



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAR 05 2009

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul Wellhausen, President
Lewis and Clark Marine, Inc.
2801 Rock Road
Granite City, IL 62040

Re: Lewis and Clark Marine, Inc., Granite City, Illinois, Consent Agreement and Final Order
Docket Nos. EPCRA-05-2009-0014

Dear Mr. Wellhausen:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on MAR - 5 2009.

Please pay the EPCRA civil penalty in the amount of \$57,504.00 in the manner prescribed in paragraph 46, and reference your check with the billing document number 2750944E015 and the docket number EPCRA-05-2009-0014.

Your payments are due on APR - 5 2009 [within 30 days of filing date].

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Kris Vezner, Associate Regional Counsel, at (312) 886-6827. Thank you for your assistance in resolving this matter.

Sincerely yours,

Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

Kris Vezner (w/ enclosure)

Jon England (w/ enclosure)
Kathy Allen (w/ enclosure)
IL SERC

Marcy Toney (w/ enclosure)
Regional Judicial Officer

Katherine D. Hodge (w/ enclosure)
Hodge Dwyer Zeman
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776 (certified)

CONFIDENTIAL

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. EPCRA-05-2009-0014
)	
Lewis & Clark Marine, Inc.)	Proceeding to Assess a Civil Penalty Under
Granite City, Illinois)	Section 325(c)(1) and (c)(2) of the Emergency
)	Planning and Community Right-to-Know Act
Respondent.)	of 1986
<hr/>		

RECEIVED
MAR - 5 2009

Consent Agreement and Final Order
Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Sections 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§ 11045(c)(1) and (c)(2) 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 Chief of the Emergency Response Branch 1, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Lewis & Clark Marine, Inc., a Missouri corporation doing business in the State of Illinois.
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.

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. Under Occupational Safety and Health Administration (OSHA) regulations at 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, a Material Safety Data Sheet (MSDS).

10. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

11. Section 311 of EPCRA, 42 U.S.C. § 11021, and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the OSHA to prepare or have available an MSDS for a hazardous chemical, to submit to the (a) state emergency response commission (SERC); (b) community emergency coordinator for the local emergency planning committee (LEPC); and (c) fire department with jurisdiction over the facility an MSDS for each such hazardous chemical present at the facility at any one time in an amount equal to or greater than 10,000 pounds, and for each extremely hazardous chemical present at the facility in an amount equal to or greater than 500 pounds, or the threshold planning quantity (TPQ), whichever is lower, or to submit a list of such chemicals. The owner or operator

must submit the required MSDS or list within three months after the owner or operator is first required to have the MSDS available or after the hazardous chemical requiring an MSDS first becomes present at the facility in an amount exceeding the threshold level.

12. 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 OSHA to prepare or have available an MSDS for a hazardous chemical, to submit to the SERC, community coordinator for the LEPC and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier 1 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 chemicals 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.

13. Section 311 of EPCRA, 42 U.S.C. § 11021 and Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees 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.

14. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes U.S. EPA to assess a civil penalty of up to \$10,000 for each EPCRA Section 311 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$11,000 per day of violation for EPCRA 311 violations that occur on or after January 31, 1997.

15. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

Factual Allegations and Alleged Violations

16. Respondent Lewis & Clark Marine, Inc. is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

17. At all times relevant to this CAFO, Respondent was an owner or operator of the bulk storage and terminal facility located at 2801 Rock Road, Granite City, Illinois (Respondent’s Facility).

18. At all times relevant to this CAFO, Respondent was an employer at Respondent’s Facility.

19. 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.

20. Respondent’s Facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

21. Calcined magnesium oxide (CAS #1309-48-4) 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. Calcined magnesium oxide (CAS #1309-48-4) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

23. On or about September 9, 2004, calcined magnesium oxide was present at Respondent's Facility at any one time in an amount equal to or greater than the minimum threshold level.

24. During at least one period of time in calendar year 2004, calcined magnesium oxide was present at Respondent's Facility in an amount equal to or greater than the minimum threshold level.

25. During at least one period of time in calendar year 2005, calcined magnesium oxide was present at Respondent's Facility in an amount equal to or greater than the minimum threshold level.

26. During at least one period of time in calendar year 2006, calcined magnesium oxide was present at Respondent's Facility in an amount equal to or greater than the minimum threshold level.

27. OSHA requires Respondent to prepare, or have available, an MSDS for calcined magnesium oxide.

28. Respondent was required to submit to the SERC, LEPC, and fire department with jurisdiction over Respondent's Facility, on or before December 31, 2004, an MSDS for calcined magnesium oxide or a list including calcined magnesium oxide.

29. At all times relevant to this CAFO, the Illinois State Emergency Response Commission was the SERC for Illinois under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

30. At all times relevant to this CAFO, the Madison County Local Emergency Planning Committee was the LEPC for Madison County Illinois, under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

31. At all times relevant to this CAFO, the Granite City Fire Department was the fire

department with jurisdiction over the facility.

