



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 21 2018

REPLY TO THE ATTENTION OF:

ELECTRONIC SERVICE
VIA EMAIL

Mr. Keith Mills
Director of Manufacturing
Austin Powder Company
430 Powder Plant Road
McArthur, Ohio 45651-0317

Re: Austin Powder Company, McArthur, Ohio, Consent Agreement and Final Order
Docket No. CERCLA-05-2018-0003

Dear Mr. Mills:

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 March 21, 2018.

Please pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$12,640 in the manner prescribed in paragraph 39, and reference your check with the billing document number 2751830B002 and the docket number CERCLA-05-2018-0003.

Your payment is due on April 20, 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 John P. Steketee, Associate Regional Counsel, at (312) 886-0558. Thank you for your assistance in resolving this matter.

Sincerely,

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

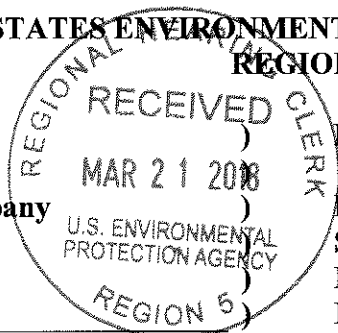
Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Austin Powder Company
McArthur, Ohio,

Respondent.



Docket No. CERCLA-05-2018-0003

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, Chief, Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Austin Powder Company, an Ohio 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), 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) provide 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 \$54,789 per day of violation for violations that occurred after November 2, 2015.

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 430 Powder Plant Road, McArthur, Ohio (facility).

14. Respondent’s facility consists of a building, structure, installation, equipment, pipe, pond, impoundment, storage container, rolling stock, 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. Nitric acid (CAS #7697-37-2) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. Nitric acid (CAS #7697-37-2) has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On February 27, 2017, at or about 5:56 p.m., a release occurred from Respondent’s facility of approximately 1,817 pounds of nitric acid (the nitric acid release).

19. In a 24-hour time period, the nitric acid release exceeded the 1,000 pound RQ.

20. During the nitric acid release, approximately 1,817 pounds of nitric acid spilled, leaked, pumped, poured, discharged, escaped, into the surface water, ground water, land surface or subsurface strata.

21. The nitric acid 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 nitric acid release on February 27, 2017, at approximately 5:56 p.m.

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

24. Respondent notified the NRC of the nitric acid release on February 28, 2017, at 1:55 p.m.

25. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the nitric acid release.

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

27. 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).

28. Sulfuric acid (CAS #7664-93-9) has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

29. On February 27, 2017, at or about 5:56 p.m., a release occurred from Respondent’s facility of approximately 1,335 pounds of sulfuric acid (the sulfuric acid release).

30. In a 24-hour time period, the sulfuric acid release exceeded the 1,000 pound RQ.

31. During the sulfuric acid release, approximately 1,335 pounds of sulfuric acid spilled, leaked, pumped, poured, discharged, escaped, into the surface water, ground water, land surface or subsurface strata.

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

33. Respondent had knowledge of the sulfuric acid release on February 27, 2017, at approximately 5:56 p.m.

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

35. Respondent notified the NRC of the sulfuric acid release on February 28, 2017, at 1:55 p.m.

36. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the sulfuric acid release.

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

Civil Penalty

38. Complainant has determined that an appropriate civil penalty to settle this action is \$12,640 for the CERCLA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations; Respondent’s 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 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).

39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$12,640 civil penalty for the CERCLA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

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

for checks sent by express mail, by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

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: Austin Powder Company, the docket number of this CAFO and the billing document number 2751830B002.

40. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket number and the billing document number, if any, must accompany the payment. Respondent must send a copy of the check 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

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

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

42. 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.

43. 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

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

45. 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.

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

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

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

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

50. 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.

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

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

53. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Steketee.john@epa.gov (for Complainant), and Keith.Mills@austinpowder.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

Austin Powder Company, Respondent

3/8/2018

Date

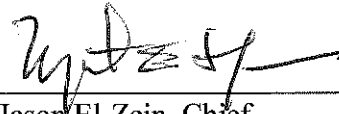


Keith Mills
Director of Manufacturing
Austin Powder Company

U.S. Environmental Protection Agency, Complainant

3-19-18

Date

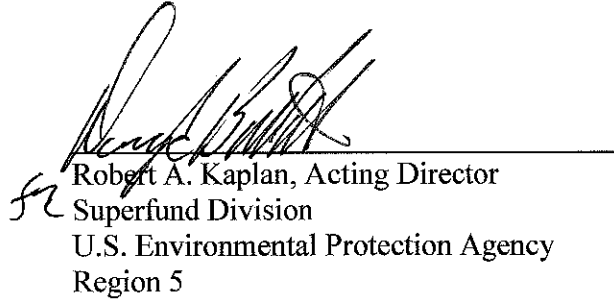


Jason El-Zein, Chief
Emergency Response Branch 1
U.S. Environmental Protection Agency
Region 5

Michael E. Hans
for JEZ

3/19/2018

Date



Robert A. Kaplan, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Austin Powder Company, McArthur, Ohio
Docket No. CERCLA-05-2018-0003

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.

March 30, 2018
Date

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

In the Matter of: Austin Powder Company, McArthur, Ohio
Docket No. CERCLA-05-2018-0003

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 March 21, 2018 in the following manner to the addressees:

Copy by E-mail
Respondent:

Mr. Keith Mills
Director of Manufacturing
Austin Powder Company
430 Powder Plant Road
McArthur, Ohio 45651-0317
Keith.Mills@austinpowder.com

Copy by E-mail
Attorney for Respondent:

Matthew R. Ring, Attorney
mring@taftlaw.com

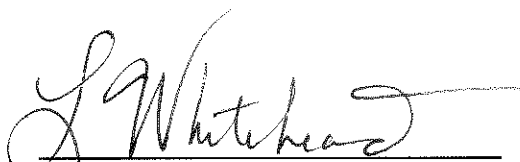
Copy by E-mail to
Attorney for Complainant:

John P. Steketee
Steketee.john@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
Coyle.ann@epa.gov

Dated: March 21, 2018



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