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BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2012 SEP 25 AM 10:10
REGION III

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In the Matter of:

Consent Agreement and Final Order

Johnstown Wire Technologies, Inc.
124 Laurel Avenue
Johnstown, Pennsylvania 15906,

Docket No.: CERCLA-03-2012-0245
Docket No.: EPCRA-03-2012-0245

RESPONDENT,

Johnstown Wire Technologies Facility
124 Laurel Avenue
Johnstown, Pennsylvania 15906,

Proceeding Under Sections 103 and
109 of the Comprehensive Environmental
Response, Compensation, and Liability Act,
42 U.S.C. §§ 9603, 9609, and Sections 304
and 325 of the Emergency Planning and
Community Right-to-Know Act, 42 U.S.C.
§§ 11004 and 11045

FACILITY.

CONSENT AGREEMENT

Statutory Authority

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609. The President has delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA"), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has delegated this authority to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant"). This Consent Agreement is also proposed and entered into pursuant to the authority vested in the Administrator of EPA by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, delegated to the Regional Administrator by EPA Delegation No. 22-3-A, and delegated to Complainant by the Regional Administrator. Furthermore, this Consent Agreement is proposed and entered into under the authority provided by 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 ("Part 22"). The parties agree to commence and conclude this proceeding by issuance of this Consent Agreement and the attached Final Order pursuant to 40 C.F.R. § 22.13(b), consent to its entry, and agree to comply with its terms.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. §§ 22.1(a)(7) and 22.1(a)(8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).

3. For the purposes of this proceeding, Johnstown Wire Technologies, Inc. (“Respondent”) admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA’s jurisdiction with respect to the execution or enforcement of this Agreement.

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

4. With the exception of paragraph 3, above, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.
5. Respondent is a corporation established under the laws of the State of Delaware, with its principal place of business located at 124 Laurel Avenue, Johnstown, Pennsylvania.
6. As a corporation, Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61.
7. Respondent manufactures steel wire products at a facility located at 124 Laurel Ave, Johnstown, Pennsylvania (the “Facility”). At all times relevant to this Agreement, Respondent has been a person “in charge of” the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6. Respondent has also been an “operator” of the Facility, within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004.
8. The Facility is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and its regulations, 40 C.F.R. § 302.3. The Facility is also a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and its regulations, 40 C.F.R. §355.61.
9. On May 19, 2011, EPA conducted an inspection of the Facility to determine the Facility’s compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302-312 of the EPCRA, 42 U.S.C. §§ 11002-11022.
10. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) (“Reportable Quantity” or “RQ”). The list of hazardous substances and their respective RQs is codified at 40 C.F.R. § 302.4.
11. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances (“EHSs”) and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under Section 304(a) through (c) of EPCRA, 42 U.S.C. § 11004(a) through (c), (“Reportable Quantity” or “RQ”). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.

12. At all times relevant to this Agreement, the Facility was a facility at which a “hazardous chemical” was produced, used or stored, as that term is used in Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).
13. On February 8, 2010, starting at approximately 11:30 am and ending at approximately 2:15 pm, Respondent released from the Facility an estimated 16,005 pounds of hydrochloric acid, Chemical Abstracts Service (“CAS”) No. 7647-01-0 (the “Release”).

Factual Allegations: CERCLA § 103 Violation

14. Paragraphs 4 through 13 are incorporated herein by reference.
15. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center (“NRC”) established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.
16. Hydrochloric acid is listed as a hazardous substance pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602. The RQ for hydrochloric acid is listed in 40 C.F.R. § 302.4 as 5,000 pounds.
17. The Release was a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
18. The Release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).
19. Respondent notified the NRC of the Release at approximately 4:27 pm on February 8, 2010.
20. Respondent knew or should have known of the release of Hydrochloric acid in a quantity exceeding its RQ at approximately 3:30 pm on February 8, 2010, but waited nearly one hour before notifying the NRC.
21. Respondent failed to immediately notify the NRC of the Release as soon as Respondent knew that a release of a hazardous substance had occurred from the Facility in an amount equal to or exceeding its applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

Conclusion of Law: CERCLA § 103 Violation

22. Respondent’s failure to immediately notify the NRC of the Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

Factual Allegations: EPCRA § 304 Violations

23. Paragraphs 4 through 13 are incorporated herein by reference.
24. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored to notify the State Emergency Response Commission (“SERC”) and the Local Emergency Planning Committee (“LEPC”) immediately following a release of a hazardous substance or an EHS in a quantity equal to or exceeding the RQ for the hazardous substance or EHS.
25. Hydrochloric acid is a hazardous substance subject to the reporting requirements of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), pursuant to 40 C.F.R. § 355.33. The RQ for hydrochloric acid is listed in 40 C.F.R. § 302.4 as 5,000 pounds.
26. The SERC for the Facility for the purpose of emergency release notification is, and has been at all times relevant to this Agreement, the Pennsylvania Emergency Management Agency (PEMA), 2605 Interstate Drive, Harrisburg, Pennsylvania, 17110.
27. The LEPC for the Facility for the purpose of emergency release notification is, and has been at all times relevant to this Agreement, Cambria County Emergency Management Agency, 110 Franklin Street, Ste. 200, Johnstown, PA 15901.
28. The Release of hydrochloric acid from the Facility exceeded the RQ and, therefore, was a reportable release under Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b).
29. The Release required immediate notification of the SERC and LEPC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C.
30. Respondent failed to notify the SERC of the Release.
31. Respondent did not notify the LEPC of the Release until approximately 4:45 p.m. on February 8, 2010.
32. Respondent knew or should have known of the release of Hydrochloric acid in a quantity exceeding its RQ at 3:30 pm on February 8, 2010, but waited more than one hour before notifying the LEPC.
33. Respondent failed to immediately notify the SERC and LEPC of the Release of hydrochloric acid as soon as Respondent knew that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding its RQ, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C.

