

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

Received by  
EPA Region 1  
Hearing Clerk

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)  
In the Matter of )  
)  
Millard Wire Company, )  
)  
Respondent. )  
)  
Proceeding under Section 325(c) of the )  
Emergency Planning and Community )  
Right-to-Know Act, 42 U.S.C. § 11045(c) )  
And under Section 113(d) of the Clean Air )  
Act, 42 U.S.C. § 7413(d) )  
\_\_\_\_\_)

Docket Nos. CAA-01-2023-0016,  
EPCRA-01-2023-0017

**CONSENT AGREEMENT  
AND FINAL ORDER**

**CONSENT AGREEMENT**

The United States Environmental Protection Agency (“EPA”), Region 1 (“Complainant”), alleges that Millard Wire Company, d/b/a Millard Wire & Specialty Strip Company (“Respondent”), violated Sections 312 and 313 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11022 and 11023, and the federal regulations promulgated thereunder, and also violated Section 112(r)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7412(r)(1).

Complainant and Respondent (together, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), set out at 40 C.F.R. Part 22, Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

Therefore, before any hearing, and without adjudication of any issue of fact or law, the Parties agree to comply with the terms of this CAFO as follows:

**I. STATUTORY AND REGULATORY AUTHORITY**

**A. EPCRA Section 312**

1. Pursuant to Sections 312 and 328 of EPCRA, 42 U.S.C. §§ 11022 and 11048, EPA promulgated Hazardous Chemical Reporting: Community Right-to-Know regulations at 40 C.F.R. Part 370.

2. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), requires that owners or operators of facilities that are required to prepare or have available a material data safety sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act of 1970 (“OSHA”), and regulations promulgated thereunder, must prepare and submit an emergency and hazardous chemical inventory form (“Tier 1” or “Tier 2” form) to the local emergency planning committee (“LEPC”), the state emergency response commission (“SERC”), and the local fire department. Tier 1 or Tier 2 forms must be submitted annually, on or before March 1 of each year, and are required to contain information with respect to the preceding calendar year.

3. The term “MSDS” has been replaced by the term “safety data sheet” (“SDS”) in OSHA’s hazard communication regulations at 29 C.F.R. § 1910.1200.

4. Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), authorizes EPA to establish minimum threshold levels of hazardous chemicals for the purposes of reporting under EPCRA Section 312. In accordance with Section 312(b) of EPCRA, 40 C.F.R. § 370.10 establishes minimum threshold levels for hazardous chemicals for the purposes of 40 C.F.R. Part 370. For extremely hazardous substances, the minimum threshold level is 500 lbs. or the threshold planning quantity set forth in Appendices A and B of 40 C.F.R. Part 355, whichever is lower.

5. Under 40 C.F.R. §§ 370.20, 370.40, and 370.44, the owner or operator of a facility that has present a quantity of a hazardous chemical exceeding the minimum threshold level, as set forth in 40 C.F.R. § 370.10, must prepare and submit a Tier 1 or Tier 2 form to the LEPC, SERC, and local fire department. Forty C.F.R. § 370.45(a) requires that Tier 1 or Tier 2 forms be submitted annually on or before March 1 and contain information relating to the preceding calendar year. Forty C.F.R. § 370.40(b) allows the LEPC, SERC, or local fire department to request that a facility submit the more comprehensive Tier 2 form in lieu of the Tier 1 form. The State of Rhode Island requires the use of Tier 2 forms rather than Tier 1 forms.

**B. EPCRA Section 313**

6. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated Toxic Chemical Release Reporting: Community Right-to-Know regulations at 40 C.F.R. Part 372.

7. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), requires owners or operators of a facility subject to the requirements of Section 313(b) of EPCRA to submit annually, on or before July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, “TRI Form R”), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25 and 372.28. If an owner or operator determines that the alternative reporting threshold specified in 40 C.F.R. § 372.27 applies, the owner or operator may instead submit an alternative threshold certification statement that contains the information required under 40 C.F.R. § 372.95 (“TRI Form A”). Each TRI Form R or Form A (hereinafter, referred to together as “TRI Forms”) must be submitted to EPA and a designated state authority.

8. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. §§ 372.22 and 372.30 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification (“SIC”) code or North American Industry Classification System (“NAICS”) code set forth in 40 C.F.R. § 372.23; and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 in a quantity exceeding the established threshold during a calendar year, must submit TRI Forms to EPA and the state authority for each of these substances for that year.

9. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended through 2016 (“FCPIAA”), and the FCPIAA’s implementing regulations as promulgated and updated by EPA at 40 C.F.R. Part 19 (most recently at 88 Fed. Reg. 986, 989 (Jan. 6, 2023)), together authorize the assessment of civil administrative penalties of up to \$67,544 for each violation of Section 312 or 313 of EPCRA that occurs after November 2, 2015 and is assessed after January 5, 2023. Pursuant to Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day that an EPCRA Section 312 or 313 violation continues constitutes a separate violation.

**C. CAA Section 112(r)(1)**

10. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), states that the purpose of Section 112(r) of the CAA and its implementing regulations is “to prevent the accidental release and to minimize the consequences of any such release” of an “extremely hazardous substance.”

11. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to (a) identify hazards which may result from accidental releases of such substances using

appropriate hazard assessment techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases which do occur. This section of the CAA is referred to as the “General Duty Clause” or the “GDC.”

12. Section 112(r)(8), 42 U.S.C. § 7412(r)(8), of the CAA requires EPA to develop and disseminate information on how to conduct hazard assessments. According to EPA’s Guidance for Implementation of the GDC CAA Section 112(r)(1) (“EPA GDC Guidance,” May 2000), available at <https://www.epa.gov/sites/production/files/documents/gendutyclause-rpt.pdf>, the General Duty Clause’s duty to identify hazards that may result from hazardous releases should include determining: (a) the intrinsic hazards of the chemicals used in the processes; (b) the risks of accidental releases from the processes through possible release scenarios; and (c) the potential effect of these releases on the public and the environment. The document that contains this analysis is often referred to as a process hazard review.

13. The extremely hazardous substances listed pursuant to Section 112(r)(3) of the CAA include, among others, anhydrous ammonia.

14. The term “accidental release” is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

15. The term “stationary source” is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations, or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

16. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), the FCPIAA, and the FCPIAA’s implementing regulations as promulgated and updated by EPA at 40 C.F.R.

Part 19 (most recently at 88 Fed. Reg. 986, 989 (Jan. 6, 2023)), together provide for the assessment of civil administrative penalties of up to \$55,808 per day for violations of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r), that occur after November 2, 2015 and are assessed after January 5, 2023.

## II. GENERAL ALLEGATIONS

17. Respondent operates a custom metal wire and metal strip manufacturing and distribution facility at 449 Warwick Industrial Drive, Warwick, Rhode Island (the “Facility”).

18. At the Facility, Respondent re-rolls, cuts, and redraws copper-based and nickel-based alloys and other metals into coiled strips, flat strips, and round wires.

19. In these manufacturing processes, Respondent uses anhydrous ammonia to produce an oxygen-free environment for annealing (heat treating) metals. The anhydrous ammonia is stored in a tank outside the Facility. The anhydrous ammonia is piped from this tank into the Facility and then thermally “cracked” into hydrogen and nitrogen for use in the Facility’s annealing furnaces.

20. Respondent is a corporation organized under the laws of the State of Rhode Island.

21. Respondent is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66, and as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

22. Respondent operates a “facility,” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

23. The Facility has more than 10 “full-time employees,” as defined by 40 C.F.R. § 372.3.

24. The Facility is classified in a NAICS code set forth in 40 C.F.R. § 372.23.

25. During calendar years 2020 and 2021, the Facility “otherwise used” anhydrous ammonia in quantities greater than 10,000 pounds.

26. The EPCRA TRI reporting threshold set out at 40 C.F.R. § 372.25 for a facility that otherwise uses anhydrous ammonia is 10,000 pounds per year.

