

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Karen McGuire 9/13/12
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number EPCRA-01-2012-0099

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Textile Rubber & Chemical Co.,
63 Water Street
Fall River, MA 02143

Total Dollar Amount of Receivable \$ 9,800 Due Date: 10/13/12

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1ST \$ _____ on _____
- 2nd \$ _____ on _____
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

_____ Phone Number

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

RECEIVED
SEP 13 2012
EPA ORC WS
Office of Regional Hearing Clerk

_____)
IN THE MATTER OF)
Textile Rubber & Chemical Co.,)
63 Water Street)
Fall River, MA 02143)
Respondent.)
Proceeding under Section 325(c) of Title III)
of the Superfund Amendments and)
Reauthorization Act, 42 U.S.C. § 11045(c))
_____)

Docket No: EPCRA-01-2012-99

**CONSENT AGREEMENT
AND FINAL ORDER**

Complainant, the United States Environmental Protection Agency (“EPA”), Region 1 (“Region 1”) and Textile Rubber & Chemical Co. (“Respondent”) enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent. By this CAFO, Respondent agrees to pay a civil penalty for alleged violations of Section 312(a) of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11022(a), and the federal regulations that set out in greater detail these statutory requirements, 40 C.F.R. Part 370.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). Complainant and Respondent (the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

NOW THEREFORE, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law, the Parties agree to comply with the terms of this CAFO.

II. Statutory and Regulatory Background

1. Under Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.12, 370.20, 370.40, 370.44, and 370.45, the owner or operator of any facility that is required to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act of 1970 (“OSHA”), and the hazard communication standards promulgated at 29 C.F.R. § 1910.1200(b)(1), must prepare and submit an emergency and hazardous chemical inventory form (“Tier I” or “Tier II” form) to the Local Emergency Planning Committee (“LEPC”), the State Emergency Response Commission (“SERC”), and the local fire department with jurisdiction over the facility for each hazardous chemical present at the facility at a quantity exceeding the applicable minimum threshold level set forth at 40 C.F.R. § 370.10(a). The Tier I or Tier II form must be submitted annually on or before March 1 and must contain chemical inventory information with respect to the preceding calendar year. Facilities in Massachusetts must submit Tier II forms instead of Tier I forms.

2. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, which was promulgated in accordance with the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, authorizes EPA to assess civil penalties for violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and regulations promulgated thereunder in amounts of up to \$37,500 per day for each violation that occurred after January 12, 2009.

III. General Allegations

3. Respondent is a corporation organized under the laws of Georgia with a principal place of business at 1400 Tiarco Drive, Dalton, Georgia.

4. As a corporation, Respondent is a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66 against whom a civil penalty may be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

5. Respondent is the operator of a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66, located at 63 Water Street, Fall River, Massachusetts (“the Facility”).

6. At the Facility, Respondent manufactures and markets latex compounds, adhesives and aqueous emulsions.

IV. EPCRA Violations

7. During the calendar year 2011, Respondent stored various chemicals at the Facility including, but not limited to, acrylic polymer emulsion, polychloroprene emulsion, styrene butadiene copolymer, vinylidene chloride emulsion and various latex compounds. These substances are considered “hazardous chemicals” under the OSHA, 29 U.S.C. §§ 651 *et seq.*, and in regulations promulgated thereunder at 29 C.F.R. § 1910.1200(c).

8. At all times relevant to the allegations cited herein, Respondent was required, pursuant to the OSHA and regulations promulgated thereunder, to prepare or have available on site an MSDS for each of these hazardous chemicals.

9. In accordance with 40 C.F.R. § 370.10(a), the minimum threshold level (“MTL”) for the purposes of EPCRA Sections 312 is 10,000 pounds for these hazardous chemicals.

10. At all times relevant to the allegations cited herein, Respondent stored these hazardous chemicals in quantities exceeding 10,000 pounds.

11. Accordingly, at all times relevant to the allegations herein, Respondent stored hazardous chemicals in quantities exceeding the corresponding MTL set forth in 40 C.F.R. § 370.10 at the Facility.

