



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Release Reporting/CERCLA Enforcement: U.S. Environmental Protection Agency and Erie, Pennsylvania Chemical Manufacturing Facility Enter into Consent Agreement

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The United States Environmental Protection Agency ("EPA") and BASF Corporation ("BASF") entered into a February 13th Consent Agreement ("CA") addressing alleged violations of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). See CERC-EPCRA-03-2020-0062.

The CA provides that BASF is the owner of a chemical manufacturing facility ("Facility") in Erie, Pennsylvania.

BASF is stated to be in charge of the Facility. Further, it is stated to be classified as a Facility as defined by Section 101(9) of CERCLA.

EPA is stated to have conducted an inspection of the Facility on November 16, 2017, to determine BASF's compliance with Section 103 of CERCLA and Sections 302-312 of the Emergency Planning and Community Right-To-Know Act ("EPCRA"). The inspection was stated to be in response to a September 20, 2016, release of wastewater from the Facility and an October 5, 2016, release of nitric oxide from the Facility. The CA states in part:

. . . Beginning at or around 5:50 p.m. on September 20, 2016, and continuing until approximately 1:00 a.m. on September 21, 2016, approximately 10 ,000 gallons of wastewater, classified as a RCRA F005 waste, were discharged from Building 300 when the Maleic Sewer Tank (T-320) overflowed due to a pump malfunction. As a result, 2,000 gallons of wastewater was discharged to the surface of the ground in the gravel lot adjacent to Building 300, and 8,000 gallons flowed to the Building 100 concrete trench, which drains to the site's storm sewer system and ultimately to Motsch Run and Lake Erie (the "Release "). According to EPA' s calculation, 2000 gallons of the wastewater equals approximately 16,680 pounds, and 8,000 gallons equals approximately 66,720 pounds.

Section 103 of CERCLA requires facilities to immediately notify the National Response Center of any release of hazardous substance in an amount equal to or greater than the reportable quantity for that substance. In order for a release to be considered reportable under CERCLA, there are three criteria that must be met which include the following:

- Be into the environment
- Be equal to or exceed the reportable quantity for a particular substance

- Occur within a 24-hour period

The terms “environment” and “facility” are very broadly defined by CERCLA.

F005 waste released is stated to be a CERCLA hazardous substance. Further, the CA contends that the Facility released a hazardous substance in a quantity equal to or exceeding a reportable quantity for that hazardous substance, requiring immediate notification to the National Response Center.

BASF is stated to have been first aware that the release was occurring at approximately 5:50 p.m. on September 20, 2016. It is stated to have reported the release to the National Response Center at approximately 1:11 p.m. on September 21, 2016. As a result, it is alleged that BASF failed to immediately notify the National Response Center of the release as soon as BASF knew or should have known that a release of hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable reportable quantity.

The CA also alleges certain violations of the EPCRA related to the previously referenced release.

The CA assesses a civil penalty of \$82,045.

A copy of the CA can be downloaded [here](#).