



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
July 16, 2013

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7676 8771

Mr. Jose Dieck  
Specialty Gases of America  
6055 Brent Drive  
Toledo, Ohio 43611

Consent Agreement and Final Order, In the Matter of  
Specialty Gases of America, Inc., Docket No. EPCRA-05-2013-0018

Dear Mr. Dieck:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on July 16, 2013, with the Regional Hearing Clerk.

The civil penalty in the amount of \$5,318 is to be paid in the manner described in paragraphs 28 and 29. In the comment or description field of the electronic funds transfer, please state: Specialty Gases of America, Inc, and the docket number of this CAFO (above), and the following billing document number. Payment is due by August 15, 2013, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Meghan Dunn".

Meghan Dunn  
Pesticides and Toxics Compliance Section

Enclosures

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:	)	Docket No. EPCRA-05-2013-0018
	)	
Specialty Gases of America, Inc.	)	Proceeding to Assess a Civil Penalty
Toledo, Ohio,	)	Under Section 325(c) of the Emergency
	)	Planning and Community Right-to-Know
Respondent.	)	Act of 1986, 42 U.S.C. § 11045(c)
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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. Respondent is Specialty Gases of America, Inc., a corporation doing business in the State of Ohio, which is wholly owned as a subsidiary of Praxair Distribution, Inc.
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, 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. 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 \$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**

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 6055 Brent Drive, Toledo, Ohio (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 is covered by SIC code 5169, 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 conformity with the Small Business Compliance Policy, 65 Fed. Reg. 19630 (April 11, 2000), Respondent voluntarily disclosed to EPA, by letter dated September 30, 2011, the following violations of Section 313 of EPCRA, 42 U.S.C. § 11023, at its facility:

<b>Chemical</b>	<b>CAS No.</b>	<b>Reporting Year in Violation</b>	<b>Date Form R Filed</b>
Propylene	115-07-1	2010	October 24, 2011
Chloromethane	74-87-3	2010	October 18, 2011

20. In addition, Respondent provided EPA with information about, but did not explicitly disclose, one violation of Section 313 of EPCRA relating to propylene processed in calendar year 2009, for which Respondent has agreed to pay a penalty.

**Violation**

21. During calendar year 2009, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, propylene, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 36,620 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(a).

22. Respondent was required to submit to the Administrator of EPA and to Ohio a Form R for propylene for calendar year 2009 by July 1, 2010.

23. Respondent did not submit to the Administrator of EPA and to Ohio a Form R for propylene for calendar year 2009 by July 1, 2010.

24. Respondent submitted Form R for propylene to the Administrator of EPA and to Ohio on August 29, 2012 for calendar year 2009.

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

### Civil Penalty

26. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$5,318. 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 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).

27. With respect to the initial self-disclosure reference in paragraph 19, above, Complainant has determined that Respondent has satisfied each of the four Small Business Compliance Policy criteria. Therefore, a 100 percent reduction of the gravity-based portion of the civil penalty to be assessed in this matter is appropriate under the Small Business Compliance Policy. In addition, Complainant has determined that there was no economic benefit associated with these violations and, therefore, seeks no penalty in association with the disclosed violations.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,318 civil penalty for the EPCRA violations by sending 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 Specialty Gases of America, Inc. and the docket number of this CAFO.

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

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

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

31. 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.

32. 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**

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

34. This CAFO addresses all civil claims for alleged EPCRA violations identified above and shall not be construed as a release from any other action under law and/or regulation administered by EPA. .

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

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

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

38. 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.


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

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




**Specialty Gases of America, Inc., Respondent**

5/22/2013  
Date

  
\_\_\_\_\_  
Jose M. Dieck  
General Manager  
Specialty Gases of America, Inc.

**United States Environmental Protection Agency, Complainant**

7/11/2013  
Date

  
\_\_\_\_\_  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**Specialty Gases of America, Inc.**  
**Docket No. EPCRA-05-2013-0018**

**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.

7-12-13

Date



Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

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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 Specialty Gases of America, Inc, was filed on July 16, 2013, 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 7676 8771, a copy of the original to the Respondents:

Mr. Jose Dieck  
Specialty Gases of America  
6055 Brent Drive  
Toledo, Ohio 43611

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Susan Perdomo, 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

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