

In the Matter of:

Leed Foundry, Inc.
Wade Road, P.O. Box 98
Saint Clair, PA 17970

Respondent,

Leed Foundry, Inc.
Wade Road, P.O. Box 98
Saint Clair, PA 17970

Facility.

~~Docket No. EPCRA-03-2008-0377~~

CONSENT AGREEMENT

Proceeding under EPCRA § 325(c),
42 U.S.C. § 11045(c)

cm

CONSENT AGREEMENT

Preliminary Statement

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and Leed Foundry, Inc. ("Respondent" or "Leed Foundry") pursuant to Sections 313 and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11023 and 11045(c), the regulations implementing EPCRA Section 313, as set forth at 40 C.F.R. Part 372, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Pursuant to 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO") simultaneously commence and conclude this proceeding to resolve the violations of EPCRA Section 313, as alleged herein, by Respondent at its Facility located at Wade Road, Saint Clair, Pennsylvania.

2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

3. Except as provided in paragraph 2, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

4. Respondent agrees not to contest the jurisdiction of the U.S. Environmental Protection Agency ("EPA") with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

5. For purposes of this proceeding only, Respondent hereby expressly waives any

right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

6. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

7. Respondent shall bear its own costs and attorney's fees.

Findings of Fact and Conclusions of Law

8. Complainant has determined that Respondent has violated EPCRA Section 313. In accordance with Sections 22.13(b), 22.18(b)(2) and (3), and 22.14(a)(2) and (3) of the Consolidated Rules of Practice, Complainant adopts the following findings of fact and conclusions of law:

- A. Leed Foundry does business in Pennsylvania and is a corporation, incorporated under the laws of the Commonwealth of Pennsylvania. As a Pennsylvania corporation, Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
- B. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. Section 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures, and other stationary items that are located on a single site and that are owned or operated by the same person.
- C. Respondent owns and operates, and at the time of the violations alleged herein, owned and operated a iron and steel construction castings and grating plant located at Wade Road, Saint Clair, Pennsylvania (the "Facility").
- D. Respondent's Facility is a "facility" as defined in Section 329(4) of EPCRA and 40 C.F.R. § 372.3.
- E. Section 313 of EPCRA and 40 C.F.R. Section 372 require, *inter alia*, that the owner or operator of a facility that: 1) has 10 or more employees; 2) has a primary Standard Industrial Classification ("SIC") code (as in effect on July 1, 1985) between codes 20 and 39; and 3) manufactures, processes or otherwise uses a toxic chemical listed in 40 C.F.R. Section 372.65, in excess of the threshold quantities set forth in Section 313(f) of EPCRA, 42 U.S.C. Section 11023(f), during the calendar year for which the form is required, to complete and submit a toxic chemical release form ("Form

R”) or appropriate alternative threshold report (“Form A”) for each such toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year.

- F. Section 313(g) of EPCRA, 42 U.S.C. § 11023(g) and 40 C.F.R. § 372.85(b) require the owner or operator of the facility to accurately report its releases of toxic chemicals based upon reasonable estimates using data available to the preparer of the report on Form R and Form A.
- G. At the time of the violations alleged herein, Respondent employed 10 or more full-time employees at the Facility.
- H. At the time of the violations alleged herein, the Facility had SIC codes of 3321, 3272, and 3369. These SIC codes fall between the primary SIC codes of 20 (2000) and 39 (3900) (as in effect on July 1, 1985).
- I. For each toxic chemical listed in 40 C.F.R. § 372.65 manufactured, processed, or otherwise used by Respondent at its Facility in excess of the threshold quantity set forth in Section 313(f) of EPCRA during any calendar year, Respondent has been required by EPCRA Section 313, at all times relevant to this Consent Agreement, to complete and submit to EPA and the Commonwealth of Pennsylvania either a Form R or Form A by July 1 of the following calendar year.
- J. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA Section 313 shall be liable to the United States for a civil penalty.
- K. Leed Foundry self-disclosed violations of EPCRA Section 313 in its August 30, 2007 letter to EPA, pursuant to “Small Business Compliance Policy,” 65 Fed. Reg. 19630 (April 11, 2000).
- L. Respondent disclosed that it failed to submit its Form Rs to the EPA and the Commonwealth of Pennsylvania by the July 1 deadline for calendar years 2003, 2004 and 2005.
- M. EPA evaluated Leed Foundry’s Self-Disclosure letter and subsequent correspondence and determined that Leed Foundry did not meet criterion 4(a)(iii) of the Small Business Compliance Policy, in that the facility has been subject to two or more enforcement actions for violations of environmental requirements in the past five years.

COUNT I - COUNT III

- N. The chemical substance lead compound is a “toxic chemical” as defined in EPCRA Section 313(c) - (d), 42 U.S.C. § 11023(c) - (d), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
- O. During the calendar years 2003, 2004 and 2005, the amount of lead compound “otherwise used” by Respondent exceeded the 10,000 pound threshold quantity for reporting set forth in Section 313(f) of EPCRA, as that term is defined in EPCRA § 313(b)(1)(C)(ii), 42 U.S.C. § 11023(b)(1)(C)(ii), and 40 C.F.R. § 372.3.
- P. Pursuant to EPCRA Section 313, Respondent was required to submit to EPA and the Commonwealth of Pennsylvania by July 1 of the following calendar year a completed Form R or Form A to report reasonable estimates of its lead compound releases, based on available data, from the Facility during calendar years 2003, 2004 and 2005.
- Q. Respondent failed to submit to EPA and the Commonwealth of Pennsylvania, on or before July 1 of 2004, 2005 and 2006, Form R for releases from the Facility during calendar years 2003, 2004 and 2005.
- R. Respondent's failure to submit Form Rs for lead compound released at its Facility during calendar years 2003, 2004 and 2005 constitutes three violations of Section 313 of EPCRA, for which Respondent is liable for a civil penalty pursuant to EPCRA Section 325(c).

