

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
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REGIONAL COMPLIANCE DIVISION
EPA REGION VI

IN THE MATTER OF:

DRAGON PRODUCTS, LTD
BEAUMONT, TEXAS

RESPONDENT

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DOCKET NO. EPCRA-06-2017-0503

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant"), and Dragon Products, LTD ("Dragon" or "Respondent") hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c), is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.
3. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.
5. The Respondent consents to the issuance of this CAFO, to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.
6. The Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.
7. The Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.
8. The Respondent hereby certifies that as of the date of the execution of this CAFO, Respondent has corrected the violations alleged in this CAFO and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

II. STATUTORY AND REGULATORY BACKGROUND

9. 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: (a) has ten or more full-time employees; (b) that is an establishment with a primary Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) “manufactured, processed, or otherwise used” a toxic chemical listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Subsection

313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, or 372.28 during the calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, for the preceding calendar year, for each toxic chemical known by the owner or operator to be “manufactured, processed, or otherwise used” in quantities exceeding the established threshold quantity during that preceding calendar year.

10. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30, is 25,000 pounds for any toxic chemical “manufactured or processed,” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year.

Alternative reporting thresholds are set forth in 40 C.F.R. §§ 372.27 and 372.28.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

11. Respondent is a limited liability company.
12. Respondent is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
13. The Respondent owns and operates the businesses at:
 - a. 972 FM 92 North, Silsbee Texas 77656 (the “North Silsbee Facility”);
 - b. 816 W. Barbours Cut Blvd, La Porte, Texas 77571 (the “La Porte Facility”);
 - c. 2609 Wespine, Beaumont, Texas 77713 (the “Wespine Facility”).
14. Each Facility identified in Paragraph 13 is 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.

15. Each of Respondent's Facilities has ten (10) or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.

16. The Respondent's facility is in NAICS code 333132 oil and gas field machinery and equipment manufacturing.

17. During the calendar years 2011 through 2014, diisocyanates, ethylene glycol, methanol, 1,2,4 trimethylbenzene, 4,4 isopropylidenediphenol, xylene, m-xylene, copper, ethylbenzene, and methyl isobutyl ketone, were "manufactured, processed or otherwise used" as those terms are defined by Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.3, at Respondent's facilities in North Silsbee, La Porte, and Wespine, Texas.

18. Diisocyanates, ethylene glycol, methanol, 1,2,4 trimethylbenzene, xylene, 4,4, isopropylidenediphenol, copper, ethylbenzene, and methyl isobutyl ketone are toxic chemicals within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

19. At its North Silsbee Facility, Respondent "manufactured, processed or otherwise used" the following chemicals in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25:

- a. Diisocyanates in calendar years 2011, 2012, and 2013.
- b. Methanol in calendar year 2011.
- c. 4,4 Isopropylidenediphenol in calendar years 2011, 2012, and 2013.

20. At its La Porte Facility, Respondent "manufactured, processed or otherwise used" the following chemicals in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25:

- a. Ethylbenzene in calendar year 2011.
- b. Xylene in calendar year 2011.
- c. Methyl Isobutyl Ketone in calendar years 2011 and 2012.
- d. Copper in calendar years 2011 and 2012.

21. At its Wespine Facility, Respondent “manufactured, processed or otherwise used” the following chemical in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25:

Ethylene Glycol in calendar years 2012 and 2013.

22. Inspections at these facilities were conducted during the week of October 6, 2014 by a duly authorized representative of the EPA’s Region 6 office. Based on information provided by the Respondent, the following violations are alleged.

B. VIOLATIONS

i. North Silsbee Facility

Diisocyanates

23. During calendar years 2011, 2012, and 2013, Respondent processed diisocyanates in excess of the applicable threshold quantity.

24. Respondent failed to submit the required Form R for diisocyanates by July 1 of 2012, 2013, and 2014.

25. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for diisocyanates for calendar years 2011-2013 to the EPA and to the State of Texas by the applicable due date.

Methanol

26. During calendar year 2011, Respondent processed methanol in excess of the applicable threshold quantity.

27. Respondent failed to submit the required Form R for methanol by July 1 of 2012.

28. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for methanol for calendar year 2011 to the EPA and to the State of Texas by the applicable due date.

4,4 Isopropylidenediphenol

29. During calendar years 2011, 2012, and 2013, Respondent processed 4,4 isopropylidenediphenol in excess of the applicable threshold quantity.