27. During calendar years 2020 and 2021, the Facility “processed” copper and nickel in quantities greater than 25,000 pounds for each substance.

28. The EPCRA TRI reporting threshold set out at 40 C.F.R. § 372.25 for a facility that processes copper and nickel is 25,000 pounds per year.

29. Accordingly, the requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, apply to Respondent at the Facility.

30. Respondent is the “owner or operator” of the Facility within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022.

31. At all times relevant to the violations alleged in this Complaint, Respondent was required, pursuant to OSHA and the regulations promulgated thereunder, to prepare or have available onsite an SDS for anhydrous ammonia.

32. During calendar years 2020 and 2021, Respondent stored anhydrous ammonia, a hazardous chemical, in a quantity that exceeded the minimum threshold level of 10,000 pounds for EPCRA Tier 2 reporting set forth in 40 C.F.R. § 370.10.

33. Accordingly, the requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, apply to the Facility.

34. The Facility is a building or structure from which an accidental release may occur and is therefore a “stationary source” as that term is defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

35. Respondent is the “owner or operator” of the Facility within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

36. Beginning from no later than March 1, 2018, the Facility has stored and handled anhydrous ammonia in its outdoor ammonia storage tank, piping, and indoor equipment.

37. Anhydrous ammonia is an “extremely hazardous substance” within the meaning of the General Duty Clause of Section 112(r)(1) of the CAA, 42 U.S.C. §7412(r)(1). Anhydrous ammonia is corrosive to the skin, eyes, and lungs, and is flammable at certain concentrations in the air. Exposure to 300 parts per million (ppm) is immediately dangerous to life and health.

38. The unanticipated emission of anhydrous ammonia into the ambient air from the Facility would constitute an “accidental release,” as that term is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

39. Accordingly, Respondent operates a stationary source that stores and handles anhydrous ammonia, an extremely hazardous substance, and is subject to the CAA’s General Duty Clause at Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

40. An EPA representative initially contacted Respondent on March 4, 2022, to request information about Respondent’s compliance with EPCRA Section 313. Respondent provided an initial response to EPA on June 7, 2022.

41. On July 13, 2022, two EPA inspectors conducted an inspection at the Facility with representatives of the Warwick Fire Department. The purposes of EPA’s inspection were to determine whether Respondents were complying with EPCRA and with Section 112(r) of the CAA.

### III. ALLEGED VIOLATIONS

#### **Count 1: Failure to Timely Submit TRI Form For Anhydrous Ammonia for Calendar Year 2020**

42. During calendar year 2020, Respondent otherwise used anhydrous ammonia, a toxic chemical listed under 40 C.F.R. § 372.65(a), at the Facility in quantities greater than the 10,000-pound threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25.

43. Respondent was therefore required to submit to EPA a TRI Form for anhydrous ammonia for calendar year 2020 on or before July 1, 2021. See Section 313(a) of EPCRA and 40 C.F.R. §§ 372.30 (a) and (d).

44. Respondent failed to submit a TRI Form for anhydrous ammonia for calendar year 2020 to EPA on or before July 1, 2021.

45. Respondent's failure to timely submit a TRI Form for anhydrous ammonia for calendar year 2020 violated Section 313 of EPCRA and 40 C.F.R. Part 372.

#### **Count 2: Failure to Timely Submit TRI Form For Anhydrous Ammonia for Calendar Year 2021**

46. During calendar year 2021, Respondent otherwise used anhydrous ammonia, a toxic chemical listed under 40 C.F.R. § 372.65(a), at the Facility in quantities greater than the 10,000-pound threshold amount established for EPCRA TRI reporting by 40 CFR § 372.25.

47. Respondent was therefore required to submit to EPA a TRI Form for anhydrous ammonia for calendar year 2021 on or before July 1, 2022. See Section 313(a) of EPCRA and 40 C.F.R. §§ 372.30 (a) and (d).

