UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TX 75270

JAN 23 2020

Certified Mail - Return Receipt Requested #7014 0150 0000 2404 8329

Rick Hollin,
Sourcing Manager
Alumacraft Boat Company
1329 N. 10th St.,
Arkadelphia, Arkansas 71923

RE: In the Matter of Alumacraft Boat Company, Arkadelphia, AR
Docket No. EPCRA-06-2020-0501

Dear Mr. Hollin:

Enclosed is the fully executed Consent Agreement and Final Order (CAFO) filed with the Regional Hearing Clerk. Alumacraft has 30 days from the effective date of the CAFO to pay the $9,603 civil penalty, as set forth in section IV beginning on page 4. The effective date is the date the CAFO is filed with the hearing clerk (stamped in the top right corner of the document).

If you have any questions, or concerns regarding this matter, please contact me at 214.665.8034. Your cooperation in the settlement of this case is most appreciated.

Sincerely,

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosure (1)

FILED
2020 JAN 28 PM 3:06
REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	§	
	§	EPA DOCKET NOUMBER
	§	EPCRA-06-2020-0501
ALUMACRAFT BOAT COMPANY	§	
	§	CONSENT AGREEMENT
ARKADELPHIA, ARKANSAS	§	AND FINAL ORDER
	§	
RESPONDENT	§	
	§	

CONSENT AGREEMENT

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Alumacraft Boat Company (Respondent) (hereinafter Alumacraft) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c), is simultaneously commenced and concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b), and 22.18(b)(2) and (3).

2. For the purposes of this proceeding, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO

3. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth herein and waives all defenses which have been raised or could have been raised to the claims set forth in this CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve federal civil liability for only those violations which are set forth herein.

5. Respondent consents to the issuance of this CAFO, and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

6. Respondent represents it is duly authorized to execute this CAFO and the party signing this CAFO on behalf of Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.

7. Respondent agrees the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

8. Respondent hereby certifies that as of the date of the execution of this CAFO, Respondent has corrected the violations alleged in this CAFO and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

II. STATUTORY AND REGULATORY BACKGROUND

9. 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 with: (a) ten or more full-time employees; (b) a Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), for

which the corresponding North American Industry Classification System (NAICS) subsector or industry codes are listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) a toxic chemical listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, that manufactured, processed, or otherwise used the chemical in excess of the threshold quantity established under Subsection 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, or 372.28, to complete and submit a toxic chemical release inventory Form R, for each toxic chemical known by the owner or operator to be "manufactured, processed, or otherwise used" in quantities exceeding the established threshold quantity, to the Administrator of EPA and to the State in which the facility is located by July 1, for the preceding calendar year.

10. Pursuant to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), the owner or operator of a facility shall complete a toxic chemical release form for each toxic chemical listed under 313(c) of EPCRA, 42 U.S.C. § 11023(c) that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by 313(f) of EPCRA, 42 U.S.C. § 11023(f) during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

11. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30, is 25,000 pounds for any toxic chemical manufactured or processed, and 10,000 pounds for any toxic chemical otherwise used for the applicable calendar year.

Alternative reporting thresholds are set forth in 40 C.F.R. §§ 372.27 and 372.28.

12. 40 C.F.R. § 372.30(a) requires that for each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in 40 C.F.R. §§ 372.25, 372.27, or 372.28 at its covered facility described in 40 C.F.R. § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350-1), EPA Form A (EPA Form 9350-2), and, for the dioxin and dioxin-like compounds category, EPA Form R Schedule 1 (EPA Form 9350-3) in accordance with the instructions referred to in subpart E of this part.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

13. Respondent is incorporated in the State of Delaware, domiciled in the State of Arkansas, and authorized to do business in the State of Arkansas.

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

15. Respondent owns and operates the facility at 1329 N. 10th St., Arkadelphia, Arkansas 71923.

16. Respondent's facility identified in Paragraph 15 is a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

17. At the time of the violations, Respondent's facility had ten (10) or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.

18. Respondent's facility is in NAICS code 336612 (boat building).

19. Diisocyanates is a "toxic chemical" within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

20. During calendar year 2015 and 2016 the toxic chemical listed in Paragraph 19 was "manufactured, processed, or otherwise used," as those terms are defined by Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.3, at Respondent's facility.

21. On or about July 10, 2019, an off-site investigation was initiated to determine compliance of Respondent's Arkadelphia, Arkansas facility with Section 313 of EPCRA. During the off-site investigation, EPA determined Alumacraft failed to file 2015 and 2016 TRI reporting forms for the TRI chemicals listed in Paragraph 19 on or before their due date.