30. Respondent failed to submit the required Form R for 4,4 isopropylidenediphenol by July 1 of 2012, 2013, and 2014.

31. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for 4,4 isopropylidenediphenol for calendar years 2011-2013 to the EPA and to the State of Texas by the applicable due date.

ii. La Porte Facility

Ethylbenzene

32. During calendar year 2011, Respondent processed ethylbenzene in excess of the applicable threshold quantity.

33. Respondent failed to submit the required Form R for ethylbenzene by July 1 of 2012.

34. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for ethylbenzene for calendar year 2011 to the EPA and to the State of Texas by the applicable due date.

Xylene

35. During calendar year 2011, Respondent processed xylene in excess of the applicable threshold quantity.

36. Respondent failed to submit the required Form R for xylene by July 1 of 2012.

37. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for xylene for calendar years 2011 to the EPA and to the State of Texas by the applicable due date.

Methyl Isobutyl Ketone

38. During calendar years 2011 and 2012, Respondent processed methyl isobutyl ketone in excess of the applicable threshold quantity.

39. Respondent failed to submit the required Form R for methyl isobutyl ketone by July 1 of 2012 and 2013.

40. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for methyl isobutyl ketone for calendar years 2011 and 2012 to the EPA and to the State of Texas by the applicable due date.

Copper

41. During calendar years 2011 and 2012, Respondent processed copper in excess of the applicable threshold quantity.
42. Respondent failed to submit the required Form R for copper by July 1 of 2012 and 2013.
43. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for copper for calendar years 2011 and 2012 to the EPA and to the State of Texas by the applicable due date.

iii. Wespine Facility

44. During calendar years 2012 and 2013, Respondent processed ethylene glycol in excess of the applicable threshold quantity.
45. Respondent failed to submit the required Form R for ethylene glycol by July 1 of 2013 and 2014.
46. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for ethylene glycol for calendar years 2012 and 2013 to the EPA and to the State of Texas by the applicable due date.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

47. For the reasons set forth above, the Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), which authorizes EPA to assess a civil penalty of up to Fifty-Three Thousand Nine Hundred Seven

Dollars (\$53,907) per day for each violation of EPCRA occurring after November 2, 2015.¹

Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the nature, circumstances, extent and gravity of the alleged violations, and with respect to the Respondent, ability to pay, history of prior EPCRA Section 313 violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and other factors as justice may require, it is **ORDERED** that Respondent be assessed a civil penalty of **One Hundred Eighty-Seven Thousand Dollars (\$187,000)**.

48. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

49. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

¹ On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

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For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

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"

PLEASE NOTE: Docket number EPCRA 06-2017-0503 shall be clearly typed on the check, or other method of payment, to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Mark Potts
Chief
Waste Enforcement Branch (6ENH)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attn: Stan Lancaster;

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

50. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

51. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f), to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

52. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury

tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

53. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

54. This document is a "Final Order" as that term is defined in the "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)," dated August 10, 1992; Amended, April 12, 2001; for the purpose of demonstrating a history of "prior such violations".

B. RETENTION OF ENFORCEMENT RIGHTS

55. The EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

56. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

57. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health,

welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

C. COSTS

58. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

D. TERMINATION

59. At such time as the Respondent believes that it has complied with all terms and conditions of this CAFO, it may request that EPA concur whether the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing as expeditiously as possible. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated.


E. EFFECTIVE DATE

60. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:


Date: 1/20/2017



Casey Crenshaw
President
Dragon Products, Ltd.

FOR THE COMPLAINANT:

Date: 2-1-17



Stacey B. Dwyer, P.E.
Acting Director
Compliance Assurance and
Enforcement Division

for

V. FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

2/7/17



Thomas Rucki
Regional Judicial Officer

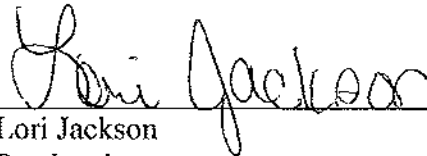
CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of February, 2017, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED #7001 0360 0003 6674 981

Via Email (PDF):

Eric Groten
Vinson & Elkins
2801 Via Fortuna
Suite 100
Austin, Texas 78746-7568



Lori Jackson
Paralegal
U.S. EPA Region 6
Dallas, TX 75202