

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

Filed June 29, 2021 @ 10:01 am

USEPA – Region II
Regional Hearing Clerk

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In the Matter of

Clean Earth of North Jersey, Inc.,

**CONSENT AGREEMENT/
FINAL ORDER**

Respondent.

Docket No. EPCRA-02-2021-4102

Proceeding Under Section 325 (c)
of Title III of the Superfund
Amendments and Reauthorization Act

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This administrative proceeding for the assessment of a civil penalty is being commenced pursuant to Section 325 of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11045 (“EPCRA” or the “Act”). The United States Environmental Protection Agency (“EPA” or “Agency”), under authority of EPCRA, has promulgated regulations, codified at 40 C.F.R. Part 372, that govern, *inter alia*, the reporting of manufacturing, processing and otherwise using “toxic chemicals” (as defined in 40 C.F.R. § 372.3). Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides, in part, that “[a]ny person...who violates a provision of section...11023 of this title [Section 313 of EPCRA] shall be liable to the United States for a civil penalty....”

Pursuant to Section 22.13(b) of the revised Consolidated Rules of Practice, 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding is simultaneously being commenced and concluded pursuant to said provisions of 40 C.F.R. § 22.18(b).

The parties agree that settling this matter by entering into this consent agreement pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Clean Earth of North Jersey, Inc. (“Clean Earth”) without further litigation. To that end, the parties have met and discussed settlement. No adjudicated findings of fact or conclusions of law have been made in either a judicial or administrative forum. EPA’s Findings of Fact and Conclusions of Law are based on information of which EPA, Region 2 was aware as of the date this CA/FO is executed.

Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assurance (“Complainant”) of EPA, Region 2, and Complainant has been duly delegated the authority to commence this proceeding.

FINDINGS OF FACT

1. Clean Earth of North Jersey (“Clean Earth”) is a for-profit corporation incorporated in New Jersey.
2. Clean Earth is a corporation which, for all years relevant to this proceeding, owned and operated a hazardous waste treatment, storage, and disposal facility situated at 105/115 Jacobus Avenue, Kearny, New Jersey 07032 (“Kearny Facility”).
3. The Kearny facility handles or manages hazardous and non-hazardous soils, bulk liquids, bulk solids, including, but not limited to, various hazardous and non-hazardous industrial waste, including RCRA listed waste, contaminated soils, liquids, electronics, TSCA Waste, PCBs, solvents, aerosols, oily waste, drill cuttings, flammable solids, contaminated soil, and pharmaceutical waste.
4. The Kearny facility is an establishment with a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. § 372.23(b), specifically, subsector code or industry code 562211, “Hazardous Waste Treatment and Disposal.”
5. In each of the calendar years 2015 through 2018, the Kearny facility had more than 10, but fewer than 50 full-time employees, and gross annual sales of over ten million dollars.
6. In each of the calendar years 2015 through 2018 the Kearny facility, otherwise used several TRI chemicals over their respective reporting thresholds.
7. On June 5, 2019, representatives of EPA conducted an on-site inspection of the Kearny facility to determine Clean Earth’s compliance with Section 313 of the Emergency Planning and Community Right-To-Know Act (EPCRA), also known as the Toxics Release Inventory (“TRI”) requirements, codified at 40 C.F.R. Part 372.
8. Following that June 5, 2019 inspection, EPA requested additional information from Clean Earth to determine the Kearny facility’s compliance with TRI reporting requirements.
9. Upon review of the documents submitted by Clean Earth, and follow-up communications with facility representatives, EPA determined that Clean Earth had failed to timely submit Form R reports for Zinc Compounds and PCBs it otherwise used in calendar year 2015, Mercury Compounds it otherwise used in calendar year 2016, Mercury Compounds it otherwise used in calendar year 2017, and Zinc Compounds it otherwise used in calendar year 2018. In addition, for calendar year 2015, a significant data quality violation was identified in the Form R report the facility had submitted for Lead Compounds.

10. In August 2019, after EPA brought the suspected violations to Respondent's attention, in Clean Earth revised their existing Lead Compounds Form R report for reporting year 2015. In March and May 2020, Clean Earth submitted Form R reports for the years and chemical substances identified in the preceding paragraph.

CONCLUSIONS OF LAW

1. This is an action brought pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), to assess a civil penalty against Respondent for having violated a requirement of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and of 40 C.F.R. § 372.30.

2. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), provides, in part, “[a]ny person...who violates any requirement of section...11023 of this title [Section 313 of EPCRA] shall be liable to the United States for a civil penalty....”

3. Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), provides, “Each day a violation described in paragraph (1) [Section 325(c)(1), 42 U.S.C. § 11045(c)(1)]...continues shall, for purposes of this subsection, constitute a separate violation.”

4. EPA promulgated the regulations set forth in 40 C.F.R. Part 372 pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, respectively.

5. Pursuant to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.22 and 372.30, owners or operators of a facility subject to the requirements of Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 are required to submit annually, no later than July 1st of each year, accurate reports for each toxic chemical (defined under 40 C.F.R. § 372.3 to include a chemical listed in 40 C.F.R. § 372.65) that was “manufactured,” “processed” or “otherwise used” (each such term defined in 40 C.F.R. § 372.3) during the preceding calendar year in quantities exceeding the established toxic chemical threshold levels as listed in 40 C.F.R. § 372.25, 372.27 or 372.28. The information, to be reported on the prescribed EPA form (40 C.F.R. § 372.30(a); hereinafter “Form R”) must be submitted to the Administrator of EPA and the state in which the toxic chemicals were manufactured, processed, or otherwise used.

6. Each of the following is a “requirement” within the meaning of Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1): (a) Section 313(a) of EPCRA, 42 U.S.C. § 11025(a); (b) 40 C.F.R. § 372.22 and (c) 40 C.F.R. § 372.30.

7. For the period including each of calendar years 2015 through 2018, Clean Earth was a “person” as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and in 40 C.F.R. § 372.3.

8. For the period including each of calendar years 2015 through 2018, Clean Earth was subject to the reporting requirements set forth in Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30.

9. For the period including each of calendar years 2015 through 2018, the activity threshold amount for reporting: (a) Zinc Compounds otherwise used was, pursuant to 40 C.F.R. § 372.25(b), 10,000 pounds; (b) PCBs otherwise used was, pursuant to 40 C.F.R. § 372.28(a)(1), ten pounds; and (c) Mercury Compounds otherwise used was, pursuant to 40 C.F.R. § 372.28(a)(2), ten pounds.

10. Pursuant to each of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30, Clean Earth was required to submit to EPA and to the State of New Jersey a complete and correct Form R for the following:

- (a) For the Zinc Compounds and PCBs otherwise used at the Kearny facility in calendar year 2015, a completed Form R by July 1, 2016;
- (b) For the Mercury Compounds otherwise used at the Kearny facility in calendar years 2016 and 2017, a completed Form R by July 1, 2017 and July 1, 2018, and;
- (c) For the Zinc Compounds otherwise used at the Kearny facility in calendar year 2018, a completed Form R by July 1, 2019.

11. Clean Earth failed to submit complete and correct Forms R for the Zinc Compounds, PCBs, and Mercury Compounds otherwise used at the Kearny facility in calendar years 2015, 2016, 2017, and 2018 by their respective regulatory due dates discussed above.

12. Clean Earth failed to submit a correct (accurate) Form R for Lead Compounds otherwise used at the Kearny Facility in calendar year 2015.

13. Each of Clean Earth's aforementioned failures constitutes, for purposes Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) a separate and distinct violation of a requirement of: **(a)** Section 313 of EPCRA, 42 U.S.C. § 11023; **(b)** Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3); **(c)** 40 C.F.R. § 372.22; and **(d)** 40 C.F.R. § 372.30.

14. For each of Clean Earth's aforementioned violations, Clean Earth is liable to the United States pursuant to Section 325(c)(1) of EPCRA and Section 325(c)(3) of EPCRA, 42 U.S.C. §11045(c)(1) and 42 U.S.C. 11045(c)(3), respectively.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. § 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22," it is hereby agreed by and between Complainant and Clean Earth, that, for

purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, Clean Earth: **(a)** admits EPA has jurisdiction under EPCRA to enforce the provisions of the Act and the regulations promulgated thereunder; **(b)** neither admits nor denies the specific factual allegations or legal conclusions contained in EPA’s Findings of Fact, above; **(c)** consents to the assessment of the civil penalty as set forth below; **(d)** consents to the issuance of the Final Order accompanying this Consent Agreement; and **(e)** waives any right it might possess to seek or obtain judicial review of, or otherwise contest, said Final Order.