12. Respondent was therefore required by Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44 and 370.45 to prepare and submit a Tier II form containing information for these hazardous chemicals to the SERC, LEPC and the local fire department for calendar year 2011, by March 1 of the following year.

13. Based on an EPA inspection of the Facility on May 2, 2012, and other information provided by Respondent, Complainant determined that:

- a. Respondent did not include the hazardous chemicals referenced in paragraph 7 above in its Tier II form submitted for the calendar year 2011.
- b. Respondent's failure to prepare and submit complete Tier II forms on or before the reporting deadline of March 1st of 2012 for calendar year 2011 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44, and 370.45.
- c. Therefore, Respondent is subject to the assessment of civil penalties under Section 325(c) of EPRCA and the 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, in the amount of up to \$37,500 per day for each violation of Section 312(a) of EPRCA.

IV. Terms of Settlement

14. Respondent certifies that it has corrected the alleged violations cited in this CAFO and that it is now operating the Facility in compliance with Section 312(a) of EPCRA and the regulations promulgated thereunder.

15. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in herein and that the allegations in this CAFO state a claim upon which relief can be granted.

Respondent hereby waives any defenses it might have as to jurisdiction and venue.

16. Respondent waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth herein and waives its right to appeal the Final Order accompanying this Consent Agreement.

17. Without admitting or denying the allegations herein, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of a civil penalty for the purpose of settlement of this action.

18. This CAFO shall apply to and be binding upon Respondent and its officers, directors, agents, successors and assigns.

19. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and in light of the nature of the violations and other relevant factors, Complainant has determined that an appropriate civil penalty to settle this action is \$9,800.

20. Within thirty (30) days of the effective date of the Final Order, Respondent shall make payment in the amount of \$9,800 by cashier's or certified check, payable to "Treasurer, United States of America," with the title and docket number of the action ("In the Matter of Textile Rubber & Chemical Co., Inc., EPCRA-01-2012-99") noted on the check.

21. The check shall be mailed via regular U.S. Postal Service mail to:

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

22. Respondent shall simultaneously submit notice of payment of the civil penalty and copies of the check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: ORA18-1)
Boston, MA 02109-3912

and

Karen McGuire, Esq.
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES04-3)
Boston, MA 02109-3912

23. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based.

24. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that any partial payment of the civil penalty, plus interest thereon, is not paid when due without demand, the penalty plus accrued interest shall be payable with additional interest from the original due date to the date of payment, at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. §901.9(b)(2). In addition, a penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes

due and is not paid. See 31 C.F.R. § 901.9(d). In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

25. All penalties, interest, and charges payable pursuant to this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Respondent further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

26. The terms of this CAFO constitute a full settlement by EPA of all claims for civil penalties for the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, and local law. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Nothing in the CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. This CAFO does not operate as a waiver of any defenses in governmental or third party actions against the Respondent for matters not addressed in this CAFO.

27. Respondent shall bear its costs in connection with the action resolved by this CAFO, including attorney's fees. Respondent specifically waives any right to recover such costs from the Complainant pursuant to the Equal Access for Justice Act, 5 U.S.C. § 504, or other applicable laws.

28. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

29. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO shall be the date on which it is filed with the Regional Hearing Clerk.

For Respondent Textile Rubber & Chemical Co., Inc.



Date: 8/27/2012

Print Name: **FREDERICK H. HOWALT III**
Title: **PRESIDENT**

For Complainant U.S. EPA, Region 1



Date: 9/7/12

Joanna Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

V. **FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

Date: 9/13/12


for LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1

In the Matter of: Textile Rubber & Chemical Co., Inc.

Docket No. EPCRA-01-2012-0099

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Consent Agreement and Final Order to be sent to the following person(s), in the manner stated, on the date below:

Original and one copy,
By Hand Delivery:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

One copy, By Certified Mail,
Return Receipt Requested:

Frederick Howalt
President and CEO
Textile Rubber & Chemical Co, Inc.
1400 Tiarco Drive
Dalton, GA 30721

Dated: _____

9-13-12



Karen McGuire
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: OES04-3
Boston, MA 02109-3912
(617) 918-1711