

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

Cascades Plastics, Inc.)

7501 South Spoeede Lane)

Warrenton, Missouri 63383)

Respondent)

.Docket Nos.

EPCRA 07-2009-0002

CAA-07-2009-0022

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Cascades Plastics, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) 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), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 312 of the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11022 and Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the date of the alleged violation occurred more than 12 months before the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order (CA/FO) serves as notice that EPA has reason to believe that Respondent has violated the provisions section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 370; and the provisions governing Chemical Accident Prevention, and specifically the requirement pertaining to

Risk Management Plans (RMPs) under 40 C.F.R. Part 68 and Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Further, this CA/FO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this alleged violation.

Parties

3. The Complainant, by delegation from the Administrator of EPA, and the Regional Administrator, EPA Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Cascades Plastics, Inc., located at 7501 South Spoeede Lane, Warrenton, Missouri 63383. Respondent is incorporated under the laws of Missouri and authorized to conduct business in the State of Missouri.

Statutory and Regulatory Requirements

5. On October 17, 1986, the Superfund Amendments and Reauthorization Act (SARA) became effective. Title III of SARA included the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001-11050 (EPCRA). The purpose of EPCRA is to help local communities protect public health, safety, and the environment from chemical hazards.

6. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a) and the regulation set forth at 40 C.F.R. § 370.25, require an owner or operator of a facility that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, to submit an inventory form to the commission, the committee, and the fire department with jurisdiction over the facility. 40 C.F.R. §§ 370.20 and 370.25(a). The inventory form must meet the requirements of 40 C.F.R. § 370.41.

7. Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorizes a civil penalty for violations of the requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, of not more than \$25,000 per day for each day during which the violation continues. Section 325 of EPCRA, 42 U.S.C. § 11045, as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of up to \$27,500 per day for each violation that occurs between January 30, 1997, and March 15, 2004; \$32,500 per day for each violation occurring between March 16, 2004, and January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

8. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3) mandates the Administrator to promulgate a list

of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances. 42 U.S.C. § 7412(r)(7).

9. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. These regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

10. The regulations at 40 C.F.R. Part 68, set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a risk management plan (RMP) that must be submitted to EPA.

11. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than June 21, 1999; or the date on which a regulated substance is first present above the threshold quantity in a process.

12. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Section 112(r)(7), 42 U.S.C. § 7412(r)(7). Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of up to \$27,500 per day for each violation that occurs between January 30, 1997, and March 15, 2004; \$32,500 per day for each violation occurring between March 16, 2004, and January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

Definitions

13. The regulations at 40 C.F.R. § 68.3 define "stationary source" in part, as any buildings, structures, equipment, installations or substance emitting stationary activities, which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

14. The regulations at 40 C.F.R. § 68.3 define "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, 42

U.S.C. § 7412(r)(5), as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

15. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), as amended, in 40 C.F.R. § 68.130.

16. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances or a combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

Alleged Violations

17. EPA alleges that Respondent has violated EPCRA Section 312, 42 U.S.C. § 11022, and the federal regulations promulgated pursuant to EPCRA; and Section 112(r) of the CAA, 42 U.S.C. § 7412(r) and federal regulations promulgated pursuant to the CAA as follows:

18. Respondent is, and at all times referred to herein, was a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

19. On or about March 26, 2008, EPA conducted an inspection of Respondent’s facility to determine compliance with EPCRA, Section 112(r) of the CAA, and 40 C.F.R. Part 68.

Count I-EPCRA

20. Paragraphs 1-7 and 17-19 are incorporated by reference as if fully set forth herein.

21. Respondent’s facility, located at located at 7501 South Spoede Lane, Warrenton, Missouri 63383, is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

22. At all times relevant hereto, Respondent was an owner or operator of a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.

23. Records collected during the inspection demonstrated that Respondent did not file a Tier II report with the State of Missouri for the isobutane stored and used at Respondent’s facility.

24. Respondent's failure to file a Tier II report is a violation of Section 312 of EPCRA, 42 U.S.C. § 11022 and 40 C.F.R. § 370.41.

Count II-CAA

25. Paragraphs 1-4 and 8-19 are incorporated by reference as if fully set forth herein.

26. Respondent's facility, located at 7501 S. Spoede Lane, Warrenton, Missouri 63383, is a "stationary source" pursuant to 40 C.F.R. § 68.3.

27. Isobutane is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for isobutane, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

28. Records collected during the inspection showed that Respondent exceeded the threshold quantity for isobutane.

29. Respondent is subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

30. Respondent is required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

31. Records collected during the inspection showed that Respondent failed to implement a risk management program that included all the requirements of a prevention program. Specifically, EPA alleges that Respondent failed to: (1) submit its five year update to the RMP as required by 40 C.F.R. § 68.190(b)(1); (2) failed to review and update its off-site consequence analysis every five years as required by 40 C.F.R. § 68.36; (3) failed to update and revalidate its initial process hazard analysis every five years as required by 40 C.F.R. § 68.67(f); (4) failed to annually certify that the operating procedures are current as required by 40 C.F.R. § 68.69(c); and (5) failed to obtain from contractors employee identification, date of training and verification of training as required by 40 C.F.R. § 68.87(c)(3).

32. Respondent's alleged failure to comply with 40 C.F.R. Part 68, as set forth in Paragraph 31, violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

33. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

34. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.

35. Respondent neither admits nor denies the factual allegations set forth above.

36. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CA/FO.

37. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees incurred as a result of this action.

38. This CA/FO addresses and fully resolves and settles, and Complainant hereby agrees to release Respondent from, all civil and administrative claims for the alleged EPCRA and CAA violations identified in Paragraphs 24 and 32, above, existing through the effective date of this CA/FO. Complainant reserves the right to take an enforcement action with respect to any other violations of the CAA or other applicable law.

