

FILED

2008 SEP 26 PM 1:30

1 UNITED STATES  
2 ENVIRONMENTAL PROTECTION AGENCY  
3 REGION 9

U.S. EPA, REGION IX  
REGIONAL HEARING CLERK

4 In the Matter of:  
5 Bay State Milling Company  
6 Respondent

Docket No. EPCRA-09-2008- 00 2 1  
CONSENT AGREEMENT AND FINAL  
ORDER PURSUANT TO 40 C.F.R.  
§§ 22.13 AND 22.18

7 I. CONSENT AGREEMENT

- 8 1. The Director of the Communities and Ecosystems Division  
9 ("Complainant"), United States Environmental Protection  
10 Agency ("EPA") EPA Region 9, and Bay State Milling  
11 Company ("Respondent" or "Bay State"), the Parties herein,  
12 agree to settle this matter and consent to the entry of this  
13 Consent Agreement and Final Order Pursuant to 40 C.F.R. §§  
14 22.13 and 22.18 ("CAFO"), which simultaneously commences and  
15 concludes this matter in accordance with 40 C.F.R. §§  
16 22.13(b) and 22.18(b).
- 17 2. This is a civil administrative proceeding initiated pursuant  
18 to Section 325(c) of Title III of the Superfund Amendments  
19 and Reauthorization Act, 42 U.S.C. § 11001 et seq., also  
20 known as the Emergency Planning and Community Right-to-Know  
21 Act of 1986 ("EPCRA"), for violation of Section 313 of EPCRA,  
22 42 U.S.C. § 11023, and the regulations promulgated to  
23 implement Section 313 at 40 C.F.R. Part 372.
- 24 3. Complainant has been duly delegated the authority to file  
25 this action and sign a consent agreement settling this  
26 action. Respondent is a Minnesota corporation headquartered  
27 at 100 Congress Street, Quincy, Massachusetts 02169.  
28

 9/24/08

- 1 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023  
2 and 11048, EPA promulgated the Toxic Chemical Release  
3 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part  
4 372.
- 5 5. Section 313(a) of EPCRA, as implemented by 40 C.F.R.  
6 § 372.30, provides that an owner or operator of a facility  
7 that meets the criteria set forth in EPCRA Section 313(b) and  
8 40 C.F.R. § 372.22, is required to submit annually to the  
9 Administrator of EPA and to the State in which the facility  
10 is located, no later than July 1st of each year, a toxic  
11 chemical release inventory reporting form (hereinafter "Form  
12 R") for each toxic chemical listed under 40 C.F.R. § 372.65  
13 that was manufactured, processed or otherwise used at the  
14 facility during the preceding calendar year in quantities  
15 exceeding the thresholds established under EPCRA Section  
16 313(f) and 40 C.F.R. §§ 372.25, 372.27 and 372.28.
- 17 6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that  
18 the requirements of Section 313(a) and 40 C.F.R. § 372.30  
19 apply to an owner and operator of a facility that has 10 or  
20 more full-time employees; that is in a Standard Industrial  
21 Classification (SIC) (as in effect on January 1, 1987) major  
22 group or industry code listed in § 372.23(a), for which the  
23 corresponding North American Industry Classification System  
24 (NAICS) (as in effect on January 1, 2007, for reporting year  
25 2008 and thereafter) subsector and industry codes are listed  
26 in 40 C.F.R. §§ 372.23(b) and (c); and that manufactures,

