

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2010 SEP 13 PM 1:20
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

THE CONLEY CORPORATION
TULSA, OKLAHOMA

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§ DOCKET NO. EPCRA-06-2010-0515
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RESPONDENT

CONSENT AGREEMENT AND FINAL ORDER

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency (EPA), Region 6 (Complainant), and The Conley Corporation (Respondent), 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 the Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

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

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

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

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

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

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

8. The Respondent hereby certifies that as of the date of the execution of this CAFO, The Conley Corporation 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 that: (a) has ten or more full-time employees; (b) is an establishment with a primary Standard Industrial Classification (SIC) major group or industry

code listed in 40 C.F.R. § 372.23(a), or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) “manufactured, processed, or otherwise used” a toxic chemical listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, 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 during the calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1 of the following year, for each toxic chemical known by the owner or operator to be “manufactured, processed, or otherwise used” in quantities exceeding the established threshold quantity during that preceding calendar year.

10. According 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.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

11. The Respondent is a corporation incorporated under the laws of the State of Oklahoma and is authorized to do business in the State of Oklahoma.

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

13. The Respondent owns and operates The Conley Corporation, which is located at 2795 East 91st Street, Tulsa, Oklahoma, 74137.

14. The Conley Corporation, identified in Paragraph 13 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.

15. The Respondent's facility has ten (10) or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.

16. The Respondent's facility is in NAICS subsector or industry code 326122 (Plastics Pipe and Pipe Fitting Manufacturing).

17. 1,3-phenylenediamine is a "toxic chemical" within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

18. During the 2007 and 2008 reporting years, 1,3-phenylenediamine was "manufactured", "processed", and/or "otherwise used" as those terms are defined by 40 C.F.R. § 372.3, at the Respondent's facility.

19. On March 10, 2010, a duly authorized representative from EPA, Region 6, conducted an inspection of Respondent's facility.

B. VIOLATIONS

Failure to Timely Submit Form R for Reporting Year 2007

20. During the 2007 reporting year, the Respondent processed 1,3-phenylenediamine at the Respondent's facility in excess of the applicable threshold quantity.

21. The Respondent failed to file a Form R for the identified toxic chemical by July 1 of 2008.

22. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit a complete and accurate Form R for the identified toxic chemical for the 2007 reporting year to EPA and to the State of Oklahoma by the applicable due date.

Failure to Timely Submit Form R for Reporting Year 2008

23. During the 2008 reporting year, the Respondent processed 1,3-phenylenediamine at the Respondent's facility in excess of the applicable threshold quantity.

24. The Respondent failed to file a Form R with EPA and the State of Oklahoma for the identified toxic chemical by July 1 of 2009. The Form R was filed March 16 of 2010, 258 days late.

25. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit a complete and accurate Form R for the identified toxic chemical for the 2008 reporting year to EPA and to the State of Oklahoma by the applicable due date.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

32. For the reasons set forth above, the 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).¹ Upon consideration of the entire record 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 the Respondent, ability to pay, lack 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 **Five Thousand Dollars (\$5,000)**.

33. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the first of four (4) quarterly installments of \$1,250, or twenty-five percent (25%) of the fully-assessed civil penalty of \$5,000, 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 regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

¹ The amount of penalty that can be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$27,500 per day of violation, for violations occurring between January 30, 1997 and March 15, 2004; and \$32,500 per day of violation for violations which occurred between March 15, 2004 and January 12, 2009; and to \$37,500 per day of violation for violations which occurred after January 12, 2009.

In the Matter of The Conley Corporation; Docket No. EPCRA 06-2010-0515

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 06-2010-0515 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 the 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 the Respondent's name and address, the case name, and docket number of the CAFO. The 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:

David Riley
EPCRA 313 Enforcement Officer
Toxics Section (6PD-T)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region. The schedule of payments is as follows:

<u>DUE DATE</u>	<u>INSTALLMENT</u>	<u>PAYMENT</u>	<u>TOTAL PAID</u>
October 13, 2010	1 st (initial)	\$1,250	\$1,250
January 13, 2011	2 nd	\$1,250	\$2,500
April 13, 2011	3 rd	\$1,250	\$3,750
July 13, 2011	4 th	\$1,250	\$5,000

34. The 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.

35. If Respondent fails to submit the first payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action pursuant to Section 325(f) of

EPCRA, 42 U.S.C. § 11045(f), to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

36. 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).

37. 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.

38. 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, April 21, 2001; for the purpose of demonstrating a history of “prior such violations”.

B. RETENTION OF ENFORCEMENT RIGHTS

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

40. Nothing in this CAFO shall relieve the 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.

41. Except as specifically provided in this CAFO, nothing herein 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, or contaminants on, at, or from the Respondent’s facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA’s civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

C. COSTS

42. Each party shall bear its own costs and attorney’s fees. Furthermore, the 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.

V. 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. The 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 September 13, 2010



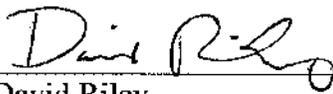
Michael C. Barra
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of September, 2010, 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, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following individual by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT # 7010 1060 0002 1871 9409

Larry D. Clark
The Conley Corporation
2795 East 91st Street
Tulsa, Oklahoma 74137



David Riley
EPCRA 313 Enforcement Officer
U.S. EPA Region 6
Dallas, TX 75202