

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

FILED

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U.S. EPA. REGION IX
REGIONAL HEARING CLERK

IN THE MATTER OF)

Valimet, Inc.,)

Respondent)

Docket No. EPCRA-09-2007- 0021

CIVIL COMPLAINT AND
NOTICE OF OPPORTUNITY
FOR HEARING UNDER
SECTION 325(c) OF THE
EMERGENCY PLANNING AND
COMMUNITY RIGHT TO
KNOW ACT

PRELIMINARY STATEMENT

APPLICABLE STATUTORY AND REGULATORY SECTIONS

1. This is a civil administrative action ("Complaint") 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 ("EPCRA"), for violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations promulgated to implement Section 313 at 40 C.F.R Part 372. The Administrator of the United States Environmental Protection Agency ("EPA") has delegated the authority to file this action under EPCRA to the Regional Administrator, Region IX, by EPA Delegation Order Number 22-3-A, dated May 11, 1994. The Regional Administrator, Region IX, has further delegated the authority to file this action under EPCRA to the Director of the Communities and Ecosystems Division by EPA Regional Order Number R1260.14B, dated May 19, 2005.

2. Complainant is the Director of the Communities and Ecosystems Division in EPA, Region IX, who has been duly delegated the authority to bring this action. Respondent is Valimet, Inc. This administrative action serves as notice that Complainant believes that Respondent violated Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations promulgated to implement Section 313 at 40 C.F.R Part 372.
3. Respondent is a Delaware registered corporation.
4. Respondent owns, operates and is wholly responsible for a place of business with an address at 431 Sperry Road, Stockton, California (the "Facility").
5. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule at 40 C.F.R. Part 372.
6. Sections 313(a) and (b) of EPCRA, as implemented by 40 C.F.R. §§ 372.22 and 372.30, provide that an owner or operator of a facility that meets the criteria set forth in EPCRA Section 313(b) and 40 C.F.R. § 372.22, is required to submit annually to the Administrator of EPA and to the State in which the facility is located, no later than July 1st of each year, a toxic chemical release inventory reporting form (hereinafter "Form R") for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed or otherwise used at the facility during the preceding calendar year in quantities exceeding the thresholds established under EPCRA Section 313(f) and 40 C.F.R. § 372.25.
7. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that the requirements of Section 313(a) and 40 C.F.R. § 372.30 apply to an owner and operator of a facility that

has 10 or more full-time employees; that is in a Standard Industrial Classification major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), 20 through 39; industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce), or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. §6921 *et seq.*), or 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); and that manufactures, processes, or otherwise uses one or more toxic chemicals listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of the applicable thresholds established under EPCRA Section 313(f) and 40 C.F.R. § 372.25.

8. The applicable thresholds for reporting established under EPCRA Section 313(f) and 40 C.F.R. § 372.25 are (i) 25,000 pounds of a regulated toxic chemical manufactured or processed for the year or (ii) 10,000 pounds of a regulated toxic chemical otherwise used for the calendar year.
9. Under 40 C.F.R. § 372.3, the term "process" means "the preparation of a toxic chemical, after its manufacture, for distribution in commerce."
10. Under 40 C.F.R. § 372.3, the term "manufacture" means to "produce, prepare, import, or compound a toxic chemical," which also applies to a toxic chemical "that is produced coincidentally during the manufacture, processing, use, or disposal of another chemical or mixture of chemicals."

C. ALLEGATIONS

11. Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C.

§ 11049(7) since it is a corporation.

12. At all times relevant to this Complaint, Respondent was an owner and 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. § 372.3.
13. At all times relevant to this CAFO, the Facility had 10 or more "full-time employees," as that term is defined at 40 C.F.R. § 372.3.
14. The Facility is classified in Standard Industrial Classification code 3399, which falls within the Standard Industrial Classification code 33.
15. The Facility produces high quality spherical metal powders, including aluminum, aluminum silicon, aluminum bronze, copper compounds, and other alloys.
16. Respondent produced aluminum and copper compound dust at the Facility during the times relevant to this Complaint.

Counts 1-5

17. Paragraphs 1 through 16 are realleged and incorporated herein by reference.
18. During calendar year 2001, the Facility processed around 4,316,000 pounds of aluminum.
19. During calendar year 2002, the Facility processed around 4,125,000 pounds of aluminum.
20. During calendar year 2003, the Facility processed around 3,910,000 pounds of aluminum.
21. During calendar year 2004, the Facility processed around 4,884,000 pounds of aluminum.
22. During calendar year 2005, the Facility processed around 2,985,000 pounds of aluminum.
23. Aluminum is a chemical listed under 40 C.F.R. § 372.65, CAS No. 7429-90-5.
24. The quantity of aluminum that Respondent processed at the Facility during calendar years 2001 through 2005 exceeded the established threshold of 25,000 pounds set forth at 40

C.F.R. § 372.25(b).

