

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION 7  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )

PM Resources, Inc. )  
13001 St. Charles Rock Road )  
Bridgeton, Missouri 63044 )

Docket No. EPCRA-07-2011-0006

Respondent )

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and PM Resources, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325(c) of the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11045(c).
2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023 and the regulations promulgated thereunder.

### Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air & Waste Management Division, EPA, Region 7.

4. The Respondent is PM Resources, Inc., located at 13001 St. Charles Rock Road, Bridgeton, Missouri 63044. The primary activity at Respondent's facility is pharmaceutical manufacturing.

### Statutory and Regulatory Requirements

5. Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. Part 372.22 and 372.30 require the owner or operator of a facility that (a) has ten or more full-time employees; (b) that is an establishment with a primary SIC major group or industry code listed in 40 C.F.R. Part 372.23(a) or a primary NAICS subsector or industry code listed in 40 C.F.R. Part 372.23(b) or (C); and (c) "manufactured, processed, or otherwise used" a toxic chemical listed under Subsection 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. Part 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. Part 11023(f), and 40 C.F.R. Part 372.25, 372.27 or 372.78 during the calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, for the preceding calendar year, for each toxic chemical known by the owner or operator to be "manufactured, processed, or otherwise used" in quantities exceeding the established threshold quantity that preceding calendar year.

6. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and 40 C.F.R. Part 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. Part 372.30, is 25,000 pounds for any toxic chemical "manufactured or

processed” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year.

7. 40 C.F.R. Part 372.10 establishes recordkeeping requirements for facility subject to Section 313 of EPCRA. Specifically, that the following documentation must be retained for a period of three years from the date of submission of a report pursuant to 40 C.F.R. Part 372.30: (1) A copy of each report submitted under 372.30; (2) All supporting materials and documentation used by the person to make the compliance determination that the facility is a covered facility under 372.22 or 373.45; (3) Documentation supporting the report submitted under 372.30 including: (i) Documentation supporting any determination that a claimed allowable exemption under 372.38 applies; (ii) Data supporting the determination of whether a threshold under 372.25 applies for each toxic chemical; (iii) Documentation supporting the calculation of the quantity of each toxic chemical released to the environment or transferred to an off-site location; (iv) Documentation supporting the use indications and quantity on site reporting for each toxic chemical, including dates of manufacturing, processing, or use; (v) Documentation supporting the basis of estimate used in developing any release or off-site transfer estimates for each toxic chemical; (vi) Receipts or manifests associated with the transfer of each toxic chemical in waste to off-site locations; (vii) Documentation supporting reported waste treatment methods, estimates of treatment efficiencies, ranges of influent concentration to such treatment, the sequential nature of treatment steps, if applicable, and the actual operating data, if applicable, to supporting the waste treatment efficiency estimate for each toxic chemical.

8. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, on the basis of any available information, the Administrator

finds that such person has violated or is violating any requirement or prohibition of Section 313, 42 U.S.C. § 11023. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of up to \$27,500 per day of for each violation that occurs between January 30, 1997, and March 15, 2004; \$32,500 per day for each violation occurring between March 16, 2004, and January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

#### Definitions

9. The regulations at 40 C.F.R. § 372.3 define “facility” as “all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person). A facility may contain more than one establishment.”
10. The regulations at 40 C.F.R. § 372.3 define “full time employees” as “2,000 hours per year of full-time equivalent employment. A facility would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.”
11. The regulations at 40 C.F.R. Part 372.3 define “toxic chemical” as a “chemical or chemical category listed in 40 C.F.R. Part 372.65.”
12. The regulations at 40 C.F.R. Part 372.3 define “manufacture” as “to produce, prepare, import or compound a toxic chemical. Manufactures also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other

chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical mixtures of chemicals as an impurity.”

13. “Process” means the preparation of a toxic chemical, after its manufacture, for distribution in commerce: (1) in the same form or physical state as, or in a different form or physical state from that in which it was received by the person so preparing such substance; or (2) as part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product. 40 C.F.R. Part 372.3.

14. “Otherwise use” means any use of toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms “manufacture” or “process.” Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless: (1) the toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; (2) the toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or re-distributing of the toxic chemical with no repackaging of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical. 40 C.F.R. Part 372.3.

#### Alleged Violations

15. EPA alleges that Respondent has violated EPCRA and federal regulations, promulgated pursuant to EPCRA, as follows:

16. Respondent is, and at all times referred to herein, was a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

17. Respondent's facility located at located at 13001 St. Charles Rock Road, Bridgeton, Missouri 63044 is a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. Part 372.3.

18. The Respondent's facility has ten (10) or more "full-time employees" pursuant to Section 313(b)(1)(A) of EPCRA and as defined by 40 C.F.R. Part 372.3.

19. The Respondent's facility is in NAICS Code 325412– Pharmaceutical Preparation Manufacturing.

20. The following are "toxic chemicals" within the meaning of 40 C.F.R. Part 372.3 and 372.65: ethylbenzene, tetracycline hydrochloride, and xylene.

