



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV 05 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Howard E. Jarvis, Esq.
Woolf, McClane, Bright, Allen & Carpenter, PLLC
900 Riverview Tower
900 S. Gay Street
Knoxville, Tennessee 37902

Re: Vytron Corporation – Loudon, TN
Consent Agreement and Final Order
Docket No. EPCRA-04-2019-2020(b)

Dear Mr. Jarvis:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Should you or your client have any questions concerning this matter or Vytron Corporation's compliance status in the future, please contact Eddie Chow of the EPA staff at (404) 562-8989.

Sincerely,

A handwritten signature in blue ink, appearing to read "César A. Zapata".

César A. Zapata
Acting Chief
Air Enforcement Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
Vytron Corporation) Docket Number: EPCRA-04-2019-2020(b)
)
Respondent.)
_____)

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GENERAL COUNSEL

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22.

2. Complainant is the Administrator of the United States Environmental Protection Agency (EPA). On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division, Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 325 of EPCRA, 42 U.S.C. § 11045. Respondent is Vytron Corporation.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent is Vytron Corporation, which owns and operates a facility in the State of Tennessee.

5. Respondent is a "person" and owned and operated, at all times relevant to the allegations in Section III, a "facility" as those terms are defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), respectively.

6. Respondent's facility is located at 1000 Vytron Road, Loudon, Tennessee 37774.

III. EPA's Allegations of Violations

Violations of Section 312 of EPCRA

7. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) or Safety Data Sheet (SDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, on or before March 1 annually, a completed Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II) as described in 40 C.F.R. Part 370.40, containing the information required by Part 370 for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds and containing the information required by that part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less. In 2012, the applicable OSHA regulation at 29 C.F.R. § 1910.1200(g) was revised to change the name of Material Data Safety Sheet (MSDS) to Safety Data Sheet (SDS).

8. At some time during calendar years 2015, 2016, and 2017, lead and sulfuric acid from the lead acid batteries were present at the facility in an amount equal to or greater than 10,000 and 500 pounds respectively.

9. Lead and sulfuric acid are "hazardous chemicals" as defined under Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), and sulfuric acid is an EHS as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 355.61, for which Respondent is required to prepare or have available an MSDS or SDS under OSHA at its facility.

10. Respondent failed to submit a complete Emergency and Hazardous Chemical Inventory Form for lead and sulfuric acid or lead acid batteries to the SERC, the LEPC, and fire department with jurisdiction over the facility for calendar years 2015, 2016, and 2017 by March 1 of the following years.

11. The EPA alleges that Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facility for calendar years 2015, 2016, and 2017 and is therefore subject to the assessment of civil penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

12. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, the EPA may assess a civil penalty for each violation of Section 312 of EPCRA, 42 U.S.C. § 11022. Each day a violation of Section 312 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by administrative order.

Violations of Section 313 of EPCRA

13. 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 10 or more full-time employees; (b) is in a Standard Industrial Classification (SIC) major group or industry listed in 40 C.F.R. § 372.23(a) for which the corresponding North American Industry Classification System (NAICS) subsector and industry codes are listed in 40 C.F.R. §§ 372.23(b) and 372.23(c)); and (c) manufactured, processed, or otherwise used a toxic chemical listed in Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65, in excess of an applicable threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and set forth in 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory reporting Form R (EPA Form 9350-1) to the Administrator of the EPA and to the State in which the 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 the preceding calendar year.

14. As set forth at EPCRA Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds per calendar year. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds. Notwithstanding 40 C.F.R. § 372.25 or 40 C.F.R. § 372.27, lower reporting thresholds for chemicals of special concern are set forth in 40 C.F.R. § 372.28.

15. Respondent has 10 or more full-time employees, as defined at 40 C.F.R. § 372.3 at its facility.

16. Respondent's facility is classified under SIC code 3082 and the NAICS code 326121.

17. Respondent's facility is classified in a covered SIC code as described at 40 C.F.R. § 372.22 and in a covered NAICS code as described at 40 C.F.R. § 372.23.

