

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

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In the Matter of :
Weldon Asphalt Company :
Respondent. :
Proceeding under Section 325(c) of Title III :
of the Superfund Amendments and Reauthorization Act :
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**CONSENT AGREEMENT
AND
FINAL ORDER**

**DOCKET NUMBER
EPCRA-02-2012-4107**

**U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 AUG 28 A 8:16
REGIONAL HEARING
CLERK**

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §11001 *et seq.* [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA")]. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc." (40 C.F.R. Part 22 (July 1, 2000)) provide in 40 C.F.R. §22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2, ("EPA" or "Complainant") alleges that Weldon Asphalt Company located at 2000 Marshes Dock Road in Linden, New Jersey 07036, violated the requirements of Section 313 of EPCRA (42 U.S.C. §11023) and the regulations promulgated pursuant to that Section, codified at 40 C.F.R. Part 372. Under Section 313 of EPCRA and 40 C.F.R. §372.22, owners or operators of a facility subject to the requirements of Section 313(b) are required to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form R, EPA Form 9350-1 (hereinafter, "Form R") for each toxic chemical listed under 40 C.F.R. §372.65 and/or 40 C.F.R. §372.28 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. A complete and correct Form R is required to be submitted to the Regional Administrator of the Environmental Protection Agency and to the State in which the subject facility is located.

As an alternative to the requirements set forth above, pursuant to Section 313(f)(2) of EPCRA (42 U.S.C. §11023(f)(2)), and 40 C.F.R. §372.27, owners or operators of a facility subject to the requirements of Section 313(b) with respect to the manufacture, process or otherwise use of a toxic chemical may apply an alternate threshold of one million (1,000,000) pounds per year to that chemical if the conditions set forth in 40 C.F.R. §372.27(a) are met. If the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators, in lieu of filing a Form R, therefore, may submit an "Alternate Threshold Certification Statement" (Form A) pursuant to 40 C.F.R. §372.27(b). Pursuant to 40 C.F.R. §372.27(e), EPA has excluded the Persistent Bioaccumulative Toxic Chemicals listed in 40 C.F.R. §372.28 from eligibility for the Alternate Thresholds described in 40 C.F.R. §372.27(a). [59 FR 61502, Nov. 30, 1994, as amended at 64 FR 58750, Oct. 29, 1999; as amended at 71 FR 76944, Dec. 22, 2006; as amended at 74 FR 19005, Apr. 27, 2009]

EPA and Weldon Asphalt Company agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO"), pursuant to 40 C.F.R. §22.13(b) and 40 C.F.R. §22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated Findings of Fact or Conclusions of Law have been made. The following constitutes EPA's Findings of Fact and Conclusions of Law based upon information EPA obtained through June 23, 2012.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. Respondent is Weldon Asphalt Company (TRI Facility ID No.: 0703WWLDNS2MARS).
2. At all times relevant hereto, Respondent has maintained a facility located at 2000 Marshes Dock Road, Linden, New Jersey 07036, which is the subject of this Consent Agreement and Final Order (hereinafter, "Respondent's facility").
3. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. §11049).
4. Respondent is a multi-establishment "facility", as defined at 40 C.F.R. §372.3, comprised of the two contiguous facilities Weldon Asphalt Company and Weldon Concrete Company, both located at 2000 Marshes Dock Road in Linden, New Jersey.
5. Respondent is an owner of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. §11049(4)) and by 40 C.F.R. §372.3.
6. Respondent is an operator of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. §11049(4)) and by 40 C.F.R. §372.3.

