

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Sarah Meeks 9/19/16
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number EPCRA-01-2016-0059

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Lucas - Milhaupt Warwick LLC
235 Kilvert Street
Warwick, RI 02886

Total Dollar Amount of Receivable \$ 69,265 Due Date: 10/19/16

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ _____ on _____
2nd \$ _____ on _____
3rd \$ _____ on _____
4th \$ _____ on _____
5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number _____



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

September 19, 2016

BY HAND

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

RECEIVED

SEP 19 2016

EPA ORC WS
Office of Regional Hearing Clerk

Re: In re: Lucas-Milhaupt Warwick LLC, Docket No. EPCRA-01-2016-0059

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Consent Agreement and Final Order; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sarah Meeks".

Sarah Meeks
Enforcement Counsel

Enclosures

cc: Jeff Allen, Lucas-Milhaupt Warwick LLC

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

)
IN THE MATTER OF:)
)
LUCAS-MILHAUPT WARWICK LLC)
)
235 Kilvert Street)
Warwick, Rhode Island 02886,)
)
Respondent.)
)
Proceeding under Section 325(c) of the)
Emergency Planning and Community)
Right-to-Know Act, 42 U.S.C. § 11045(c))

Docket No: EPCRA-01-2016-0059

**CONSENT AGREEMENT
AND FINAL ORDER**

RECEIVED

SEP 19 2016

EPA ORC WS
Office of Regional Hearing Clerk

Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), alleges that Respondent Lucas-Milhaupt Warwick LLC. (“Lucas-Milhaupt” or “Respondent”) violated Section 313 of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11023 (also known as the Emergency Planning and Community Right-to-Know Act or “EPCRA”), and the federal regulations promulgated thereunder.

EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA’s “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22, EPA and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

Therefore, before any hearing, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of EPA and Respondent, it is hereby ordered and agreed as follows:

I. STATUTORY AND REGULATORY AUTHORITY

1. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 372.

2. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), requires owners or operators of a facility subject to the requirements of Section 313(b) to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25. If the owner or operator determines that the alternative reporting threshold specified in 40 C.F.R. § 372.27 applies, the owner or operator may submit an alternative threshold certification statement that contains the information required under 40 C.F.R. § 372.95 (the alternative threshold certification statement is also known as "Form A"). Each Form R or Form A is required to be submitted to the Administrator of EPA and to the state in which the subject facility is located. Forms R and Forms A are hereinafter referred to as "TRI Forms."

3. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification ("SIC") code or North American Industry Classification System ("NAICS") code set forth in 40 C.F.R. § 372.23; and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 in a quantity exceeding the established threshold during a calendar year are required to submit a Form R or Form A for each of these substances for that year.

4. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) (as amended by the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and the Debt Collection Improvement Act, 31 U.S.C. § 3701), and EPA’s Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder at 40 C.F.R. Part 19, authorize the assessment of civil administrative penalties of 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)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day a Section 313 violation continues constitutes a separate violation.

II. GENERAL ALLEGATIONS

5. Lucas-Milhaupt is a limited liability company organized under the laws of the State of Delaware with a usual place of business at 235 Kilvert Street, Warwick, Rhode Island (the “Facility”).

6. Respondent manufactures silver and copper based brazing and soldering filler metals and fluxes for the appliance, construction, and metal-working industries at the Facility.

7. Lucas-Milhaupt owns the Facility.

8. On August 13, 2015, a duly authorized representative of EPA conducted a compliance evaluation inspection of the Facility (the “EPA inspection”) to determine its compliance with EPCRA reporting requirements.

9. As a corporation or partnership, Respondent is a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

10. Respondent owns and operates a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

11. The Facility has more than 10 “full-time employees,” as that term is defined by 40 C.F.R. § 372.3.

12. The Facility is classified in a SIC code or NAICS code set forth in 40 C.F.R. § 372.23.

13. During the calendar years 2012, 2013, and 2014, Respondent processed copper, a toxic chemical listed under 40 C.F.R. § 372.65, in quantities exceeding the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25.

14. During the calendar years 2012, 2013, and 2014, Respondent processed silver, a toxic chemical listed under 40 C.F.R. § 372.65, in quantities exceeding the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25.

15. The requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, therefore apply to the Facility.

III. VIOLATIONS

Count 1: Failure to Timely File TRI Form for Copper for Reporting Year 2012

16. The foregoing paragraphs 1 through 15 are incorporated by reference as if fully set forth herein.

17. During the calendar year 2012, Respondent processed copper, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2013.

18. Respondent failed to properly submit this form to the Administrator of EPA on or before July 1, 2013.

19. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 2: Failure to Timely File TRI Form for Copper for Reporting Year 2013

20. The foregoing paragraphs 1 through 19 are incorporated by reference as if fully set forth herein.

21. During the calendar year 2013, Respondent processed copper, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2014.

22. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2014.

23. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 3: Failure to Timely File TRI Form for Copper for Reporting Year 2014

24. The foregoing paragraphs 1 through 23 are incorporated by reference as if fully set forth herein.

25. During the calendar year 2014, Respondent processed copper, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI for this chemical on or before July 1, 2015.

26. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2015.

27. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 4: Failure to Timely File TRI Form for Silver for Reporting Year 2012

28. The foregoing paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

29. During the calendar year 2012, Respondent processed silver, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI for this chemical on or before July 1, 2013.

30. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2013.

31. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 5: Failure to Timely File TRI Form for Silver for Reporting Year 2013

32. The foregoing paragraphs 1 through 31 are incorporated by reference as if fully set forth herein.

33. During the calendar year 2013, Respondent processed silver, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI for this chemical on or before July 1, 2014.

34. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2014.

35. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 6: Failure to Timely File TRI Form for Silver for Reporting Year 2014

36. The foregoing paragraphs 1 through 35 are incorporated by reference as if fully incorporated herein.

37. During calendar year 2014, Respondent processed silver, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI for this chemical on or before July 1, 2015.

38. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2015.

39. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

IV. TERMS OF SETTLEMENT

40. Respondent certifies that it has corrected the alleged violations cited in this CAFO and will operate the facility in compliance with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder found at 40 C.F.R. Part 372.

41. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states a claim upon which relief may be granted against Respondent. Respondent hereby waives any defenses it might have as to jurisdiction and venue.

42. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives its right to appeal the Final Order.

43. Without admitting or denying the facts and violations alleged in this CAFO, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of the civil penalty set forth herein.

44. Pursuant to the relevant factors for penalties issued pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and taking into account any such matters as justice may

require, Complainant has determined that it is fair and proper that Respondent pay a total civil penalty in the amount of sixty-nine thousand two hundred sixty-five dollars (\$69,265) to resolve the violations alleged in this matter.

45. Within thirty (30) days of the effective date of this CAFO, Respondent shall submit a company, bank, cashier's, or certified check in the amount of \$69,265, payable to the order of the "Treasurer, United States of America." The check should be sent to:

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

or, Respondent may make payment by electronic funds transfer via:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

Respondent shall include the case name and docket number ("*In re Lucas-Milhaupt Warwick LLC*, Docket No. EPCRA-01-2016-0059") on the face of the check or wire transfer confirmation.

In addition, at the time of payment, Respondent shall simultaneously send notice of the payment and a copy of the check or electronic wire transfer confirmation to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

and

Sarah Meeks
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES 04-3
Boston, MA 02109-3912

46. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that any partial payment of the civil penalty, plus interest thereon, is not paid when due without demand, the penalty plus accrued interest shall be payable with additional interest from the original due date to the date of payment, at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees. In addition, a penalty charge of six percent per year, compounded annually, will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment becomes due in accordance with 31 C.F.R. § 901.9(d).

47. The civil penalty under this CAFO and any interest, nonpayment penalties, and other charges described herein shall represent penalties assessed by EPA, and shall not be deductible for purposes of federal, state, or local taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

48. The provisions of this CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

49. Respondent shall bear its own costs and attorneys' fees in this proceeding and specifically waives any right to recover such costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

50. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA for the violations specifically alleged in this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

51. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent is in violation of this CAFO or continues to be in violation of the statutes and regulations upon which the allegations in this CAFO are based, or for Respondent's violation of any other applicable provision of federal, state, or local law.

52. Each of the undersigned representatives of the parties certifies that he or she is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

53. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approval of a Regional Judicial Officer.

54. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed with the Regional Hearing Clerk.

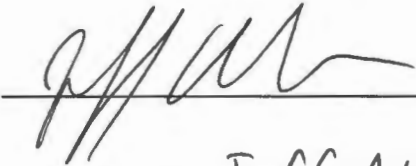
FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



Joanna Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Date: 9/16/16

FOR RESPONDENT LUCAS-MILHAUPT WARWICK LLC:



PRINT NAME: Jeff Allen

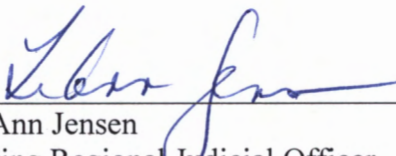
TITLE: Plant Manager

Date: 9/6/16

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will be effective on the date is filed with the Regional Hearing Clerk.

Date: September 19, 2016



LeAnn Jensen
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the matter of:)	
)	Docket No. EPCRA-01-2016-0059
LUCAS-MILHAUPT WARWICK LLC)	
)	
235 Kilvert Street)	
Warwick, RI 02886)	
)	
Respondent)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

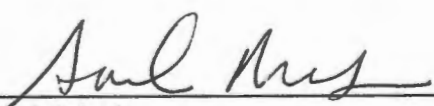
Original and one copy,
hand-delivered:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy, by Certified Mail,
Return Receipt Requested:

Jeff Allen
Plant Manager, Warwick
Lucas-Milhaupt Warwick LLC
235 Kilvert Street
Warwick, RI 02886

Dated: 9/19/16



Sarah Meeks
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES 04-3)
Boston, MA 02109-3912
Tel (617) 918-1438
Fax (617) 918-0438