Civil Penalty

9. The proposed penalty is \$0.00 in consideration of Respondent’s current financial situation and inability to pay, as documented to EPA by Respondent during a recent prior enforcement action. Respondent has notified EPA that its current financial situation has not changed in any way since the submittal of its financial information to EPA.

10. The aforesaid settlement amount is based upon Complainant’s consideration of a number of factors, including, but not limited to, the particular facts and circumstances of this case and EPA’s *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-know Act (1986)* (August 10, 1982) and the *Small Business Compliance Policy*, 65 Fed. Reg. 19630 (April 11, 2000). The settlement in this proceeding is consistent with the provisions and objectives of EPCRA and 40 C.F.R. Part 372.

11. EPA hereby agrees and acknowledges that the settlement of the proposed penalty as set forth above shall be a full and final satisfaction of all civil claims for penalties which Complainant may have under Section 313 of EPCRA for the violations alleged in the Consent Agreement.

12. The settlement embodied in this Consent Agreement is based in part upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information submitted to Complainant by Respondent. Respondent, by his signature to this Consent Agreement, certifies that the information he has submitted to EPA regarding his ability to pay and regarding any other matter at issue in the Consent Agreement, is accurate and not misleading. Respondent is aware that the submission of false or misleading information to the United States government may subject them to separate civil and/or criminal liability. Complainant shall have the right to institute new and separate actions to recover civil penalties for the claims made in the Consent Agreement in this matter if Complainant obtains evidence that the information provided and/or representations may be Respondent to EPA regarding his ability to pay or regarding the matters at issue in the Complaint are false in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, EPA may have under law or equity in such event.

13. Failure by the Respondent to comply with the requirements of this CAFO pursuant to terms of the CAFO, may subject the Respondent to an additional enforcement action, including, but not limited to, the issuance of an Administrative Complaint and the imposition of penalties as provided by Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), or the accompanying final order.

Certifications

14. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Facility referred to in this Consent Agreement is currently in compliance with all applicable requirements of EPCRA Section 313.

Other Applicable Laws

15. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

16. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged in this CAFO. EPA reserves the right to commence

action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under EPCRA and the regulations promulgated thereunder, to enforce the provisions of this CAFO and any other federal laws or regulations for which EPA has jurisdiction, following the filing of this CAFO with the Regional Hearing Clerk.

Full and Final Satisfaction

17. This CAFO with no calculated penalty shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 325 of EPCRA for the specific violations alleged in paragraphs 8.A through 8.R, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

18. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents, and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

Effective Date

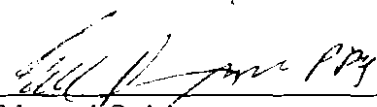
19. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA - Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

20. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent:

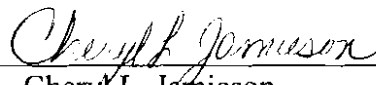
Date: 8/27/08

By: 
Edmund Quirin
President
Leed Foundry, Inc.
Wade Road, P.O. Box 98
Saint Clair, PA 17970

For Complainant:

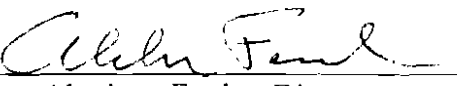
**U.S. Environmental Protection Agency
Region III**

Date: 4/22/08

By: 
Cheryl L. Jamieson
Sr. Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 8/27/08

By: 
Abraham Ferdas, Director
Land and Chemicals Division
(formerly the Waste and Chemicals
Management Division)
U.S. EPA Region III

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	
	:	
Leed Foundry, Inc.	:	Docket No. EPCRA-03-2008-0377
Wade Road, P.O. Box 98	:	
Saint Clair, PA 17970	:	
	:	FINAL ORDER
Respondent,	:	
	:	
Leed Foundry, Inc.	:	
Wade Road, P.O. Box 98	:	
Saint Clair, PA 17970	:	Proceeding under EPCRA § 325(c),
	:	42 U.S.C. § 11045(c)
Facility.	:	

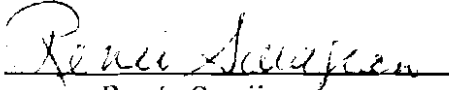
FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Leed Foundry, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 325(c) of the Emergency Planning and Community Right-to-know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(c), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-know Act (1986)* (August 10, 1992), IT IS HEREBY ORDERED that Respondent pay a civil penalty of Zero Dollars (\$0.00), and comply with the terms and conditions of the Consent Agreement.

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.

Date: 7/3/08


Renée Sarajian
Regional Judicial Officer
U.S. EPA - Region III

In the Matter of Leed Foundry, Docket No. EPCRA-03-2008-0377

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused to be sent the attached Consent Agreement and Final Order to the following parties:

Original By Hand Delivery to:

Regional Hearing Clerk, Region III,
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

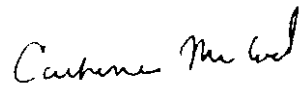
Copy by Hand Delivery to:

Regional Judicial Officer, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Copy by Federal Express:

Edmund Quirin
President
Leed Foundry, Inc.
Wade Road, P.O. Box 98
Saint Clair, Pennsylvania 17970

Date: 9/3/2008



Catherine Mc Cool
Lead Paralegal Specialist