

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

Docket No. EPCRA-03-2011-0237

**ABB Inc.
12040 Regency Parkway
Cary, NC 27518**

Respondent

CONSENT AGREEMENT

**ABB Inc.
171 Industry Drive
Bland, VA 24315**

Facility

**Proceeding under
EPCRA § 325(c),
42 U.S.C. § 11045(c)**

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CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and ABB Inc. ("Respondent") pursuant to Sections 313 and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11023 and 11045(c), the regulations implementing EPCRA Section 313, as set forth at 40 C.F.R. Part 372, 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. Pursuant to 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO") simultaneously commence and conclude this proceeding to resolve violations of EPCRA § 313, as alleged herein, by Respondent at its facility located 171 Industry Drive in Bland, Virginia.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.
3. Respondent agrees not to contest the jurisdiction of the U.S. Environmental Protection Agency ("EPA") with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

4. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees.

Findings of Fact and Conclusions of Law

7. Respondent does business in the Commonwealth of Virginia and is a corporation organized under the laws of the State of Delaware.
8. As a Delaware corporation, Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
9. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures, and other stationary items that are located on a single site and that are owned or operated by the same person.
10. Respondent owns and operates, and at the time of the violations alleged herein, owned and operated a manufacturing plant for Dry and Cast, Small Power Transformers located at 171 Industry Drive, Bland Virginia (the "Facility").
11. Respondent's Facility is a "facility" as defined in Section 329(4) of EPCRA and 40 C.F.R. § 372.3.
12. Section 313 of EPCRA and 40 C.F.R. Part 372 require, *inter alia*, that the owner or operator of a facility that:
 - a) has 10 or more employees;
 - b) has a primary Standard Industrial Classification ("SIC") Code of 20 [2000] through 39 [3900] (as in effect on July 1, 1985), or, starting January 1, 1998, has an SIC code in one or more of the following categories:
 - i. between 1000 and 1099, except 1011, 1081, and 1094;
 - ii. between 1200 and 1299, except 1241;
 - iii. 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce);
 - iv. 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. §§ 6921-6939e);

- v. 5169 or 5171;
 - vi. 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); and
- c) manufactured, processed or otherwise used a toxic chemical listed in 40 C.F.R. § 372.65, in excess of the threshold quantities established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form is required, must submit a completed toxic chemical release reporting form ("Form R") or appropriate alternative threshold report ("Form A") for each such toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year.
13. At the times of the violations alleged herein, Respondent employed 10 or more full-time employees at the Facility.
 14. At the times of the violations alleged herein, the Facility's SIC code was 3612. This SIC code falls between the primary SIC codes of 20 (2000) and 39 (3900) (as in effect on July 1, 1985).
 15. For each toxic chemical listed in 40 C.F.R. § 372.65 manufactured, processed, or otherwise used by Respondent at the Facility in excess of the threshold quantity set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25(a) during any calendar year, Respondent has been required by EPCRA § 313, at all times relevant to this Consent Agreement, to complete and submit to EPA and the Commonwealth of Virginia by July 1 of the following calendar year a Form R pursuant to 40 C.F.R. § 372.30.
 16. The chemical substance "manganese" is a toxic chemical as defined in EPCRA § 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
 17. The chemical substances "zinc compounds" are toxic chemicals as defined in EPCRA § 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
 18. The chemical substance "copper" is a toxic chemical as defined in EPCRA § 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
 19. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA § 313 shall be liable to the United States for a civil penalty.
- COUNT I
20. The allegations of Paragraphs 1 through 19 of this Consent Agreement are incorporated herein by reference.
 21. During calendar year 2007, Respondent processed more than 25,000 pounds of manganese.

Such amount exceeded the threshold quantities for reporting for the processing of manganese as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25(a).

22. Pursuant to EPCRA § 313, Respondent was required to submit to EPA and the Commonwealth of Virginia, by July 1, 2008, a completed Form R to report its releases of manganese at the Facility during 2007.
23. On or about January 25, 2010, Respondent submitted to EPA and the Commonwealth of Virginia a completed Form R to report the manganese processed at the Facility during the 2007 calendar year, after the aforesaid July 1, 2008 deadline.
24. Respondent's failure to submit to EPA and the Commonwealth of Virginia, by July 1, 2008, a completed Form R for the manganese processed at the Facility during the 2007 calendar year constitutes a violation of Section 313 of EPCRA, for which Respondent is liable for civil penalties pursuant to EPCRA Section 325(c).

