



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

Release Reporting/CERCLA Enforcement: U.S. Environmental Protection Agency and McArthur, Ohio, Explosive Manufacturing Facility Enter into Expedited Settlement Agreement

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The United States Environmental Protection Agency (“EPA”) and Austin Powder Company (“APC”) entered into a June 8th Expedited Settlement Agreement (“ESA”) addressing an alleged violation of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) release reporting requirements. See Docket No. CERCLA-05-2023-0010.

APC is stated to be the owner of a facility (“Facility”) in McArthur, Ohio.

Section 103 of CERCLA requires a facility to immediately notify the National Response Center (“NRC”) of any release of hazardous substances in an amount equal to or greater than the reportable quantity (“RQ”) 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 RQ for a particular hazardous substance
- Occur within a 24-hour period

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

The ESA provides that on August 3, 2022, at or about 1:50 p.m. a release occurred from the APC Facility of approximately 2,312 pounds of sulfuric acid (described as a release). The release of sulfuric acid is stated to have exceeded 1,000 pounds within a 24-hour period. The release is stated to have resulted in potential for exposure to persons or sites on which the Facility is located.

The ESA provides that APC did not immediately notify the NRC as soon as it knew or should have known of the release. This is alleged to constitute a failure to immediately notify the NRC of the release and a violation of Section 103(a) of CERCLA.

APC neither admits nor denies the factual allegations contained in the ESA.

A civil penalty of \$5,000 is assessed.

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

