



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
August 21, 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL: 7009 1680 0000 7663 8890
RETURN RECEIPT REQUESTED

Mr. Christopher J. Jaeckles
Davis and Kuelthau, S.C.
111 East Kilbourn Avenue, Suite 1400
Milwaukee, Wisconsin 53202

RE: Correction Docket Number for Consent Agreement and Final Order,
In the Matter of Eau Claire Cooperative Oil Company,
Docket Number: EPCRA-05-2013-0022

Dear Mr. Jaeckles:

Enclosed is an amended copy of a Consent Agreement and Final Order (CAFO) dated August 12, 2013. The CAFO did not have the correct statute docket number. The correct docket number is EPCRA-05-2013-0022.

We apologize for the error. If you have any questions feel free to contact me at (312) 886-6191.

Sincerely,

A handwritten signature in black ink, appearing to read "Meghan Dunn".

2/ Meghan Dunn
Pesticides and Toxics Compliance Section

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
August 12, 2013

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL 7009 1680 0000 7668 1551
RETURN RECEIPT REQUESTED.

Mr. Christopher J. Jaeckles,
Davis and Kuelthau, S.C.
111 East Kilbourn Avenue, Suite 1400
Milwaukee, Wisconsin 53202

Consent Agreement and Final Order, In the Matter of
Eau Claire Cooperative Oil Company, Docket No. EPCRA-05-2013-0022


Dear Mr. Jaeckles:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on August 12, 2013, with the Regional Hearing Clerk.

The civil penalty in the amount of \$64,790 is to be paid in the manner described in paragraphs 43 and 44. In the comment or description field of the electronic funds transfer, please state: Specialty Gases of America, Inc, and the docket number of this CAFO (above), and the following billing document number. Payment is due by September 11, 2013 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

for 
Meghan Dunn
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. EPCRA-05-2013-0022
)	
Eau Claire Cooperative Oil Company)	Proceeding to Assess a Civil Penalty
Eau Claire, Wisconsin,)	Under Section 325(c) of the Emergency
)	Planning and Community Right-to-Know
Respondent.)	Act of 1986, 42 U.S.C. § 11045(c)

RECEIVED
AUG 12 2013
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Consent Agreement and Final Order

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), 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 the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Eau Claire Cooperative Oil Company, a corporation doing business in the State of Wisconsin.
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 to the terms of this 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.

9. Respondent certifies that it is complying with Section 313 of EPCRA, 42 U.S.C. § 11023.

Statutory and Regulatory Background

10. 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 has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed or otherwise used a toxic chemical in an amount exceeding an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. §§ 372.25 and 372.28, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years including and subsequent to 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

12. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28, the reporting threshold amount for trifluralin manufactured, processed or otherwise used at a facility is 100 pounds for calendar years including and subsequent to 2001.

13. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that may be assessed pursuant to each agency's statutes. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 of EPCRA that occurred after March 15, 2004 through January 12, 2009, and up to \$37,500 per day for each violation of Section 313 of EPCRA that occurred after January 12, 2009, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

14. Respondent is a "person" as that term is defined at Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 4970 Kane Road, Eau Claire, Wisconsin (facility).

16. At all times relevant to this CAFO, Respondent had "10 or more full-time employees," as defined at 40 C.F.R. § 372.3, and was an employer at the facility.

17. 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.

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

19. The facility has a SIC code of 2875, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

20. Under the Final Policy Statement on Small Business Compliance Policy, 65 Fed. Reg. 19630 (April 11, 2000), Respondent voluntarily disclosed to EPA, by letters dated April 26, 2012 and May 16, 2012, the following violations of Section 313 of EPCRA, 42 U.S.C. § 11023, at Respondent's facility which are the subject of this CAFO:

Chemical	CAS Number	Reporting Year(s) in Violation	Date of Disclosure
Trifluralin	1582-09-8	2007, 2008, 2009, 2010	April 26, 2012
2,4-D butoxyethyl ester	1929-73-3	2007, 2008, 2009, 2010	May 16, 2012
Dimethylamine dicamba	2300-66-5	2007, 2008, 2009, 2010	May 16, 2012
N-methyl-2-pyrrolidone	872-50-4	2007	May 16, 2012

Count 1

21. During calendar year 2007, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, trifluralin, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 10,690 pounds which is greater than 100 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

22. Respondent was required to submit to the Administrator of EPA and to Wisconsin a Form R for trifluralin for calendar year 2007 by July 1, 2008.

23. Respondent did not submit to the Administrator of EPA and to Wisconsin a Form R for trifluralin for calendar year 2007 by July 1, 2008.

24. Respondent submitted Form R for trifluralin to the Administrator of EPA and to Wisconsin on June 15, 2012 for calendar year 2007.

25. Respondent's failure to submit timely a Form R for trifluralin to the Administrator of EPA and to Wisconsin for calendar year 2007 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 2

26. During calendar year 2008, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, trifluralin, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 10,725 pounds which is greater than 100 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

27. Respondent was required to submit to the Administrator of EPA and to Wisconsin a Form R for trifluralin for calendar year 2008 by July 1, 2009.

28. Respondent did not submit to the Administrator of EPA and to Wisconsin a Form R for trifluralin for calendar year 2008 by July 1, 2009.

