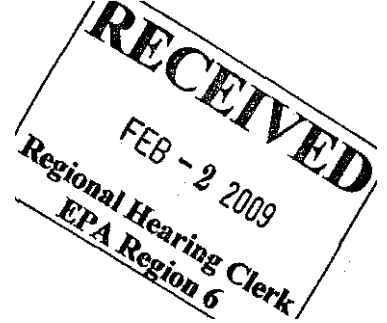


UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS



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<b>IN THE MATTER OF:</b>	§	
	§	
	§	<b>DOCKET NO. EPCRA 06-2009-0506</b>
<b>MABRY CASTINGS, LTD.</b>	§	
<b>BEAUMONT, TEXAS</b>	§	
	§	
	§	<b>COMPLAINT AND</b>
	§	<b>CONSENT AGREEMENT AND</b>
	§	<b>FINAL ORDER</b>
<b>RESPONDENT</b>	§	
	§	

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**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 Mabry Castings, Limited, located in Beaumont, 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. § 11045(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 \$25,000<sup>1</sup> for each violation of Section 313 of EPCRA, 42 U.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 EPCRA.

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.

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<sup>1</sup>The 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.**

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,

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,

## **II. STATUTORY AND REGULATORY BACKGROUND**

8. 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 of 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.

9, 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 (PBTs) are individually listed at 40 C.F.R. § 372.28,

**III.**  
**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

10, Mabry Castings, Ltd" is a corporation authorized to do business in the State of Texas, The Respondent's principal place of business is located at 6531 Industrial Road, Beaumont, Texas,

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

12, 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),

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

14, Respondent's facility is in covered NAICS Code 331511, iron foundries,

15, In correspondence with Respondent, dated December 29,2008, Respondent was notified of alleged non-reporting and late reporting violations to the Toxic Release Inventory, pursuant to Section 313 of EPCRA,

16, For calendar years 2005, Respondent failed to report copper. For calendar year 2007, Respondent was 84 days late in reporting copper. Copper is a toxic chemical within the meaning of 40 C.F.R, §§ 372.4 and 372.65,

17. During calendar years 2005 and 2007, copper was 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,

18, Copper was processed 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,

19, According to information obtained from the TRI database and confirmed by Respondent, copper was not reported by the respective due dates for calendar years 2005 and 2007,

#### **IV.** **VIOLATIONS**

20, Respondent's late submissions of the 2005 and 2007 Form Rs for copper, by the applicable due dates, 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**

21. 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 )<sup>2</sup> per 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 **FOUR THOUSAND FOUR HUNDRED DOLLARS AND NO CENTS (\$4,400).**

22. Within thirty (30) days of Respondent's receipt of this fully executed Complaint and CAFO, Respondent shall pay the first of four (4) consecutive quarterly installments of **\$1,100**, or twenty-five percent (25%) of the fully-assessed civil penalty of \$4,400, 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 checks should be remitted to:

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<sup>2</sup> *Ibid.*

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](http://www.pay.gov) and see

**Attachment 1** for directions if remittance is to be made in this manner.

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**PLEASE NOTE: Docket number EPCRA 06-2009-0506 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:

David Riley  
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

<u>DUE DATE</u>	<u>INSTALLMENT</u>	<u>PAYMENT</u>	<u>TOTAL PAID</u>
March 4, 2009	1 <sup>st</sup> (initial)	\$1,100	\$1,100
June 4, 2009	2 <sup>nd</sup>	\$1,100	\$2,200
September 4, 2009	3 <sup>rd</sup>	\$1,100	\$3,300
December 4, 2009	4 <sup>th</sup>	\$1,100	\$4,400

23. If Respondent fails to submit the first 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.



24. 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 a 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)(I) and 4 C.F.R. § 102.13(c).

h. Handling Charge. Pursuant to 31 U.S.C. § 3717 (e)(I), 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).

25. The provisions of this CAFO shall be binding on Respondent, its officers, directors, agents, servants, authorized representatives, employees, successors, and assigns.

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: JAN. ED, 2009



Eddie Hall  
Operations Manager  
Mabry Castings, Ltd.  
Beawmont, Texas

FOR THE COMPLAINANT:

Date: 23 January 2009



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

FINAL ORDER

Pursuant to Section 32S(c) of EPCRA, 42 U.S.C. § 1104S(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. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk,

Dated January 30, 2009

Michael C. Ba

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of February '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 REQUESTED # 7008 0150 0003 4923 0682**

Eddie Hall  
Operations Manager  
Mabry Castings, Limited  
P.O, Box 21777  
Beaumont, Texas 77720-0777



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David Riley  
EPCRA 313 Enforcement Officer  
U.S. EPA Region 6  
Dallas, Texas