B. VIOLATIONS

Failure to timely File a Form R for Diisocyanates for Calendar Year 2015

22. Complainant hereby restates and incorporates by reference Paragraphs 1 through 21.

23. During calendar year 2015, Respondent "manufactured, processed, or otherwise used" the TRI chemicals identified in Paragraph 19, at the Respondent's facility, in excess of the applicable threshold quantities.

24. Respondent did not submit TRI reporting forms until 12/15/2017, Greater than 1 year after the required due date of July 1, 2016.

25. EPA finds Respondent violated 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30(d) by failing to submit TRI reporting forms for the TRI chemicals identified in Paragraph 19 on or before the due date of July 1, 2016.

Failure to timely File a Form R for Diisocyanates for Calendar Year 2016

26. Complainant hereby restates and incorporates by reference Paragraphs 1 through 21.

27. During calendar year 2016, Respondent "manufactured, processed, or otherwise used" the TRI chemicals identified in Paragraph 19, at the Respondent's facility, in excess of the applicable threshold quantities.

28. Respondent did not submit TRI reporting forms until 12/15/2017, 167 days after the required due date of July 1, 2017.

29. EPA finds Respondent violated 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30(d) by failing to submit TRI reporting forms for the TRI chemicals identified in Paragraph 19 on or before the due date of July 1, 2017.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

30. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), which authorizes EPA to assess a civil penalty of up to Fifty-Five Thousand Nine Hundred and Seven Dollars ($55,907) per day per violation of EPCRA.[1] Upon consideration of the entire record

[1] The statutory maximum penalty level under Section 325(c) of EPCRA, 42 USC 11045(c) has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L.114-74, Section 701). EPA implements these adjustments through rulemaking which are codified in 40 CFR Part 19. As adjusted by the *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule* (2018 Rule) (83 Fed. Reg. 1194), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to $55,907 per violation per day of violation occurring after November 2, 2015 and where penalties are assessed on or after January 15, 2018.

herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the nature, circumstances, extent and gravity of the alleged violations, and with respect to Respondent's ability to pay, history of prior EPCRA Section 313 violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and other factors as justice may require, it is **ORDERED** that Respondent be assessed a civil penalty of **Nine Thousand Three Hundred and Six Dollars and No Cents ($9,306.00)**.

31. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail (including certified mail), overnight mail, or wire transfer.

For U.S. Postal Service mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket number EPCRA 06-2020-0501 shall be clearly typed on the check, or other method of payment, to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference Respondent's name and address, the case name, and docket number of the CAFO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Stan Lancaster
EPCRA 313 Enforcement Coordinator
U.S. EPA, Region 6
Toxics Enforcement Section (ECDST)
1201 Elm Street, Suite 500
Dallas, TX 75270-2102;

Lorena Vaughn
Regional Hearing Clerk
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

Respondent's adherence to this request will ensure proper credit is given when penalties are

received by EPA and acknowledged in the Region.

32. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

33. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action to collect the penalty in an appropriate district court of the United Stated pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f).

34. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b)

35. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent.

See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

36. This Consent Agreement and Order shall not relieve 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.

37. This document is a "Final Order" as that term is defined in the "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)," dated August 10, 1992 (Amended: 1996, 1997, and 2001) for the purpose of demonstrating a history of "prior such violations."

B. RETENTION OF ENFORCEMENT RIGHTS

38. EPA does not waive any rights or remedies available to EPA for any violations by Respondent of Federal or State laws, regulations, or permitting conditions.

39. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

40. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at, or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of Federal, State, or local agencies or departments to obtain penalties or injunctive relief under Federal, State, or local laws or regulations.

C. COSTS

41. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

D. EFFECTIVE DATE

42. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: 12/12/2019

Rick Hollin
Sourcing Manager
Alumacraft Boat Company
1329 N. 10th St.,
Arkadelphia, Arkansas 71923

FOR THE COMPLAINANT:

Date: 1-22-2020

Cheryl T. Seager
Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 6
Dallas, TX

FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 1/28/2020

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of January 2019, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and a true and correct copy of the CAFO was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED #

Rick Hollin
Sourcing Manager
Alumacraft Boat Company
1329 N. 10th St.,
Arkadelphia, Arkansas 71923

Stan Lancaster
EPCRA 313 Enforcement
U.S. EPA Region 6
Toxics Enforcement Section (ECDST)
Dallas, TX 75270