

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

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EPA REGION III, PHILA. PA

In the Matter of:	:	
	:	
James Austin Company	:	Docket No. EPCRA-03-2013-0166
115 Downieville Rd.	:	
Mars, PA 16046	:	
	:	
Respondent	:	CONSENT AGREEMENT
	:	
James Austin Company	:	
115 Downieville Rd.	:	
Mars, PA 16046	:	
	:	
Facility	:	Proceeding under § 325(c) of EPCRA, 42 U.S.C. § 11045(c)
	:	

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and James Austin Company ("Respondent"), pursuant to Sections 313 and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11023 and 11045(c), the regulations implementing Section 313 of EPCRA, as set forth at 40 C.F.R. Part 372, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively, "CAFO") simultaneously commence and conclude this proceeding to resolve violations of Section 313 of EPCRA, 42 U.S.C. § 11023, as alleged herein, by Respondent at its facility located at 115 Downieville Road, Mars, Pennsylvania, 16046.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

3. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
4. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

Findings of Fact and Conclusions of Law

7. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of the Consolidated Rules, Complainant adopts the following findings of fact and conclusions of law.
8. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372 require, *inter alia*, that the owner or operator of a facility that: 1) has 10 or more employees; 2) has a primary Standard Industrial Classification ("SIC") Code of 20 [2000] through 39 [3999] (as in effect on July 1, 1985), or other SIC or industry code as set forth in 40 C.F.R. Section 372.22(b); and 3) manufactured, processed or otherwise used a toxic chemical listed in 40 C.F.R. § 372.65, in excess of the threshold quantities established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form is required, to complete and submit a toxic chemical release form ("Form R") or appropriate alternative threshold report ("Form A") for each such toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year.
9. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures, and other stationary items that are located on a single site and that are owned or operated by the same person.
10. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines "person" to include any corporation.
11. Respondent is incorporated in the Commonwealth of Pennsylvania and is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
12. During calendar year 2011, and at the time of the violations alleged herein, Respondent owned and operated a manufacturing plant located at 115 Downieville Road, Mars, Pennsylvania, 16046 ("Facility").
13. Respondent's Facility is a "facility" as defined in Section 329(4) of EPCRA, 42 U.S.C.

§ 11049(4), and 40 C.F.R. § 372.3.

14. During calendar year 2011, Respondent employed 10 or more full-time employees at the Facility.
15. During calendar year 2011, the Facility had a primary SIC code of 2841.
16. Respondent was required to complete and submit a Form R or Form A for each toxic chemical listed in 40 C.F.R. § 372.65 which was manufactured, processed, or otherwise used at the Facility in excess of the threshold quantity set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during any calendar year, to EPA and the Commonwealth of Pennsylvania by July 1 of the following calendar year.

Count I: Chlorine

17. "Chlorine" is a "toxic chemical" as defined in §§ 313(c) and 329(10) of EPCRA, 42 U.S.C. §§ 11023(c) and 11049(10), 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
18. As set forth in Section 313(f)(1)(B) of EPCRA, 42 U.S.C. § 11023(f)(1)(B), and 40 C.F.R. § 372.25, the reporting threshold amount for chlorine which is processed at a facility is 25,000 pounds.
19. Respondent processed more than 25,000 pounds of chlorine at the Facility during the 2011 calendar year.
20. Pursuant to § 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.27 and 327.30, Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1 of 2012, a completed Form A or Form R for chlorine processed at the Facility during the 2011 calendar year.
21. Respondent filed the required Form R for the toxic chemical chlorine processed at the Facility during the 2011 calendar year with the Commonwealth of Pennsylvania on or about August 1, 2012 and with the Administrator of EPA on or about November 6, 2012.
22. Respondent never filed a Form A for chlorine processed at the Facility during the 2011 calendar year with the Administrator of EPA and the Commonwealth of Pennsylvania.
23. Respondent's failure to timely file a Form A or Form R with the Administrator of EPA and the Commonwealth of Pennsylvania for the toxic chemical chlorine processed at the Facility during the 2011 calendar year is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.27 and 372.30.

Count II: Methanol

24. "Methanol" is a "toxic chemical" as defined in §§ 313(c) and 329(10) of EPCRA, 42 U.S.C.

§§ 11023(c) and 11049(10), 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.

25. As set forth in Section 313(f)(1)(B) of EPCRA, 42 U.S.C. § 11023(f)(1)(B), and 40 C.F.R. § 372.25, the reporting threshold amount for methanol which is processed at a facility is 25,000 pounds.
26. Respondent processed more than 25,000 pounds of methanol at the Facility during the 2011 calendar year.
27. Pursuant to § 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.27 and 327.30, Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1 of 2012, a completed Form A or Form R for the methanol processed Facility during the 2011 calendar year.
28. Respondent filed the required Form R for the toxic chemical methanol processed at the Facility during the 2011 calendar year with the with the Commonwealth of Pennsylvania on or about August 1, 2012 and with the Administrator of EPA on or about November 6, 2012.
29. Respondent never filed a Form A for methanol processed at the Facility during the 2011 calendar year with the Administrator of EPA and the Commonwealth of Pennsylvania.
30. Respondent's failure to timely file a Form A or Form R with the Administrator of EPA and the Commonwealth of Pennsylvania for the toxic chemical methanol processed at the Facility during the 2011 calendar year is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.27 and 327.30.