COUNT II

25. The allegations of Paragraphs 1 through 24 of this Consent Agreement are incorporated herein by reference.
26. During calendar year 2008, Respondent processed more than 25,000 pounds of manganese. Such amount exceeded the threshold quantities for reporting for processing of manganese as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25(a).
27. Pursuant to EPCRA § 313, Respondent was required to submit to EPA and the Commonwealth of Virginia, by July 1, 2009, a completed Form R to report its releases of manganese at the Facility during 2008.
28. On or about January 25, 2010, Respondent submitted to EPA and the Commonwealth of Virginia a completed Form R to report the manganese processed at the Facility during the 2008 calendar year, after the aforesaid July 1, 2009 deadline.
29. Respondent's failure to submit to EPA and the Commonwealth of Virginia, by July 1, 2009, a completed Form R to report its releases of manganese at the Facility during 2008 constitutes a violation of Section 313 of EPCRA, for which Respondent is liable for civil penalties pursuant to EPCRA § 325(c).

COUNT III

30. The allegations of Paragraphs 1 through 29 of this Consent Agreement are incorporated herein by reference.
31. During calendar year 2007, Respondent processed more than 25,000 pounds of zinc compounds. Such amount exceeded the threshold quantities for reporting for processing of zinc compounds as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25(a).

32. Pursuant to EPCRA § 313, Respondent was required to submit to EPA and the Commonwealth of Virginia, by July 1, 2008, a completed Form R to report its releases of zinc compounds at the Facility during 2007.
33. On or about January 25, 2010, Respondent submitted to EPA and the Commonwealth of Virginia a completed Form R to report the zinc compounds processed at the Facility during the 2007 calendar year, after the aforesaid July 1, 2008 deadline.
34. Respondent's failure to submit to EPA and the Commonwealth of Virginia, by July 1, 2008, a completed Form R for the zinc compounds processed at the Facility during the 2007 calendar year constitutes a violation of Section 313 of EPCRA, for which Respondent is liable for civil penalties pursuant to EPCRA Section 325(c).

COUNT IV

35. The allegations of Paragraphs 1 through 34 of this Consent Agreement are incorporated herein by reference.
36. During calendar year 2008, Respondent processed more than 25,000 pounds of zinc compounds. Such amount exceeded the threshold quantities for reporting for processing of zinc compounds as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25(a).
37. Pursuant to EPCRA § 313, Respondent was required to submit to EPA and the Commonwealth of Virginia, by July 1, 2009, a completed Form R to report its releases of zinc compounds at the Facility during 2008.
38. On or about January 25, 2010, Respondent submitted to EPA Commonwealth of Virginia a completed Form R to report the zinc compounds processed at the Facility during the 2008 calendar year, after the aforesaid July 1, 2009 deadline.
39. Respondent's failure to submit to EPA and the Commonwealth of Virginia, by July 1, 2009, a completed Form R for the zinc compounds processed at the Facility during the 2008 calendar year constitutes a violation of Section 313 of EPCRA, for which Respondent is liable for civil penalties pursuant to EPCRA Section 325(c).

COUNT V

40. The allegations of Paragraphs 1 through 39 of this Consent Agreement are incorporated herein by reference.
41. During calendar year 2008, Respondent processed more than 25,000 pounds of copper. Such amount exceeded the threshold quantity for reporting for processing of copper set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and § 40 C.F.R. § 372.25(a).
42. Pursuant to EPCRA § 313, Respondent was required to submit to EPA and the

Commonwealth of Virginia, by July 1, 2009, a completed Form R to report its releases of copper at the Facility during 2008.

43. On or about January 25, 2010, Respondent submitted to EPA and the Commonwealth of Virginia a completed Form R to report the copper processed at the Facility during the 2008 calendar year, after the aforesaid July 1, 2009 reporting deadline.
44. Respondent's failure to submit to EPA and the Commonwealth of Virginia, by July 1, 2009, a completed Form R for the copper processed at the Facility during the 2008 calendar year constitutes a violation of Section 313 of EPCRA, for which Respondent is liable for civil penalties pursuant to EPCRA Section 325(c).

