



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

January 22, 2009

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0183 0548

Mr. Richard Wilkey  
President  
Accurate Specialties, Inc.  
N12 W24360 Bluemound Road  
Waukesha, Wisconsin 53188

Consent Agreement and Final Order, Docket No. EPCRA-05-2009-0009

Dear Mr. Wilkey:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on January 22, 2009, with the Regional Hearing Clerk.

The civil penalty in the amount of \$12,221.00 is to be paid in the manner described in paragraphs 31 and 32. In the comment or description field of the electronic funds transfer, please state: Accurate Specialties, Inc., the docket number of this CAFO (above), and the following billing document number BD 2750944E010. Payment is due by February 21, 2009 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Maynard Shaw".

Maynard Shaw  
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Accurate Specialties, Inc.  
Waukesha, Wisconsin

Respondent.

) Docket No. EPCRA-05-2009-0009

) Proceeding to Assess a Civil Penalty  
) Under Section 325(c) of the Emergency  
) Planning and Community Right-to-Know  
) Act of 1986, 42 U.S.C. § 11045(c)

Consent Agreement and Final Order

Preliminary Statement

RECEIVED  
JAN 22 2009

REGIONAL HEARING CLERK  
EPA  
PROTECT

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, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Accurate Specialties, Inc., a corporation doing business in the State of Wisconsin.
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 ten 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 in excess of an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of U.S. 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. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years including and subsequent to 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

12. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of U.S. 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 can be imposed pursuant to each agency's statutes. The U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 of EPCRA that occurred from January 31, 1997 through March 15, 2004, and 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, 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 N12 W24360 Bluemound Road, Waukesha, Wisconsin (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 3366, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

19. In substantial conformity with the Final Policy Statement on Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations" (the Self-Disclosure Policy), 65 Fed. Reg. 19618 (April 11, 2000), the violations of Section 313 of EPCRA, 42 U.S.C. § 11023, at Respondent's facility which are the subject of this CAFO were voluntarily disclosed to U.S. EPA by letter dated September 16, 2005 and by Respondent's affidavit dated February 16, 2006.

### **Count 1**

20. During calendar year 2003, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, copper, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 1,205,992 pounds which is greater than 25,000 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. § 372.25.

21. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Wisconsin a Form R for copper for calendar year 2003 by July 1, 2004.

22. Respondent did not submit to the Administrator of U.S. EPA and to the State of Wisconsin a Form R for copper for calendar year 2003 by July 1, 2004.

23. Respondent submitted a Form R for copper to the Administrator of U.S. EPA and to the State of Wisconsin on October 11, 2005, for calendar year 2003.

24. Respondent's failure to submit timely a Form R for copper to the Administrator of U.S. EPA and to the State of Wisconsin for calendar year 2003 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

## Count 2

25. During calendar year 2004, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, copper, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 1,389,242 pounds which is greater than 25,000 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. § 372.25.
26. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Wisconsin a Form R for copper for calendar year 2004 by July 1, 2005.
27. Respondent did not submit to the Administrator of U.S. EPA and to the State of Wisconsin a Form R for copper for calendar year 2004 by July 1, 2005.
28. Respondent submitted a Form R for copper to the Administrator of U.S. EPA and to the State of Wisconsin on September 6, 2005, for calendar year 2004.
29. Respondent's failure to submit timely a Form R for copper to the Administrator of U.S. EPA and to the State of Wisconsin for calendar year 2004 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

## Civil Penalty

30. Based upon the initial self-disclosure and the information in Respondent's subsequently submitted affidavit, U.S. EPA has determined that while Respondent did not discover the violations pursuant to a comprehensive audit, it has satisfied eight of the nine Self-Disclosure Policy criteria. U.S. EPA has concluded that a 75 percent reduction of the gravity-based portion of the civil penalty to be assessed in this matter is appropriate under the Self-Disclosure Policy. The gravity-based portion of the civil penalty was calculated to be \$48,886; 25 percent of this amount is \$12,221.50. U.S. EPA has determined that there was no economic benefit associated

with the alleged violations. U.S. EPA has determined that the appropriate penalty to settle this action is \$12,221.

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$12,221 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note In the Matter of: Accurate Specialties Inc., the docket number of this CAFO and the billing document number.

32. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Maynard D. Shaw (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

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

34. If Respondent does not pay the civil penalty timely, or any stipulated penalties due under paragraph 47, below, U.S. 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.

35. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following charges 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.

#### **General Provisions**

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

37. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

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

41. 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.



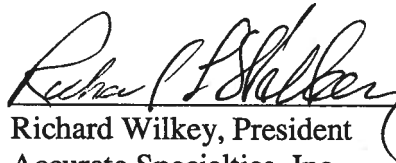
42. Each party agrees to bear its own costs and attorney's fees, in this action.

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

**Accurate Specialties, Inc., Respondent**

December 29, 2008

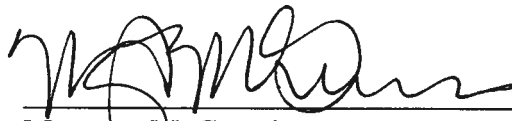
Date

  
Richard Wilkey, President  
Accurate Specialties, Inc.

**United States Environmental Protection Agency, Complainant**

January 12, 2009

Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

In the Matter of:  
Accurate Specialties Inc.  
Docket No. EPCRA-05-2009-0009

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PROTECTION AGENCY

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.

1/15/09  
\_\_\_\_\_  
Date

*Lynn Buhl*  
\_\_\_\_\_  
Lynn Buhl  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
JAN 01 2009  
OFFICE OF REGIONAL  
COUNSEL


**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 Accurate Specialties, Inc., was filed on January 22, 2009, with the Regional Hearing Clerk (E-13J), U. S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed, by Certified Mail, Receipt No. 7001 0320 0006 0183 0548 a copy of the original to the Respondent:

Mr. Richard Wilkey  
Accurate Specialties, Inc.  
N12 W24360 Bluemound Road  
Waukesha, Wisconsin 53188-1631

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Steven Kaiser, Counsel for Complainant/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-05-2009-0009

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