32. Respondent submitted to the SERC, LEPC, and Granite City Fire Department a MSDS for calcined magnesium oxide or a list showing calcined magnesium oxide on August 30, 2007.

33. Respondent's failure to submit to the SERC an MSDS or a list for calcined magnesium oxide by December 31, 2004 is a violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

34. Respondent's failure to submit to the LEPC an MSDS or a list for calcined magnesium oxide by December 31, 2004 is a violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

35. Respondent's failure to submit to the Granite City Fire Department an MSDS or a list for calcined magnesium oxide by December 31, 2004 is a violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

36. As of August 16, 2007, Respondent had not submitted to the SERC, LEPC, and Granite City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including calcined magnesium oxide for calendar year 2004.

37. Respondent's failure to submit to the SERC, LEPC, or the Granite City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including calcined magnesium oxide by March 1, 2005, for calendar year 2004 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

38. As of August 16, 2007, Respondent had not submitted to the SERC, LEPC, and Granite City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including calcined magnesium oxide for calendar year 2005.

39. Respondent's failure to submit to the SERC, LEPC, or the Granite City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including Calcined magnesium oxide by March 1, 2006, for calendar year 2005 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

40. Respondent submitted to the SERC, LEPC, and Granite City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including calcined magnesium oxide on August 30, 2007, for calendar year 2006.

41. Respondent's failure to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including calcined magnesium oxide by March 1, 2007, for calendar year 2006 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

42. Respondent's failure to submit to the LEPC a completed emergency and hazardous chemical inventory form including calcined magnesium oxide by March 1, 2007, for calendar year 2006 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

43. Respondent's failure to submit to the Granite City Fire Department a completed emergency and hazardous chemical inventory form including calcined magnesium oxide by March 1, 2007, for calendar year 2006 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

44. In consideration of Respondent's cooperation, return to compliance, willingness to quickly resolve this matter, and other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$57,504.00.

45. Within 30 days after the effective date of this CAFO, Respondent must pay a \$57,504.00 civil penalty for the EPCRA violations. If paying by check, Respondent must pay

the penalty by sending a cashier's or certified check payable to the "Treasurer, United States of America" to:

for checks sent by regular U.S. postal service

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

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: Lewis & Clark Marine, Inc., the docket number of this CAFO and the billing document number 2750944E015.

If paying by electronic funds transfer, Respondent must pay the penalty by electronic funds transfer payable to "Treasurer, United States of America" and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: Lewis & Clark Marine, Inc., the docket number of this CAFO and the billing document number

2750944E015.

If paying online, Respondent must pay online using ACH debit or credit card. For payments online using ACH debit or credit card please visit www.pay.gov. Using the Search Public Forms

option on the tool bar (left side of page), enter SFO 1.1 in the search field. Open the form and complete the information requested.

46. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the docket number and the billing document number must accompany the payment. Respondent must send the transmittal letter and a copy of the check, electronic funds transfer or online payment receipt to:

Regional Hearing Clerk, (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

James Entzminger, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Kris Vezner, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

48. 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.

49. 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

50. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

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

52. Respondent certifies that it is complying with Section 311 of EPCRA, 42 U.S.C. § 11021 and Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

54. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Sections 311 and 312 of EPCRA.

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

56. 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.

57. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

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

In the Matter of:

Lewis & Clark Marine, Inc., Granite City, Illinois

Docket No. EPCRA-05-2009-0014

Lewis & Clark Marine, Inc., Respondent

2-16-2009

Date

Paul Wellhausen

Mr. Paul Wellhausen, President
Lewis & Clark Marine, Inc.

U.S. Environmental Protection Agency, Complainant

3/2/2009

Date

Jason H. El-Zein

Jason H. El-Zein, Chief
Emergency Response Branch 1
Superfund Division

3-4-09

Date

Richard C. Karl

Richard C. Karl, Director
Superfund Division

In the Matter of:
Lewis & Clark Marine, Inc., Granite City, Illinois
Docket No. EPCRA-05-2009-0014

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.

3/3/09
Date

Walter W. Kovalich
for
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

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MAR - 5 2009
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U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:
Lewis & Clark Marine, Inc., Granite City, Illinois
Docket No. EPCRA-05-2009-0014

Certificate of Service


I, James Entzminger, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number EPCRA-05-2009-0014²⁰ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Lewis & Clark Marine, Inc. and their Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Paul Wellhausen, President
Lewis & Clark Marine, Inc.
2801 Rock Road
Granite City, IL 62040

Katherine D. Hodge
Hodge Dwyer Zeman
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776

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MAR - 5 2009
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

on the 5 day of March, 2009


James Entzminger
U.S. Environmental Protection Agency
Region 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY
FEB 5 2009
OFFICE OF REGIONAL
COUNSEL