48. Respondent failed to submit a TRI Form for anhydrous ammonia for calendar year 2021 to EPA on or before July 1, 2022.

49. Respondent's failure to timely submit a TRI Form for anhydrous ammonia for calendar year 2021 violated Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 3: Failure to Timely Submit TRI Form  
For Copper for Calendar Year 2020**

50. During calendar year 2020, Respondent processed copper, a toxic chemical listed under 40 C.F.R. § 372.65(a), at the Facility in quantities greater than the 25,000-pound threshold amount established for EPCRA TRI reporting by 40 CFR § 372.25.

51. Respondent was therefore required to submit to EPA a TRI Form for copper for calendar year 2020 on or before July 1, 2021. See Section 313(a) of EPCRA and 40 C.F.R. §§ 372.30 (a) and (d).

52. Respondent failed to submit a TRI Form for copper for calendar year 2020 to EPA on or before July 1, 2021.

53. Respondent's failure to timely submit a TRI Form for copper for calendar year 2020 violated Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 4: Failure to Timely Submit TRI Form  
For Copper for Calendar Year 2021**

54. During calendar year 2021, Respondent processed copper, a toxic chemical listed under 40 C.F.R. § 372.65(a), at the Facility in quantities greater than the 25,000-pound threshold amount established for EPCRA TRI reporting by 40 CFR § 372.25.

55. Respondent was therefore required to submit to EPA a TRI Form for copper for calendar year 2021 on or before July 1, 2022. See Section 313(a) of EPCRA and 40 C.F.R. §§ 372.30 (a) and (d).

56. Respondent failed to submit a TRI Form for copper for calendar year 2021 to EPA on or before July 1, 2022.

57. Respondent's failure to timely submit a TRI Form for copper for calendar year 2021 violated Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 5: Failure to Timely Submit TRI Form  
For Nickel for Calendar Year 2020**

58. During calendar year 2020, Respondent processed nickel, a toxic chemical listed under 40 C.F.R. § 372.65(a), at the Facility in quantities greater than the 25,000-pound threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25.

59. Respondent was therefore required to submit to EPA a TRI Form for nickel for calendar year 2020 on or before July 1, 2021. See Section 313(a) of EPCRA and 40 C.F.R. §§ 372.30 (a) and (d).

60. Respondent failed to submit a TRI Form for nickel for calendar year 2020 to EPA on or before July 1, 2021.

61. Respondent's failure to timely submit a TRI Form for nickel for calendar year 2020 violated Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 6: Failure to Timely Submit TRI Form  
For Nickel for Calendar Year 2021**

62. During calendar year 2021, Respondent processed nickel, a toxic chemical listed under 40 C.F.R. § 372.65(a), at the Facility in quantities greater than the 25,000-pound threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25.

63. Respondent was therefore required to submit to EPA a TRI Form for nickel for calendar year 2021 on or before July 1, 2022. See Section 313(a) of EPCRA and 40 C.F.R. §§ 372.30 (a) and (d).

64. Respondent failed to submit a TRI Form for nickel for calendar year 2021 to EPA on or before July 1, 2022.

65. Respondent's failure to timely submit a TRI Form for nickel for calendar year 2021 violated Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 7: Failure to Timely Submit Tier 2 Reports  
For Anhydrous Ammonia for Calendar Year 2020**

66. In calendar year 2020, Respondent stored anhydrous ammonia, a “hazardous chemical” as defined under 40 C.F.R. § 370.66, at the Facility, in an amount equal to or in excess of the threshold level for that hazardous chemical set forth in 40 C.F.R. § 370.10.

67. Under 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, Respondent was required to prepare and submit a Tier 2 Form to the SERC, LEPC, and the local fire department with jurisdiction over the Facility in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), for calendar year 2020 by March 1, 2021.

68. Respondent failed to submit a Tier 2 form for calendar year 2020 by March 1, 2021.

69. Respondent’s failure to timely submit the Tier 2 Form for anhydrous ammonia for calendar year 2020 violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45.

