



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

NOV 06 2006

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8932 9119

Kenneth S. Komoroski  
Kirkpatrick & Lockhart  
Henry Oliver Building  
535 Smithfield Street  
Pittsburg, PA. 15222-2312

Consent Agreement and Final Order, Docket No. EPCRA-05-2007-0002

Dear Mr. Komoroski:

I have enclosed an original signed copy of a fully executed Consent Agreement and Final Order and a Complaint and Opportunity for Hearing in resolution of the above case. This document was filed on November 6, 2006 with the Regional Hearing Clerk.

The civil penalty in the amount of \$16,500 is to be paid in the manner prescribed in paragraph 47 and 48. Please be certain that the number BD 2750744E001 and the docket number are written on both the transmittal letter and on the check. The payment is due by December 13, 2006.

Thank you for your cooperation in resolving this matter.

Sincerely,

*fr Anthony J. Restaino*  
Terence Bonace

Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
Thomas Martin, ORC/C-14J (w/Encl.)  
Ray Marasigan, Finance/MF-10J (w/Encl.)

**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 Magnetics International, Inc., Burns Harbor, Indiana, was filed on November 6, 2006, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8932 9119, a copy of the original to the Respondents:

Kenneth S. Komoroski  
Kirkpatrick & Lockhart  
Henry Oliver Building  
535 Smithfield Street  
Pittsburg, PA 15222-2312

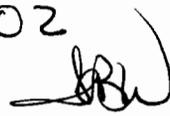
and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Thomas Martin, Counsel for Complainant/C-14J  
Ray Marisigan, Finance/MF-10J



Elizabeth Lytle  
Pesticides and Toxics Branch  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. EPCRA-05-2007-0002



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REGION 5

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

Magnetics International, Inc.  
Burns Harbor, Indiana

**Respondent**

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**Consent Agreement and Final Order**

**Docket No.**

**EPCRA-05-2007-0000**

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**CONSENT AGREEMENT AND FINAL ORDER**

**I. AUTHORITY**

The United States Environmental Protection Agency, Region 5 (U.S. EPA or “the Agency”), and Respondent Magnetics International, Inc. (Magnetics), have agreed to a settlement of this action before the filing of a Complaint. This action is simultaneously commenced and concluded under Rules 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. § 22.13(b) and 22.18(b).

**II. JURISDICTION**

1. This is a civil administrative penalty matter that is brought and resolved by U.S. EPA, under the authority vested in the Administrator of U.S. EPA by Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA or “the Act”), 42 U.S.C. § 11045(c).

2. Complainant is, by lawful delegation, the Chief of the Pesticides and Toxics Branch, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Magnetics International, Inc., a corporation doing business in the State of Indiana.

### **III. STATUTORY AND REGULATORY BACKGROUND**

4. The U.S. EPA promulgated the Toxic Chemical Release Reporting Community Right-to-Know Rules at 40 C.F.R. Part 372 pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048.

5. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that the requirements of Section 313 and Part 372 apply to any facility that: (1) has 10 or more full-time employees, (2) has a Standard Industrial Classification (SIC) Code between 20 and 39, and (3) that manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c) and listed at 40 C.F.R. § 372.65, in amounts that exceed the threshold for reporting, as set forth in Section 313(f) and in 40 C.F.R. §§ 372.25 or 372.27.

6. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 require the owner or operator of a facility, subject to the requirements of Section 313 and Part 372, to complete and submit to the Administrator of the U.S. EPA and to the state in which the facility is located, no later than July 1, 1988 and each July 1 thereafter, a chemical release form published pursuant to Section 313(g) for each toxic chemical listed under Section 313(c) that was manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold established by Section 313(f).

7. The U.S. EPA published the Toxic Chemical Release Inventory Reporting Form, U.S. EPA Form 9350-1 (1-88) (Form R) at 40 C.F.R. § 372.85, pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g).

8. All persons required to report pursuant to Section 313(b) must use Form R according to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).

9. The Administrator may prescribe regulations as may be necessary to carry out EPCRA, 42 U.S.C. § 11048.

10. Under 40 C.F.R. § 372.18, violators of the requirements of Part 372 will be liable for a civil penalty not to exceed \$25,000 each day for each violation as provided in Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

11. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 (1996), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (1998), increased the statutory maximum penalty from \$25,000 to \$27,500 per day of violation for EPCRA violations that occur on or after January 31, 1997, and, as amended by 69 Fed. Reg. 7121 (February 13, 2004), to \$32,500 per day of each EPCRA violation that occurs after March 15, 2004.

#### **IV. GENERAL ALLEGATIONS**

12. Respondent is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

13. Respondent is a corporation incorporated in the State of Delaware.

14. Respondent, at all times relevant to this Complaint, owned or operated a facility, located at 1111 North State Road 149 in Burns Harbor, Indiana (Respondent’s facility or facility) during the 2001 calendar year.