It is further hereby agreed by and between Complainant and Clean Earth, that there shall be compliance with the following terms and conditions:

1. Clean Earth hereby certifies, to the best of its knowledge, that with regard to the operations at its Kearny facility it is presently in full compliance with the applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and of 40 C.F.R. Part 372.

2. Clean Earth shall pay a civil penalty to EPA in the amount of **SIXTY-TWO THOUSAND THREE HUNDRED DOLLARS (\$62,300)** for the violations EPA has alleged in the “Findings of Fact” and “Conclusions of Law” sections, above. Said amount must be *received* by EPA (at the address or account of EPA specified in paragraph 3, below) within thirty (30) days¹ of the date the Regional Administrator of EPA, Region 2, signs the Final Order accompanying this Consent Agreement (said date hereinafter referred to as the “due date”).

3. Payment in accordance with the terms and schedule of this Consent Agreement shall be made by cashier’s check, certified check, electronically via Fedwire, or online.

a. If payment is made by cashier’s check or by certified check, each such check shall be made payable to the “**Treasurer, United States of America,**” and shall be identified with a notation thereon listing the following: ***In re Clean Earth of North Jersey, Inc., Docket Number EPCRA-02-2021-4102.*** If payment is made by either form of check, such payment shall be mailed to the following address:

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

b. Alternatively, if Clean Earth chooses to make electronic payment via Fedwire, then the following information is to be provided to the remitter bank when such payment is made:

¹ For purposes of this CA/FO, days shall mean calendar days.

- i. Amount of payment;
- ii. SWIFT address: **FRNUS33, 33 Liberty Street, New York, NY 10045;**
- iii. Account Code for Federal Reserve Bank of New York receiving payment: **68010727;**
- iv. Federal Reserve Bank of New York ABA routing number: **021030004;**
- v. Field Tag 4200 of the Fedwire message should read: **“D 68010727 Environmental Protection Agency”;**
- vi. Name: **Clean Earth of North Jersey, Inc.;** and
- vii. Case docket number: **EPCRA-02-2021-4102.**

c. If Respondent chooses to make on-line payments, Respondent shall go to www.pay.gov and enter SFO 1.1 in the search field on the tool bar on the Home Page; select Continue under “EPA Miscellaneous Payments – Cincinnati Finance Center;” and open the form and complete the required fields. Once payment has been effected, Respondent shall email proof of payment to crossmon.james@epa.gov with *In the Matter of Clean Earth of North Jersey, Inc., EPCRA-02-2021-4102* as the subject line.

4. Failure to pay the specified amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection of the amount due (including late payments) and stipulated penalties.

Furthermore, if the required payment is not received on or before its due date in accordance with the terms of this document, interest shall 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 date payment was to have been made through the date payment is received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period or any portion thereof, following the date payment was to have been received, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) days of the due date.

5. The civil penalty provided for in this section (including any payment for interest and late payment handling charge that have become due) constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and does not constitute a deductible expenditure for purposes of federal or state law.

6. Clean Earth consents to the use of electronic signatures in this matter and to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk via electronic mail to the addressee identified in paragraph 7, below. Receipt of the fully executed CA/FO by said designated representative shall constitute Respondent’s receipt and acceptance of said CA/FO.

7. Any responses, documentation, and other communications submitted in connection with this Consent Agreement shall be e-mailed to:

James Crossmon
U.S. Environmental Protection Agency – Region 2
Pesticides & Toxic Substances Branch
crossmon.james@epa.gov

and

Gary H. Nurkin
U.S. Environmental Protection Agency – Region 2
Office of Regional Counsel
nurkin.gary@epa.gov

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any future written communications related to this matter by email, including the fully-executed CA/FO and any correspondence related to payment of the penalty, to Clean Earth at the following:

Sarah Kowalczyk, Esq.
Vice President, Division Counsel
Clean Earth of North Jersey Inc.
334 South Warminster Road
Hatboro, PA 19140
skowalczyk@harsco.com

8. This CA/FO is not intended, and shall not be construed, to supersede, pre-empt, negate, invalidate or otherwise affect Clean Earth's obligation to comply with all applicable federal, state, and local laws and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state, or local permit. Payment of the civil penalty in full as provided herein, together with any late payment for interest, shall not waive, extinguish, or otherwise affect Clean Earth's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder at the Kearny facility.