39. Respondent certifies that by signing this CA/FO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, and all regulations promulgated thereunder; and Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

40. The effect of settlement described in Paragraph 38 is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 39, of this CA/FO.

41. Respondent agrees that in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of Forty-Nine Thousand Five Hundred and Thirty-Five Dollars and No Cents (\$49,535.00) as set forth in Paragraph 1 of the Final Order. Respondent additionally agrees to complete the following Supplemental Environmental Project (SEP).

42. In response to the violations of EPCRA and the CAA alleged in this CA/FO, and in settlement of this matter, although not required by EPCRA, the CAA, or any other federal, state or local law, Respondent shall complete the SEP described in Paragraph 43 of this CA/FO, which the parties agree is intended to secure improved

emergency planning and preparedness for the local emergency response or planning entities.

43. Within sixty (60) calendar days of the effective date of this CA/FO, Respondent shall provide a thermal imaging camera to the Warrenton Fire Protection District to improve the District's response to an emergency, such as a chemical fire or spill. The thermal imaging camera is a tool used to identify "hot spots", such as a human body located inside of a wall, and will be used as a search and rescue aid. The value of the thermal imaging camera shall not be less than Nine Thousand Two Hundred Dollars and No Cents (\$9,200.00) based upon the market price quoted by Respondent.

44. Within ninety (90) days of the effective date of this CA/FO, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information:

- a) A detailed description of the SEP as implemented;
- b) A description of any problems encountered in the implementation of the SEP;
- c) A signed and notarized affidavit from the Warrenton Fire Protection District stating that the thermal imaging camera was received from the Respondent;
- d) A description of the specific environmental and/or public health benefits resulting from implementation of the SEP; and
- e) Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO.

45. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

46. The SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

47. The SEP Completion Report shall be submitted on or before the due date to:

Jodi Harper, AWMD/CRIB
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101

48. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of EPCRA Section 312 and CAA Section 112(r).

49. Respondent agrees not to claim any funds expended in the performance of the SEP as a deductible business expense for the purpose of federal, state, or local taxes.

50. Respondent agrees to the payment of stipulated penalties as follows:

a) In the event the Respondent fails to comply with any of the terms or provisions of this Consent Agreement, relating to the performance of the SEP as set forth in Paragraph 43 of this CA/FO and/or to the extent that the actual expenditures of the SEP do not equal or exceed the cost of the SEP described in Paragraph 43 of this CA/FO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

i) Except as provided in subparagraph (ii) and (iii) of this Paragraph, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in Paragraph 43 of this CA/FO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Nine Thousand Two Hundred and No Dollars (\$9,200.00).

ii) If Respondent fails to timely and complete submit the SEP Completion Report required by Paragraphs 46, Respondent

shall be liable and shall pay a stipulated penalty in the amount of Four Thousand Six Hundred Dollars (\$4,600.00).

- iii) If The SEP is not completed in accordance with Paragraph 43 of this CA/FO, but EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- b) The determination of whether the SEP has been satisfactorily completed and whether the Respondent made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 1 of the Final Order portion of this CA/FO.

51. This Final Order portion of this CA/FO shall apply to and be binding upon Respondent, and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CA/FO.

52. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

53. Nothing in this CA/FO shall be construed as a release from any other action under law and/or regulation administered by EPA. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

54. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of the debt collection including processing and handling costs and attorneys' fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

55. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice (DOJ) for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

56. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of EPCRA, 42 U.S.C. § 11001, *et. seq.*, and CAA, 42 U.S.C. § 7401, *et. seq.*, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Forty-Nine Thousand Five Hundred and Thirty-five Dollars and No Cents (\$49,535.00), within thirty (30) days of the effective date of this Final Order. Payment shall be made by cashiers or certified check made payable to the "United States Treasury" and shall be remitted to:

U.S. Environmental Protection Agency, Region 7
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

This payment shall reference docket number CAA-07-2009-0022 and EPCRA-07-2009-0002.

2. A copy of the check should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency—Region 7
901 North Fifth Street
Kansas City, Kansas 66101

and to:

Sara Hertz
Assistant Regional Counsel
United States Environmental Protection Agency—Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of the CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. Respondent shall complete the SEP in accordance with the Consent Agreement and shall be liable for any stipulated penalties for failure to complete the project as specified in the Consent Agreement, above.

5. This CA/FO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval or endorsement of the product purchased by the Respondent and provided to the recipient in connection with the SEP undertaken pursuant to this Consent Agreement.

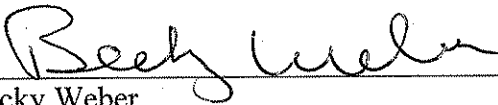
6. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.


7. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/25/09

By: 
Becky Weber
Director
Air and Waste Management Division

By: 
Sara Hertz
Assistant Regional Counsel

RESPONDENT:

CASCADES PLASTICS, INC.

Date: 08-24-2009 By:



Printed Name: PIERRE FENWICK

Title: PLANT MANAGER

IT IS SO ORDERED. This Final Order shall become effective immediately.

By: Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

Date: Sept. 1, 2009

IN THE MATTER OF Cascade Plastics, Inc., Respondent
Docket Nos. EPCRA-07-2009-0002 and CAA-07-2009-0022

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Sarah Hertz
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Pierre Renaud, Plant Manager
Cascade Plastics, Inc.
7501 South Spoede Lane
Warrenton, Missouri 63383

Dated: 9/1/09


Kathy Robinson
Hearing Clerk, Region 7