

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66215

2015 JUL 21 PM 2: 30

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

NEOGEN CORPORATION

Respondent,

Proceeding under Section 325(c) of the
Emergency Planning and Community Right-to-
Know Act, 42 U.S.C. § 11045(c)

Docket No. EPCRA-07-2015-0006

COMPLAINT AND CONSENT
AGREEMENT / FINAL ORDER

PRELIMINARY STATEMENT

The United States Environmental Protection Agency, Region 7 (“EPA”) and Neogen Corporation (“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) and 22.18(b)(2).

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045(c).

2. This Complaint and Consent Agreement/Final Order (“CA/FO”) serves as notice that EPA alleges 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 EPA Region 7, and from the Regional Administrator, EPA Region 7, is the Director of the Air and Waste Management Division, EPA Region 7.

4. The Respondent is Neogen Corporation, a company incorporated in the State of Michigan and authorized to do business in the State of Iowa. The company's facility subject to this action is located at 1006 Business Highway 5, in Pleasantville, Iowa.

Statutory and Regulatory Requirements

5. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 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. § 372.23(a) or a primary NAICS subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) that "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. § 372.65, in excess of the threshold quantity established under Section 313 (f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27 or 372.28 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 during that preceding calendar year.

6. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 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. Alternative reporting thresholds for certain other chemicals are set forth in 40 C.F.R. §§ 372.27 and 372.28.

7. 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, if, 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 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

8. 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.”

9. 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.”

10. The regulations at 40 C.F.R. § 372.3 define “toxic chemical” as a “chemical or chemical category listed in 40 C.F.R. § 372.65.”

11. The regulations at 40 C.F.R. § 372.3 define “manufacture” as “to produce, prepare, import or compound a toxic chemical. Manufacture 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 mixture of chemicals as an impurity.”

12. “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. § 372.3.

13. “Otherwise use” means any use of a 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; or (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 redistributing of the toxic chemical where no repackaging of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical. 40 C.F.R. § 372.3.

Alleged Violations

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

15. 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).

16. Respondent’s facility, located at 1006 Business Highway 5, in Pleasantville, Iowa, is 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.

17. Respondent’s facility has ten or more “full-time employees” pursuant to Section 313(b)(1)(A) of EPCRA, 42 U.S.C. § 11023(b)(1)(A), and as defined by 40 C.F.R. § 372.3.

18. Respondent’s facility is classified as NAICS Code 325320 – Pesticide and Other Agricultural Chemical Manufacturing.

19. Permethrin and piperonyl butoxide are “toxic chemicals” within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

20. During reporting year 2011, the toxic chemicals identified in Paragraph 19 were “manufactured, processed, or otherwise used” as those terms are defined by 40 C.F.R. § 372.3 at Respondent’s facility.

21. On April 1, 2014, a duly authorized representative from EPA, Region 7, conducted an inspection of Respondent’s facility.

Count 1

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

23. Pursuant to 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing permethrin is 25,000 pounds, and the threshold reporting quantity for otherwise using permethrin is 10,000 pounds.

24. The toxic chemical permethrin was manufactured, processed, and/or otherwise used at Respondent’s facility in excess of the applicable threshold quantities during reporting year 2011.

25. Respondent failed to file a Form R report for permethrin with the Administrator of EPA and the State of Missouri for 2011 by the July 1, 2012, deadline. Respondent filed the Form R report on or about May 19, 2014.

26. The failure to timely submit a Form R report for permethrin is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

Count 2

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

28. Pursuant to 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing piperonyl butoxide is 25,000 pounds, and the threshold reporting quantity for otherwise using piperonyl butoxide is 10,000 pounds.

29. The toxic chemical piperonyl butoxide was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantities during reporting year 2011.

30. Respondent failed to file a Form R report for piperonyl butoxide with the Administrator of EPA and the State of Missouri for 2011 by the July 1, 2012, deadline. Respondent filed the Form R report on or about May 19, 2014.

