

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. EPCRA-05-2023-0010
)	
Peerless Industrial Group, Inc.)	Proceeding to Assess a Civil Penalty Under
Winona, Minnesota,)	Section 325(c)(1) of the Emergency Planning
)	and Community Right-to-Know Act of 1986
Respondent.)	
_____)	

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1) and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Manager of Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Peerless Industrial Group, Inc., a Delaware corporation doing business in the State of Minnesota.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

GTK

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) or safety data sheet (SDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous substances present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state commissions, local committees, and fire departments in planning for emergencies and makes information on

chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS or SDS.

12. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 C.F.R. § 1910.1200(c).

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and 40 C.F.R. Part 19 authorizes U.S. EPA to assess a civil penalty of up to \$67,544 per day of violation, for violations of EPCRA Section 312 that occurred after November 2, 2015, and for which penalties are assessed on or after January 6, 2023, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

15. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 1416 East 8th Street, Winona, Minnesota (facility).

17. At all times relevant to this CAFO, Respondent was an employer at the facility.

18. Respondent's facility consists of 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.

19. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. Molten zinc (CAS #7440-66-6) is classified as a physical or health hazard, or hazard not otherwise classified.

21. Molten zinc (CAS #7440-66-6) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

22. Molten zinc (CAS #7440-66-6) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

23. During at least one period of time in calendar year 2018, molten zinc was present at the facility in an amount equal to or greater than the minimum threshold level.

24. During at least one period of time in calendar year 2019, molten zinc was present at the facility in an amount equal to or greater than the minimum threshold level.

25. During at least one period of time in calendar year 2020, molten zinc was present at the facility in an amount equal to or greater than the minimum threshold level.

26. During at least one period of time in calendar year 2021, molten zinc was present at the facility in an amount equal to or greater than the minimum threshold level.

27. OSHA requires Respondent to prepare, or have available, an MSDS or SDS for molten zinc.

28. Section 312 of EPCRA required Respondent to submit to the SERC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including molten zinc, on or before March 1, 2019, for calendar year 2018.

29. Section 312 of EPCRA required Respondent to submit to the SERC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including molten zinc, on or before March 1, 2020, for calendar year 2019.

30. Section 312 of EPCRA required Respondent to submit to the SERC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including molten zinc, on or before March 1, 2021, for calendar year 2020.

31. Section 312 of EPCRA required Respondent to submit to the SERC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including molten zinc, on or before March 1, 2022, for calendar year 2021.

32. At all times relevant to this CAFO, the Minnesota SERC was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

33. At all times relevant to this CAFO, the Winona Fire Department was the fire department with jurisdiction over the facility.

Count 1 (EPCRA 312/Past Year)

34. Complainant incorporates paragraphs 1 through 33 of this CAFO as if set forth in this paragraph.

35. Respondent failed to include molten zinc on the Tier II Form submitted to the SERC and the Winona Fire Department, on February 15, 2019, for calendar year 2018.

36. Respondent submitted to the SERC and Winona Fire Department, a revised Tier II Form for calendar year 2018, to include molten zinc, on September 22, 2022.

37. Each day Respondent failed to include molten zinc on the Tier II Form submitted to the SERC and Winona Fire Department, by March 1, 2019, for calendar year 2018, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 2 (EPCRA 312/Past Year)

38. Complainant incorporates paragraphs 1 through 33 of this CAFO as if set forth in this paragraph.

39. Respondent failed to include molten zinc on the Tier II Form submitted to the SERC and the Winona Fire Department, on February 7, 2020, for calendar year 2019.

40. Respondent submitted to the SERC and Winona Fire Department, a revised Tier II Form for calendar year 2019, to include molten zinc, on September 22, 2022.