29. Respondent submitted Form R for trifluralin to the Administrator of EPA and to Wisconsin on June 15, 2012 for calendar year 2008.

30. Respondent's failure to submit timely a Form R for trifluralin to the Administrator of EPA and to Wisconsin for calendar year 2008 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 3

31. During calendar year 2009, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, trifluralin, a chemical category or CAS No. listed under 40 C.F.R.

§ 372.65, in the amount of 8,287 pounds which is greater than 100 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.

§ 372.28.

32. Respondent was required to submit to the Administrator of EPA and to Wisconsin a Form R for trifluralin for calendar year 2009 by July 1, 2010.

33. Respondent did not submit to the Administrator of EPA and to Wisconsin a Form R for trifluralin for calendar year 2009 by July 1, 2010.

34. Respondent submitted Form R for trifluralin to the Administrator of EPA and to Wisconsin on June 15, 2012 for calendar year 2009.

35. Respondent's failure to submit timely a Form R for trifluralin to the Administrator of EPA and to Wisconsin for calendar year 2009 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 4

36. During calendar year 2010, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, trifluralin, a chemical category or CAS No. listed under 40 C.F.R.

§ 372.65, in the amount of 5,987 pounds which is greater than 100 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.

§ 372.28.

37. Respondent was required to submit to the Administrator of EPA and to Wisconsin a Form R for trifluralin for calendar year 2010 by July 1, 2011.

38. Respondent did not submit to the Administrator of EPA and to Wisconsin a Form R for trifluralin for calendar year 2010 by July 1, 2011.

39. Respondent submitted Form R for trifluralin to the Administrator of EPA and to Wisconsin on June 15, 2012 for calendar year 2010.

40. Respondent's failure to submit timely a Form R for trifluralin to the Administrator of EPA and to Wisconsin for calendar year 2010 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Civil Penalty

41. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$64,790. 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, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered EPA's Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (amended) (April 12, 2001).

42. With respect to the nine violations voluntarily disclosed on May 16, 2012, as referenced in paragraph 20, above, Complainant has determined that Respondent has satisfied each of the four Small Business Compliance Policy criteria. Therefore, a 100 percent reduction of the gravity-based portion for the civil penalty to be assessed in this matter is appropriate for those nine violations under the Small Business Compliance Policy. In addition, Complainant has determined that there was no economic benefit associated with those violations and, therefore, seeks no penalty in association with those disclosed violations.

43. Within 30 days after the effective date of this CAFO, Respondent must pay a Sixty-Four Thousand Seven Hundred and Ninety Dollar (\$64,790) civil penalty for the alleged EPCRA

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

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must note "Eau Claire Cooperative Oil Company" and the docket number of this CAFO.

44. Respondent must send a notice of payment that states Respondent's name, complete address, and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Meghan Dunn (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Maria Gonzalez (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

46. If Respondent does not pay timely the civil penalty, 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.

47. 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, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

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

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

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

51. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for Section 313 of EPCRA.

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

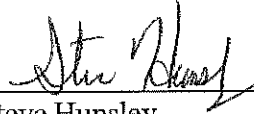
53. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

54. Each party agrees to bear its own costs and attorneys fees in this action.

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

Eau Claire Cooperative Oil Company, Respondent

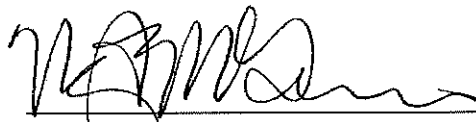
7/1/13
Date



Steve Hunsley
President
Eau Claire Cooperative Oil Company

United States Environmental Protection Agency, Complainant

7/31/2013
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

**In the Matter of:
Eau Claire Cooperative Oil Company
Docket No.**

EPCRA-05-2013-0022

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.

8-7-13

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5


AUG 12 2013
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Eau Claire Cooperative Oil Company, was filed on August 12, 2013, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed, by Certified Mail, Receipt No. 7009 1680 0000 7668 1551, a copy of the original to the Respondents:

Mr. Christopher J. Jaekles,
Davis and Kuelthau, S.C.
111 East Kilbourn Avenue, Suite 1400
Milwaukee, Wisconsin 53202

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Maria Gonzalez, Counsel for Complainant ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. EPCRA-05-2013-0022



AUG 12 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE

In the Matter of Eau Claire Cooperative Oil Company,
Docket Number: EPCRA-05-2013-0022

I hereby certify that an amended signed copy of the Consent Agreement and Final Order SHOWING THE CORRECT STATUE DOCKET NUMBER in resolution of the civil administrative action involving Eau Claire Cooperative Oil Company, was filed on August 21, 2013 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 and that I mailed by Certified Mail, Receipt Number 7009 1680 0000 7663 8890 a copy of the original to Respondents:

Mr. Christopher J. Jaeckles,
Davis and Kuelthau, S.C.
111 East Kilbourn Avenue, Suite 1400
Milwaukee, Wisconsin 53202

And forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Maria Gonzalez, Counsel for Complianant, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Fredrick Brown, PTCS (LC-8J)
U.S. EPA – Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket Number: EPCRA-05-2013-0022

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AUG 21 2013
REGIONAL HEARING CLERK
USEPA
REGION 5