31. The failure to timely submit a Form R report for piperonyl butoxide is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

Count 3

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

33. Pursuant to 40 C.F.R. § 372.10(a)(3), documentation supporting the report submitted under § 372.30 must be retained for a period of three years from the date of the submission of the report, including documentation supporting the calculations of the quantity of each toxic chemical released to the environment or transferred to an off-site location.

34. Respondent failed to retain supporting documentation showing the basis for the "not applicable" response for the reportable quantity of piperonyl butoxide in its 2012 report. Respondent did not have any documentation supporting the determination that no releases occurred.

35. The failure to maintain required documentation for a period of three years is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.10(a)(3).

36. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above.

CONSENT AGREEMENT

37. Respondent and EPA agree to the terms of this Consent Agreement/Final Order.

38. Respondent admits the jurisdictional allegations set forth in this Complaint and Consent Agreement/Final Order, and agrees not to contest EPA's jurisdiction in this proceeding or in any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

39. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Complaint and Consent Agreement/Final Order.

40. Respondent waives any right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement/Final Order.

41. Respondent and EPA agree to resolve the matters set forth in this Complaint and Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

42. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

43. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

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

Penalty Payment

45. Respondent agrees that, in settlement of the claims alleged in this Complaint and Consent Agreement/Final Order, Respondent shall pay a civil penalty of Ten Thousand, One Hundred and Twenty-Nine dollars (\$10,129) within thirty calendar days of the effective date of this Final Order.

46. Respondent shall pay the penalty by cashier's or certified check made payable to "Treasurer, United States of America," and shall deliver the check with a transmittal that identifies the case name and docket number EPCRA-07-2015-0006 to:

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

Copies of the transmittal letter and the check shall be simultaneously sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219,

and to:

Erin Weekley
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

47. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

48. Late Payment Provisions. 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. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of the debt collection, including processing and handling costs and attorneys' fees. In addition, a non-payment 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. 31 C.F.R. §§ 901.9(c) and (d).

49. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. 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. The interest will be assessed on the overdue amount from the due date through the date of payment.

Effect of Settlement and Reservation of Rights

50. This CA/FO addresses, fully resolves and settles, and Complainant hereby agrees to release Respondent from, all civil and administrative claims for the alleged EPCRA violations identified above. Complainant reserves the right to take an enforcement action with respect to any other violations of EPCRA or other applicable law.

51. The effect of settlement described above is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 44 of this Consent Agreement/Final Order.

52. Nothing in this CA/FO shall be construed as a release from any other action under law and/or regulation administered by EPA, nor shall it alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

53. The executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

54. The effective date of this Consent Agreement/Final Order shall be the date on which it is signed by the Regional Judicial Officer.

55. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

56. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.


COMPLAINANT:

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 6/24/15

By: 
Becky Weber
Director
Air and Waste Management Division

Date: 6/24/15

By: 
Erin Weekley
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:

NEOGEN CORPORATION

Date: May 26, 2015

By: 

Printed Name: Dwight Schroetter

Title: Vice President Animal Safety Manufacturing

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KS 66215

IN THE MATTER OF)
)
NEOGEN CORPORATION,)
)
Respondent.)
_____)

Docket No. EPCRA-07-2015-0006

FINAL ORDER

Pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

7-21-15
Date

Karina Boromeo
Karina Boromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

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

Copy ~~hand delivered~~ ^{emailed} to Attorney for Complainant:

Erin Weekley
Office of Regional Counsel
United States Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

Copy by ~~certified mail, return receipt requested~~ ^{First class Mail} to:

Dwight Schroedter
Vice President Animal Safety Manufacturing
Neogen Corporation
944 Nandino Blvd.
Lexington, Kentucky USA 40511.

Dated: 7/21/15

By: Kathy Robinson
Milady Peters
Paralegal
Regional Hearing
Clerk