

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

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MAY - 5 2009
Regional Hearing Clerk
EPA Region 6

IN THE MATTER OF:	§	
	§	
	§	DOCKET NO. EPCRA 06-2009-0515
BOLTEX, INC. MACHINE SHOP	§	
HOUSTON, TEXAS	§	COMPLAINT AND
	§	CONSENT AGREEMENT AND
	§	FINAL ORDER
RESPONDENT	§	
	§	

COMPLAINT AND
CONSENT AGREEMENT AND FINAL ORDER

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency, Region 6 ("EPA") as Complainant, and Boltex, Inc. Machine Shop located in Houston, Texas (hereinafter "Respondent"), in the above referenced action, have consented to the terms of this Complaint and Consent Agreement and Final Order ("Complaint" and "CAFO").

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this Consent Agreement and Final Order.

I.
PRELIMINARY STATEMENT

1. This enforcement proceeding is instituted by EPA pursuant to Section 325(c) Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § II045(c), (also known as the Emergency Planning and Community Right-to-Know Act of 1986, ["EPCRA"]) which authorizes the Administrator to bring an administrative action to assess a penalty of up to

\$25,000¹ for each violation of Section 313 of EPCRA, 42 V.S.c. § **11023** (relating to submission of toxic chemical release forms), This proceeding was instituted by the issuance of a Complaint and Notice of Opportunity for Hearing [hereinafter "Complaint"] incorporated herein.

2. The Complaint alleges Respondent violated regulations promulgated pursuant to the Act.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this Complaint; however, Respondent neither admits nor denies the specific factual allegations contained in this Complaint.

4. Respondent consents to the issuance of this CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

5. By signature on this Complaint and CAFO, Respondent waives any right to an appeal of this proceeding.

6. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

¹The Civil Penalty Inflation Adjustment Rule of December 31, 1996 (61 Fed. Reg. 69360) provides for ten percent (10%) increases in the statutory penalty provisions cited in the EPCRA § 313 Enforcement Response Policy (ERP), August 10, 1992. The ten percent (10%) increase is effective for violations which occur between the 1996 and the 2002 calendar years. The statutory maximum penalty for this time period is increased from \$25,000 to \$27,500. The Civil Penalty Inflation Adjustment Rule of February 13, 2004 (69 Fed. Reg. 7121) provides for a further increase in the statutory penalty provisions in the ERP by 17.23% for violations beginning with the 2003 calendar year. Violations of EPCRA § 313 for the 2003 calendar year, and thereafter, shall have the statutory maximum penalty increased from \$27,500 to \$32,500.

7, Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns, including, but not limited to, subsequent purchasers,

8, Respondent hereby certifies that, as of the date of its execution of this concurrent Complaint and CAFO, the Houston, Texas facility has corrected the violations alleged in the Complaint and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA and the regulations promulgated thereunder.

II.
STATUTORY AND REGULATORY BACKGROUND

9, Section 313 of EPCRA, and 40 C.F.R. §§ 372.22, 372.23, and 372.30, require the owner or operator of a facility that: (a) has 10 or more full-time employees; (b) is an establishment with a primary Standard Industrial Classification (SIC) major group or industry code listed in § 372.23(a), or a primary North American Industry Classification System (NAICS) subsector or industry code listed in § 372.23(b) or § 372.23(c); and c) "manufactures, processes, or otherwise uses" a toxic 313 chemical listed under subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA and 40 C.F.R. §§ 372.25 and 372.28 during the calendar year, to complete and submit a Toxic Chemical Release Inventory Form R to the Administrator or EPA and to the State in which the subject facility is located by July 1, for the preceding calendar year, for each toxic chemical known by the owner or operator to be "manufactured, processed, or otherwise used" in quantities exceeding the established threshold quantity during that preceding calendar year,

10. As set forth in Section 313(f) of EPCRA and 40 C.F.R. § 372.25, the reporting threshold amount for toxic chemicals "manufactured or processed" at a facility is 25,000 pounds for calendar years subsequent to and including 1989. The reporting threshold for a toxic chemical "otherwise used" at a facility is 10,000 pounds for calendar years subsequent to and including 1987. Thresholds for persistent bioaccumulative toxins (PBT's) are individually listed at 40 C.F.R., § 372.28.

III.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. Boltex, Inc, Machine Shop, is a corporation authorized to do business in the State of Texas. The Respondent's address at 13609 Industrial, Houston, Texas is a place of business for the Respondent.

12. Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

13. Respondent is the owner or operator of a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4),

14. Respondent's facility has 10 or more "full-time employees," as that term is defined by 40 C.F.R., § 372.3.

15. Respondent's facility is in covered NAICS Code 332919, other metal valve and pipe fitting manufacturing.

16. On or about January 14, 2009, Respondent consented to the inspection of the facility by a representative of the U.S. EPA, pursuant to Section 313 of EPCRA.