25. Respondent failed to submit a Form R for aluminum to the EPA Administrator and to the State of California on or before July 1, each year following the years of processing of aluminum set forth in Paragraphs 18 through 22.
26. Respondent's failure to submit a timely Form R for aluminum that Respondent processed at the Facility during calendar years 2001 through 2005 constitutes five violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

Counts 6-10

27. Paragraphs 1 through 16 are realleged and incorporated herein by reference.
28. During calendar year 2001, the Facility processed around 60,000 pounds of copper compounds.
29. During calendar year 2002, the Facility processed around 60,000 pounds of copper compounds.
30. During calendar year 2003, the Facility processed around 60,000 pounds of copper compounds.
31. During calendar year 2004, the Facility processed around 52,700 pounds of copper compounds.
32. During calendar year 2005, the Facility processed around 62,400 pounds of copper compounds.
33. Copper compounds is a chemical listed under 40 C.F.R. § 372.65, EPA chemical category code No. N100.

34. The quantity of copper compounds that Respondent processed at the Facility during calendar years 2001 through 2005 exceeded the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25(b).
35. Respondent failed to submit a Form R for copper compounds to the EPA Administrator and to the State of California on or before July 1, each year following the years of processing of copper compounds set forth in Paragraphs 28 through 32.
36. Respondent's failure to submit a timely Form R for copper compounds that Respondent processed at the Facility during calendar years 2001 through 2005 constitutes five violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

PROPOSED CIVIL PENALTY

Section 325(c) of EPCRA authorize the Administrator of the United States Environmental Protection Agency ("EPA") to assess a civil penalty not to exceed \$25,000 for each violation of Section 11023 of EPCRA, 42 U.S.C. § 11045(c). That statutory maximum civil penalty has subsequently been raised to \$27,500 for each violation that occurred on or after January 30, 1997, and \$32,500 for each violation for each violation that occurred on or after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing regulation, the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19.

Based upon the facts alleged in this Complaint, Complainant requests that the Administrator assess against the Respondent a civil administrative penalty of up \$27,500 for each violation of Section 313 of EPCRA that occurred before March 15, 2004 and up to \$32,500 for each violation of Section 313 of EPCRA that occurred on or after March 15, 2004.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

You have the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 et seq., 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. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

You must file a written Answer within thirty (30) days of receiving this Complaint to avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and to avoid having the above penalty assessed without further proceedings. If you choose to file an Answer, you are required by the Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint to which you have any knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny any of the allegations in this Complaint will constitute an admission of the undenied allegation.

The Answer shall also state the circumstances and arguments, if any, which are alleged to constitute the grounds of defense, and shall specifically request an administrative hearing, if desired. If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing.

The Answer must be filed with:

**Regional Hearing Clerk
USEPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105**

In addition, please send a copy of the Answer and all other documents filed in this action to:

**Ivan Lieben
Assistant Regional Counsel
Office of Regional Counsel (ORC-2)
USEPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105**

Mr. Lieben is the attorney assigned to represent EPA in this matter. His telephone number is (415) 972-3914.

You are further informed that the Consolidated Rules of Practice prohibit any **ex parte** (unilateral) discussion of the merits of any action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

INFORMAL SETTLEMENT CONFERENCE

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with EPA through Mr. Lieben, the EPA attorney assigned to this case, regarding the facts of this case, the amount of the proposed penalty, and the possibility of settlement. **An informal settlement conference does not, however, affect your obligation to file an Answer to this Complaint.**

ALTERNATIVE DISPUTE RESOLUTION

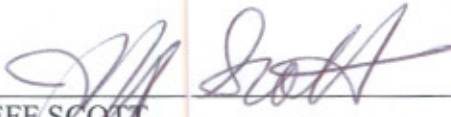
The parties also may engage in any process within the scope of the Alternative Dispute Resolution Act, 5 U.S.C. § 581 et seq., which may facilitate voluntary settlement efforts. Dispute resolution using alternative means of dispute resolution does not divest the Presiding Officer of jurisdiction nor does it automatically stay the proceeding.

CONSENT AGREEMENT AND FINAL ORDER

EPA has the authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference or through alternative dispute resolution. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by the parties would be binding as to all terms and conditions specified therein for the parties signing the Consent Agreement when the Regional Judicial Officer signs the Final Order.

DATE:

9/24/07



JEFF SCOTT
Acting Director
Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original and foregoing Complaint and Notice of Opportunity for Hearing, Docket Number EPCRA-09-2007-002¹, was filed today with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of:

- (1) the Complaint;
- (2) the Consolidated Rules of Practice, 40 C.F.R. Part 22; and
- (3) the Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-To-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (amended), dated April 12, 2001

were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

George Campbell
President
Valimet, Inc.
431 Sperry Road
Stockton, California 95206

Certified Return Receipt Article No: 7005 3110 0002 8247 1827

Dated:

Sept. 24, 2007

For

Danielle Carr

Regional Hearing Clerk
Office of Regional Council

United States Environmental Protection Agency

Steven Ramsey, Acting