

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2
2015 MAY 18 PM 2: 02

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In the Matter of :
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Cummins Inc. Jamestown Engine Plant :
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Respondent. :
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:
Proceeding under Section 325(c) of Title III :
of the Superfund Amendments and Reauthorization Act :
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REGIONAL HEARING
CLERK
CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET NUMBER
EPCRA-02-2015-0801

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was 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 (hereinafter, "EPCRA")].

Pursuant to 40 C.F.R. § 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (40 C.F.R. Part 22 (July 1, 2000)) where the parties agree to settlement of one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance the United States Environmental Protection Agency, Region 2, ("EPA" or "Complainant") alleges that Cummins Inc. Jamestown Engine Plant ("Cummins Inc." or "Respondent") located at 4720 Baker St. Extension, Lakewood, (County: Chautauqua) New York 14750 violated the requirements of Section 313 of EPCRA (42 U.S.C. § 11023) and the regulations promulgated pursuant to that Section, codified at 40 C.F.R. Part 372.

Under Section 313 of EPCRA and 40 C.F.R. § 372.22, an owner or operator of a facility subject to the requirements of Section 313 is required to submit annually, no later than July 1 of each year, a complete and correct Toxic Chemical Release Inventory Reporting Form R report, EPA Form 9350-1 (hereinafter "TRI Form R report"), for each toxic chemical listed under 40 C.F.R. § 372.65 and/or 40 C.F.R. § 372.28 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. Each required TRI Form R report must be submitted to the Regional Administrator of the Environmental Protection Agency and to the State in which the subject facility is located.

As an alternative to the requirements set forth above, pursuant to Section 313(f)(2) of EPCRA (42 U.S.C. § 11023(f)(2)) and 40 C.F.R. § 372.27, an owner or operator of a facility subject to the requirements of Section 313(b) with respect to the "manufacture, process or otherwise use" of a toxic chemical may apply an alternate threshold of one million (1,000,000) pounds per year to that chemical if the conditions set forth in 40 C.F.R. § 372.27(a) are met. If the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators, in lieu of filing a TRI Form R report, therefore, may submit an "Alternate Threshold Certification Statement" ("TRI Form A report") pursuant to 40 C.F.R. § 372.27(b). Pursuant to 40 C.F.R. § 372.27(e), EPA has excluded the Persistent Bioaccumulative Toxic Chemicals listed in 40 C.F.R. § 372.28 from eligibility for the Alternate Thresholds described in 40 C.F.R. § 372.27(a). [59 FR 61502, Nov. 30, 1994, as amended at 64 FR 58750, Oct. 29, 1999; as amended at 71 FR 76944, Dec. 22, 2006; as amended at 74 FR 19005, Apr. 27, 2009]

EPA and Cummins Inc. agree that settling this matter by entering into this CAFO, pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. § 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated Findings of Fact or Conclusions of Law have been made. The following constitutes EPA's Findings of Fact and Conclusions of Law based upon information EPA obtained through November 4, 2014 subsequent to a letter of voluntary self-disclosure under the Audit Policy dated July 11, 2014.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. Respondent is Cummins Inc. Jamestown Engine Plant (TRI Facility ID.: 14750CMMNS4720B).
2. At all times relevant hereto, Respondent has maintained a facility located at 4720 Baker St. Extension, Lakewood, New York 14750, (County: Chautauqua) which is the subject of this CAFO (hereinafter, "Respondent's facility").
3. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. § 11049(7)).
4. Respondent is an owner of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. § 11049(4)) and by 40 C.F.R. § 372.3.
5. Respondent is an operator of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. § 11049(4)) and by 40 C.F.R. § 372.3.
6. Respondent's facility has ten (10) or more "full time employees" as that term is defined by 40 C.F.R. § 372.3.
7. Respondent's facility is in North American Industry Classification System ("NAICS") code 333618311513 (Other Engine Equipment Manufacturing).
8. Respondent's facility is subject to the requirements of Section 313(b) of EPCRA (42 U.S.C. § 11023(b)) and 40 C.F.R. § 372.22.
9. Zinc compounds is a listed chemical category under 40 C.F. R. § 372.65.
10. Respondent was required to submit a timely, complete and correct TRI Form R report for zinc compounds for calendar year 2012 on or before July 1, 2013 to the Administrator of the EPA and to the State of New York.
11. Respondent was required to submit a timely, complete and correct TRI Form R report for zinc compounds for calendar year 2011 on or before July 1, 2012 to the Administrator of the EPA and to the State of New York.
12. Respondent was required to submit a timely, complete and correct TRI Form R report for zinc compounds for calendar year 2010 on or before July 1, 2011 to the Administrator of the EPA and to the State of New York.
13. Respondent submitted the required TRI Form R reports for zinc compounds for calendar years 2012, 2011 and 2010 on August 21, 2014.