**Count 8: Failure to Timely Submit Tier 2 Reports  
For Anhydrous Ammonia for Calendar Year 2021**

70. In calendar year 2021, Respondent stored anhydrous ammonia, a “hazardous chemical” as defined under 40 C.F.R. § 370.66, at the Facility, in an amount equal to or in excess of the threshold level for that hazardous chemical set forth in 40 C.F.R. § 370.10.

71. Under 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, Respondent was required to prepare and submit a Tier 2 Form to the SERC, LEPC, and the local fire department with jurisdiction over the Facility in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), for calendar year 2021 by March 1, 2022.

72. Respondent failed to submit a Tier 2 form for calendar year 2021 by March 1, 2022.

73. Respondent's failure to timely submit the Tier 2 Form for anhydrous ammonia for calendar year 2021 violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45.

**Count 9: Failure to Perform a Process Hazard Review**

74. Pursuant to the General Duty Clause in Section 112(r)(1) of the CAA, owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a general duty to identify hazards that may result from accidental releases of such substances, using appropriate hazard assessment techniques.

75. To identify hazards that may result from accidental releases of extremely hazardous substances under the General Duty Clause, owners and operators of stationary sources should determine: (a) the intrinsic hazards of the chemicals used in the processes; (b) the risks of accidental releases from the processes through possible release scenarios; and (c) the potential effect of these releases on the public and the environment, using appropriate hazard assessment techniques.

76. Beginning from no later than March 1, 2018, Respondent has stored, handled, and used anhydrous ammonia at the Facility.

77. Anhydrous ammonia is an "extremely hazardous substance" within the meaning of the General Duty Clause and is specifically included in a list of extremely hazardous substances in Section 112(r)(3) of the CAA.

78. Pursuant to the General Duty Clause, Respondent was required to identify hazards that may result from accidental releases of anhydrous ammonia by using appropriate, industry recognized hazard assessment techniques.

79. Prior to EPA's EPCRA and CAA Section 112(r) compliance inspection in July 2022, Respondent had not identified hazards that could result from accidental releases of

anhydrous ammonia at the Facility by using appropriate hazardous assessment techniques. Respondent subsequently provided EPA with a written process hazardous review for anhydrous ammonia in December 2022.

80. Respondent failed to properly identify hazards that may result from accidental releases of anhydrous ammonia and thereby violated the General Duty Clause at Section 112(r)(1) of the CAA.

#### **IV. TERMS OF SETTLEMENT**

81. Respondent certifies that it has corrected or addressed the alleged violations cited in Section III of the CAFO regarding Sections 313 and 312 of EPCRA, 42 U.S.C. §§ 11023 and 11022, and the regulations promulgated thereunder at 40 C.F.R. Part 372 and 370, and the General Duty Clause of Section 112(r)(1) of CAA, 42 U.S.C. § 7412(r)(1), and will operate its Facility in compliance with these statutory and regulatory provisions.

82. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. Admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. Neither admits nor denies the specific factual allegations contained in this CAFO;
- c. Consents to the assessment of a civil penalty as stated below;
- d. Consents to the issuance of any specified compliance or corrective action order;
- e. Consents to the conditions specified in this CAFO;
- f. Consents to any stated permit action;

- g. Waives any right to contest the alleged violations of law set forth in Section III of this CAFO; and
  - h. Waives its right to appeal the Final Order accompanying this Consent Agreement.
83. For the purpose of this proceeding, Respondent also:
- a. Agrees that this CAFO states a claim upon which relief can be granted against Respondent;
  - b. Acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
  - c. Waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO;
  - d. Consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the District of Rhode Island; and
  - e. Waives any rights Respondent may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO and to seek an additional penalty for such noncompliance and agrees that federal law shall govern in any such civil action.

84. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and Section 113(d) of the CAA, 42 U.S.C. §7413(d), and taking into account the particular facts and circumstances of this case with reference to relevant statutory penalty criteria and applicable penalty policies,

Complainant has determined that it is fair and proper that Respondent pay a total civil penalty in the amount of \$170,261 to resolve the violations alleged in Section III of this CAFO.

