



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CERCLA-05-2016-0008
)	
OHIO POOL EQUIPMENT & SUPPLY COMPANY, COLUMBUS, OHIO,)	Proceeding to Assess a Civil Penalty Under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act
Respondent.)	
)	

CONSENT AGREEMENT AND FINAL ORDER

1. This is an administrative action commenced and concluded under section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 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. 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 Ohio Pool Equipment & Supply Company, Inc., a corporation doing business in the State of Ohio.

4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

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 to the terms of the CAFO.

JURISDICTION AND WAIVER OF THE RIGHT TO A 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), provides 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.

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 \$37,500 per day of violation for violations that occurred after January 12, 2009.

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 a delivery truck with a storage container for liquids (facility). The delivery truck is based at 775 Kaderly Drive, Columbus, Ohio.

14. Respondent’s facility consists of equipment, a storage container or motor vehicle.

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. Sodium hypochlorite (CAS # 7681-52-9) is a “hazardous substance” as that term is defined under section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. Sodium hypochlorite has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. part 302, table 302.4.

18. On June 15, 2015, at or about 10:45 a.m., an accident occurred on the northbound side of Ohio SR661, Miller Township, in Knox County, Ohio. This accident resulted in a release from Respondent’s facility of approximately 944 pounds of sodium hypochlorite (the release).

19. In a 24 hour time period, the release of sodium hypochlorite exceeded 100 pounds.

20. During the release, approximately 944 pounds of sodium hypochlorite spilled, leaked, poured, emitted, discharged, escaped, or dumped onto the land surface, into subsurface strata, or into the ambient air.

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 15, 2015, at approximately 10:45 a.m.

23. Respondent notified the NRC of the release on June 15, 2015, at 12:49 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 \$9,000 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 \$9,000 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

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

The check must also note the following: *In re: Ohio Pool Equipment & Supply Company, Inc.*, the BD number (to be assigned upon filing of this document with the Regional Hearing Clerk) and docket number of this CAFO.

28. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address and the case docket numbers, must accompany the payment. Respondent must send a copy of the checks and transmittal letter, by U.S. mail or email, to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

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

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

29. These civil penalties are 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. Respondent agrees that the validity, amount and appropriateness of these 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 payment

was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

GENERAL PROVISIONS

32. 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 filed CAFO by e-mail at the following valid e-mail addresses: guenther.robert@epa.gov (for Complainant) and areck@emscocorp.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

34. 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.

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

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

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

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

39. 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.

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

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

Ohio Pool Equipment & Supply Company, Respondent

5-10-16
Date

Mark Stoyanoff President
Mark Stoyanoff
President
Ohio Pool Equipment and Supply Company

U.S. Environmental Protection Agency, Complainant

05/24/2016
Date

M. Cecilia Moore
M. Cecilia Moore, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

5-26-16
Date

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

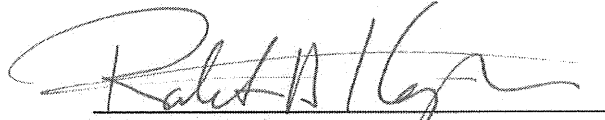
In the Matter of: Ohio Pool Equipment & Supply Company

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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.

May 27, 2016
Date



Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of: Ohio Pool Equipment and Supply Company, Columbus, Ohio
Docket No. CERCLA-05-2016-0008

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 1, 2016 in the following manner to the addressees:

Copy by E-mail to
Respondent:

Adam Reck
areck@emscocorp.com

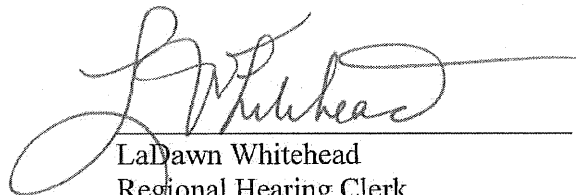
Copy by E-mail to
Attorney for Complainant:

Robert S. Guenther
Guenther.robert@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
Coyle.ann@epa.gov

Dated: June 1, 2016



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