Civil Penalty

45. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Seventy-four Thousand, One Hundred Forty Dollars (\$74,140.00)**, which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by the parties, signed by the Regional Administrator or the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
46. The aforesaid settlement amount is based upon Complainant's consideration of the facts and circumstances of this case and the penalty criteria set forth in EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (August 1, 1992), *as amended*. Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19. The settlement in this proceeding is consistent with the provisions and objectives of EPCRA § 313 and 40 C.F.R. Part 372.
47. Payment of the civil penalty amount assessed in paragraph 45, above, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:
 - A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, EPCRA-03-2011-0237;
 - B. All checks shall be made payable to "**United States Treasury**";
 - C. All payments made by check and sent by U.S Postal Service regular mail shall be addressed to:

US Environmental Protection Agency

Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The customer service contact for this address may be reached at 513-487-2105

- D. All payments made by check and sent by UPS, FedEx, or overnight mail delivery service (except as noted in section c, below) shall be addressed to:

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

The U.S. Bank customer service contact for overnight delivery is 314-418-1028.

- E. All payments made by check in any currency drawn on banks with no branches in the United States shall be addressed for delivery to the following address:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- F. All payments made by electronic funds transfer ("EFT") shall be directed to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 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"

The Federal Reserve customer service contact may be reached at 212-720-5000.

- G. All electronic payments made through the Automated Clearinghouse ("ACH"),

also known as Remittance Express ("REX"), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Customer service contact: John Schmid, at 202-874-7026, or REX at 1-866-234-5681

H. On-line payment option

WWW.PAY.GOV

Enter "sfo 1.1" in the search field. Open and complete the form.

I. Additional payment guidance is available at:

J. http://www.epa.gov/ocfo/finservices/payment_instructions.htm

48. All payments by Respondent shall include Respondent's full name and address and the EPA Docket Number of this Consent Agreement (TSCA-03-2011-0237).

49. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Jeffrey S. Nast
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

50. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to

cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

51. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
52. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Chapter 9, *Receivables and Billings*, of EPA's *Resource Management Directives System* (No. 2540-09), EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
53. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent for more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
54. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Certifications

55. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Facility referred to in this Consent Agreement is currently in compliance with all applicable requirements of EPCRA § 313.

Other Applicable Laws

56. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

57. This Consent Agreement and the accompanying Final Order resolve only EPA's civil claims for the specific violation of EPCRA § 313 alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment

to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Scope of Settlement

58. The settlement set forth in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violation alleged herein. Compliance with the CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

59. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents, and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

Effective Date

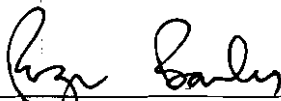
60. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA - Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

61. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violation alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.


For Respondent:

Date: 8/24/11

By: 
Roger Bailey
Senior Vice President
Power Products North America, ABB, Inc.

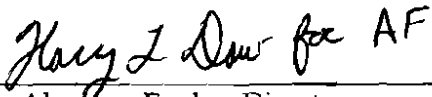
For Complainant:

Date: 9/13/2011

By: 
Jeffrey S. Nast
Senior Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 9/16/2011

By: 
Abramam Ferdas, Director
Land and Chemicals Division

CERTIFICATE OF SERVICE

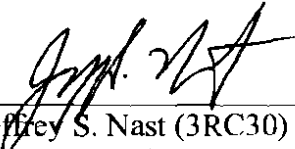
I hereby certify that the original and one copy of the Consent Agreement/Final Order, Docket No. EPCRA-03-2011-0237, and associated enclosures, have been hand delivered and filed with the EPA Region III Regional Hearing Clerk on the date below, and that copies of the same were sent via UPS expedited delivery to the following:

Diane W. Whitney, Esq.
Pullman & Comley LLC
90 State House Square
Hartford, CT 06103-3702

and

Roger Bailey
Senior Vice President
Power Products North America, ABB, Inc.
12040 Regency Parkway
Cary, NC 27518

9/22/11
Date



Jeffrey S. Nast (3RC30)
Sr. Asst. Regional Counsel
U.S. EPA , Region III
(215) 814-2652