

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
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BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
PRECISION/MASTER MADE)
PAINTS, INC.) Docket No. EPCRA-07-2015-0004
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Precision/Master Made Paints, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

A. FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325(c) of the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11045(c).
2. This Consent Agreement and Final Order (CAPO) serves as notice that EPA has reason to believe that Respondent has violated the reporting requirements of Section 313, 42 U.S.C. § 11023, and the regulations promulgated thereunder.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Precision/Master Made Paints, Inc., as located at the facility addressed at 8040 Alliance Pkwy, Joplin, MO 64804 (facility). The primary activity at Respondent's facility is the manufacture of commercial and industrial paints which involves the use of xylene and ethyl benzene.

Statutory and Regulatory Requirements

5. On October 17, 1986, the Superfund Amendments and Reauthorization Act (SARA) became effective. Title III of SARA included the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001-11050 (EPCRA). The purpose of EPCRA is to help local communities protect public health, safety and the environment from chemical hazards.

6. Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. Part 372.22 and 372.30 require the owner or operator of a facility that (a) has ten or more full-time employees; (b) that is an establishment with a primary SIC major group or industry code listed in 40 C.F.R. Part 372.23(a) or a primary NAICS subsector or industry code listed in 40 C.F.R. Part 372.23(b) or (C); and (c) "manufactured, processed, or otherwise used" a toxic chemical listed under Subsection 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. Part 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. Part 11023(f), and 40 C.F.R. Part 372.25, 372.27 or 372.78 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 that preceding calendar year.

7. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and 40 C.F.R. Part 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. Part 372.30, is 25,000 pounds for any toxic chemical “manufactured or processed” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year. Specifically, 40 C.F.R. Part 372.30 establishes a reporting threshold for manufacturing, processing, and otherwise using xylene and ethyl benzene of 25,000 pounds.

8. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 313, 42 U.S.C. § 11023. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of up to \$27,500 per day of for each violation that occurs between January 30, 1997, and March 15, 2004; \$32,500 per day for each violation occurring between March 16, 2004, and January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

Definitions

9. The regulations at 40 C.F.R. § 372.3 define “facility” as “all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any

person which controls, is controlled by, or under common control with such person). A facility may contain more than one establishment.”

10. The regulations at 40 C.F.R. § 372.3 define “full time employees” as “2,000 hours per year of full-time equivalent employment. A facility would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.”

11. The regulations at 40 C.F.R. Part 372.3 define “toxic chemical” as a “chemical or chemical category listed in 40 C.F.R. Part 372.65.”

12. The regulations at 40 C.F.R. Part 372.3 define “manufacture” as “to produce, prepare, import or compound a toxic chemical. Manufactures also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical mixtures of chemicals as an impurity.”

13. “Process” means the preparation of a toxic chemical, after its manufacture, for distribution in commerce: (1) in the same form or physical state as, or in a different form or physical state from that in which it was received by the person so preparing such substance; or (2) as part of an article containing the toxic chemical. Process, as defined, also applies to the processing of a toxic chemical contained in a mixture or trade name product. 40 C.F.R. Part 372.3.

14. “Otherwise use” means any use of toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms “manufacture” or “process.” Otherwise use of a toxic chemical does not include disposal,

stabilization (without subsequent distribution in commerce), or treatment for destruction unless: (1) the toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; (2) the toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or re-distributing of the toxic chemical with no repackaging of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical. 40 C.F.R. Part 372.3.

Alleged Violations

15. EPA alleges that Respondent has violated EPCRA and its implementing federal regulations, promulgated pursuant to EPCRA, as follows:

16. Respondent is, and at all times referred to herein, was a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

17. Respondent’s facility located at 8040 Alliance Pkwy, Joplin, MO 64804, is a “facility” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. Part 372.3.

18. The Respondent’s facility has ten (10) or more “full-time employees” pursuant to Section 313(b)(1)(A) of EPCRA and as defined by 40 C.F.R. Part 372.3.

19. The Respondent’s economic activity is within NAICS Code NAICS 325510, “Paint and Coat Manufacturing.”

20. The following are each a “toxic chemical” within the meaning of 40 C.F.R. Part 372.3 and 372.65: xylene and ethyl benzene.

21. During at least calendar years 2010, 2011, 2012 and 2013, xylene was “manufactured, processed, or otherwise used,” as those terms are defined by 40 C.F.R. Part 372.3, at the Respondent’s facility.

22. On September 22, 2014, a duly authorized representative from EPA Region 7 conducted an inspection of Respondent’s facility.

Count 1

Failure to Timely File Form R for Calendar Years 2011, 2012 and 2013

23. Paragraphs 1 through 22 are incorporated by reference as if fully set forth herein.

24. Xylene was “manufactured, processed, or otherwise used” at the Respondent’s facility in excess of the 25,000 pound threshold quantity for calendar years 2010 to 2013.

25. The Respondent failed to timely file Form Rs with the Administrator of EPA and the State of Missouri for the toxic chemical xylene for calendar years 2011, 2012 and 2013 (by July 1 of the following year).

26. Respondent’s failure to timely submit the Form Rs for xylene are violations of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and 40 C.F.R. Part 372.30.

B. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

2. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

3. Respondent neither admits nor denies the factual allegations set forth above.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CAFO.

5. Respondent and EPA agree to settle this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

6. This CAFO addresses all civil administrative claims for the EPCRA violations identified above, existing through the effective date of this CAFO. Complainant reserves the right to take enforcement action with respect to any other violations of EPCRA other applicable law.

7. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 313 EPCRA, 42 U.S.C. § 11023, and all regulations promulgated thereunder.

8. The effect of settlement described in paragraph B.6 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph B.7, above, of this CAFO.

9. Respondent consents to the issuance of the Final Order below and consents to the payment of the civil penalty as set forth in Paragraphs B.12 and B.13, below. Respondent also agrees to correct the Form R report filed for calendar year 2010 for the toxic chemical ethyl benzene.

10. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

11. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the CAFO and to legally bind Respondent to it.

12. Pursuant to the provisions of EPCRA, 42 U.S.C. § 11045, and based upon the information set forth in this Consent Agreement, Respondent shall pay a civil penalty of Eight Thousand, Six Hundred Dollars (\$8,600) within 30 days of entry of this Final Order. Payments shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

The payments shall reference docket number EPCRA-07-2015-0004.

13. Copies of the checks should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219


and to:


Howard C. Bunch
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

14. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

15. Respondent and Complainant agree that this CAFO can be signed in part and counterpart.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date 7/28/15 By 
Becky Weber
Director
Air and Waste Management Division

Date 7/23/2015 By 
Howard C. Bunch
Sr. Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
Precision/Master Made Paints, Inc.

By Steve Shul

Title President

Date 7-20-2015

C. FINAL ORDER

Pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045(c), and 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

7-30-15
Date

Karina Boromeo
Karina Boromeo
Regional Judicial Officer

IN THE MATTER OF Precision/Master Made Paints, Inc., Respondent
Docket No. EPCRA-07-2015-0004

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

bunch.howard@epa.gov

Copy by First Class Mail to:

Precision/Master Made Paints, Inc.
Attn: President
8040 Alliance Pkwy
Joplin, Missouri 64804

Dated: 8/3/15



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7