



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

JUN 13 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7667 8032

Mr. Dennis Espinoza
International Control Services, Inc.
606 West Imboden Drive
Decatur, Illinois 62521

In the Matter of International Control Services, Inc.
Consent Agreement and Final Order, Docket No. EPCRA-05-2012-0019


Dear Mr. Espinoza:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on June 13, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$10,045 is to be paid in the manner described in paragraphs 30 and 31. Please be certain that the number **BD 2751244E016** and the docket numbers are written on both the transmittal letter and on the check. Payment is due by July 13, 2012, (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

RECEIVED
JUN 13 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:) Docket No. EPCRA-05-2012-0019
)
International Control Services, Inc.) Proceeding to Assess a Civil Penalty
Decatur, Illinois,) Under Section 325(c) of the Emergency
) Planning and Community Right-to-Know
Respondent.) Act of 1986, 42 U.S.C. § 11045(c)
_____)

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, U.S. Environmental Protection Agency, Region 5.

3. Respondent is International Control Services, Inc., a corporation doing business in the State of Illinois.

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. § 372.28, 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. § 372.28, the reporting threshold amount for lead manufactured, processed or otherwise used at a facility is 100 pounds for calendar years including and subsequent to 2001.

12. 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, 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

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

14. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 606 West Imboden Drive, Decatur, Illinois (facility).

15. 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.

16. 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.

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

18. The facility has a SIC code of 3679, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

Count 1

19. During calendar year 2006, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, lead, CAS No. 7439-92-1, listed under 40 C.F.R. § 372.65, in the amount of 1,178 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.

20. Respondent was required to submit to the Administrator of EPA and to Illinois a Form R for lead for calendar year 2006 by July 1, 2007.

21. Respondent did not submit to the Administrator of EPA and to Illinois a Form R for lead for calendar year 2006 by July 1, 2007.

22. Respondent submitted Form R for lead to the Administrator of EPA and to Illinois on February 13, 2009 for calendar year 2006.

23. Respondent's failure to submit timely a Form R for lead to the Administrator of EPA and to Illinois for calendar year 2006 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 2

24. During calendar year 2007, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, lead, CAS No. 7439-92-1, listed under 40 C.F.R. § 372.65, in the amount of 1,853 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.

25. Respondent was required to submit to the Administrator of EPA and to Illinois a Form R for lead for calendar year 2007 by July 1, 2008.

26. Respondent did not submit to the Administrator of EPA and to Illinois a Form R for lead for calendar year 2007 by July 1, 2008.

27. Respondent submitted Form R for lead to the Administrator of EPA and to Illinois on February 11, 2009 for calendar year 2007.

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

Civil Penalty

29. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$40,180. 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 its agreement to perform a supplemental environmental project, 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). In consideration of Respondent's agreement to perform a supplemental environmental project, EPA agrees to mitigate the proposed penalty of \$40,180 to \$10,045.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$10,045 civil penalty for the EPCRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," by regular U.S. Postal Service mail to:

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

Alternatively, for checks sent by express mail, send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note "International Control Services, Inc," the docket number of this CAFO and the billing document number.

31. Respondent must send a notice of payment that states Respondent's name, complete address, the case docket number and the billing document 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

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

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

33. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 48, below, 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.

34. 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.

Supplemental Environmental Project

35. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment by reducing the amount of lead released to the environment.

36. At its Decatur, Illinois facility, Respondent must complete the SEP as follows:

Purchase, install, and utilize one EVS 9000 solder recovery device within six months of the effective date of this CAFO.

37. Respondent must spend at least \$38,000 to purchase the equipment; \$2,500 to install the equipment, train employees to use the equipment, and implement startup of the machine, and must pay associated costs to operate the equipment for 5 years.

38. Through the use of solder recovery devices, Respondent must reduce the amount of lead based solder that would otherwise be sent off-site.

39. Respondent must continuously use or operate the EVS 9000 solder recovery device or a functionally similar solder recovery device approved by EPA for 5 years following its installation. "Continuously" is defined for the purposes of this SEP as the amount of time necessary to manage the entire amount of leaded solder dross produced by the facility each day the facility is in operation. If circumstances beyond the control of the Respondent cause the

device to malfunction or breakdown, Respondent will not be in violation of the requirement to operate or use the devices continuously. Respondent will take reasonable steps to repair malfunctioning or broken-down devices as soon as possible.

40. Respondent certifies as follows:

I certify that ICS is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that ICS has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that ICS is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible.) For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

41. EPA may inspect the facility unannounced, at any time, to monitor Respondent's compliance with this CAFO's SEP requirements.

42. Respondent must submit a SEP commencement report to EPA no later than six months after the filing date of this CAFO. This report must contain the following information:

- a. Detailed description of the SEP as installed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to install and commence operation of the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed installation, training, maintenance and operation of the SEP in compliance with this CAFO; and

- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

43. Respondent must submit a SEP final report to EPA by September 15, 2017. This report must contain the following information:

- a. Certification that Respondent has operated the SEP in compliance with this CAFO; and
- b. A Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions).

44. Respondent must submit all notices and reports required by this CAFO by first class mail to Meghan Dunn of the Pesticides and Toxics Compliance Section at the address provided in paragraph 31, above.

45. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

46. Following receipt of the SEP commencement report described in paragraph 42, above, and the SEP final report described in paragraph 43, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily commenced the SEP and submitted the SEP commencement report;
- b. It has satisfactorily completed the SEP and submitted the SEP final report; or
- c. There are deficiencies in the SEP as commenced or in the SEP commencement report and EPA will give Respondent 30 days to correct the deficiencies;

- d. There are deficiencies in the SEP as completed or in the SEP final report and EPA will give Respondent 30 days to correct the deficiencies; or
- e. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 48, below.

47. If EPA exercises option c or d, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 48, below.

48. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO including the schedule in paragraph 36, Respondent must pay a penalty of \$30,135.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 37, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 37, Respondent must pay a penalty of \$3,013.
- d. If Respondent did not submit timely the SEP commencement report or SEP final report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

Penalty per violation per day

\$100
\$250
\$500

Period of violation

1st through 14th day
15th through 30th day
31st day and beyond

49. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

50. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 30, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

51. Any public statement that Respondent makes referring to the SEP must include the following language, "International Control Services, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against International Control Services, Inc. for violations of Section 313 of the Emergency Planning and Community Right-to-Know Act."

52. Nothing in this CAFO is intended to, nor will be construed to, constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

53. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

55. 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.

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

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

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

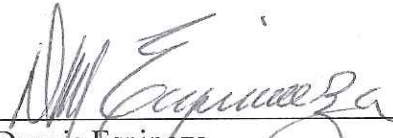
59. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

International Control Services, Inc., Respondent


5/11/12
Date



Dennis Espinoza
President
International Control Services, Inc.

United States Environmental Protection Agency, Complainant

6/5/12
Date




Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
International Control Services, Inc.
Docket No. EPCRA-05-2012-0019

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.

June 11, 2012
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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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 International Control Services, Inc., was filed on June 29, 2011, 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 7667 8032, a copy of the original to the Respondent:

Mr. Dennis Espinoza
International Control Services, Inc.
606 West Imboden Drive
Decatur, Illinois 62521

and forwarded intra-Agency copies to:

John Breslin, Regional Judicial Officer, ORC/C-14J
Steven P. Kaiser, 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-05-2012-0019

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PROTECTION AGENCY**