17, Respondent failed to accurately report manganese for calendar years 2003 - 2007. Manganese is a toxic chemicals within the meaning of 40 C.F.R. §§ 372.4 and 372.65.

18. During calendar years 2003-2007, the toxic chemical listed in Paragraph 17 of this Complaint and CAFO were either "manufactured, processed or otherwise used" as those terms are defined by Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.3, at Respondent's facility,

19. The toxic chemical listed in Paragraph 17 above, was used in excess of threshold quantities for the respective years, pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. §§ 372.25 and 372.28,

20, According to information supplied by Respondent, the facility failed to report manganese for calendar year 2003 - 2006 and reported less than one year late for calendar year 2007.

IV. **VIOLATIONS**

21. Respondent's late submission of the 2003-2007 Form R's for manganese constitutes a failure to timely report, a violation of 42 U.S.C. § 11023(a) and 40 C.F.R. § 372.30(d).

V. **CIVIL PENALTY AND TERMS OF SETTLEMENT**

22, For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), which authorizes EPA to assess a civil penalty of up to Twenty-Five Thousand Dollars (\$25,000) ² per

² *Ibid.*

day for each violation of EPCRA. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the nature, circumstances, extent and gravity of the alleged violations, and with respect to the Respondent, its culpability, history of prior EPCRA § 313 violations, and ability to continue in business, it is ORDERED that Respondent be assessed a civil penalty of **FIFTY-ONE THOUSAND TWO HUNDRED FIFTY DOLLARS AND NO CENTS (\$51,250).**

23. Within thirty (30) days of Respondent's receipt of this fully executed Complaint and CAFO, Respondent shall pay the assessed civil penalty by cashier's check or certified check, made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; or wire transfer. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

with a phone number of (314) 418-1028.

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental
Protection Agency"

As an alternative to the above methods of payment, EPA now has the flexibility to accept payment via credit cards and bank transfers over the internet. Visit www.pay.gov and see Attachment I for directions if remittance is to be made in this manner.

PLEASE NOTE: Docket number EPCRA 06-2009-0515 shall be clearly typed on the check to ensure proper credit. The check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and transmittal letter to the following:

Stan Lancaster
Toxics Section (6PD-T)
U,S, EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733;

and

Region 6 Hearing Clerk
U,S, EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

24. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action pursuant to EPCRA § 325(f), 42 U.S.c. § 11045(f), to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

25. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties or debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent shall pay the following amounts:

a. Interest. If EPA does not receive payment within thirty (30) days of the due date, and the Respondent cannot provide evidence that payment was properly sent, interest will accrue on the amount due from the due date at the current annual rate prescribed and published by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) and 4 C.F.R. § 102.13(c).

b. Handling Charge. Pursuant to 31 U.S.C. § 3717 (e)(1), a monthly handling charge of \$15.00 shall be paid if any portion of the assessed penalty is more than 30 days past due,

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of six (6) percent per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the day the underlying penalty first becomes past due. 40 C.F.R, §§ 102.13(d) and (e).

26. This document is a "Final Order" as that term is defined in 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), dated August 10, 1992, for the purpose of demonstrating a history of "prior such violations."

VI.
RETENTION OF ENFORCEMENT RIGHTS

27. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal laws, regulations, statutes, or permitting programs.

28. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA.

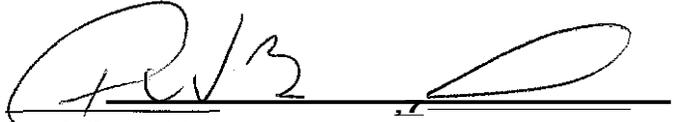
VII.
COSTS

29. Each party shall bear its own costs and attorneys fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

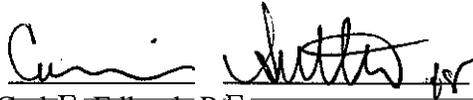
Date: 4-20-2009



Frank Bernobich
President
Boltex, Inc, Machine Shop
Houston, TX 77013

FOR THE COMPLAINANT:

Date: 4-24-09



Carl E. Edlund, P.E.
Director
Multimedia Planning and Permitting Division
U.S. EPA Region 6
Dallas, TX 75214

FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final **Order** shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.3 I(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated May 4, 2009

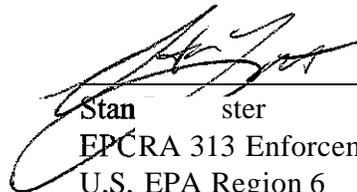
Michael C. Ba

CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of May, 2009, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order ("Complaint and CAFO") was hand delivered to the Regional Hearing Clerk, U,S, EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL RETURN RECEIPT REOUESTED # 7007 2560 0000 4611 4931

Frank Bemobich, President
Boltex, Inc, Machine Shop
4901 Oates Road
Houston, TX 77013



Stan Foster
EPCRA 313 Enforcement Officer
U,S, EPA Region 6
Dallas, Texas