Conclusions of Law: EPCRA § 304 Violations

- 34. Respondent's failure to notify the SERC immediately of the Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.
- 35. Respondent's failure to notify the LEPC immediately of the Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CIVIL PENALTY

- 36. In full and final settlement and resolution of all allegations in the foregoing Factual Allegations and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violation of Section 103 of CERCLA, 42 U.S.C. § 9603, set forth above, in the amount of **\$2,660** ("CERCLA civil penalty"), and for the violations of Sections 304(a) and (b), 42 U.S.C. §§ 11004(a) and (b) and 11022, set forth above, in the amount of **\$11,340** ("EPCRA civil penalty").

PAYMENT TERMS

- 37. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this Agreement, Respondent must pay the CERCLA civil penalty and EPCRA civil penalty no later than 30 days after the effective date of the Final Order. Payment of the CERCLA civil penalty and EPCRA civil penalty must be made in the following manner:
 - A. All payments by Respondent must reference Respondent's name and address, and the Docket Numbers of this action;
 - B. All checks for the CERCLA civil penalty should be made payable to EPA-Hazardous Substances Superfund; all checks for the EPCRA civil penalty should be made payable to United States Treasury;
 - C. All payments for the CERCLA civil penalty made by check and sent by regular mail should be addressed to:

U.S. EPA
ATTN: Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000
 - D. All payments for the EPCRA civil penalty made by check and sent by regular mail should be addressed to:

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

- E. All payments for the CERCLA civil penalty made by check and sent by overnight delivery service should be addressed for delivery to:

U.S. EPA
ATTENTION: Superfund Payments
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

- F. All payments for the EPCRA civil penalty made by check and sent by overnight delivery service should be addressed for delivery to:

U.S. EPA
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

- G. All payments made by check in any currency drawn on banks with no USA branches should be addressed for delivery to:

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

- H. All payments made by electronic wire transfer should be directed to:

Federal Reserve Bank of New York
ABA = 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

- I. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), should 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
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

J. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

38. The Respondent must submit proof of the penalty payment, noting the title and docket numbers of this case, to the following persons:

Wojciech Jankowski
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029

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

39. The CERCLA civil penalty and EPCRA civil penalty stated herein are based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and are consistent with 40 C.F.R. Part 19 and the Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (September 30, 1999).
40. 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 by the final due date or to comply with the conditions in this Agreement may result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.
41. Pursuant to 40 C.F.R. § 13.11(a)(1), interest begins to accrue on the penalty in paragraph 36 from the date that Respondent receives a copy of the filed and fully executed Consent Agreement and Final Order. However, EPA will not recover interest on any portion of the penalty paid within 30 days of this date. 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).

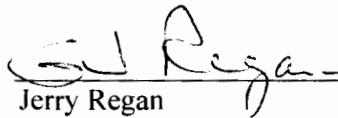
42. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.
43. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it will accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).
44. Failure by the Respondent to pay the CERCLA civil penalty and the EPCRA civil penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty may not be subject to review.
45. Respondent may not deduct any penalties paid under this Consent Agreement in calculating its federal income tax.

GENERAL PROVISIONS

46. For this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.
47. The provisions of this Agreement will be binding upon Respondent and its successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the 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 the Consent Agreement and accompanying Final Order.
48. This Agreement resolves only those civil claims that are alleged herein. Nothing herein may be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this Agreement may be construed to limit the United States' authority to pursue criminal sanctions.
49. Each party to this action will bear its own costs and attorney's fees.

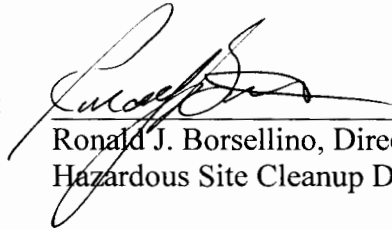
For the Respondent, Johnstown Wire Technologies, Inc.:

Date: AUG 17, 2012

By: 
Jerry Regan
Vice President of Operations

For the Complainant, U.S. Environmental Protection Agency, Region III:

Date: September 17, 2012

By: 

Ronald J. Borsellino, Director
Hazardous Site Cleanup Division

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

In the Matter of:

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RESPONDENT,

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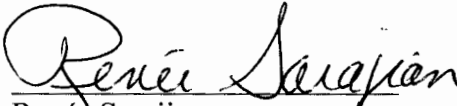
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§§ 11004 and 11045**

FINAL ORDER

Pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

The effective date of the accompanying Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S Environmental Protection Agency, Region III.

9/20/12
Date


Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

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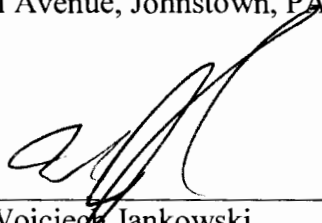
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§§ 11004, 11045

FACILITY.

CERTIFICATE OF SERVICE

I certify that on the date provided below, I hand-delivered the original and one copy of the Consent Agreement and Final Order in the case captioned *In re Johnstown Wire Technologies, Inc.*, Docket No. CERCLA-03-2012-0245 / EPCRA-03-2012-0245 to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region 3, 1650 Arch St, Philadelphia, PA 19134, and sent one copy of the signed original of the document by certified mail–return receipt requested to Jerry Regan, Vice President of Operations, 124 Laurel Avenue, Johnstown, PA 15906.

Dated: 9/25/2012



Wojciech Jankowski
Assistant Regional Counsel
U.S. EPA Region 3