

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
Cosmoflex, Inc.) Docket No. EPCRA-07-2012-0001
4142 Industrial Drive)
Hannibal, Missouri 63401,)
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Cosmoflex, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the 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 (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325(c) of the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11045(c).
2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023 and the regulations promulgated thereunder.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air & Waste Management Division, EPA, Region 7.

4. The Respondent is Cosmoflex, Inc., located at 4142 Industrial Drive in Hannibal, Missouri 63401. The primary activity at Respondent's facility is rubber and plastics hose and belt manufacturing.

Statutory and Regulatory Requirements

5. Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. Part 372.22 and 372.30 require the owner or operator of a facility that (a) has ten or more full-time employees; (b) that is an establishment with a primary SIC major group or industry code listed in 40 C.F.R. Part 372.23(a) or a primary NAICS subsector or industry code listed in 40 C.F.R. Part 372.23(b) or (c); and (c) "manufactured, processed, or otherwise used" a toxic chemical listed under Subsection 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. Part 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. Part 11023(f), and 40 C.F.R. Part 372.25, 372.27 or 372.78 during the calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, for each toxic chemical known by the owner or operator to be "manufactured, processed, or otherwise used" in quantities exceeding the established threshold quantity that preceding calendar year and shall contain data reflecting releases during the preceding calendar year. 40 C.F.R. Part 372.10 requires that complete records be maintained at the subject facility.

6. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and 40 C.F.R. Part 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. Part 372.30, is 25,000 pounds for any toxic chemical “manufactured or processed” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year.

7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 313, 42 U.S.C. § 11023. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of up to \$27,500 per day of for each violation that occurs between January 30, 1997, and March 15, 2004; \$32,500 per day for each violation occurring between March 16, 2004, and January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

Definitions

8. The regulations at 40 C.F.R. § 372.3 define “facility” as “all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person). A facility may contain more than one establishment.”

9. The regulations at 40 C.F.R. § 372.3 define “full time employees” as “2,000 hours per year of full-time equivalent employment. A facility would calculate the number of full-time

employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.”

10. The regulations at 40 C.F.R. Part 372.3 define “toxic chemical” as a “chemical or chemical category listed in 40 C.F.R. Part 372.65.”

11. The regulations at 40 C.F.R. Part 372.3 define “manufacture” as “to produce, prepare, import or compound a toxic chemical. Manufactures also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical mixtures of chemicals as an impurity.”

12. “Process” means the preparation of a toxic chemical, after its manufacture, for distribution in commerce: (1) in the same form or physical state as, or in a different form or physical state from that in which it was received by the person so preparing such substance; or (2) as part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product. 40 C.F.R. Part 372.3.

13. “Otherwise use” means any use of toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms “manufacture” or “process.” Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless: (1) the toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; (2) the toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities.

Relabeling or re-distributing of the toxic chemical with no repackaging of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical. 40 C.F.R. Part 372.3.

Alleged Violations

14. EPA alleges that Respondent has violated EPCRA and federal regulations, promulgated pursuant to EPCRA, as follows:

15. Respondent is, and at all times referred to herein, was a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. Respondent’s facility located at located at 4142 Industrial Drive in Hannibal, Missouri 63401, is a “facility” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. Part 372.3.

17. The Respondent’s facility has ten (10) or more “full-time employees” pursuant to Section 313(b)(1)(A) of EPCRA and as defined by 40 C.F.R. Part 372.3.

18. The Respondent’s facility is in NAICS Code 326220, rubber and plastics hose and belting manufacturing.

19. The following are a “toxic chemicals” within the meaning of 40 C.F.R. Part 372.3 and 372.65: antimony, barium, zinc compounds, dioctylphthalate (DOP), and lead.

20. During calendar years 2007-2009, antimony, barium, zinc compounds, dioctylphthalate (DOP), and lead were “manufactured, processed, or otherwise used,” as those terms are defined by 40 C.F.R. Part 372.3, at the Respondent’s facility.

21. On February 8, 2011, a duly authorized representative from EPA, Region 7, conducted an inspection of Respondent’s facility.

Count 1

Failure to File Form Rs for Antimony to EPA or the State of Missouri

for Calendar Years 2007, 2008 and 2009

22. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.
23. Antimony was “manufactured, processed, or otherwise used” at the Respondent’s facility in excess of the 25,000 pound threshold quantity during calendar years 2007, 2008 and 2009.
24. The Respondent failed to file Form Rs with EPA or the State of Missouri for the toxic chemical antimony by the July 1 deadline in 2008, 2009 and 2010
25. Respondent’s failure to submit Form Rs for antimony are violations of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and 40 C.F.R. Part 372.30.

Count 2

Failure to File Form Rs for Barium to EPA or the State of Missouri

for Calendar Years 2007, 2008 and 2009

26. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.
27. Barium was “manufactured, processed, or otherwise used” at the Respondent’s facility in excess of the 25,000 pound threshold quantity during calendar years 2007, 2008 and 2009.
28. The Respondent failed to file Form Rs with EPA or the State of Missouri for the toxic chemical barium by the July 1 deadline in 2008, 2009 and 2010.
29. Respondent’s failure to submit Form Rs for barium are violations of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and 40 C.F.R. Part 372.30.

