

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

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In the Matter of

STATE METAL INDUSTRIES, INC.

Respondent.

Proceeding under Section 325(c) of Title III  
of the Superfund Amendments and Reauthorization Act

**CONSENT AGREEMENT**  
**AND**  
**FINAL ORDER**

**DOCKET NUMBER**  
**EPCRA-02-2009-4106**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2010 JAN -5 AM 11:14  
REGIONAL HEARING  
CLERK

----- X  
**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §11001 *et seq.* [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA")].

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), issued a Complaint and Notice of Opportunity for Hearing to State Metal Industries, Inc. ("Respondent") on June 9, 2009.

The Complaint alleged four reporting violations of Section 313 of EPCRA, 42 U.S.C. §11023 and the regulations pursuant to that Section, 40 C.F.R. Part 372.

**FINDINGS OF FACT**  
**AND CONCLUSIONS OF LAW**

1. Respondent is State Metal Industries, Inc. (TRI Facility ID: 08103STTMT941SO)
2. At all times relevant hereto, Respondent has owned and operated a facility located at 941 South Second Street, Camden, New Jersey 08103 (hereinafter, "Respondent's facility").
3. Respondent is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. §11049(7).
4. Respondent is an owner of a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. §11049(4), and by 40 C.F.R. §372.3.
5. Respondent's facility is subject to the requirements of EPCRA, Section 313(b), 42 U.S.C. §11023(b), and 40 C.F.R. §372.22.
6. On or about October 27, 2008, an authorized representative of EPA sent an email inquiry to Respondent's facility to begin discussions to determine whether the facility was in compliance with the EPCRA Section 313 Toxic Chemical Release Reporting requirements.
7. EPA representatives determined that Respondent had failed to submit, in a timely manner, to the Administrator and to the State of New Jersey, complete and correct Form R reports for aluminum (fume or dust) for each of calendar years 2004, 2005, 2006 and 2007.
8. Respondent's failure to submit, in a timely manner, a complete and correct Form R report for aluminum (fume or dust) for calendar year 2004 constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. §11023, and with 40 C.F.R. Part 372.
9. Respondent's failure to submit, in a timely manner, a complete and correct Form R report for aluminum (fume or dust) for calendar year 2005 constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. §11023, and with 40 C.F.R. Part 372.
10. Respondent's failure to submit, in a timely manner, a complete and correct Form R report for aluminum (fume or dust) for calendar year 2006 constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. §11023, and with 40 C.F.R. Part 372.
11. Respondent's failure to submit, in a timely manner, a complete and correct Form R report for aluminum (fume or dust) for calendar year 2007 constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. §11023, and with 40 C.F.R. Part 372.
12. The parties began informal settlement discussions on July 21, 2009. A settlement was reached on September 17, 2009.

### **TERMS OF CONSENT AGREEMENT**

Based on the foregoing, and pursuant to Section 325(c) of EPCRA, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc., 40 C.F.R. §22.18 (hereinafter, "Consolidated Rules"), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees, as follows:

1. Respondent certifies herein that any and all EPA Toxic Chemical Release Inventory Forms submitted for the above-described violations comply with the requirements of Section 313 of EPCRA and the regulations set forth at 40 C.F.R. Part 372.

2. For the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of this Consent Agreement as applied to the facility as set forth in paragraphs 1 through 11, inclusive; and (b) neither admits nor denies the Findings of Fact and Conclusions of Law section, above.

3. Respondent shall pay a civil penalty totaling **FIFTY-FIVE THOUSAND FIVE HUNDRED EIGHTY-ONE DOLLARS (\$55,581)** in three installments. Payment shall be made by cashier's or certified check or by electronic fund transfer (EFT). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

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

Each check shall be identified with a notation thereon listing the following: **In the Matter of State Metal Industries, Inc.** and shall bear thereon the **Docket Number EPCRA-02-2009-4106**. The first payment of **\$18,527** must be received at the above address on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date"). The second payment of

**\$18,527** must be received at the above address on or before February 1, 2011. The third payment of **\$18,527** must be received at the above address on or before February 1, 2012. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank

- 1) Amount of Payment;
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045;
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727;
- 4) Federal Reserve Bank of New York ABA routing number: 021030004;
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency";
- 6) Name of Respondent: **State Metal Industries, Inc.**; and
- 7) Case Number: **EPCRA-02-2009-4106**.

