

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Steven C. Schlang
Name of Case Attorney

8/28/12
Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number EPCRA-01-2012-0031

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Capstan Atlantic
10 Cushing Drive
Wrentham, MA 02093

Total Dollar Amount of Receivable \$ 10,600 Due Date: 9/26/12

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1st \$ _____ on _____
- 2nd \$ _____ on _____
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

_____ Phone Number

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square Suite 100
Boston, MA 02109

Steven C. Schlang
Enforcement Counsel
617-918-1773 (phone)
617-918-1809 (fax)

RECEIVED
AUG 28 2012
EPA ORC WS
Office of Regional Hearing Clerk

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

August 28, 2012

Christopher Doughty, President
Capstan Atlantic
10 Cushing Drive
Wrentham, MA 02109-3912


Re: In the Matter of: Capstan Atlantic
Docket Number: EPCRA-01-2012-0031

Dear Mr. Doughty,

I have enclosed the executed Consent Agreement and Final Order ("CAFO") and supporting documents. The first penalty payment will be due 30 days after the effective date of the CAFO, which, under 40 C.F.R. § 33.31(b) is August 28, 2012, the date the CAFO was filed with the Regional Hearing Clerk. Instructions for making the payments can be found in Paragraphs 21-23 of the CAFO.

Your cooperation in this matter has been greatly appreciated. Please do not hesitate to call me should you have any questions.

Sincerely,



Steven C. Schlang

cc: Len Wallace, EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

5 Post Office Square Suite 100

Boston, MA 02109

Steven C. Schlang
Enforcement Counsel
617-918-1773 (phone)
617-918-1809 (fax)

RECEIVED
AUG 28 2012
EPA ORC *WS*
Office of Regional Hearing Clerk

August 28, 2012

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1
5 Post Office Square
Mail Code – ORA18-1
Boston, Massachusetts 02109-3912

Re: In the Matter of: Capstan Atlantic
Docket Number: EPCRA-01-2012-0031

Dear Ms. Santiago,

Please find enclosed for filing an original and one copy of the Consent Agreement and Final Order and Certificate of Service pertaining to the above-matter.

Please do not hesitate to contact me should you have any questions regarding the enclosed.

Sincerely,



Steven C. Schlang

cc: Christopher Doughty, President, Capstan Atlantic
Len Wallace, EPA

In the Matter of: Capstan Atlantic
Docket Number EPCRA-01-2012-0031

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and one copy
hand delivered:

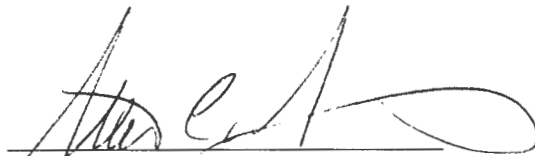
Wanda Santiago
Regional Hearing Clerk (RAA)
U.S. EPA, Region I
Mailcode ORA18-1
5 Post Office Square
Boston, MA 02109-3912

Copy by Certified Mail-
Return Receipt Requested

Christopher Doughty
President
Capstan Atlantic
10 Cushing Drive
Wrentham, MA 02093

Date:

8/28/2012



Steven C. Schlang
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I
Five Post Office Square, Suite 100
Mail Code OES04-4
Boston, MA 02109-3219
tel: (617) 918-1773
fax: (617) 918-0773

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

RECEIVED
AUG 28 2012
EPA ORC WS
Office of Regional Hearing Clerk

In the Matter of:)
)
Capstan Atlantic)
10 Cushing Drive)
Wrentham, MA 02093)
)
Respondent.)
)
Proceeding under Section 325(c) of the Emergency)
Planning and Community Right-to-Know Act, 42)
U.S.C. § 11045(c))
_____)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No.
EPCRA-01-2012-0031

The Complainant, United States Environmental Protection Agency, Region 1 ("EPA") and Capstan Atlantic ("Respondent" or "Capstan Atlantic"), enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. By this CAFO, Respondent agrees to pay a civil penalty for alleged violations of violated Section 312(a) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11022(a), and the federal regulations that set out in greater detail these statutory requirements, 40 C.F.R. Part 370.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). Complainant and Respondent (the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

NOW THEREFORE, before any hearing or the taking of any testimony, without

adjudication of any issue of law or fact herein, the Parties agree to comply with the terms of this CAFO.