Civil Penalty

31. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates § 313 of EPCRA, 42 U.S.C. § 11023, shall be liable to the United States for a civil penalty of up to \$25,000 per violation. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised (73 Fed. Reg. 75340-46 (December 11, 2008)), the maximum inflation-adjusted statutory penalty for violations of Section 313 of EPCRA, 42 U.S.C. § 11023, which occurred after January 12, 2009 is increased to \$37,500 per violation.
32. In settlement of EPA's claims for civil monetary penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of TWENTY-FOUR THOUSAND DOLLARS (\$24,000.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by Respondent and Complainant. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent. However, Respondent may elect to pay such civil penalty, including interest as described therein, in accordance with

Paragraph 34, below.

33. The civil penalty settlement amount set forth above in Paragraph 32, above, is based on a number of factors, including, but not limited to, the facts and circumstances of this case, the statutory factors set forth in § 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C), and the penalty criteria set forth in EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (August 10, 1992), as amended. Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, the November 16, 2009 memorandum by EPA Waste and Chemical Enforcement Division Director Rosemarie A. Kelley *Adjusted Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule* ("Kelley Memorandum"). The settlement in this proceeding is consistent with the provisions and objectives of § 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
34. The civil penalty of TWENTY-FOUR THOUSAND DOLLARS (\$24,000.00) set forth in Paragraph 32, above, may be paid in four (4) installments with interest at the rate of one per cent (1%) per annum on the outstanding principal balance in accordance with the following schedule:
- a. 1st Payment: The first payment in the amount of SIX THOUSAND DOLLARS (\$6,000.00) consisting of a principal payment of \$6,000.00 and an interest payment of \$0.00, shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
 - b. 2nd Payment: The second payment in the amount of SIX THOUSAND AND FIFTEEN DOLLARS AND ELEVEN CENTS (\$6,015.11) consisting of a principal payment of \$6,000.00 and an interest payment of \$15.11, shall be paid within sixty (60) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
 - c. 3rd Payment: The third payment in the amount of SIX THOUSAND AND FIFTEEN DOLLARS AND ELEVEN CENTS (\$6,015.11) consisting of a principal payment of \$6,000.00 and an interest payment of \$15.11, shall be paid within ninety (90) days of the date on which this CAFO is mailed or hand-delivered to Respondent; and
 - d. 4th Payment: The third payment in the amount of SIX THOUSAND AND FIFTEEN DOLLARS AND ELEVEN CENTS (\$6,015.11) consisting of a principal payment of \$6,000.00 and an interest payment of \$15.11, shall be paid within one hundred and twenty (120) days of the date on which this CAFO is mailed or hand-delivered to Respondent.

Pursuant to the above schedule, Respondent will remit total principal payments for the civil penalty in the amount of twenty-four thousand dollars (\$24,000.00) and total interest payments in the amount of forty-five dollars and thirty-three

cents (\$45.33).

35. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 34, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall *immediately* pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraphs 38, 39, 40 and 41, below, in the event of any such failure or default.
36. Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
37. Respondent shall pay the civil penalty amount assessed in Paragraph 32, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 38, 39, 40, and 41, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:
 - a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, EPCRA-03-2013-0166.
 - b. All checks shall be made payable to "**United States Treasury**".
 - c. All payments made by check and sent by regular mail shall be addressed to:

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

Customer service contact: 513-487-2091

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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"

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: 866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

Enter **sfo 1.1** in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

James Heenehan
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

38. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to 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, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
39. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty

(30) calendar days after the date on which such interest begins to accrue. 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).

40. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will 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) days the penalty remains unpaid.
41. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
42. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Certification

43. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Facility referred to in this Consent Agreement is currently in compliance with all applicable requirements of EPCRA Section 313, 42 U.S.C. § 11023.

Other Applicable Laws

44. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

45. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil penalties for the specific violations of Section 313 of EPCRA, 42 U.S.C. § 11023, alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Scope of Settlement

46. The settlement set forth in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations alleged herein. Compliance with the CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

47. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents, and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

Effective Date

48. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.


Entire Agreement

49. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent:

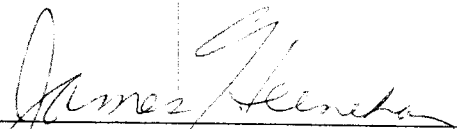
Date: 6/21/2013

By: _____


Harry Austin, President
James Austin Company

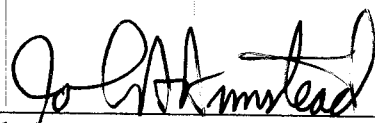
For Complainant:

Date: 6/24/2013

By: 
James Heenehan
Senior Assistant Regional Counsel
EPA Region III

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 6.27.13

By: 
John A. Armstead, Director
Land and Chemicals Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

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In the Matter of:

James Austin Company
115 Downieville Rd.
Mars, PA 16046

Respondent

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Facility

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

Docket No. EPCRA-03-2013-0166

CONSENT AGREEMENT

Proceeding under § 325(c) of EPCRA,
42 U.S.C. § 11045(c)

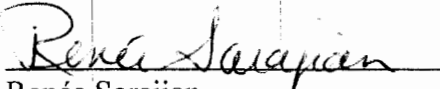
FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, James Austin Company ("Respondent"), have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the civil penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (August 10, 1992), the statutory factors set forth in § 325(b)(1)(C) the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(b)(1)(C), and the provisions and objectives of § 313 of EPCRA, 42 U.S.C. § 11023. **NOW, THEREFORE, PURSUANT TO** Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **TWENTY-FOUR THOUSAND DOLLARS (\$24,000.00)** and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: 6/27/13


Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III