Such EFT must be received on or before 45 calendar days after the signature of the Final Order at the end of this document. Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Karen Maples, Regional Hearing Clerk  
Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 16th Floor (1631)  
New York, New York 10007-1866

And

Kenneth S. Stoller, P.E., QEP, DEE, Chief  
Pesticides and Toxic Substances Branch  
U.S. Environmental Protection Agency - Region 2  
2890 Woodbridge Avenue, Bldg. 10, MS-105  
Edison, New Jersey 08837-3679

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of all civil liabilities under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11001 et seq.) and the regulations promulgated thereunder, 40 C.F.R. Part 372, that attach or might have attached, as a result of the Findings of Fact and Conclusions of Law set out above.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. State Metal Industries, Inc. has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and to abide by its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

7. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

8. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

10. Each party hereto agrees to bear its own costs and fees in this matter.

11. Respondent consents to service upon Respondent with a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

**RESPONDENT:**

State Metal Industries, Inc.

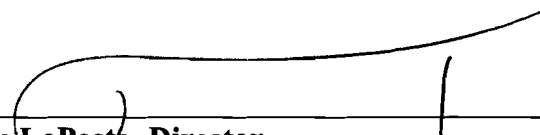
BY:   
\_\_\_\_\_  
Authorizing Signature

NAME: RICHARD HUME  
(PLEASE PRINT)

TITLE: SR-V.P. for State Metal Ind. Inc

DATE: November 25, 2009

**COMPLAINANT:**

  
\_\_\_\_\_  
**Dore LaPosta, Director**  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007

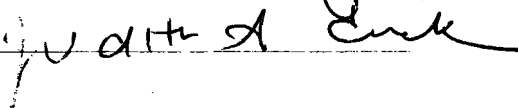
DATE: DECEMBER 22, 2009

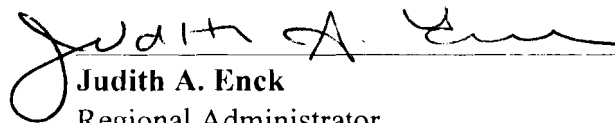
**In the Matter of State Metal Industries, Inc.**  
**Docket Number EPCRA-02-2009-4106**

**FINAL ORDER**

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement (including Attachment A) in the case of **In the Matter of State Metal Industries, Inc.**, bearing **Docket No. EPCRA-02-2009-4106**. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. [40 C.F.R. § 22.31(b)] This Final Order is being entered pursuant to the authority of 40 C.F.R. §§ 22.13(b) and 22.18(b)(3) and shall constitute an order issued under authority of Section 325(c) of EPCRA 42 U.S.C. § 11045(c).

DATE:

<sup>12/28/09</sup>  




**Judith A. Enck**

Regional Administrator  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007

**In the Matter of State Metal Industries, Inc.**

Docket No. EPCRA-02-2009-4106

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

Original and One Copy  
by Interoffice Mail:

Ms. Karen Maples, Regional Hearing Clerk  
Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency-Region 2  
290 Broadway, 16th Floor (1631)  
New York, New York 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Mr. Yale Dorfman, President  
State Metal Industries, Inc.  
941 South Second Street  
P.O. Box 1407  
Camden, New Jersey 08103

Copy by Mail:

Mr. Andrew Oppermann, EPCRA Program  
State of New Jersey Department of Environmental Protection  
Division of Environmental Safety and Health  
Office of Pollution Prevention and Right To Know  
22 S. Clinton Avenue, 3rd Floor  
P.O. Box 443  
Trenton, New Jersey 08625-0443

Mr. Richard J. Kuhl, Executive Vice President  
State Metal Industries, Inc.  
941 South Second Street  
P.O. Box 1407  
Camden, New Jersey 08103

Mr. Lewis Goldshore, Esq.  
Goldshore, Cash & Kalac, P.C.  
Attorneys at Law  
Crossroads Corporate Center  
3150 Brunswick Pike, Suite 150  
Lawrenceville, New Jersey 08648

Dated: January 5, 2010



Mary Ann Kowalski, MS, MPH  
Pesticides and Toxic Substances Branch  
U.S. Environmental Protection Agency - Region 2  
2890 Woodbridge Avenue (MS-105)  
Edison, New Jersey 08837-3679