18. Di (2-ethylhexyl)phthalate (DEHP) is a toxic chemical listed under EPCRA Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed under 40 C.F.R. § 372.65.

19. Respondent's facility processed DEHP in excess of the 25,000 pound threshold quantity established under EPCRA Section 313(f) and 40 C.F.R. § 372.25, during calendar years 2015, 2016, and 2017.

20. Respondent violated the reporting requirements of Section 313 of EPCRA at its facility by failing to submit the required Form R for DEHP for calendar years 2015, 2016, and 2017 by July 1 of the following years and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

21. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, the EPA may assess a civil penalty for each violation of Section 313. Each day a violation of Section 313 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by an Administrative Order.

IV. Consent Agreement

22. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

23. Respondent waives any right to contest the allegations and its right to appeal the final order accompanying the Consent Agreement.

24. Respondent consents to any conditions specified in this CAFO.

25. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

26. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

27. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO.

28. Nothing herein shall affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA or other applicable laws and regulations.

V. Final Order

29. Respondent shall pay a civil penalty of **SEVENTY-NINE THOUSAND, SIXTY-FIVE DOLLARS (\$79,065)**, for the violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

30. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," or by electronic transfer to one of the following addresses:

BY MAIL

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, Missouri 63197-9000

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 425-1819

BY ELECTRONIC TRANSFER*

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: "U.S. Environmental Protection Agency

*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the U. S. EPA.

The check shall reference on its face the name and the Docket Number of the CAFO.

31. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Eddie Chow
U.S. EPA, Region 4
Air Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

32. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Other Provisions

33. Pursuant to 31 U.S.C. § 3717, the 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 the civil penalty from the effective

date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

34. Except as stated in Paragraph 33, Complainant and Respondent shall bear their own costs and attorney fees in this matter.

35. This CAFO shall be binding upon the Respondent, its successors and assigns.

36. The undersigned representative of the Respondent certifies that he or she is fully authorized by the Respondent to enter into this CAFO and legally bind the Respondent to it.

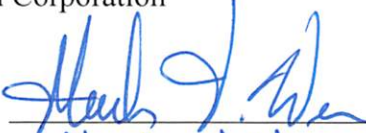
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VII. Effective Date

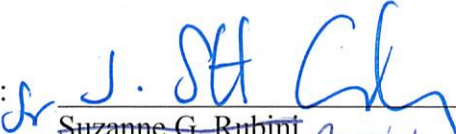
37. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

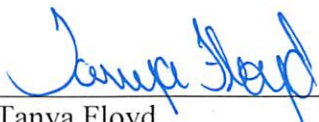
Vytron Corporation

By:  Date: 8-6-19
Name: Mark V. Weaver (Typed or Printed)
Title: President (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 10/20/19
~~Suzanne G. Rubini~~ Carol L. Kemker
~~Acting Director~~
Enforcement and Compliance Assurance Division

APPROVED AND SO ORDERED this 4th day of November, 2019


Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Vytron Corporation, Docket Number: EPCRA-04-2019-2020(b), on the parties listed below in the manner indicated:

Jason Dressler (Via EPA's internal mail)
Acting Chief
U.S. EPA Region 4
Air Section 1

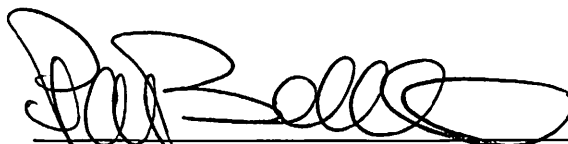
Lucia Mendez (Via EPA's internal mail)
Associate Regional Counsel
U.S. EPA Region 4
Office of Regional Counsel

Valerie Nowell (Via EPA's internal mail)
Chief
U.S. EPA Region 4
Office of Regional Counsel

Howard E. Jarvis, Esq. (Certified Mail—Return Receipt Requested)
Woolf, McClane, Bright,
Allen & Carpenter, PLLC
900 Riverview Tower
900 S. Gay Street
Knoxville, Tennessee 37902

Date:

11-5-19



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency Region 4
Atlanta Federal Center
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Atlanta, Georgia 30303
(404) 562-9511