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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:)
)
RHINO LININGS USA, INC.,)
)
)
)
Respondent)
_____)

Docket No. EPCRA-⁰⁹~~9~~-2007- 0018
CONSENT AGREEMENT AND
FINAL ORDER PURSUANT TO
40 C.F.R. §§ 22.13 AND 22.18

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA Region IX"), and Rhino Linings USA, Inc. ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought under Section 325(c) of the Emergency Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for assessment of a civil administrative penalty against Respondent for its failure to submit timely, complete and correct Toxic Chemical Release Inventory Forms for calendar years

2004 and 2005 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing regulations set forth at 40 C.F.R. Part 372.

2. Complainant is the Director of the Communities and Ecosystems Division in EPA, Region IX (the "Complainant"). Pursuant to EPA Delegation Order Number 22-3-A, dated May 11, 1994, the Administrator of EPA has delegated the authority to file this action under EPCRA to the Regional Administrator of EPA, Region IX, and pursuant to EPA Regional Order Number R1260.14, dated May 19, 2005, the Regional Administrator re-delegated that authority to Complainant.

B. STATUTORY AND REGULATORY BASIS

3. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for the submission of information relating to the release of toxic chemicals under EPCRA Section 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.
4. Section 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. §§ 372.22 and 372.30, provide that the owner or operator of a facility that (i) has ten or more full-time employees, (ii) is in Standard Industrial Classification Codes 20 through 39, and (iii) manufactured, processed, or otherwise used one or more toxic chemicals listed under Section 313(f) of EPCRA and 40 C.F.R. § 372.65, must submit to EPA and the State in which the facility is located a chemical release form published under Section 313(g) of EPCRA for each such toxic chemical.
5. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a uniform

Toxic Chemical Release Inventory Form (hereinafter referred to as a "Form R") for facilities that are subject to the reporting requirements of Section 313. Section 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. § 372.30(d), provide that each Form R for activities involving a toxic chemical that occurred during a calendar year must be submitted on or before July 1 of the next year.

C. ALLEGED VIOLATIONS

6. Respondent is a California company and a "person" as that term is defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
7. At all times relevant to this matter, Respondent owned and operated, and continues to own and operate, a "facility," as that term is defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), located at 9151 Rehco Road, San Diego, California (hereinafter referred to as the "Facility").
8. At all times relevant to this matter, the Facility had 10 or more "full-time employees," as that term is defined at 40 C.F.R. § 372.3.
9. At all times relevant to this matter, the Facility was in Standard Industrial Classification Codes 20 through 39.
10. During the calendar year 2004, over 25,000 pounds of diisocyanates, CAS Number N120, a toxic chemical listed under 40 C.F.R. § 372.65, were "processed," as that term is defined in 40 C.F.R. § 372.3, at the Facility. This quantity exceeded the threshold for reporting established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.
11. Respondent was required to submit a Form R for diisocyanates to EPA and the State of

California for calendar year 2004 on or before July 1, 2005.

12. Respondent failed to submit a Form R for diisocyanates for calendar year 2004 to EPA and the State of California on or before July 1, 2005, and thus violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
13. During the calendar year 2004, over 100 pounds of lead, CAS Number 7439-92-1, were “processed,” as that term is defined in 40 C.F.R. § 372.3, at the Facility. This quantity exceeded the threshold for reporting established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.
14. Respondent was required to submit a Form R for lead to EPA and the State of California for calendar year 2004 on or before July 1, 2005.
15. Respondent failed to submit a Form R for lead for calendar year 2004 to EPA and the State of California on or before July 1, 2005, and thus violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
16. During the calendar year 2005, over 25,000 pounds of diisocyanates were “processed,” as that term is defined in 40 C.F.R. § 372.3, at the Facility. This quantity exceeded the threshold for reporting established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.
17. Respondent was required to submit a Form R for diisocyanates to EPA and the State of California for calendar year 2005 on or before July 1, 2006.
18. Respondent failed to submit a Form R for diisocyanates for calendar year 2005 to EPA and the State of California on or before July 1, 2006, and thus violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

19. During the calendar year 2005, over 100 pounds of lead were “processed,” as that term is defined in 40 C.F.R. § 372.3, at the Facility. This quantity exceeded the threshold for reporting established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.
20. Respondent was required to submit a Form R for lead to EPA and the State of California for calendar year 2005 on or before July 1, 2006.
21. Respondent failed to submit a Form R for lead for calendar year 2005 to EPA and the State of California on or before July 1, 2006, and thus violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
22. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and the Civil Monetary Penalty Inflation Adjustment Rule (61 Fed. Reg. 69359 (Dec. 31, 1996); 62 Fed. Reg. 13513 (March 20, 1997); 69 Fed. Reg. 7121 (Feb. 13, 2004)) provide that any person who violates any requirement of Section 313 shall be liable to the United States for a civil penalty in an amount not to exceed \$32,500 per day for each such violation that occurs after March 15, 2004.

D. RESPONDENT’S ADMISSIONS

23. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C of this

CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

24. In settlement of the violations specifically alleged in Section I.C of this CAFO, Respondent shall pay a civil administrative penalty of TWENTY-FOUR THOUSAND AND NINE HUNDRED TEN DOLLARS (\$24,910) within 30 days of the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested, to the following address:

U.S. Environmental Protection Agency
Region 9
P.O. Box 371099M
Pittsburgh, PA 15251

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

David H. Kim
Office of Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

25. Payment of the above civil administrative penalty shall not be used by Respondent or any

other person as a tax deduction from Respondent's federal, state, or local taxes.

26. If Respondent fails to pay the civil administrative penalty within 30 days of entry of this CAFO, then Respondent shall pay to EPA the stipulated penalty of \$30,000 instead of the agreed upon penalty sum specified in Paragraph 24 immediately. In addition, failure to pay the civil administrative penalty within 30 days of entry of this CAFO may lead to any or all of the following actions:

- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
- b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay

the civil administrative penalty by the deadline specified in Paragraph 26 of this CAFO. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. RETENTION OF RIGHTS

27. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in the Complaint. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not

specifically alleged in the Complaint.

28. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

G. ATTORNEYS' FEES AND COSTS

29. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

H. EFFECTIVE DATE

30. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

I. BINDING EFFECT

31. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
32. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT RHINO LININGS USA, INC.:

9/4/07
DATE

Sandra S Roberts
By: SANDRA S. ROBERTS
Title: VP/CFO
Address: 9151 Rehco Road
San Diego, CA 92121

FOR COMPLAINANT EPA REGION IX:

9/11/2007
DATE

Jeff Scott
JEFF SCOTT

Acting Director, Communities and Ecosystems Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105


II. FINAL ORDER

EPA Region IX and Rhino Linings USA, Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-9-2007-⁰⁹0018) be entered, and Respondent shall pay a civil administrative penalty in the amount of \$24,910 in accordance with the terms set forth in this CAFO.

09/11/07

DATE



STEVEN JAWGIEL
Regional Judicial Officer
United States Environmental
Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original and a copy of the foregoing Consent Agreement and Final Order was hand delivered to: *and filed with:*

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

and that a true and correct copy of the same document was placed in the United States Mail, addressed to the following:

James Holden
Rhino Linings USA, Inc.
9151 Rehco Road
San Diego, CA 92121
Certified Mail No. _____

Dated: 9-12-07

By: *Danielle E. Carr*
Office of Regional Counsel
USEPA, Region 9
Regional Hearing Clerk