7. Respondent's facility, has ten (10) or more "full time employees" as defined by 40 C.F.R. §372.3.
8. Weldon Asphalt Company is in the North American Industry Classification System "NAICS" Code 324121 (Asphalt Paving Mix & Block Mfg.)
9. Weldon Concrete Company is in the North American Industry Classification System "NAICS" Code 327320 (Ready-mix Concrete Mfg.).
10. Respondent's facility is subject to the requirements of Section 313(b) of EPCRA (42 U.S.C. §11023(b)) and 40 C.F.R. §372.22.
11. Polycyclic Aromatic Compounds (PACs) is a listed chemical category under 40 C.F.R. §372.65.
12. Respondent was required to submit a complete and correct Form R report for PACs for 2010 to the Administrator of the EPA and to the State of New Jersey by July 1, 2011.
13. Respondent was required to submit a complete and correct Form R report for PACs for 2009 to the Administrator of the EPA and to the State of New Jersey by July 1, 2010.
14. Respondent was required to submit a complete and correct Form R report for PACs for 2008 to the Administrator of the EPA and to the State of New Jersey by July 1, 2009.
15. Respondent submitted Form R reports for PACs to the EPA for calendar years 2010, 2009 and 2008 on June 28, 2012.
16. Each of Respondent's failures to submit a timely Form R report for PACs for calendar years 2010, 2009 and 2008 constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. §11023, and with 40 C.F.R. Part 372.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 325(c) of EPCRA, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc., 40 C.F.R. §22.18 (hereinafter, "Consolidated Rules"), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

1. Respondent certifies herein that any and all EPA Toxic Chemical Release Inventory Forms submitted for the above-described violations comply with the requirements of Section 313 of EPCRA and the regulations set forth at 40 C.F.R. Part 372.
2. For the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of this Consent Agreement as applied to the facility as set forth in paragraphs 1 through 16, inclusive, and (b) neither admits nor denies the Findings of Fact and Conclusions of Law section, above.

3. Respondent shall pay a civil penalty totaling **TWENTY ONE THOUSAND TWO HUNDRED DOLLARS (\$21,200)**. Payment shall be made by cashier's or certified check or by electronic fund transfer (EFT). If the payment is made by check, then the check shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: In The Matter of Weldon Asphalt Company and shall bear thereon the Docket Number EPCRA-02-2012-4107. Payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date"). If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: **Weldon Asphalt Company**
- 7) Case Number: **EPCRA-02-2012-4107**.

Such EFT must be received on or before 45 calendar days after the due date of this CAFO. Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor (1631)
New York, NY 10007-1866

and

John Gorman, Chief
Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-105)
Edison, NJ 08837

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice for collection.

b. Further, 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, on the overdue amount from the due date through the date of payment. In addition, a late payment handling fee of \$15 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of all civil liabilities under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11001 et seq.) and the regulations promulgated thereunder, 40 C.F.R. Part 372, that attach or might have attached as a result of the Findings of Fact and Conclusions of Law set out above.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Respondent has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and to abide by its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

7. Respondent waives any right it may have pursuant to 40 C.F.R. §22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

8. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

10. Each party hereto agrees to bear its own costs and fees in this matter.

11. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

Weldon Asphalt Company

BY: 
Authorizing Signature

NAME: JEFF WOODS
(PLEASE PRINT)

TITLE: E H & S DIRECTOR

DATE: 8-9-12

COMPLAINANT:


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

DATE: 8/16/12

In the Matter of Weldon Asphalt Company
Docket Number EPCRA-02-2012-4107

FINAL ORDER

The Regional Judicial Officer of the United States Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of **Weldon Asphalt Company**, bearing **Docket No. EPCRA-02-2012-4107**. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. §§ 22.13(b) and 22.18(b)(3) and shall constitute an order issued under authority of Section 325(c) of EPCRA 42 U.S.C. § 11045(c).

DATE: August 21, 2012

Helen S. Ferrara

Helen S. Ferrara, Regional Judicial Officer
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

In the Matter of Weldon Asphalt Company

Docket No. EPCRA-02-2012-4107

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

Original and One Copy
by Interoffice Mail:

Ms. Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency -Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Mr. Jeffrey Woods
Environmental Health and Safety Director
Weldon Asphalt Company
141 Central Avenue
Westfield, New Jersey 07090

Copy by Mail:

Mr. Andrew Oppermann, EPCRA Section 313
New Jersey Department of Environmental Protection
Division of Environmental Safety and Health
Office of Pollution Prevention and Right-To-Know
22 S. Clinton Avenue, 3rd Floor
P.O. Box 443
Trenton, New Jersey 08625-0443

Dated: 8-23-12



Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency - Region 2
2890 Woodbridge Avenue (MS-105)
Edison, New Jersey 08837-3679