41. Each day Respondent failed to include molten zinc on the Tier II Form submitted to the SERC and Winona Fire Department, by March 1, 2020, for calendar year 2019, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 3 (EPCRA 312/Past Year)

42. Complainant incorporates paragraphs 1 through 33 of this CAFO as if set forth in this paragraph.

43. Respondent failed to include molten zinc on the Tier II Form submitted to the SERC and Winona Fire Department, on February 11, 2021, for calendar year 2020.

44. Respondent submitted to the SERC and Winona Fire Department, a revised Tier II Form for calendar year 2020, to include molten zinc, on September 22, 2022.

45. Each day Respondent failed to include molten zinc on the Tier II Form submitted to the SERC and Winona Fire Department, by March 1, 2021, for calendar year 2020, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 4 (EPCRA 312/SERC)

46. Complainant incorporates paragraphs 1 through 33 of this CAFO as if set forth in this paragraph.

47. Respondent failed to include molten zinc on the Tier II Form submitted to the SERC, on January 28, 2022, for calendar year 2021.

48. Respondent submitted to the SERC, a revised Tier II Form for calendar year 2021, to include molten zinc, on September 22, 2022.

49. Each day Respondent failed to include molten zinc on the Tier II Form submitted to the SERC, by March 1, 2022, for calendar year 2021, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 5 (EPCRA 312/fire department)

50. Complainant incorporates paragraphs 1 through 33 of this CAFO as if set forth in this paragraph.

51. Respondent failed to include molten zinc on the Tier II Form submitted to the Winona Fire Department on January 28, 2022, for calendar year 2021.

52. Respondent submitted to the Winona Fire Department, a revised Tier II Form for calendar year 2021, to include molten zinc, on September 22, 2022.

53. Each day Respondent failed to include molten zinc on the Tier II Form submitted to the Winona Fire Department by March 1, 2022, for calendar year 2021, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

54. Complainant has determined that an appropriate civil penalty to settle this action is \$17,622 for the EPCRA violations. In determining the penalty amount, Complainant considered

the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, effect on ability to continue to do business, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

55. Within 30 days after the effective date of this CAFO, Respondent must pay a \$17,622 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

For checks sent by express mail, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Peerless Industrial Group, Inc., and the docket number of this CAFO EPCRA-05-2023-0010.

56. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
r5hearingclerk@epa.gov

James Entzminger (SE-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
entzminger.james@epa.gov

Robert Gustafson (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
gustafson.robert@epa.gov

57. This civil penalty is not deductible for federal tax purposes.

58. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

59. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In

addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

60. The parties consent to service of this CAFO by email at the following valid email addresses: gustafson.robert@epa.gov (for Complainant) and paul.johnston@harringtonhoists.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing with the Regional Hearing Clerk.

61. Full payment of the penalty and compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

62. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

63. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

64. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state, and local laws and regulations.

65. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

66. The terms of this CAFO bind Respondent and its successors and assigns.

67. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

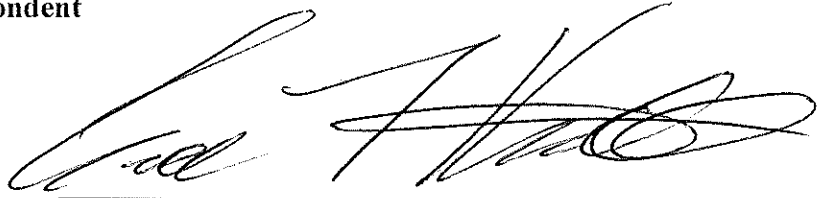
68. Each party agrees to bear its own costs and attorney's fees in this action.

69. This CAFO constitutes the entire agreement between the parties.

**In the Matter of: Peerless Industrial Group, Inc., Winona, Minnesota
Docket No. EPCRA-05-2023-0010**

Peerless Industrial Group, Inc., Respondent

4/12/2023
Date



George Kosidowski
President
Peerless Industrial Group, Inc.

U.S. Environmental Protection Agency, Complainant

Date

Jason El-Zein, Manager
Emergency Response Branch 1
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

Date

Douglas Ballotti
Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5