

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for Amelia W. Katzen 9/8/10  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number EPCRA-01-2010-0047

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Katwall Corporation  
1111 Candia Road  
Manchester, NH 03105

Total Dollar Amount of Receivable \$ 25,100 Due Date: 9/9/10

SEP due? Yes  No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

- 1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

2010 AUG 10  
2010 AUG 10  
CLERK

Reply to: (617) 918-1869  
Fax: (617) 918-0869  
Mail Code: OES 04-3

August 10, 2010

BY HAND

Ms. Wanda Santiago  
Regional Hearing Clerk (ORA18-1)  
U.S. EPA, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Re: *In re: Kalwall Corporation*, Docket No. EPCRA-01-2010-0047

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Consent Agreement and Final Order and
2. Certificate of Service.

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2), the Consent Agreement and Final Order simultaneously commences and concludes the proceeding.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Amelia Welt Katzen".

Amelia Welt Katzen  
Senior Enforcement Counsel

Enclosures

cc: Robert Cheney, Jr., Esquire  
Chris Rascher, OES

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

In the Matter of: )  
 )  
**KALWALL CORPORATION** )  
 )  
1111 Candia Road )  
Manchester, New Hampshire 03109 )  
 )  
Respondent )  
 )  
Proceeding under Section 325(c) of the Emergency )  
Planning and Community Right-to-Know Act, )  
42 U.S.C. § 11045(c) )  
 )

RECEIVED  
200 NOV 10 P 3:30  
**CONSENT AGREEMENT  
AND FINAL ORDER**  
CLERK  
Docket No.  
EPCRA-01-2010-0047

Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”) alleges that Respondent, Kalwall Corporation, has violated Section 313 of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §11023 (also known as the Emergency Planning and Community Right-to-Know Act or “EPCRA”), and the federal regulations promulgated thereunder.

EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA’s revised “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; Final Rule,” 40 C.F.R. Part 22, EPA and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

Therefore, before any hearing, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of EPA and Respondent, it is hereby ordered and adjudged as follows:

**I. EPCRA STATUTORY AND REGULATORY AUTHORITY**

1. Section 313(a) of EPCRA, 42 U.S.C. §11023(a), and 40 C.F.R. § 372.22, require owners or operators of a facility subject to the requirements of Section 313(b) to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. §11023(f). Each Form R is required to be submitted to the Administrator of EPA and to the state in which the subject facility is located.

2. Section 313(b) of EPCRA, 42 U.S.C. §11023(b), and 40 C.F.R. § 372.22 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification ("SIC") code or North American Industry Classification System (NAICS) code set forth in 40 C.F.R. §§ 372.23; and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. §372.65 in a quantity exceeding the established threshold during a calendar year are required to submit a Form R for each of these substances for that year.

3. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection and Improvement Act, 31 U.S.C. § 3701, and EPA's Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder at 40 C.F.R. Part 19, authorizes the

assessment of civil administrative penalties of up to \$32,500 per day for each violation of Section 313 of EPCRA that occurred after March 15, 2004 through January 12, 2009 and \$37,500 per day for each violation that occurs after January 12, 2009.

## II. GENERAL ALLEGATIONS

4. Respondent Kalwall Corporation is a corporation incorporated under the laws of the State of New Hampshire with a place of business at 1111 Candia Road, Manchester, New Hampshire. Respondent operates its Panels & Accessories Division at the Manchester facility ("Manchester facility"), where it manufactures energy-conserving, light transmitting building fenestration systems.

5. Respondent owns and operates its Flat Sheet Division at a facility that manufactures fiberglass flat sheets, located at 40 River Road, Bow, New Hampshire 03304 ("Bow facility") (the Bow and Manchester facilities are, collectively, "the facilities").

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

7. Respondent is an owner or operator of 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.

8. The facilities each have 10 or more "full-time employees," as that term is defined at 40 C.F.R. § 372.3. The facilities are classified in a Standard Industrial Classification code or National Industrial Classification System code set forth in 40 C.F.R. § 372.23.

9. During the calendar year 2008, Respondent manufactured, processed or otherwise used toxic chemicals listed under 40 C.F.R. § 372.65 in quantities exceeding the established thresholds at each of the two facilities.

10. The requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, therefore apply to Respondent's Bow and Manchester facilities.

