



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 04 2014

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Keith Schneider  
Plant Manager  
PPG Industries, Inc.  
3800 West 143<sup>rd</sup> Street  
Cleveland, Ohio 44111

Re: PPG Industries, Inc., Cleveland, Ohio, Consent Agreement and Final Order,  
Docket Nos. MM-05-2015-0001 CERCLA-05-2015-0001 EPCRA-05-2015-0002

Dear Mr. Schneider:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on November 4, 2014.

Please pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$24,262.50 in the manner prescribed in paragraph 51, and reference your check with the billing document number CERCLA-05-2015-0001 and the docket number 2751530B001.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$48,525 in the manner prescribed in paragraph 53, and reference your check with the docket number EPCRA-05-2015-0002.

Your payments are due on December 5, 2014.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Erik H. Olson, Associate Regional Counsel, at (312) 886-6829. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief  
Chemical Emergency Preparedness  
and Prevention Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

MM-05-2015-0001

In the Matter of: )  
)  
PPG Industries, Inc. )  
Cleveland, Ohio )  
Respondent. )



Docket Nos. EPCRA-05-2015-0002  
CERCLA-05-2015-0001  
Proceeding to Assess a Civil Penalty Under  
Section 109(b) of the Comprehensive  
Environmental Response, Compensation and  
Liability Act, and Section 325(b)(2) of the  
Emergency Planning and Community Right-  
to-Know Act of 1986

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), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), 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 Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is PPG Industries, Inc., a Delaware corporation doing business in the State of Ohio.

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 the terms of the 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), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state and local 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 governments' response to an emergency and pose serious threats to human health and the environment.

10. 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 reportable quantity of the hazardous substance.

11. Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of a hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are

produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

13. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1910.1200(c).

14. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

15. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

#### **Factual Allegations and Alleged Violations**

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

17. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

18. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 3800 West 143<sup>rd</sup> Street, Cleveland, Ohio (facility).

19. At all times relevant to this CAFO, Respondent was in charge of the facility.

20. Respondent's facility consists of a building, structure, installation, equipment, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

21. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

23. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

24. Xylene (CAS # 1330-20-7) (mixed isomers) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. Xylene (CAS # 1330-20-7) (mixed isomers) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

26. Xylene (CAS # 1330-20-7) (mixed isomers) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

27. Xylene is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

28. At all times relevant to this CAFO, Respondent produced, used or stored xylene at the facility.

29. On November 16, 2013 at or about 3:00 p.m., a release occurred from Respondent's facility of approximately 3,200 pounds of xylene (the release).

30. In a 24 hour time period, the release of xylene exceeded 100 pounds.

31. During the release, approximately 3,200 pounds spilled, leaked, discharged, or escaped into the land surface, subsurface strata, ambient air, water and/or land.

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

33. The release is a "release" as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

34. Respondent had knowledge of the release on November 17, 2013 at approximately 11:45 a.m.

35. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

36. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

37. The release was likely to affect Ohio.

38. At all times relevant to this CAFO, the Ohio Environmental Protection Agency was the SERC for Ohio under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

39. The release was likely to affect Cuyahoga County, Ohio.

40. At all times relevant to this CAFO, the Cuyahoga County LEPC was the LEPC for Cuyahoga County, Ohio under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

41. Respondent notified the NRC of the release on November 18, 2013 at 8:19 p.m.

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

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

44. Respondent notified the Ohio SERC of the release on November 18, 2013 at 6:55 p.m.

45. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

46. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

47. Respondent notified the LEPC of the release on November 18, 2013 at 7:01 p.m.

48. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

49. Respondent's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

#### **Civil Penalty**

50. Complainant has determined that an appropriate civil penalty to settle this action is \$24,262.50 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

51. Within 30 days after the effective date of this CAFO, Respondent must pay a \$24,262.50 civil penalty for the CERCLA violation. Respondent must 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 should read:  
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state the following: PPG Industries, Inc., the docket number of this CAFO and the billing document number.

52. Complainant has determined that an appropriate civil penalty to settle this action is \$48,525 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA’s EPCRA/CERCLA Enforcement Response Policy.

53. Within 30 days after the effective date of this CAFO, Respondent must pay a \$48,525 civil penalty for the EPCRA violations. Respondent must pay the penalty by electronic funds transfer, payable to “Treasurer, United States of America,” 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 should read:  
“D68010727 Environmental Protection Agency”



In the comment or description field of the electronic funds transfer, state the following: PPG Industries, Inc. and the docket number of this CAFO.

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

55. If Respondent does not timely pay the civil penalty, 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.

56. 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.

#### **General Provisions**

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

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

59. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

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

61. This CAFO is a “final order” for purposes of U.S. EPA’s EPCRA/CERCLA Enforcement Response Policy.

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

63. 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.

64. Each party agrees to bear its own costs and attorney’s fees in this action.

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

**PPG Industries, Inc., Respondent**

10/21/14  
Date

Keith H. Schneider  
Keith Schneider  
Plant Manager, Cleveland  
PPG Industries, Inc.

**U.S. Environmental Protection Agency, Complainant**

10/30/14  
Date

Lawrence Schmitt  
Lawrence Schmitt, Acting Chief  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5

10/30/14  
Date

Richard C. Karl  
Richard C. Karl, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5


**In the Matter of: PPG Industries, Inc.**

**Docket No. MM-05-2015-0001 CERCLA-05-2015-0001 EPCRA-05-2015-0001**

**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.

10/31/2014  
Date

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

**In the Matter of: PPG Industries, Inc.**

**Docket No. MM-05-2015-0001 ERCLA-05-2015-0001 EPCRA-05-2015-0001**

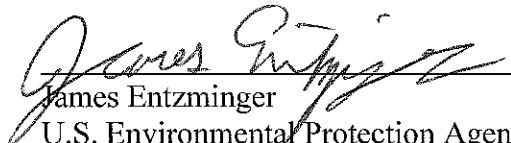
**Certificate of Service**

I, James Entzminger, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Keith Schneider  
Plant Manager  
PPG Industries, Inc.  
3800 West 143<sup>rd</sup> Street  
Cleveland, Ohio 44111

Steven F. Faeth  
Corporate Counsel EHS  
PPG Industries, Inc.  
One PPG Place  
Pittsburgh, PA 15272-0001

on the 4 day of November 2014

  
James Entzminger  
U.S. Environmental Protection Agency  
Region 5