15. The facility discussed in the prior paragraph is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

16. Respondent's facility consists of buildings, equipment and structures and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned by the same person, entity, or corporation.

17. During the calendar year 2001, Respondent employed at its facility the equivalent of at least 10 employees with total paid hours equal to or more than 20,000 hours per calendar year.

18. Respondent's facility is covered by SIC Code 2819.

19. During the calendar year 2001, Respondent processed, as defined by 40 C.F.R. § 372.3, toxic chemicals identified by Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65, in quantities exceeding the thresholds for reporting set forth at Section 313(f) and at 40 C.F.R. § 372.25.

20. On June 25, 2004, a representative of the U.S. EPA contacted Respondent's facility to inform it of an inspection to take place on July 2, 2004.

21. On July 2, 2004, a representative of the U.S. EPA inspected Respondent's facility.

22. On December 16, 2005, U.S. EPA sent to Respondent a Notice of Intent to File Administrative Complaint, noticing it of its failure to file a Form R required under EPCRA, as described more fully below.

### **Count I**

23. Complainant incorporates paragraphs 1 through 22 of this CAFO as if set forth in this paragraph.

24. The reporting threshold for a chemical is 25,000 pounds if that chemical is:  
(1) identified by Section 313(c) of EPCRA, 42 U.S.C. § 11023(c); (2) listed under 40 C.F.R.

§ 372.65; and (3) processed during the 2001 calendar year. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(b).

25. During the 2001 calendar year, Respondent's facility processed more than 25,000 pounds of hydrochloric acid vapor (HCL).

26. During the 2001 calendar year, Respondent's facility processed 26.35 million pounds of HCL.

27. HCL is a chemical category identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

28. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of the U.S. EPA and to the State of Indiana a Form R for HCL for the 2001 calendar year, on or before July 1, 2002.

29. Respondent failed to submit to the Administrator of the U.S. EPA and to the State of Indiana a Form R for HCL for the 2001 calendar year on or before July 1, 2002.

30. On approximately March 15, 2006, subsequent to notification of an impending inspection itself, and U.S. EPA's Notice of Intent to File Administrative Complaint against Respondent, Respondent submitted to the Administrator the missing Form R for HCL for the 2001 calendar year.

31. Respondent's failure to timely submit a Form R for HCL for the 2001 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.30.

## **Count II**

32. Complainant incorporates paragraphs 1 through 22 of this CAFO as if set forth in this paragraph.

33. The reporting threshold for a chemical is 25,000 pounds if that chemical is: (1) identified by Section 313(c) of EPCRA, 42 U.S.C. § 11023(c); (2) listed under 40 C.F.R. § 372.65; and (3) processed during the 2001 calendar year. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(b).

34. During the 2001 calendar year, Respondent's facility processed more than 25,000 pounds of chlorine.

35. Chlorine is a chemical category identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

36. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of the U.S. EPA and to the State of Indiana a Form R for chlorine for the 2001 calendar year, on or before July 1, 2002.

37. Respondent failed to submit to the Administrator of the U.S. EPA and to the State of Indiana a Form R for Chlorine for the 2001 calendar year on or before July 1, 2002.

38. On approximately March 15, 2006, subsequent to notification of an impending inspection itself, and U.S. EPA's Notice of Intent to File Administrative Complaint against Respondent, Respondent submitted to the Administrator the missing Form R for chlorine for the 2001 calendar year.

39. Respondent's failure to timely submit a Form R for chlorine for the 2001 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.30.

## **V. TERMS OF SETTLEMENT**

### **A. Stipulations**

40. Respondent stipulates to the jurisdictional allegations in this Consent Agreement and Final Order (CAFO) and neither admits nor denies the factual allegations in this CAFO.

41. Respondent waives its right to an administrative or judicial hearing on any issue of law or fact set forth in this CAFO, and waives any arguable right to appeal the Final Order accompanying this Consent Agreement.

42. Pursuant to Sections Section 325(c) of the Act, 42 U.S.C. § 1045(c), and U.S. EPA's Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act and Section 6607 of the Pollution Prevention Act (dated August 10, 1992), U.S. EPA has considered the seriousness of the violation, Respondent's good faith efforts to comply with the applicable regulations, and Respondent's prompt correction of the violation, as well as other relevant factors.

43. The parties consent to the terms, and the issuance of this CAFO, and Respondent consents to the payment of a \$16,500 civil penalty.

44. Respondent certifies that it is complying with EPCRA, with respect to the allegations in this CAFO, and that it is no longer in violation of the Federal regulations and the Act.

