



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 West Jackson Boulevard
Chicago, Illinois 60604



EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER

DOCKET NO: CERCLA-05-2023-0010

CERCLA PAYMENT DOCKET NO: CERCLA-23-ESA-001

This Expedited Settlement Agreement is issued to:

Austin Powder Company
32000 Powder Plant Road
McArthur, Ohio 45651

for alleged violation of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act.

The United States Environmental Protection Agency, Region 5, and Austin Powder Company ("Respondent") (jointly "the Parties") have agreed to the settlement of this action before the filing of a complaint. This action is thus simultaneously commenced and concluded by this Expedited Settlement Agreement ("ESA") and Final Order. *See* 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

This is an administrative action for the assessment of civil penalty instituted pursuant to EPA's authority under Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609. The U.S. Environmental Protection Agency has jurisdiction over this matter pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. §§ 22.1(a)(7) and (8), and 22.4 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"). The Director of the Superfund & Emergency Management Division, EPA Region 5, has been delegated the authority to issue an Administrative Complaint seeking the assessment of civil penalty for violations of Section 103 of CERCLA, 42 U.S.C. § 9603. The Regional Judicial Officer for Region 5 of EPA is authorized to issue a Final Order, which concludes this matter pursuant to 40 C.F.R. § 22.18. The Regional Administrator has delegated the authority to issue Final Orders ratifying settlements pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(3) to the Regional Judicial Officer, Office of Regional Counsel, EPA Region 5. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Sections 22.18(c) and 22.31(a) of the Consolidated Rules of Practice.

ALLEGED VIOLATIONS

Complainant alleges that, at all times relevant to the allegations described in this Agreement, Respondent was a "person" in charge of a "facility" from which a "hazardous substance" was "released," other than a "federally-permitted release," within the meaning of Subsections 101(9), (10), (14), (21) and (22) of CERCLA, 42 U.S.C. § 9601(9), (10), (14), and (22).

On August 3, 2022, at or about 1:50 p.m., a release occurred from Respondent's facility 32000 Powder Plant Road, McArthur, Ohio, of approximately 2,312 pounds of sulfuric acid (the release). The release of sulfuric acid exceeded 1,000 pounds within a 24-hour period and the release resulted in the potential for exposure to persons or sites on which the facility is located.

Respondent did not immediately notify the National Response Center (NRC) as soon as Respondent knew or should have known of the release. 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). In failing to comply with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), Respondent is subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

SETTLEMENT

In consideration of the Respondent's prior history of such violations and such other matters as justice may require, and upon consideration of the entire record, the parties enter into the ESA in order to settle the violations cited above for the total penalty amount of \$5,000 for the CERCLA violation. In signing this ESA, Respondent: (1) admits that EPA has jurisdiction over Respondent's conduct as alleged herein; (2) neither admits nor denies the factual allegation(s) contained herein; (3) consents to the assessment of this penalty; and (4) waives any right to request a hearing to contest any fact or allegation or appeal the final order accompanying this ESA. Respondent consents to, and is bound by, the terms and conditions of this ESA.

By its signature below Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that: (1) the alleged violation(s) has/have been corrected; and (2) Respondent is submitting payment of the civil penalty as described below. Respondent also: (1) admits that EPA has jurisdiction over Respondent's conduct as alleged herein; (2) neither admits nor denies the factual allegation(s) contained herein, except as provided in the jurisdictional admission above; (3) consents to the assessment of this penalty; and (4) waives any right to request a hearing to contest any fact or allegation or appeal the final order accompanying this ESA. Respondent consents to, and is bound by, the terms and conditions of this ESA.

Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this ESA and Final Order. Late payment of the agreed upon penalty may subject Respondent to interest, administrative costs and late payment penalties in accordance with 40 C.F.R. § 13.11.

Respondent must send a certified, company, or cashier's check for the CERCLA violation payable to "EPA Hazardous Substance Superfund," in the amount of \$5,000 to:

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

The payment docket number of this ESA **must be included on the check.** (The payment docket number is located at the top left corner of this ESA.)

This original ESA and **a copy of the check must be sent by certified mail to:**

James Entzminger
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Upon the issuance of the Final Order, Respondent's correction of the alleged violation, and confirmation of receipt of Respondent's payment of the civil penalty, Respondent's liability is resolved only for any federal civil penalties due as a result of the specific facts and violations alleged in this ESA. This ESA, the Final Order, and Respondent's full payment of the civil penalty set forth herein, do not affect the right of EPA to pursue appropriate injunctive, other equitable relief, or criminal sanctions for any violations of law. EPA also does not waive any enforcement authority for any other violation of CERCLA, or any other statute. The issuance of the Final Order does not waive, extinguish, or otherwise affect Respondent's duty to comply with CERCLA, the regulations promulgated thereunder, or any other applicable law or requirement.

If the signed original ESA **with an attached copy of the check** is not returned to the **EPA Region 5 office** at the above address in correct form by Respondent within 45 days of the date of Respondent's receipt of this ESA, the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified in this ESA.

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

This ESA is binding on the Parties signing below.

Each Party to this action shall bear its own costs and fees, if any.

Each Person signing this ESA 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.

FOR RESPONDENT:

Signature:  Date: 5/30/2023

Name (print): Chris Waketfield

Title (print): Plant Manager

Name of facility: Austin Powder Red Diamond Plant

In the Matter of: Austin Powder Company, McArthur, Ohio
Docket No. CERCLA-05-2023-0010

FOR COMPLAINANT:

DOUGLAS
BALLOTTI

Digitally signed by DOUGLAS
BALLOTTI
Date: 2023.05.31 10:28:37 -05'00'

Date: May 31, 2023

Douglas Ballotti, Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Austin Powder Company, McArthur, Ohio
Docket No. CERCLA-05-2023-0010

FINAL ORDER

This Expedited Settlement 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.

**ANN
COYLE**

Digitally signed by
ANN COYLE
Date: 2023.06.01
15:42:07 -05'00'

Date: _____

Ann Coyle, Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5