



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

June 28, 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7667 8124

Mr. Brent Korb
1725 Rockingham Rd.
P.O. Box 3808
Davenport, Iowa 52802

Consent Agreement and Final Order, In the Matter of Nichols Aluminum, LLC
Docket No. EPCRA-05-2012-0023

Dear Mr. Korb:

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 28, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$46,125 is to be paid in the manner described in paragraphs 52 and 53. Please be certain that the number **BD 2751244E019** and the docket number are written on both the transmittal letter and on the check. Payment is due by July 28, 2012 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

for 
Maynard Shaw
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
JUN 29 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:) Docket No. EPCRA-05-2012-0023
)
Nichols Aluminum LLC) Proceeding to Assess a Civil Penalty
Lincolnshire, Illinois) Under Section 325(c) of the Emergency
Respondent.) Planning and Community Right-to-Know
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, United States Environmental Protection Agency (EPA), Region 5.
3. The Respondent is Nichols Aluminum LLC, a limited liability company formed under the laws of the State of Delaware and 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. §§ 372.25 and 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. § 372.25, 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. 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.

13. 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, and \$37,500 per day for each violation of Section 313 of EPCRA that occurred after 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

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

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 200 Schelster Road, Lincolnshire, Illinois.

16. 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.

17. 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.

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

19. The facility has a SIC code of 3353, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

20. In 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 EPA by letter dated July 19, 2010, and by Respondent's affidavit dated January 31, 2011.

Count 1

21. During calendar year 2006, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, coils of aluminum alloy containing lead, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 32,884 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.

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

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

24. Respondent submitted Form R for lead to the Administrator of EPA and to the State of Illinois on September 13, 2010 for calendar year 2006.

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

Count 2

26. During calendar year 2006, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, coils of aluminum alloy containing manganese, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 1,952,169 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.

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

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

29. Respondent submitted Form R for manganese to the Administrator of EPA and to the State of Illinois on September 13, 2010 for calendar year 2006.

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

Count 3

31. During calendar year 2007, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, coils of aluminum alloy containing lead, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 32,321 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.

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

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

34. Respondent submitted Form R for lead to the Administrator of EPA and to the State of Illinois on September 13, 2010 for calendar year 2007.

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

Count 4

36. During calendar year 2007, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, coils of aluminum alloy containing manganese, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 1,918,753 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.

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

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

39. Respondent submitted Form R for manganese to the Administrator of EPA and to the State of Illinois on September 13, 2010 for calendar year 2007.

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

Count 5

41. During calendar year 2008, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, coils of aluminum alloy containing lead, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 33,916 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.

42. Respondent was required to submit to the Administrator of EPA and to the State of Illinois a Form R for lead for calendar year 2008 by July 1, 2009.

43. Respondent did not submit to the Administrator of EPA and to the State of Illinois a Form R for lead for calendar year 2008 by July 1, 2009.

44. Respondent submitted Form R for lead to the Administrator of EPA and to the State of Illinois on September 13, 2010 for calendar year 2009.

45. Respondent's failure to submit timely a Form R for lead to the Administrator of EPA and to the State of Illinois for calendar year 2009 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 6

46. During calendar year 2008, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, coils of aluminum alloy containing manganese, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 2,013,423 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.

47. Respondent was required to submit to the Administrator of EPA and to the State of Illinois a Form R for manganese for calendar year 2008 by July 1, 2009.

48. Respondent did not submit to the Administrator of EPA and to the State of Illinois a Form R for manganese for calendar year 2008 by July 1, 2009.

49. Respondent submitted Form R for manganese to the Administrator of EPA and to the State of Illinois on September 13, 2010 for calendar year 2009.

50. Respondent's failure to submit timely a Form R for manganese to the Administrator of EPA and to the State of Illinois for calendar year 2009 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Civil Penalty

51. Based upon the initial self-disclosure and the information in Respondent's subsequently submitted affidavit, Complainant has determined that Respondent has satisfied eight of the nine Self-Disclosure Policy criteria. Therefore, 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. Complainant also reduced the gravity-based portion of the civil penalty by 10 percent for other matters as justice may require pursuant to 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), based on the Respondent's installation of a new oil separation centrifuge in early 2011, to provide better filtration efficiency in removing excess oil that drips into an open basement area below their processing line where there is water seepage and allow them to manage the entire volume of

groundwater collected, rather than shipping it off-site. Complainant has determined that there was no economic benefit associated with the alleged violations. Therefore, Complainant has determined that the appropriate penalty to settle this action is \$46,125.

52. Within 30 days after the effective date of this CAFO, Respondent must pay a \$46,125 civil penalty for the EPCRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note Nichols Aluminum LLC, the docket number of this CAFO and the billing document number.

53. 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

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

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

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

55. If Respondent does not pay timely the civil penalty, 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.

56. 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.

General Provisions

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

58. 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.

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

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

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

62. 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.

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

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


Nichols Aluminum LLC, Respondent

6/18/2012
Date


~~Thomas Brackmann, President~~ BRENT KORB, VP
Nichols Aluminum LLC

United States Environmental Protection Agency, Complainant

6/25/12
Date

 for M.G.
Margaret M. Guerriero
Director
Land and Chemicals Division

**In the Matter of:
Nichols Aluminum LLC
Docket No.EPCRA-05-2012-0023**

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.

6-27-12

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED
JUN 29 2012
REGIONAL HEARING CLERK
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 Nichols Aluminum, LLC., was filed on June 28, 2012, 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 8124, a copy of the original to the Respondent:

Mr. Brent Korb
1725 Rockingham Rd.
P.O. Box 3808
Davenport, Iowa 52802

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Maria Gonzalez, 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-05-2012-0023



bcc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)