Count 3

Failure to File Form Rs for Zinc Compounds to EPA or the State of Missouri
for Calendar Years 2007, 2008, and 2009

30. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

31. Zinc Compounds were “manufactured, processed, or otherwise used” at the Respondent’s facility in excess of the 25,000 pound threshold quantity during calendar years 2007, 2008 and 2009.

32. The Respondent failed to file Form Rs with EPA or the State of Missouri for the toxic chemical zinc compounds by the July 1 deadline in 2008, 2009, 2010.

33. Respondent’s failure to submit Form Rs for zinc compounds are violations of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and 40 C.F.R. Part 372.30.

Count 4

Failure to File Form Rs for Dioctyphthalate for Calendar Year 2007, 2008 and 2009
in a Timely Manner

34. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

35. Dioctyphthalate (DOP) was “manufactured, processed, or otherwise used” at the Respondent’s facility in excess of the 25,000 pound threshold quantity during calendar years 2007, 2008 and 2009.

36. The Respondent filed Form Rs with the Administrator of EPA and the State of Missouri for the toxic chemical dioctyphthalate 82 days after the July 1, 2008 deadline, 58 days after the July 1, 2009 deadline, and 137 days after the July 1, 2010 deadline.

37. Respondent’s failure to submit Form Rs for dioctyphthalate in a timely manner are violations of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and 40 C.F.R. Part 372.30.

Count 5

Failure to File Form Rs for Lead Compounds for Calendar Years 2007, 2008 and 2009
in a Timely Manner

38. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

39. Lead compounds were “manufactured, processed, or otherwise used” at the Respondent’s facility in excess of the 100 pound threshold quantity during calendar years 2007 and 2008.

40. The Respondent filed Form Rs with the Administrator of EPA and the State of Missouri for the toxic chemical lead compounds 82 days after the July 1, 2008 deadline, 58 days after the July 1, 2009 deadline, and 137 days after the July 1, 2010 deadline.

41. Respondent’s failure to submit Form Rs for lead compounds in a timely manner are violations of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and 40 C.F.R. Part 372.30.

Count 6

Data Quality Error in 2007 Form R for Lead

42. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

43. Lead compounds were “manufactured, processed, or otherwise used” at the Respondent’s facility in excess of the 100 pound threshold quantity during calendar year 2007.

44. The Respondent filed Form Rs with the Administrator of EPA and the State of Missouri for the toxic chemical lead compounds with significant data quality errors. Specifically, Respondent failed to submit a complete and accurate report for the reporting year 2007 by failing to accurately calculate the transfer of lead to Lakeland Polymers. Respondent failed to report this transfer, when 114 pounds of lead were transferred.

45. Respondent's submission of Form Rs for lead compounds with significant data quality errors is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and 40 C.F.R. Part 372.30.

Count 7

Failure to Maintain Complete Records at the Facility for Lead
for Calendar Years 2007, 2008 and 2009

46. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

47. Lead compounds were "manufactured, processed, or otherwise used" at the Respondent's facility in excess of the 100 pound threshold quantity during calendar years 2007, 2008 and 2009.

48. The Respondent failed to maintain records at the facility in violation of 40 C.F.R. 372.10. Specifically, Respondent failed to maintain records supporting the calculation or providing reasonable estimate of releases or off-site transfers of lead for calendar years 2007, 2008 and 2009.

49. Respondent's failure to maintain records at the facility for lead compounds for calendar years 2007, 2008 and 2009 are violations of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and 40 C.F.R. Part 372.30.

CONSENT AGREEMENT

50. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

51. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

52. Respondent neither admits nor denies the factual allegations and legal conclusions set forth above.

53. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CAFO.

54. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

55. This CAFO addresses all civil claims for the alleged EPCRA violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of EPCRA or other applicable law.

56. Respondent performed a voluntary audit of the information appearing in the 2010 EPCRA report. As a result of the audit, on March 2, 2012 Respondent filed updated forms for the 2010 reporting year. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 313 EPCRA, 42 U.S.C. § 11023, and all regulations promulgated thereunder.

57. The effect of settlement described in paragraph 55 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 56, above, of this CAFO.

58. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

59. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a

civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

60. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the CAFO and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of EPCRA, 42 U.S.C. § 11045, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Eighty Thousand Dollars (\$80,000) within thirty days of entry of this Final Order. Payments shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

United State Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

The payments shall reference docket number EPCRA-07-2012-0001.

2. Copies of the checks should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101

and to:

Kristen Nazar
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY


Date 3/30/12

By Becky Weber
Becky Weber
Director
Air and Waste Management Division

Date 3/29/2012

By Kristen Nazar
Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
COSMOFLEX, INC.

By 
Title President & CEO
Date 3/27/12

IT IS SO ORDERED. This Final Order shall become effective immediately.

Date April 2, 2012

By Robert L. Patrick
ROBERT L. PATRICK
Regional Judicial Officer

IN THE MATTER OF Cosmoflex, Inc., Respondent
Docket No. EPCRA-07-2012-0001

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Kristen Nazar
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Joe Koncelik
Frantz Ward LLP
127 Public Square, Suite 2500
Cleveland, Ohio 44114-1230

Dated: 4/2/12



Kathy Robinson
Hearing Clerk, Region 7