



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

2015 SEP 29 PM 1:44

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: EPCRA-08-2015-0005

IN THE MATTER OF:

NICHOLAS & COMPANY

5520 Harold Gatty Drive
Salt Lake City, UT 84116


RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 29th DAY OF September, 2015.



Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
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HEARING CLERK

IN THE MATTER OF:)
)
Nicholas and Co., Inc.)
5520 Harold Gatty Drive)
Salt Lake City, UT 84116)
Respondent)

EXPEDITED SETTLEMENT AGREEMENT

(COMBINED COMPLAINT AND
CONSENT AGREEMENT)

DOCKET NO. : EPCRA-08-2015-0005

AUTHORITY

1. This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter the Agreement), intended to simultaneously commence and conclude this matter, is being entered into by the United States Environmental Protection Agency (EPA), Region 8, by its duly delegated official, the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, and by Nicholas and Co., Inc. (Respondent). This matter is authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA and Respondent agree that the EPA has jurisdiction over this matter pursuant to section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045.
3. Respondent agrees that the EPA has jurisdiction and venue over the matters contained in this Agreement, however, Respondent neither admits nor denies the EPA's specific factual allegations contained herein.

RESPONDENT

4. Respondent is a "person" as defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
5. Respondent is the owner or operator of a "facility", as defined by section 329(4) of EPCRA, 42 U.S.C. § 11049(4), located at 5520 Harold Gatty Drive, Salt Lake City, Utah.

ALLEGED VIOLATIONS

6. On February 5, 2015, the EPA inspected Respondent's facility in Salt Lake City, Utah, with Respondent's consent.
7. At all times relevant to this matter, the facility stored hazardous chemicals as defined by 29 C.F.R. § 1910.1200. Diesel Fuel and Diesel Exhaust Fluid (DEF) are hazardous chemicals as defined by 29 C.F.R. § 1910.1200(c).

Nicholas and Co., Inc.
EXPEDITED SETTLEMENT AGREEMENT

8. At all times relevant to this matter, the facility was required to prepare or have available a Safety Data Sheet (SDS) for each hazardous chemical used and stored at the facility. This requirement is found under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, and the regulations promulgated under that Act.
9. Respondent is required to file an annual Tier II inventory report for hazardous chemicals stored in excess of established thresholds. Such thresholds are located at 40 C.F.R. § 370.20(b).
10. Under section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations at 40 C.F.R. section 370, Respondent was required to submit its Tier II form for calendar year 2014 on or before March 1, 2015.
11. Nicholas and Co., Inc. did not file the Tier II form for the hazardous chemical, Diesel Fuel, stored on site in an amount equal to or in excess of the threshold level of 10,000 pounds during calendar year 2014, as required by section 312 of EPCRA, 42 U.S.C. § 11022.
12. Nicholas and Co., Inc. did not file the Tier II form for the hazardous chemical, Diesel Exhaust Fluid (DEF), stored on site in an amount equal to or in excess of the threshold level of 10,000 pounds during calendar year 2014, as required by section 312 of EPCRA, 42 U.S.C. § 11022.

SETTLEMENT

13. The EPA and Respondent agree that settlement of this matter is in the public interest, and the EPA and Respondent agree that execution of this Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
14. This Agreement contains all terms of the settlement agreed to by the parties.
15. Pursuant to section 325 of EPCRA, 42 U.S.C. § 11045, and based in part on the nature of the alleged violations and other relevant factors, EPA agrees that an appropriate civil penalty to settle this matter is **TWO THOUSAND DOLLARS (\$2,000)**.
16. Respondent consents, for the purpose of settlement, to the issuance of a Final Order and the payment of the civil penalty cited in the foregoing paragraph.
17. Respondent agrees that the penalty specified in this ESA shall not be deductible for purposes of state or federal taxes.

Nicholas and Co., Inc.
EXPEDITED SETTLEMENT AGREEMENT

18. Within 30 days of receipt of this Agreement, Respondent must send a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of \$2,000 to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

**The following Payment Number for this Agreement must be included on the check:
ESA-R8-EPCRA-15-004**

19. The signed Agreement and a copy of the check must be sent certified mail to:

Greg Bazley
EPCRA/RMP Technical Enforcement Program
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129


20. Respondent waives its right to a hearing on any issue of law or fact set forth in this Agreement and knowingly agrees to waive its right to a hearing on this matter under section 325(b)(1)(B) of EPCRA, 42 U.S.C. § 11045(b)(1)(B), and to appeal this matter under EPCRA § 325(f), 42 U.S.C. § 11045(f).
21. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.
22. This Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.
23. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
24. Nothing in this Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
25. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Agreement and to execute and legally bind that party to this Agreement.

Nicholas and Co., Inc.
EXPEDITED SETTLEMENT AGREEMENT

26. The parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
27. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in this Agreement.
28. This Agreement shall not in any case affect EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
29. Each party shall bear its own costs and attorney's fees in connection with all issues associated with this Agreement.

**For Complainant UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

Date: 9/29/15

By: 
Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

For Respondent Nicholas and Co., Inc.

Date: 9-18-2015

By: 

Print: Doug Kronen

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER**, in the matter **NICHOLAS AND CO., INC.**; **DOCKET NO.: EPCRA-08-2015-0005** was filed with the Regional Hearing Clerk on September 29, 2015.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Jessica Portmess, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on September 29, 2015 to:


Respondent is:

Doug Kronen, Safety and Compliance Manager
Nicholas and Co., Inc.
5520 Harold Gatty Drive
Salt Lake City UT 84116

And emailed to:

Jessica Farmer
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

September 29, 2015



Michael C. Nelson
Acting Regional Hearing Clerk