14. Sec-butyl alcohol is a listed chemical under 40 C.F.R. § 372.65.
15. Respondent was required to submit a timely, complete and correct TRI Form R report for sec-butyl alcohol for calendar year 2012 on or before July 1, 2013 to the Administrator of the EPA and to the State of New York.
16. Respondent submitted the required TRI Form R report for sec-butyl alcohol for calendar year 2012 on August 21, 2014.
17. Certain glycol ethers is a listed chemical category under 40 C.F.R. § 372.65.
18. Respondent was required to submit a timely, complete and correct TRI Form R report for certain glycol ethers for calendar year 2012 on or before July 1, 2013 to the Administrator of the EPA and to the State of New York.
19. Respondent was required to submit a timely, complete and correct TRI Form R report for certain glycol ethers for calendar year 2011 on or before July 1, 2012 to the Administrator of the EPA and to the State of New York.
20. Respondent was required to submit a timely, complete and correct TRI Form R report for certain glycol ethers for calendar year 2010 on or before July 1, 2011 to the Administrator of the EPA and to the State of New York.
21. Respondent submitted the required TRI Form R reports for certain glycol ethers for calendar years 2012, 2011 and 2010 on August 21, 2014.
22. Each of Respondent's failures to submit to the EPA a timely TRI Form R report as described in paragraphs 9 through 21 above, constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 325(c) of EPCRA, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc., 40 C.F.R. § 22.18 (hereinafter, "Consolidated Rules"), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees, as follows:

1. Respondent certifies herein that any and all EPA Toxic Chemical Release Inventory Forms submitted for the above-described violations comply with the requirements of Section 313 of EPCRA and the regulations set forth at 40 C.F.R. Part 372.

2. For the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of this Consent Agreement as applied to the facility as set forth in paragraphs 1 through 22, inclusive, and (b) neither admits nor denies the Findings of Fact and Conclusions of Law section, above.

3. Respondent shall pay a civil penalty totaling **FORTY-TWO THOUSAND ONE HUNDRED FIFTY DOLLARS (\$42,150)**. Payment should be made by cashier's or certified check or by electronic fund transfer ("EFT"). If the payment is made by check, then the check should be made payable to the "Treasurer, United States of America," and mailed to:

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

The check should be identified with a notation thereon listing the following: "In The Matter of Cummins Inc. Jamestown Engine Plant" and "Docket Number EPCRA-02-2015-0801." Payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date"). If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: **Cummins Inc. Jamestown Engine Plant.**
- 7) Case Number: **EPCRA-02-2015-0801.**

Such EFT must be received on or before each due date of this CAFO. Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor (1631)
New York, NY 10007-1866

and

John Gorman, Chief
Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-105)
Edison, NJ 08837

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling fee of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of all civil liabilities under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.) and the regulations promulgated thereunder, 40 C.F.R. Part 372, that attach or might have attached as a result of the Findings of Fact and Conclusions of Law set out above.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Respondent has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and to abide by its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

7. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

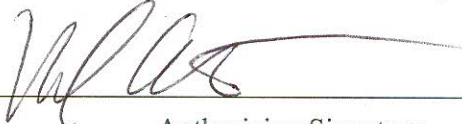
8. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

9. Each party hereto agrees to bear its own costs and fees in this matter.

10. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

Cummins Inc. Jamestown Engine Plant

BY: 
Authorizing Signature

NAME: Mike Abbate
(PLEASE PRINT)

TITLE: Plant Manager

DATE: 4/21/15

COMPLAINANT:



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

DATE: MAY 8, 2015

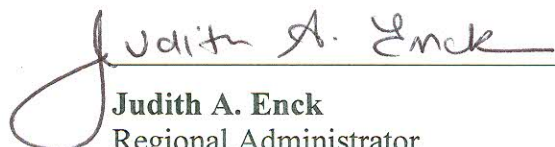
In the Matter of:

Cummins Inc. Jamestown Engine Plant Docket Number EPCRA-02-2015-0801

FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of **In the Matter of Cummins Inc. Jamestown Engine Plant** bearing **Docket No. EPCRA-02-2015-0801**. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. §§ 22.13(b) and 22.18(b) (3) and shall constitute an order issued under authority of Section 325(c) of EPCRA 42 U.S.C. § 11045(c).

DATE: 5/11/15



Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

In the Matter of Cummins Inc. Jamestown Engine Plant

Docket No. EPCRA-02-2015-0801

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

Original and One Copy
by Interoffice Mail:

Ms. Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency -Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Mr. Frank J. Deveau / Partner
Taft Stettinius & Hollister LLP
One Indiana Square, Suite 3500
Indianapolis, Indiana, 46204-2023

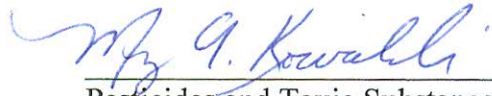
Copy by Mail:

Mr. David L. Burlee, Plant Engineering Manager
Cummins Inc. Jamestown Engine Plant
4720 Baker St Extension
Lakewood, NY 14750

Ms. Suzanne Wither,
Bureau of Program Management
Division of Environmental Remediation
NYS Department of Environmental Conservation
625 Broadway - 12th Floor
Albany, New York 12233-7252

MAY 13 2015

Dated: _____



Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-105)
Edison, New Jersey 08837-3679