9. Full payment of the penalty amount set forth above (*i.e.* \$62,300) in accordance with the terms herein, as well as any interest or late payment handling charges that accrue, shall only resolve Clean Earth's liability for federal civil penalties for the underlying facts that gave rise to the violations described in paragraphs 1 – 10, above, of the Findings of Fact and paragraphs 1 – 14, above, of the Conclusions of Law. Notwithstanding the above, nothing herein shall affect the authority of EPA or the United States on behalf of EPA to pursue appropriate injunctive or otherwise seek equitable relief or criminal sanctions for any violation(s) of law resulting from or pertaining to toxic chemical release reporting from the Kearny facility.

10. Pursuant to 40 C.F.R. § 22.18(b)(2), in entering this Consent Agreement, Clean Earth waives any right it might possess to seek or obtain judicial review under EPCRA, the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*, or other law that might be applicable. Clean Earth, in entering into this Consent Agreement, waives any right it might have under Section 325 of EPCRA, 42 U.S.C. § 11045, or other applicable law otherwise to seek or obtain an administrative or judicial hearing on the claims set forth in or arising from the above Findings of Fact or Conclusions of Law or on the terms and conditions set forth in this Consent Agreement.

11. This Consent Agreement, and any provision herein, shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.

12. EPA's entering into this Consent Agreement is premised upon Clean Earth not having misrepresented or concealed any material fact in any of its written or oral representations to the Agency regarding its activities or actions or those of its corporate predecessor. If any material fact has been misrepresented or concealed, EPA may, at its discretion, declare this Consent Agreement and accompanying Final Order null and void *ab initio*.

13. Compliance with the requirements and provisions of this Consent Agreement shall not constitute a defense to any subsequent (*i.e.* following the filing of this document) action, suit or proceeding EPA (or the United States on behalf of EPA) may commence pursuant to any applicable federal statutory or regulatory provision for any violation(s) occurring after the date of the execution of the Final Order accompanying this Consent Agreement, or for any violation(s) of EPCRA statutory or regulatory requirements or prohibitions not alleged herein but that may have occurred prior to the date of the execution of the Final Order accompanying this Consent Agreement.

14. Each party shall bear its own costs and fees in connection with this proceeding.

15. This Consent Agreement shall be fully binding upon the parties and their officers, directors, employees, successors and/or assigns.

16. The signatory for Clean Earth certifies that: (a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and (b) he or she is duly and fully authorized to bind Clean Earth to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.

17. Clean Earth has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Clean Earth agrees that this CAFO constitutes the entire agreement between the parties and all terms of settlement are set forth herein.

18. Pursuant to 40 C.F.R. § 22.31(b), the Final Order ratifying this Consent Agreement shall be effective as of the date of filing with the Regional Hearing Clerk of EPA, Region 2.

RESPONDENT: **CLEAN EARTH OF NORTH JERSEY, INC.**

BY: **Robert Fixter** Digitally signed by Robert Fixter
DN: cn=Robert Fixter, o=Clean Earth, ou=Clean Earth of
North Jersey, email=bfixter@harsco.com, c=US
Date: 2021.06.18 08:32:27 -04'00'

Authorizing Signature

NAME: Robert Fixter
(PLEASE PRINT)

TITLE: GM

DATE: 6/18/21

COMPLAINANT: **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

for _____
Dore LaPosta, Director
Division of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007-1866

DATE: _____

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Clean Earth of North Jersey, Inc.*, bearing Docket Number EPCRA-02-2021-4102. The Consent Agreement, agreed to and entered into by the parties to this matter, is hereby ratified, incorporated herein, and issued as an Order ratified and incorporated into this Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b).

Walter Mugdan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

DATE: _____

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing **Docket Number EPCRA-02-2021-4102**, in the following manner to the respective addressees below:

By E-mail to:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th floor
New York, NY 10007-1866
maples.karen@epa.gov

Copy by Email to:

Sarah Kowalczyk, Esq.
Vice President, Division Counsel
Clean Earth of North Jersey, Inc.
334 South Warminister Road
Hatboro, PA 19140
skowalczyk@harsco.com

Dated: _____, 2021

Yolanda Majette
WTS Branch Secretary