



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAR 28 2017,

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Karen Aldridge Crawford, Esq.  
Nelson Mullins Riley & Scarborough LLP  
Meridian, 17<sup>th</sup> Floor  
1320 Main Street  
Columbia, South Carolina 29201

Re: Devro, Inc., Swansea, South Carolina  
Consent Agreement and Final Order  
Docket No. CERCLA-04-2017-2004(b)

Dear Ms. Crawford:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also, enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document, "SEC" refers to the Securities and Exchange Commission.

Should you or your client have any questions concerning this matter or Devro, Inc.'s compliance status in the future, please contact Lucia Mendez, Associate Regional Counsel, at (404) 562-9637.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney  
Chief  
Chemical Safety and Enforcement Branch

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**IN THE MATTER OF:**

Devro, Inc.

Respondent.

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**Docket Number:** CERCLA-04-2017-2004(b)

HEARING CLERK

2017 MAR 28 PM 3:55

APR 28 2017

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency, EPA. Respondent is Devro, Inc.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 is vested in the President of the United States. The President has delegated that authority to the Administrator of the EPA. The Administrator of the EPA has delegated the authority to the Regional Administrators by EPA Delegations 14-31, dated May 11, 1994. The Region 4 Administrator has delegated the authority to the Director, Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

**II. Preliminary Statements**

4. Respondent, Devro, Inc., is a corporation doing business in the State of South Carolina.

5. Respondent is a "person" and is the "owner or operator" of a "facility" as those terms are defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 101 (20)(A) of

CERCLA, 42 U.S.C. § 9601(20)(A), and Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), respectively.

6. Respondent's facility is located at 785 Old Swamp Road, Swansea, South Carolina 29160.

### **III. EPA's Allegations of Violations**

7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of the EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). The EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the RQ within a 24-hour period.

9. Respondent was in charge of the facility during the relevant period described below.

10. Sulfuric acid is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 1,000 pounds, as specified in 40 C.F.R. § 302.4.

11. On October 31, 2015, a release of sulfuric acid above the RQ occurred at the facility.

12. The EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the applicable CERCLA regulations, 40 C.F.R. § 302.6, by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of sulfuric acid in an amount equal to or greater than its RQ at Respondent's facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

13. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after December 6, 2013 and before November 2, 2015. Each day a violation of Section 103 continues constitutes a separate violation. Civil

penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

#### **IV. Consent Agreement**

14. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations or conclusions of law set out above.

15. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

16. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

17. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of CERCLA.

18. Compliance with this CAFO shall resolve the allegations of violations contained herein. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA, CERCLA or other applicable laws and regulations.

19. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA and EPCRA.

#### **V. Final Order**

20. Respondent shall pay a civil penalty of **ELEVEN THOUSAND, FIVE HUNDRED FIVE DOLLARS (\$11,505)** for the CERCLA violation in Section III, which shall be paid within thirty (30) days of the effective date of this CAFO.

21. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, or by electronic transfer, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

U.S. Environmental Protection Agency  
P.O. Box 979076  
St. Louis, MO 63197-9000  
(513) 487-2091

BY OVERNIGHT

U.S. Environmental Protection Agency  
Government Lockbox 979076  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
(513) 487-2091

BY ELECTRONIC TRANSFER

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Beneficiary: US Environmental Protection Agency

\*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the US EPA.

The check shall reference on its face the name and the Docket Number of the CAFO.

22. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Vinson Poole  
U.S.EPA Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Saundi Wilson  
U.S. EPA Region 4  
Office of Regional Counsel  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

23. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made

pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

24. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

25. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

26. This CAFO shall be binding upon the Respondent, its successors, and assigns.

27. The following individual is authorized to receive service for EPA in this proceeding:

Robert W. Bookman  
U.S. EPA Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9169

28. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

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**VI. Effective Date**

29. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Devro, Inc.

By: Tom Root (Signed) Date: 2/15/17

Name: Tom Root (Typed or Printed)

Title: CFO (Typed or Printed)

U.S. Environmental Protection Agency

By: Beverly H. Banister Date: 3/16/17

Beverly H. Banister  
Director  
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 28<sup>th</sup> day of March, 2017

Tanya Floyd  
Tanya Floyd  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing  
Consent Agreement and Final Order: In the Matter of Devro, Inc., Docket Number: CERCLA-  
04-2017-2004(b), on the parties listed below in the manner indicated:

Robert W. Bookman (Via EPA's internal mail)  
U.S. EPA Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street  
Atlanta, GA 30303

Lucia Mendez (Via EPA's internal mail)  
U.S. EPA Region 4  
Office of Regional Counsel  
61 Forsyth Street  
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)  
U.S. EPA Region 4  
Office of Regional Counsel  
61 Forsyth Street  
Atlanta, GA 30303

Karen Aldridge Crawford, ESQ. (Via Certified Mail - Return Receipt Requested)  
Nelson Mullins Riley & Scarborough LLP  
Meridian, 17<sup>th</sup> Floor  
1320 Main Street  
Columbia, South Carolina 29201

Date: 3-28-17



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511