45. The parties desire to settle and compromise this action without a hearing or an adjudication of any fact or law. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

**B. Civil Penalty**

46. Complainant has determined the civil penalty according to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). In determining the settlement penalty amount of \$16,500, U.S. EPA considered the nature, circumstances, extent and gravity of the violation, and with respect to the Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation, and any other matters justice required. In determining the

41. Respondent waives its right to an administrative or judicial hearing on any issue of law or fact set forth in this CAFO, and waives any arguable right to appeal the Final Order accompanying this Consent Agreement.

42. Pursuant to Section 325(c) of the Act, 42 U.S.C. § 1045(c), and U.S. EPA's Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act and Section 6607 of the Pollution Prevention Act (dated August 10, 1992), U.S. EPA has considered the seriousness of the violation, Respondent's good faith efforts to comply with the applicable regulations, and Respondent's prompt correction of the violation, as well as other relevant factors.

43. The parties consent to the terms, and the issuance of this CAFO, and Respondent consents to the payment of a \$16,500 civil penalty.

44. Respondent certifies that it is complying with EPCRA, with respect to the allegations in this CAFO, and that it is no longer in violation of the Federal regulations and the Act.

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**B. Civil Penalty**

46. Complainant has determined the civil penalty according to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). In determining the settlement penalty amount of \$16,500, U.S. EPA considered the nature, circumstances, extent and gravity of the violation, and with respect to the Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation, and any other matters justice required. In determining the

settlement penalty amount in this CAFO, Complainant also considered U.S. EPA's Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act and Section 6607 of the Pollution Prevention Act (August 10, 1992).

47. Respondent agrees to pay the \$16,500 civil administrative penalty, discussed in the preceding paragraph, to U.S. EPA by cashier's or certified check payable to the Treasurer, United States of America, within 30 days after the effective date of this CAFO. Respondent must send the check to:

U.S. EPA, Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251-7531

The check must reference Respondent's name, the case docket number of this CAFO, and the billing document number.

48. A transmittal letter that states Respondent's name, complete address, the case docket number, and the billing document number, must accompany the payment mentioned in the preceding paragraph. Respondent must send a *copy* of the check and transmittal letter to each person as follows:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Terence Bonace (DT-8J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Thomas J. Martin (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.

Chicago, Illinois 60604-3509

49. This \$16,500 civil penalty is not deductible for Federal tax purposes.

50. If Respondent does not timely pay the civil penalty of \$16,500 due under this CAFO, 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 any collection action that is instituted to collect Respondent's unpaid settlement penalty amount. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

51. Pursuant to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO:

(a) **Interest.** Interest will accrue on any amount overdue from the date the payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

(b) **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

(c) **Non-Payment Penalty.** Respondent will pay a six percent per annum penalty on any principal amount 90 days past due, which will accrue from the date the penalty payment became due and is not paid. This nonpayment penalty is in addition to charges that accrue under subparagraphs (a) and (b), above.

## **VI. GENERAL PROVISIONS.**

52. This CAFO settles U.S. EPA's claims for civil penalties for the violation alleged above in this CAFO.

53. Full payment of the penalty of \$16,500 identified in paragraphs 47 and 48 above shall resolve Respondent's liability for the violations described in this CAFO.

54. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.

55. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable Federal, state and local laws, and regulations.

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

57. The terms of this CAFO binds Respondent, Magnetics International, Inc. and its agents, successors, authorized representatives, and assigns.

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

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

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

61. This CAFO is effective on the date of filing with the U.S. EPA, Region 5 Hearing Clerk.

**CONSENT AGREEMENT AND FINAL ORDER**

**In the Matter of Magnetics International, Inc.**

Docket No. **EPCRA-05-2007-0002**

*JSW*

**Magnetics International, Inc.,  
Respondent**

Date: \_\_\_\_\_

By: *Walter Sieckman*

Printed Name: *Walter Sieckman*  
Walter Sieckman  
Chairman and CEO  
International Steel Services, Inc.  
On behalf of subsidiary Magnetics  
International, Inc.

**U.S. Environmental Protection Agency,  
Complainant**

Date: *10/23/06*

By: *Mardi Klevs*  
*for* Mardi Klevs, Chief  
Pesticides and Toxics Branch

Date: *10/24/06*

By: *Margaret M. Guerriero*  
Margaret M. Guerriero, Director  
Waste, Pesticides and Toxics Division

**CONSENT AGREEMENT AND FINAL ORDER**

**In the Matter of Magnetics International, Inc.**

Docket No. EPCRA-05-2007-0002 *BDW*

**Final Order**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ORDERED to comply with all the terms of the Consent Agreement, effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter, pursuant to 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice at 40 C.F.R. §§ 22.13(b) and 22.18(b).

Dated: 11/03/06

By: *Mary A. Gade*

Mary A. Gade  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

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