



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 21 2018

REPLY TO THE ATTENTION OF:

ELECTRONIC SERVICE
VIA E-MAIL

Grant P. Gilezan
Dykema Gossett PLLC
400 Renaissance Center
Detroit, Michigan 48243

Re: Federal-Mogul LLC, Greenville, Michigan, Consent Agreement and Final Order
Docket No. CERCLA-05-2018-0007

Dear Mr. Gilezan:

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 June 21, 2018.

Please have your client pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$19,661 in the manner prescribed in paragraph 27, and reference your check with the billing document number 2751830B005 and the docket number CERCLA-05-2018-0007.

Your payment is due on July 23, 2018.

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 Robert H. Smith, Associate Regional Counsel, at (312) 886-0765. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

cc: Captain Christopher A. Kelenske, Chairperson (w/enclosure)
Citizen-Community Emergency Response
Coordinating Counsel
EMHSD/Michigan Department of State Police
Post Office Box 30634
Lansing, Michigan 48910

Michael Young (w/enclosure)
Michigan DEQ Executive Office
Emergency Management Unit
Post Office Box 30457
Lansing, Michigan 48909

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Federal-Mogul LLC
Greenville, Michigan

Respondent.



Docket No. CERCLA-05-2018-0007-

Proceeding to Assess a Civil Penalty Under
Section 109(b) of the Comprehensive
Environmental Response, Compensation and
Liability Act

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 Chief of the Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Federal-Mogul LLC, a Delaware Limited Liability Company, doing business in the State of Michigan.

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 or legal conclusions set forth 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 reportable quantity of the hazardous substance.

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 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 \$32,500 per day of violation that occurred after March 15, 2004 through January 12, 2009, to \$37,500 per day of violation for

violations that occurred after January 12, 2009, and to \$55,907 per day of violation for violations that occurred after November 2, 2015, and assessed after January 15, 2018.

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 the facility located at 510 East Grove Street, Greenville, Michigan (facility).

14. Respondent’s facility consists of a building, structure, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, 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. Lead fluoborate (CAS #13814-96-5) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. Lead fluoborate (CAS #13814-96-5) has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On June 24, 2017, at or about 10:00 a.m., a release was discovered from Respondent’s facility of approximately 290.95 pounds of lead fluoborate (the release).

19. In a 24-hour time period, the release of lead fluoborate exceeded 10 pounds.

20. During the release, approximately 290.95 pounds spilled, leaked, emptied, discharged, escaped, or dumped into the 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 June 24, 2017, at approximately 10:00 a.m.

23. Respondent notified the NRC of the release on June 24, 2017, at 2:19 p.m.

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

25. 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).

Civil Penalty

26. Complainant has determined that an appropriate civil penalty to settle this action is \$19,661 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).

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$19,661 civil penalty for the CERCLA violation. Respondent agrees to 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: In the Matter of: Federal-Mogul LLC, the docket number of this CAFO, and the billing document number 2751830B005.

28. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket number and the billing document number, must promptly follow the payment. Respondent must send a copy of the electronic funds transfer confirmation and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

Robert H. Smith (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
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, 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.

General Provisions

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

33. 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.

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

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

36. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

38. 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.

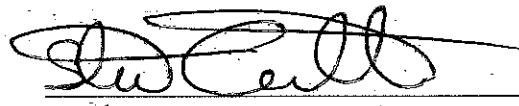
39. Each party agrees to bear its own costs and attorney's fees in this action.

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

41. Pursuant to 40 C.F.R. §§ 22.5 and 22.6, the parties consent to service of this CAFO by email at the following email addresses: smith.roberth@epa.gov (for Complainant) and GGilezan@dykema.com (for Respondent). See 40 C.F.R. §§ 22.5-6.


Federal-Mogul LLC, Greenville, Michigan, Respondent

6/14/2018
Date

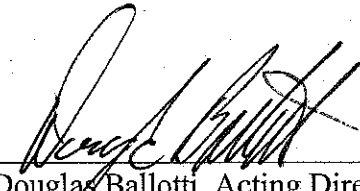

Steve Grilliot
Plant Manager
Federal-Mogul LLC, Greenville, Michigan

U.S. Environmental Protection Agency, Complainant

6-19-18
Date


Jason El-Zein, Chief *Michael S. Hans for JEZ*
Emergency Response Branch 1
U.S. Environmental Protection Agency
Region 5

6/20/18
Date


Douglas Ballotti, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Federal-Mogul LLC, Greenville, Michigan

Docket No. CERCLA-05-2018-0007

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.

June 20, 2018
Date

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

In the Matter of: Federal-Mogul LLC, Greenville, Michigan
Docket No. CERCLA-05-2018-0007

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on June 21, 2018 in the following manner to the addressees:

Copy by E-mail to

Attorney for Respondent: Grant P. Gilezan
Dykema Gossett PLLC
400 Renaissance Center
Detroit, Michigan 48243
GGilezan@dykema.com
(313) 568-6789

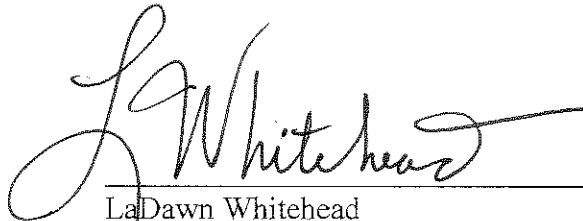
Copy by E-mail to

Attorney for Complainant: Robert H. Smith
Smith.roberth@epa.gov

Copy by E-mail to

Regional Judicial Officer: Ann Coyle
Coyle.ann@epa.gov

Dated: June 21, 2018



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5