



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 15 2006

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8910 6024

Dan Chisholm, President  
L & M Radiator, Inc.  
1414 East. 37<sup>th</sup> Street  
Hibbing, Minnesota 55742

Consent Agreement and Final Order, Docket No. *EPCRA-05-2007-0004*

Dear Mr. Chisholm:

I have enclosed an original signed copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on November 15, 2006 with the Regional Hearing Clerk.

The civil penalty in the amount of \$20,779 is to be paid in the manner prescribed in paragraph 39 and 40. Please be certain that the number **BD 2750744E003** and the docket number are written on both the transmittal letter and on the check. The payment is due by December 15, 2006.

Thank you for your cooperation in resolving this matter.

Sincerely,

*Anthony A. Silvasi*  
Anthony Silvasi  
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
Mony Chabria, ORC/C-14J (w/Encl.)  
Ray Marasigan, Finance/MF-10J (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: )  
)  
L&M Radiator, Inc. )  
Hibbing, Minnesota )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. EPCRA-05-2007-0004  
Proceeding to Assess a Civil Penalty  
Under Section 325(c) of the Emergency  
Planning and Community Right-to-Know  
Act of 1986, 42 U.S.C. § 11045(c)

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**CONSENT AGREEMENT AND FINAL ORDER**

The United States Environmental Protection Agency, Region 5 (Complainant or U.S. EPA), and L&M Radiator, Inc., (Respondent) (together, the Parties), have agreed to a settlement of this action before the filing of a complaint. Therefore, this action is simultaneously commenced and concluded pursuant to Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), by the issuance of this Consent Agreement and Final Order (CAFO).

**I. JURISDICTION**

1. This is an administrative action for the assessment of civil penalties brought pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c).

**II. PARTIES**

2. The Complainant, by delegation from the Administrator of U.S. EPA and the Regional Administrator, U.S. EPA, Region 5, is the Chief of the Pesticides and Toxics Branch, Waste,

Pesticides and Toxics Division. The authority to settle this matter has been delegated to the Director of the Waste, Pesticides and Toxics Division, U.S. EPA, Region 5.

3. The Respondent is L&M Radiator, Inc., a corporation doing business in the State of Minnesota, with a facility at 1414 East 37<sup>th</sup> Street, Hibbing, Minnesota (Respondent's plant).

### **III. PRELIMINARY STATEMENT OF LAW AND FACT**

4. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that the requirements of Section 313 and Part 372 apply to any facility that has 10 or more full-time employees and a Standard Industrial Classification (SIC) Code between 20 and 39, and that manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c) and listed at 40 C.F.R. § 372.65, in amounts that exceed the threshold for reporting, as set forth in Section 313(f) and in 40 C.F.R. §§ 372.25, 372.27, or 372.28.

5. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 require the owner or operator of a facility subject to the requirements of Section 313 and Part 372 to complete and submit to the Administrator of the U.S. EPA and to the state in which the facility is located, no later than July 1, 1988 and each July 1 thereafter, a chemical release form published pursuant to Section 313(g) for each toxic chemical listed under Section 313(c) that was manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold for reporting.

6. Respondent is a "person," as defined at Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

7. Respondent's plant is a "facility" as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

8. During the calendar year 2002, Respondent employed at Respondent's plant the equivalent of at least 10 employees, with total paid hours equal to or more than 20,000 hours per calendar year.

9. During calendar year 2002, Respondent had 10 or more "full-time employees," as that term is defined at 40 C.F.R. § 372.3.

10. Respondent's plant has a SIC code of 3714.

11. During the calendar year 2002, Respondent "processed," as defined by 40 C.F.R. § 372.3, toxic chemicals identified by Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65, in quantities exceeding the thresholds for reporting set forth at Section 313(f) and at 40 C.F.R. § 372.25.

#### **IV. STIPULATIONS**

12. Respondent admits to the jurisdictional statements set forth above in Section I of this CAFO, stipulates that Complainant had jurisdiction over the subject matter of this CAFO, and waives any jurisdictional defenses it may have.

13. Respondent neither admits nor denies the specific factual allegations set forth below in Section V of this CAFO.

14. The Parties consent to the assessment of the civil penalty specified in this CAFO and to all other terms and conditions of this CAFO.

15. Respondent waives any right to an administrative or judicial hearing on any issue of fact or law set forth in this CAFO, and waives its right to appeal the Final Order accompanying this Consent Agreement.

16. Respondent certifies that it is complying fully with EPCRA Section 313, 42 U.S.C. § 11023.

17. The Parties agree that settling this action without litigation, upon the terms in this CAFO, is in the public interest.

## **V. ALLEGED VIOLATIONS**

### **Count 1**

18. The reporting threshold for a chemical identified by Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed under 40 C.F.R. § 372.65 that is processed during the 2002 calendar year is 25,000 pounds. See 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

19. Copper, CAS No. 7440-50-8, is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

20. Copper is a “toxic chemical” as that term is defined at 40 C.F.R. § 372.3.

21. During the 2002 calendar year, Respondent prepared approximately 640,167 pounds of Copper, CAS No. 7440-50-8, for distribution in commerce in the same form or physical state, or in a different form or physical state, from that in which Respondent received the Copper.

22. During the 2002 calendar year, Respondent “processed,” as defined in 40 C.F.R. § 372.3, at least 25,000 pounds of Copper.

23. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of the U.S. EPA and to the State of Minnesota a Form R for Copper for the 2002 calendar year, on or before July 1, 2003.

24. Respondent failed to submit to the Administrator of the U.S. EPA and to the State of Minnesota a Form R for Copper for the 2002 calendar year on or before July 1, 2003.

25. On September 24, 2003, Respondent submitted to the Administrator a Form R for Copper for the 2002 calendar year.

26. Respondent's failure to timely submit a Form R for Copper for the 2002 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.30.

### **Count 2**

27. The reporting threshold for Lead, CAS No. 7439-92-1, that is processed during the 2002 calendar year is 100 pounds. See 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.28(a).

28. Lead, CAS No. 7439-92-1, is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

29. Lead is a "toxic chemical" as that term is defined at 40 C.F.R. § 372.3.

30. During the 2002 calendar year, Respondent prepared approximately 20,538 pounds of Lead, CAS No. 7439-92-1, for distribution in commerce in the same form or physical state, or in a different form or physical state, from that in which Respondent received the Lead.

31. During the 2002 calendar year, Respondent "processed," as defined in 40 C.F.R. § 372.3, at least 100 pounds of Lead.

32. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of the U.S. EPA and to the State of Minnesota a Form R for Lead for the 2002 calendar year, on or before July 1, 2003.

33. Respondent failed to submit to the Administrator of the U.S. EPA and to the State of Minnesota a Form R for Lead for the 2002 calendar year on or before July 1, 2003.

34. On September 24, 2003, Respondent submitted to the Administrator a Form R for Lead for the 2002 calendar year.

35. Respondent's failure to timely submit a Form R for Lead for the 2002 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.30.

#### **VI. CIVIL PENALTY**

36. Complainant calculated an initial proposed penalty of \$29,684 for the alleged violations described in Section V of this CAFO.

37. Based upon Respondent's cooperation and good faith efforts to comply, Complainant has mitigated its proposed penalty to \$20,779.

38. Respondent agrees to pay a civil penalty of \$20,779 for the violations alleged in Section V of this CAFO.

39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,779 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA, Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251-7531

The check must reference Respondent's name, the docket number of this CAFO, and the billing document number.

40. A transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Tony Silvasi, PTES (DT-8J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Mony Chabria, ORC (C-14J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

41. This civil penalty is not deductible for federal tax purposes.

42. If Respondent does not pay the civil penalty within 30 days after the effective date of this CAFO, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

43. Pursuant to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO:

(a) **Interest.** Interest will accrue on any amount overdue from the date the payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

(b) **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

(c) **Non-Payment Penalty.** Respondent will pay a six percent per annum penalty on any principal amount 90 days past due. This non-payment penalty is in addition to charges that accrue under subparagraphs (a) and (b).



## **VII. GENERAL PROVISIONS**

44. The terms of this CAFO constitute a full settlement of this proceeding with respect to all civil and administrative claims alleged in Section V of this CAFO.

45. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with EPCRA and other applicable laws and regulations.

46. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state and local laws, and regulations.

47. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 313 of EPCRA. Except as provided in paragraph 44, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA.

48. The terms of this CAFO bind Respondent and its successors and assigns.

49. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents, and to bind that party to its terms.

50. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

51. This CAFO constitutes the entire agreement between the parties.

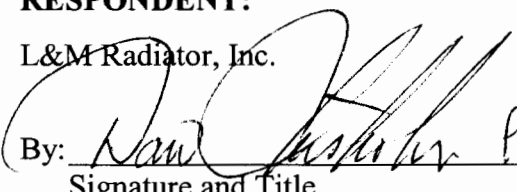
In the Matter of: L&M Radiator, Inc.  
Consent Agreement and Final Order Docket No.

EPCRA-DS-2007-0004  
BLW

**WE AGREE TO THIS CONSENT AGREEMENT AND FINAL ORDER**

**RESPONDENT:**

L&M Radiator, Inc.

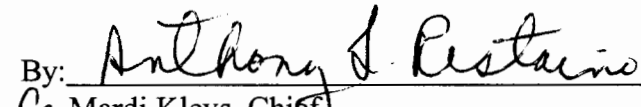
By:  President  
Signature and Title

Date: 11/1/06


DAN CHISHOLM PRESIDENT  
Printed Name and Title

**COMPLAINANT:**

United States Environmental Protection Agency  
Region 5

By:   
for Mardi Klevs, Chief  
Pesticides and Toxics Branch

Date: 11/9/06

By:  for  
Margaret M. Guerriero, Director  
Waste, Pesticides and Toxics Division

Date: 11/13/06

In the Matter of: L&M Radiator, Inc.

Consent Agreement and Final Order Docket No. EPCRA-05-2007-0004 *bbw*

**FINAL ORDER**

This Consent Agreement and Final Order, agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk.

By: *Mary A. Gade*  
Mary A. Gade  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

Date: 11/14/06

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**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving L & M Radiator, Inc, was filed on November 15, 2006, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8910 6024, a copy of the original to the Respondents:

Dan Chisholm, President  
L & M Radiator, Inc.  
1414 East 37<sup>th</sup> Street  
Hibbing, Minnesota 55742


and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Mony Chabria, Counsel for Complainant/C-14J  
Ray Marisigan, Finance/MF-10J



Elizabeth Lytle  
Pesticides and Toxics Branch  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. EPCRA-05-2007-0004

  
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