### **III. EPCRA VIOLATIONS**

#### **Failure to File Form Rs for Styrene, Methyl Methacrylate, and Propylene for Reporting Year 2008**

11. The foregoing paragraphs 1 through 10 are incorporated by reference as if fully set forth herein.

12. During the calendar year 2008, Respondent manufactured, processed or otherwise used styrene, methyl methacrylate, and propylene, each a chemical listed under 40 C.F.R. § 372.65, at the Bow facility, and propylene at the Manchester facility, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a Form R for each of the foregoing chemicals on or before July 1, 2009.

13. Respondent failed to submit the Form Rs to the Administrator of EPA on or before July 1, 2009.

14. Respondent's failure to submit the Form Rs was in violation of Section 313 of EPCRA, 42 U.S.C. §11023, and 40 C.F.R. Part 372.

### **IV. TERMS OF SETTLEMENT**

15. Respondent certifies that it has corrected the alleged violations cited in this CAFO and will operate the facilities in compliance with Section 313 of EPCRA and the regulations promulgated thereunder.

16. Respondent hereby certifies that it is presently in compliance with the requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. Part 370.

17. Respondent agrees that EPA has jurisdiction over the subject matter alleged in this CAFO and hereby waives any defenses it might have as to jurisdiction and venue.

18. Respondent acknowledges that it has been informed of its right to request a hearing in this proceeding and hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in this CAFO.

19. Without admitting or denying the facts and violations alleged in this CAFO, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of the civil penalty set forth herein.

20. Pursuant to the relevant factors for penalties issued pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and taking into account any such matters as justice may require, Complainant has determined that it is fair and proper that Respondent pay a total civil penalty in the amount of twenty-five thousand one hundred dollars (\$25,100) to resolve the alleged violations of Section 313 of EPCRA.

21. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the penalty of \$25,100 by cashier's or certified check, payable to "Treasurer, United States of America," and referencing the title and docket number of the action ("*In the Matter of Kalwall Corporation*, Docket No. EPCRA-01-2010-0047"). The check shall be mailed via first class U.S. Postal Service mail, to:

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

with a copy of the check to:

Amelia Katzen, Senior Enforcement Counsel  
Office of Environmental Stewardship (OES04-3)  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

22. 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. In the event that any partial payment of the civil penalty, plus interest thereon, is not paid when due without demand, the penalty plus accrued interest shall be payable with additional interest from the original due date to the date of payment, at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. §901.9(b)(2). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. §901.9(d).

23. The penalty provided for herein is a penalty within the meaning of 26 U.S.C. § 162(f) and is not tax deductible for purposes of federal, state, or local law.

24. The provisions of this CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

25. Respondent shall bear its own costs and attorneys fees in this proceeding.

26. This CAFO constitutes a settlement by EPA of all claims for civil



penalties pursuant to Section 325(c) of EPCRA for the violations of the EPCRA specifically alleged in this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

27. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

28. The undersigned representative of Respondent certifies that he is fully authorized by Respondent to enter into the terms and conditions of this CAFO and legally bind Respondent.

RESPONDENT:


**KALWALL CORPORATION**

By:   
Richard R. Keller  
President


Date: 08/06/10

COMPLAINANT:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By:   
For Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
EPA, Region 1

Date: 8/9/10

  
Amelia Welt Katzen  
Senior Enforcement Counsel  
Office of Environmental Stewardship  
EPA, Region 1

Date: 8/9/10

**VII. FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

Date: August 10, 2010

Jill T. Metcalf  
Jill T. Metcalf  
Acting Regional Judicial Officer  
U.S. EPA, Region.1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
<b>KALWALL CORPORATION</b>	)	<b>CONSENT AGREEMENT</b>
	)	<b>AND FINAL ORDER</b>
	)	
Respondent	)	Docket No.
	)	EPCRA-01-2010-0047
	)	


CERTIFICATE OF SERVICE

I hereby certify that the foregoing Unilateral Administrative Order for Removal Action has been sent to the following persons on the date noted below:

Copy, hand-delivered: Ms. Wanda Santiago  
Regional Hearing Clerk (ORA 18-1)  
U.S. EPA, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Original, by First Class Mail,  
Return Receipt Requested: Robert P. Cheney, Jr., Esquire  
Sheehan Phinney Bass & Green  
Two Eagle Square  
Concord, NH 03301

Dated: 8/10/10

  
Amelia Welt Katzen  
Senior Enforcement Counsel  
U.S. EPA, Region 1 (OES 04-3)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912