



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAR 21 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Andrew S. Gutwein
Bennett Boehning & Clary LLP
415 Columbia Street, Suite 1000
P.O. Box 469
Lafayette, Indiana 47902

Re: Wilson Transportation Inc., Brook, Indiana
Consent Agreement and Final Order
Docket No. **CERCLA-05-2011-0010**

Dear Mr. Gutwein:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on March 21, 2011.

Please have your client pay the CERCLA civil penalty in the amount of \$4,489 in the manner prescribed in paragraphs 27 and 28, and reference you check with the billing document number 2751130B011 and the docket number CERCLA-05-2011-0010.

Your payment is due on April 21, 2011.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Maria Gonzalez, Associate Regional Counsel, at (312) 886-6630. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Silvia Palomo".

Silvia Palomo, Acting Chief
Chemical Emergency Preparedness
and Prevention Section

RECEIVED
MAR 21 2011

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
USEPA
REGION 5

In the Matter of:)	Docket No. CERCLA-05-2011-0010
)	
Wilson's Transportation Inc.)	Proceeding to Assess a Civil Penalty
Brook, Indiana)	Under Section 109(b) of the
)	Comprehensive Environmental Response,
Respondent.)	Compensation, and Liability Act
<hr/>)	

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Wilson's Transportation Inc., a corporation doing business in the State of Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), provides a mechanism to alert federal agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the government's response to an emergency and pose serious threats to human health and the environment.

11. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collection Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

Factual Allegations and Alleged Violations

12. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

13. At all times relevant to this CAFO, Respondent was in charge of a transportation vehicle that released a hazardous substance when hit from behind by a semi truck (facility).

14. Respondent’s facility consists of storage container, motor vehicle, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

15. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. Sulfuric Acid CAS# 7664-93-9 is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. Sulfuric acid has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On August 22, 2008, at or about 1500 CST, a release occurred from Respondent’s facility of approximately 11,475 pounds of sulfuric acid (the release).

19. In a 24 hour time period, the release of 11,475 pounds exceeded 1,000 pounds..

20. During the release, approximately 11,475 pounds of sulfuric acid spilled, leaked, pumped, poured, emitted, emptied, discharged, escaped, dumped, or disposed onto a land surface or subsurface strata.

21. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

22. Respondent had knowledge of the release on August 22, 2008, at approximately 1500 CST.

23. Respondent notified the NRC of the release on August 22, 2008, at 1905 CST.

24. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

25. Respondent's failure to notify immediately the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Civil Penalty

26. In consideration of Respondent's good faith, cooperation, and agreement to perform a supplemental environmental project, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$4,489.

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$4,489 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

[for checks sent by regular U.S. postal service]

U.S. EPA
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979076 U.S. EPA Superfund Payments
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: In the Matter of Wilson's Transportation Inc; the docket number of this CAFO and the billing document number 2751130B011.

Respondent may pay the penalty by electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the name of the case, docket number of this CAFO and the bill document number 2751130B11.

28. If payment by check, a transmittal letter, stating the Respondent's name, case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Ruth McNamara, (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Maria Gonzalez
Office of Regional Counsel
U.S. EPA, Region 5 (C-14J)
77 West Jackson Blvd.
Chicago, IL 60604

29. This civil penalty is not deductible for federal tax purposes.

30. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 42, below," U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

31. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

32. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment by reducing the potential for releases of automotive urea during fueling of their trucks.

33. By April 1, 2011, Wilson's Transportation Inc. will install a triple-walled permanent tank with an automatic overflow device at its 201 S. Wilson Street, Brook, Indiana facility (the Brook facility). This tank would be utilized to dispense the automotive urea which is used by the newer diesel trucks. The installation of this bulk tank will eliminate the need to use one or two gallon containers to add this automotive urea to the tanks. The small containers are hard to handle and hard to empty out completely. These smaller containers also result in disposal issues as well as creating a high probability of spills. This project would result in an overall decrease in the amount of pollution released into the environment, and create a safer

method to handle this material.

34. Respondent must spend at least \$16,834 to install this tank.

35. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

36. U.S. EPA may inspect the Brook facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

37. Respondent must submit a SEP completion report to U.S. EPA by May 1, 2011.

This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP.

38. Respondent must submit all notices and reports required by this CAFO by first class mail to Ruth McNamara at the address provided in paragraph 28, above.

39. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

40. Following receipt of the SEP completion report described in paragraph 37 above,

U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 42, below.

41. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 42, below.

42. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent has spent less than the amount set forth in paragraph 34 above (\$16,834), Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and \$16,834.
- b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$5,000 in addition to any penalty required under subparagraph a, above.

- c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$5,000 in addition to the penalty required under subparagraph a, above. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 33 for implementing the SEP, or fails to submit timely the SEP completion report, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$200	1st through 14th day
\$400	15th through 30th day
\$600	31st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone, until it achieves compliance with the milestone.

43. U.S. EPA’s determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

44. Respondent must pay any stipulated penalties within 15 days of receiving U.S EPA’s written demand for the penalties. Respondent will use the method of payment specified in paragraphs 27 and 28 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

45. Any public statement that Respondent makes referring to the SEP must include the following language, “Respondent undertook this project under the settlement of the United States Environmental Protection Agency’s enforcement action against Respondent for violations of CERCLA Section 103(a).”

46. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP

under the terms of this CAFO.

47. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

48. This CAFO resolves only Respondent's liability for federal civil penalties for the violations in the CAFO.

49. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

50. Respondent certifies that that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

51. This CAFO does not affect Respondent's responsibility to comply with CERCLA and other applicable federal, state and local laws, and regulations.

52. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA.

53. The terms of this CAFO bind Respondent and its successors, and assigns.

54. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

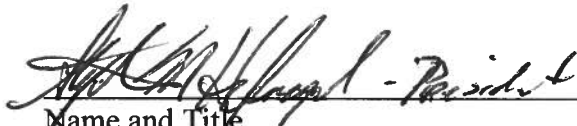
55. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

56. This CAFO constitutes the entire agreement between the parties.

In the Matter of:
Wilson's Transportation Inc., Brook, Indiana
Docket No.


Wilson's Transportation, Inc., Respondent

2-26-11
Date

 - President
Name and Title
Wilson's Transportation Inc.

U.S. Environmental Protection Agency, Complainant

3/15/11
Date


~~Richard C. Karl, Director~~
Superfund Division
Douglas E. Ballotti, Acting Director

In the Matter of:
Wilson's Transportation Inc., Brook, Indiana
Docket No. CERCLA-05-2011-0010

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3-17-11

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of:
Wilson Transportation Inc., Brook, Indiana
Docket No. CERCLA-05-2011-0010

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Certificate of Service

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number **CERCLA-05-2011-0010** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Wilson Transportation, Inc.'s Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Andrew S. Gutwein
Bennett Boehning & Clary LLP
415 Columbia Street, Suite 1000
P.O. Box 469
Lafayette, Indiana 47902

on the 21st day of March, 2011.

Ruth McNamara
Ruth McNamara
U.S. Environmental Protection Agency
Region 5