21. During calendar year 2007, ethylbenzene, tetracycline hydrochloride, and xylene were "manufactured, processed, or otherwise used," as those terms are defined by 40 C.F.R. Part 372.3, at the Respondent's facility. During calendar year 2009, tetracycline hydrochloride was "manufactured, processed, or otherwise used," as those terms are defined by 40 C.F.R. Part 372.3, at the Respondent's facility.

22. On December 7, 2010, a duly authorized representative from EPA, Region 7, conducted an inspection of Respondent's facility.

#### Count 1

##### Failure to File Form Rs to EPA and the State of Missouri for Calendar Year 2009

22. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

23. Tetracycline hydrochloride was "manufactured, processed, or otherwise used" at the Respondent's facility in excess of the 25,000 pound threshold quantity for calendar year 2009.

24. Respondent failed to file Form Rs with EPA and the State of Missouri for the toxic chemical tetracycline hydrochloride by July 1, 2010.

25. Respondent's failure to submit Form Rs for tetracycline hydrochloride is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and 40 C.F.R. Part 372.30.

Count 2

Failure to Maintain Documentation for Ethylbenzene for Calendar Year 2007

26. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

27. Ethylbenzene was "manufactured, processed, or otherwise used" at the Respondent's facility in excess of the 25,000 pound threshold quantity and was reported on Respondent's Form R for calendar year 2007.

28. Respondent failed to maintain documentation for ethylbenzene threshold calculations for the calendar year 2007, in violation of 40 C.F.R. Part 372.10.

29. Respondent's failure to maintain documentation for ethylbenzene is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. Part 372.10.

Count 3

Failure to Maintain Documentation for Tetracycline Hydrochloride for Calendar Year 2007

30. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

31. Tetracycline hydrochloride was "manufactured, processed, or otherwise used" at the Respondent's facility in excess of the 25,000 pound threshold quantity and was reported on Respondent's Form R for calendar year 2007.

32. Respondent failed to maintain documentation for tetracycline hydrochloride threshold calculations for the calendar year 2007, in violation of 40 C.F.R. Part 372.10.

33. Respondent's failure to maintain documentation for tetracycline hydrochloride is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. Part 372.10.

#### Count 4

##### Failure to Maintain Documentation for Xylene for Calendar Year 2007

34. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

35. Xylene was "manufactured, processed, or otherwise used" at the Respondent's facility in excess of the 25,000 pound threshold quantity and was reported on Respondent's Form R for calendar year 2007.

36. Respondent failed to maintain documentation for xylene threshold calculations for the calendar year 2007, in violation of 40 C.F.R. Part 372.10.

37. Respondent's failure to maintain documentation for xylene is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. Part 372.10.

#### CONSENT AGREEMENT

38. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

39. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

40. Respondent neither admits nor denies the factual allegations set forth above.

41. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CAFO.



42. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

43. This CAFO addresses all civil administrative claims for the EPCRA violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of EPCRA other applicable law.

44. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 313 EPCRA, 42 U.S.C. § 11023, and all regulations promulgated thereunder.

45. The effect of settlement described in paragraph 43 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 44, above, of this CAFO.

46. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

47. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

48. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the CAFO and to legally bind Respondent to it.

#### **FINAL ORDER**

Pursuant to the provisions of EPCRA, 42 U.S.C. § 11045, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Forty-Four Thousand Six Hundred and Twenty-Three Dollars (\$44,623) within 30 days from the final date of this Order. The payment shall be made at the address below. The payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
United States Environmental Protection Agency - Region 7  
901 N. Fifth Street  
Kansas City, Kansas 66101

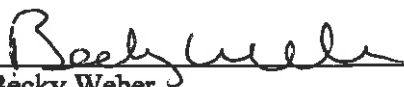
and to:

Kristen Nazar  
Assistant Regional Counsel  
United States Environmental Protection Agency - Region 7  
901 N. Fifth Street  
Kansas City, Kansas 66101.


3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:  
U. S. ENVIRONMENTAL PROTECTION AGENCY


Date 10/31/11

By   
Becky Weber  
Director  
Air and Waste Management Division

Date 10/23/2011

By   
Kristen Nazar  
Assistant Regional Counsel

RESPONDENT:  
PM RESOURCES, INC.

By   
Erik R. Martinec

Title PRESIDENT

Date OCT. 20, 2011

IT IS SO ORDERED. This Final Order shall become effective immediately.

Date Oct. 31, 2011

By   
ROBERT L. PATRICK  
Regional Judicial Officer

IN THE MATTER OF PM Resources, Inc., Respondent  
Docket No. EPCRA-07-2011-0006

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Kristen Nazar  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Erik Martinez, President  
PM Resources, Inc.  
13001 St. Charles Rock Road  
Bridgeton, Missouri 63044

Dated: 11/1/11

  
Kathy Robinson  
Hearing Clerk, Region 7