85. Respondent agrees to:

- a. Pay the civil penalty of \$170,261 within 30 calendar days of the effective date of this CAFO (*i.e.*, the day the CAFO is filed with the Regional Hearing Clerk);
- b. Pay the civil penalty using any appropriate method provided on the website <https://www.epa.gov/financial/makepayment>, identifying the payment with “*In the Matter of Millard Wire Company*, Docket Nos. CAA-01-2023-0016, EPCRA-01-2023-0017”; and
- c. Within 24 hours of payment of the civil penalty, send proof of payment by email to the addresses below. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with “*In the Matter of Millard Wire Company*, Docket Nos. CAA-01-2023-0016, EPCRA-01-2023-0017”. The addresses are as follows:

Wanda Santiago  
Regional Hearing Clerk  
EPA Region 1  
[santiago.wanda@epa.gov](mailto:santiago.wanda@epa.gov)  
and  
[R1\\_Hearing\\_Clerk\\_Filings@epa.gov](mailto:R1_Hearing_Clerk_Filings@epa.gov)

and

Megan Edwards  
Enforcement Counsel  
EPA Region 1  
[edwards.megan@epa.gov](mailto:edwards.megan@epa.gov)

86. 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.

87. If any portion of the civil penalty amount relating to the alleged EPCRA violations (which shall be deemed to be \$102,271) is not paid when due, then the unpaid penalty shall be payable with accrued interest from the original due date to the date of payment. The interest shall be calculated at the rate established in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due, with the charge assessed from the first day that payment is due in accordance with 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

88. If any portion of the civil penalty amount relating to the alleged CAA violations (which shall be deemed to be \$67,990) is not paid when due, then pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), Respondent will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid within thirty (30) calendar days of the effective date of this CAFO. In that event, interest will accrue from the effective date of this CAFO at the “underpayment rate” established pursuant to 26 U.S.C. § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States’ enforcement expenses, including attorneys’ fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent’s outstanding

civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

89. The civil penalty under this CAFO, and any interest, nonpayment penalties, and other charges paid pursuant to any penalty collection action arising from this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and shall not be deductible for purposes of federal, state, or local taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

90. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and Section 113(d) of the CAA, 42 U.S.C. § 7413 (d), for the violations specifically alleged in Section III of this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public or the environment.

91. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent is in violation of this CAFO or continues to be in violation of the statutes and regulations upon which the

allegations in this CAFO are based, or if Respondent violates any other applicable provision of federal, state, or local law.

92. Each of the undersigned representatives of the Parties certifies that he or she is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that Party to it.

93. Complainant and Respondent, by entering into this CAFO, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the full executed CAFO, by electronic mail, to the following address: dlacroixjr@millardwire.com. Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database. Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing Order, dated June 19, 2020. Electronic signatures shall comply with and be maintained in accordance with that Order.

94. Except as qualified by Paragraphs 86 to 88 above, each Party shall bear its own costs and fees (including attorneys' fees) in this proceeding and specifically waives any right to recover such costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

95. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and approval of the Regional Judicial Officer.

96. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed, either in person or electronically via email, with the Regional Hearing Clerk.

FOR RESPONDENT:

Daniel R LaCroix jr. Digitally signed by Daniel R LaCroix jr.  
Date: 2023.06.21 10:30:06 -04'00'

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Daniel R. LaCroix, Jr.  
Vice President, Millard Wire Company  
Millard Wire Company

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Date

FOR COMPLAINANT:

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James Chow, Acting Director  
Enforcement and Compliance Assurance Division  
EPA Region 1

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Date

**FINAL ORDER**

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the Consolidated Rules, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent Millard Wire Company is ordered to pay the civil penalty amount specified in the Consent Agreement in the manner indicated therein. The terms of the CAFO shall become effective on the date that it is filed, either in person or electronically via email, with the Regional Hearing Clerk.

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LeAnn Jensen  
Regional Judicial Officer  
EPA Region 1

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Date