

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 AUG 12 PM 2:25
REGIONAL HEARING
CLERK

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In the Matter of : **CONSENT AGREEMENT**
: **AND**
MW INDUSTRIES INC. : **FINAL ORDER**
ATLANTIC SPRING DIVISION :
: **DOCKET NUMBER**
Respondent. : **EPCRA-02-2008-4106**
:
:
Proceeding under Section 325(c) of Title III :
of the Superfund Amendments and Reauthorization Act :
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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 MW Industries Inc. – Atlantic Spring Division located at 137 Route 202 South, Flemington, New Jersey 08822 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. The completed and correct Form R is required to be submitted to the Regional Administrator of the EPA 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) (see 71 Fed. Reg. 76944; December 22, 2006) pursuant to 40 C.F.R. §372.27(b). Pursuant to 40 C.F.R. §372.27(e)(3), EPA has excluded the Persistent Bioaccumulative Toxic Chemical (PBT) dioxin and dioxin-like compounds from eligibility for the Alternate Thresholds described in 40 C.F.R. §372.27(a).

EPA and MW Industries Inc.- Atlantic Spring Division 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 Complainant's Findings of Fact and Conclusions of Law based upon information EPA had obtained through May 13, 2008.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. Respondent is MW Industries Inc. – Atlantic Spring Division (TRI Facility No.: 08822TLNNTC137RT).
2. At all times relevant hereto, Respondent has maintained a facility located at 137 Route 202 South, Flemington, New Jersey 08822 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 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.
5. 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.
6. Respondent's facility has 10 or more "full time employees" as that term is defined by 40 C.F.R. §372.3.
7. Respondent's facility is in Standard Industrial Classification Code 3493.
8. Respondent's facility is in the American Industry Classification System (NAICS) Code 332611.
9. Respondent's facility is subject to the requirements Section 313(b) of EPCRA (42 U.S.C. §11023(b)) and 40 C.F.R. §372.22.
10. Chromium Compounds are listed under 40 C.F.R. §372.65.
11. The established reporting threshold amount for processing chromium compounds in calendar year 2006 was 25,000 pounds. [40 C.F.R. §372.25(a)]
12. Respondent submitted a Form R report to the EPA for processing approximately 62,933 pounds of chromium compounds for calendar year 2006 on December 12, 2007. The Form R was due July 1, 2007 (the "due date"). The Form R was 164 days late.
13. Respondent was required to submit a complete and correct Form R for chromium compounds for calendar years 2006 to the Administrator of EPA and to the State of New Jersey by July 1, 2007.
14. Respondent failed to submit, in a timely manner, a complete and correct Form R for chromium compounds for calendar year 2006 to the Administrator and to the State of New Jersey.

15. Respondent's failure to submit, in a timely manner, a Form R for chromium compounds for calendar year 2006 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 violation 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; and (b) neither admits nor denies the specific factual allegations contained in the Consent Agreement and the Findings of Fact and Conclusions of Law section above.
3. Respondent shall pay by cashier's or certified check, a civil penalty totaling **THREE THOUSAND FIVE HUNDRED TWENTY FIVE DOLLARS (\$3,525)** Such 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 MW INDUSTRIES INC. – ATLANTIC SPRING DIVISION** and shall bear thereon the **Docket Number EPCRA-02-2008-4106**. 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: **MW Industries Inc. – Atlantic Spring Division**
- 7) Case Number: **EPCRA-02-2008-4106.**

Such EFT must be received on or before 45 calendar days after the Effective 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:

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

And

Kenneth S. Stoller, P.E., QEP, DEE, Chief
Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency - Region 2
2890 Woodbridge Avenue, Bldg. 10, MS-105
Edison, New Jersey 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 charge of \$15.00 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 the civil liabilities that might have attached as a result of the allegations contained in the Complaint. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

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. MW Industries Inc. – Atlantic Spring Division 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 or the Deputy Regional Administrator 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:

**MW INDUSTRIES INC.
ATLANTIC SPRING DIVISION**

BY: *Jeff Van Natta*
Authorizing Signature

NAME: Jeff Van Natta
(PLEASE PRINT)

TITLE: General Manager

DATE: 7/11/08

COMPLAINANT:

Dore LaPosta ⁷
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

DATE: JULY 22, 2008

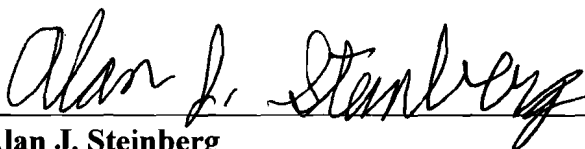
In the Matter of MW Industries Inc. – Atlantic Spring Division
Docket Number EPCRA-02-2008-4106

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties in full settlement of EPA's Complaint bearing **Docket No. EPCRA-02-2008-4106**, issued **In the Matter of MW Industries Inc. – Atlantic Spring Division** is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

DATE: _____

7-25-08



Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

In the Matter of MW Industries Inc. Atlantic Spring Division

Docket No. EPCRA-02-2008-4106

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

Jeffrey Van Natta, President
MW Industries Inc.
Atlantic Spring Division
P.O. Box 650
Flemington, New Jersey 08822

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 Mail:

Mr. Andrew Oppermann, EPCRA Program
State of 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:

August 7, 2008

M. A. Kowalski

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