

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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<b>In the Matter of</b>	:	<b><u>CONSENT AGREEMENT</u></b>
	:	<b><u>AND</u></b>
<b>American Flux and Metal</b>	:	<b><u>FINAL ORDER</u></b>
	:	
<b>Respondent.</b>	:	<b>DOCKET NUMBER</b>
	:	<b>EPCRA-02-2010-0111</b>
	:	
Proceeding under Section 325(c) of Title III	:	
of the Superfund Amendments and Reauthorization Act	:	
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U.S. ENVIRONMENTAL PROTECTION AGENCY-REG. II  
2010 AUG 19 PM 3:54  
REGIONAL HEARING OFFICE

**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 "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc." (40 C.F.R. Part 22 (July 1, 2000)) provide in 40 C.F.R. §22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 ("EPA or Complainant"), alleges that American Flux and Metal, located at 352 East Fleming Pike in Winslow, New Jersey 08095 violated the requirements of Section 313 of EPCRA (42 U.S.C. §11023) and the regulations promulgated pursuant to that Section, codified at 40 C.F.R. Part 372.

Under Section 313 of EPCRA and 40 C.F.R. §372.22, owners or operators of a facility subject to the requirements of Section 313(b) are required to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form R report, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. §372.65 and/or 40 C.F.R. §372.28 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. The completed and correct Form R is required to be submitted to the Regional Administrator of the EPA and to the State in which the subject facility is located.

As an alternative to the requirements set forth above, pursuant to Section 313(f)(2) of EPCRA (42 U.S.C. §11023(f)(2)), and 40 C.F.R. §372.27, owners or operators of a facility subject to the requirements of Section 313(b), with respect to the manufacture, process or otherwise use of a toxic chemical, may apply an alternate threshold of one million (1,000,000) pounds per year to that chemical if the conditions set forth in 40 C.F.R. §372.27(a) are met. If the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators in lieu of filing a Form R may submit an "Alternate Threshold Certification Statement" (Form A) pursuant to 40 C.F.R. §372.27(b). Pursuant to 40 C.F.R. §372.27(e), EPA has excluded Persistent Bioaccumulative Toxic Chemicals (PBTs) listed in 40 C.F.R. §372.28 from eligibility for the Alternate Thresholds described in 40 C.F.R. §372.27(a). [59 FR 61502, Nov. 30, 1994, as amended at 64 FR 58750, Oct. 29, 1999; as amended at 71 FR 76944, Dec. 22, 2006; as amended at 74 FR 19005, Apr. 27, 2009]

EPA and American Flux and Metal agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §22.13(b) and 40 C.F.R. §22.18(b)(2) and (3) is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated Findings of Fact or Conclusions of Law have been made. The following constitutes EPA's Findings of Fact and Conclusions of Law based upon information EPA had obtained through July 6, 2010.

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

1. Respondent is American Flux and Metal (TRI Facility No.: 08095CYRPSFLEMI).
2. At all times relevant hereto, Respondent has maintained a facility located at 352 East Fleming Pike, Winslow, New Jersey 08095, which is the subject of this Consent Agreement and Final Order (hereinafter, "Respondent's facility").
3. Respondent is incorporated in the State of New Jersey.
4. Respondent is a "person" within the meaning of Section 329(7) of EPCRA. (42 U.S.C. §11049).
5. 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.
6. Respondent is an operator 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.
7. Respondent's facility has 10 or more "full time employees" as that term is defined by 40 C.F.R. §372.3.
8. Respondent's facility is in the North American Industry Classification System (NAICS) Code, 325998 [all other miscellaneous chemical product and preparation].
9. Respondent's facility is subject to the requirements of Section 313(b) of EPCRA (42 U.S.C. §11023(b)) and 40 C.F.R. §372.22.
10. Molybdenum trioxide is listed under 40 C.F.R. §372.65.
11. The established threshold amount for processing molybdenum trioxide for the 2008 calendar year was 25,000 pounds. [40 C.F.R. §372.65]
12. Respondent processed greater than 25,000 pounds of molybdenum trioxide in calendar year 2008.
13. Respondent was required to submit a complete and correct Form R for molybdenum trioxide for calendar year 2008 to the Administrator of EPA and to the State of New Jersey by July 1, 2009.
14. Respondent submitted a Form R to the EPA for molybdenum trioxide for calendar year 2008 on March 11, 2010. The Form R was 253 days late.
15. Respondent's failure to submit, in a timely manner, a complete and correct Form R report for molybdenum trioxide for calendar year 2008 constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. §11023, and with 40 C.F.R. Part 372.

### 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 thru 9, 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 **THREE THOUSAND SEVEN HUNDRED TEN DOLLARS (\$3,710)**. 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, Missouri 63197-9000

The check shall be identified with a notation thereon listing the following: **In the Matter of American Flux and Metal** and shall bear thereon the **Docket Number EPCRA-02-2010-4111**. Payment of **\$3,710** 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"). 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: **American Flux and Metal**
- 7) Case Number: **EPCRA-02-2010-4111.**

Such EFT must be received on or before 45 calendar days after the due date of this CAFO.

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

Daniel J. Kraft, Acting 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. Respondent 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.

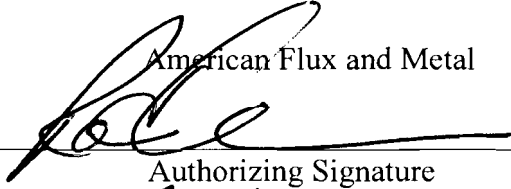
9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.


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

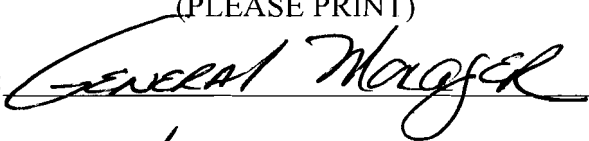
11. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.


**RESPONDENT:**

American Flux and Metal


BY:   
 Authorizing Signature

NAME:   
 (PLEASE PRINT)

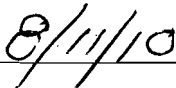
TITLE: 

DATE: 

**COMPLAINANT:**

*FCR* 

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

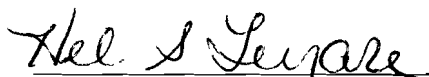
DATE: 

**In the Matter of American Flux and Metal**  
**Docket Number EPCRA-02-2010-4111**

**FINAL ORDER**

The Regional Judicial Officer of the U.S Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of **In the Matter of American Flux and Metal**, bearing **Docket No. EPCRA-02-2010-4111**. 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 into 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: August 16, 2010



**Helen S. Ferrara, Regional Judicial Officer**  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007



**In the Matter of American Flux and Metal**

Docket No. EPCRA-02-2010-4111

**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:

Ms. Catherine Sullivan  
American Flux and Metal  
352 East Fleming Pike  
Winslow, New Jersey 08095

Copy by Mail:

Mr. Andrew Oppermann, EPCRA Section 313  
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

Dated: August 18, 2010



Ms. 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