I. PRELIMINARY STATEMENT

1. EPA alleges that Respondent violated Section 312(a) of EPCRA and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.44 and 370.45 by failing to submit to the Local Emergency Planning Committee ("LEPC"), State Emergency Response Commission ("SERC"), and local fire department, chemical inventory forms for hazardous chemicals stored at Respondent's facility located at 10 Cushing Drive, Wrentham, Massachusetts ("facility") in quantities equal to or greater than the chemical-specific minimum threshold for these chemicals set forth at 40 C.F.R. § 370.10.

II. GENERAL ALLEGATIONS

2. Respondent is a California corporation maintaining a manufacturing plant at the facility.
3. Respondent is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and 40 C.F.R. § 370.66.
4. Respondent's primary activity is the manufacture of metal gears used in the automotive, appliance, lawn/garden, power tool, and power transmission industries.
5. Respondent is an owner or operator of a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. §11049(4), and 40 C.F.R. § 370.66.

III. EPCRA VIOLATIONS

6. Under Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, any facility that is required to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act of 1970 (“OSHA”) and regulations promulgated thereunder must prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II form) to the LEPC, SERC, and the local fire department. The Tier I or Tier II form must be submitted annually on or before March 1st of each year and must contain information reflecting the preceding calendar year. Facilities in Massachusetts must submit Tier II forms instead of Tier I forms. Forty C.F.R. § 370.42 specifies the contents of Tier II forms.

7. Section 325(c) of EPCRA, 42 U.S.C. §11045(c), authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation for violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and regulations promulgated thereunder. The Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19, as mandated by the Debt Collection Improvement Act, 31 U.S.C. § 3701, authorizes the assessment of civil administrative penalties of up to \$32,500 per day for each violation of Section 312 of EPCRA that occurred after March 15, 2004 through January 12, 2009 and \$37,500 per day for each violation that occurs after January 12, 2009.

8. Powdered iron, liquid nitrogen, anhydrous ammonia and sulfuric acid are considered “hazardous chemicals” under OSHA, 29 U.S.C. §§ 651 et seq., and in its regulations at 29 C.F.R. § 1910.1200(c). Anhydrous ammonia and sulfuric acid are also “extremely hazardous substances” (“EHS”), as defined by 40 C.F.R. § 370.66.

9. At all times relevant to the allegations cited herein, Respondent was required, pursuant to the OSHA and regulations promulgated thereunder, to prepare or have available a MSDS for powdered iron, liquid nitrogen, anhydrous ammonia and sulfuric acid stored at the Facility.

10. In accordance with 40 C.F.R. § 370.10(a), EHS chemicals are subject to a 500 pounds minimum threshold level (“MTL”), while other hazardous chemicals are subject to a higher MTL of 10,000 pounds. Therefore, the MTL for Tier II reporting for anhydrous ammonia and sulfuric acid is 500 pounds. The MTL for powdered iron and liquid nitrogen is 10,000.

11. EPA alleges that, during the calendar year 2010, Respondent stored the following substances at the facility in quantities that exceeded the MTL of 10,000 pounds set forth in 40 C.F.R. § 370.10(a)(2): powdered iron (63,000 pounds); and liquid nitrogen (74,030 pounds). In addition, EPA alleges that Respondent stored 1,536 pounds of sulfuric acid and 9,926 pounds of anhydrous ammonia, quantities that exceeded the MTL of 500 pounds, as set forth in 40 C.F.R. § 370.10(a)(1).

12. Respondent was therefore subject to the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40 and 370.42, 370.44 and 370.45 for calendar year 2010.

13. Accordingly, on or before March 1 of 2011, Respondent was required to prepare and submit to the SERC, LEPC and the local fire department Tier II forms containing chemical information for calendar year 2010.

14. Based on an EPA inspection of the Facility on May 4, 2011, Complainant determined that:
- a. Respondent failed to submit Tier II forms for the calendar year 2010 to the SERC, LEPC and local fire department.
 - b. Respondent's failure to prepare and submit Tier II forms on or before the reporting deadline of March 1st of the subsequent year for calendar year 2010 constitutes a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44 and 370.45.

IV. TERMS OF SETTLEMENT

15. Respondent certifies that it has corrected the alleged violations cited in this CAFO and that it is now operating the Facility in compliance with Section 312(a) of EPCRA and the regulations promulgated thereunder.

16. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in herein and that the allegations in this CAFO state a claim upon which relief can be granted. Respondent hereby waives any defenses it might have as to jurisdiction and venue.

17. Respondent waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth herein and waives its right to appeal the Final Order accompanying this Consent Agreement. Without admitting or denying the allegations herein, Respondent consents to this CAFO.

18. Respondent consents to the terms and issuance of this CAFO and agrees to the payment of a civil penalty for the purpose of settlement of this action.

In the Matter of Capstan Atlantic
Docket No. EPCRA-01-2012-0031

19. This CAFO shall apply to and be binding upon Respondent and its officers, directors, agents, successors and assigns.

20. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and in light of the nature of the violations and other relevant factors, Complainant has determined an appropriate civil penalty to settle this action is \$10,600.

21. Within thirty (30) days of the effective date of the Final Order, Respondent shall make payment in the amount of \$10,600 by cashier's or certified check, payable to "Treasurer, United States of America," with the title and docket number of the action ("In the Matter of Atlantic Capstan, EPCRA-01-2012-0031) noted on the check.

22. The check shall be mailed via regular U.S. Postal Service mail to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

23. Respondent shall simultaneously submit notice of payment of the civil penalty and copies of the check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: ORA18-1)
Boston, MA 02109-3912

and

Steven Schlang
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES04-3)
Boston, MA 02109-3912

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. In the event that any partial payment of the civil penalty, plus interest thereon, is not paid when due without demand, the penalty plus accrued interest shall be payable with additional interest from the original due date to the date of payment, at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. §901.9(b)(2). In addition, a penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. See 31 C.F.R. § 901.9(d). In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

25. All penalties, interest, and charges payable pursuant to this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Respondent further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

26. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of

Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based.

27. The terms of this CAFO constitute a full settlement by EPA of all claims for civil penalties for the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, and local law. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Nothing in the CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. This CAFO does not operate as a waiver of any defenses in governmental or third party actions against the Respondent for matters not addressed in this CAFO.

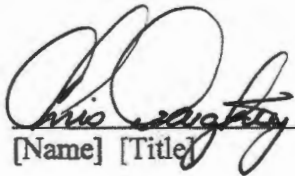
28. Respondent shall bear its costs in connection with the action resolved by this CAFO, including attorney's fees. Respondent specifically waives any right to recover such costs from the Complainant pursuant to the Equal Access for Justice Act, 5 U.S.C. § 504, or other applicable laws.

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

In the Matter of Capstan Atlantic
Docket No. EPCRA-01-2012-0031

30. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO shall be the date on which it is filed with the Regional Hearing Clerk.

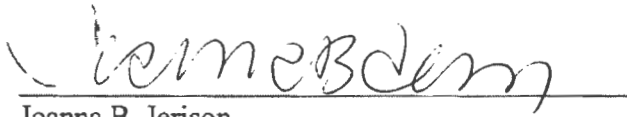
For Capstan Atlantic:

 President
[Name] [Title]

8/4/2012
Date

In the Matter of Capstan Atlantic
Docket No. EPCRA-01-2012-0031

For Complainant:

A handwritten signature in cursive script, appearing to read "Joanna B. Jerison", written over a horizontal line.

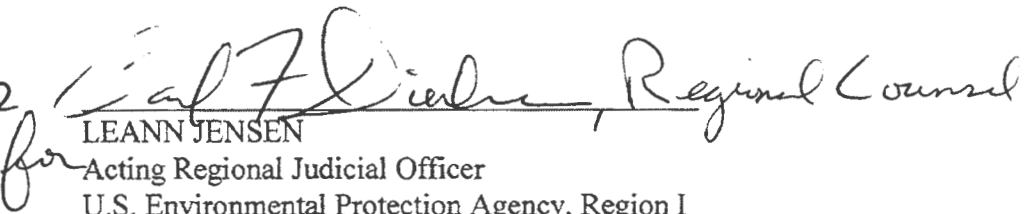
Joanna B. Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I

Date: 8/22/12

In the Matter of Capstan Atlantic
Docket No. EPCRA-01-2012-0031

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

Date: August 27, 2012  Regional Counsel
LEANN JENSEN
for Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region I