27  
28

*N.J. 9/26/08*

- 1 processes, or otherwise uses one or more toxic chemicals  
2 listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65  
3 in quantities in excess of the applicable thresholds  
4 established under EPCRA Section 313(f) and 40 C.F.R. §§  
5 372.25, 372.27 and 372.28.
- 6 7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R.  
7 Part 19 authorize EPA to assess a penalty of up to \$27,500  
8 for each violation of Section 313 of EPCRA that occurred on  
9 or after January 30, 1997, but before March 15, 2004, and up  
10 to \$32,500 for each violation of Section 313 of EPCRA that  
11 occurred on or after March 15, 2004.
- 12 8. Respondent is a "person," as that term is defined by Section  
13 329(7) of EPCRA.
- 14 9. At all times relevant to this CAFO, Respondent was the owner  
15 and operator of a facility located at 421 South 99<sup>th</sup> Avenue,  
16 Tolleson, Arizona 85353 the "Facility"), which falls within  
17 the definition of a "facility" found in Section 329(4) of  
18 EPCRA and 40 C.F.R. § 372.3.
- 19 10. The Facility employed 10 or more "full-time employees," as  
20 that term is defined at 40 C.F.R. § 372.3 and was classified  
21 in NAICS Code 311211 - Flour Milling.
- 22 11. During calendar year 2003, Respondent processed approximately  
23 33,350 pounds of chlorine, a chemical listed under 40 C.F.R.  
24 § 372.65, at the Facility.
- 25 12. The quantity of chlorine Respondent processed at the Facility  
26 during calendar year 2003 exceeds the established threshold  
27

28

*R.F. 9/24/08*

- 1 of 25,000 pounds set forth at 40 C.F.R. § 372.25(a).
- 2 13. Respondent failed to submit a Form R for chlorine processed  
3 at the Facility to the EPA Administrator and to the State of  
4 Arizona on or before July 1, 2004, for calendar year 2003.
- 5 14. Respondent's failure to submit a Form R before July 1 of 2004  
6 for chlorine processed at the Facility during the preceding  
7 calendar year constitutes a violation of Section 313 of EPCRA  
8 and 40 C.F.R. § 372.30.
- 9 15. During calendar year 2004, Respondent processed approximately  
10 37,200 pounds of chlorine, a chemical listed under 40 C.F.R.  
11 § 372.65, at the Facility.
- 12 16. The quantity of chlorine Respondent processed at the Facility  
13 during calendar year 2004 exceeds the established threshold  
14 of 25,000 pounds set forth at 40 C.F.R. § 372.25(a).
- 15 17. Respondent failed to submit a Form R for chlorine processed  
16 at the Facility to the EPA Administrator and to the State of  
17 Arizona on or before July 1, 2005, for calendar year 2004.
- 18 18. Respondent's failure to submit a Form R before July 1 of 2005  
19 for chlorine processed at the Facility during the preceding  
20 calendar year constitutes a violation of Section 313 of EPCRA  
21 and 40 C.F.R. § 372.30.
- 22 19. During calendar year 2005, Respondent processed approximately  
23 35,350 pounds of chlorine, a chemical listed under 40 C.F.R.  
24 § 372.65, at the Facility.
- 25 20. The quantity of chlorine Respondent processed at the Facility  
26 during calendar year 2005 exceeds the established threshold  
27

28

*R. J. 9/24/08*

- 1 of 25,000 pounds set forth at 40 C.F.R. § 372.25(a).
- 2 21. Respondent failed to submit a Form R for chlorine processed  
3 at the Facility to the EPA Administrator and to the State of  
4 Arizona on or before July 1, 2006, for calendar year 2005.
- 5 22. Respondent's failure to submit a Form R before July 1 of 2006  
6 for chlorine processed at the Facility during the preceding  
7 calendar year constitutes a violation of Section 313 of EPCRA  
8 and 40 C.F.R. § 372.30.
- 9 23. The EPA Enforcement Response Policy for EPCRA Section 313  
10 dated August 10, 1992, as amended by 40 C.F.R. Part 19,  
11 provides for a penalty of nineteen thousand, three hundred  
12 (\$19,300) for these violations.
- 13 24. In executing this CAFO, Respondent certifies that (1) it has  
14 now fully completed and submitted to EPA all required Form  
15 Rs, in compliance with Section 313 of EPCRA and the  
16 regulations promulgated to implement Section 313; and (2) it  
17 has complied with all other EPCRA requirements at all  
18 facilities under its control.
- 19 25. In accordance with 40 C.F.R. § 22.18(b) (2) and for the  
20 purpose of this proceeding, Respondent (i) admits that EPA  
21 has jurisdiction over the subject matter of this CAFO and  
22 over Respondent; (ii) admits the violations and facts alleged  
23 in this CAFO; (iii) consents to the terms of this CAFO; (iv)  
24 waives any right to contest the allegations in this CAFO; and  
25 (v) waives the right to appeal the proposed final order  
26 contained in this CAFO.

27  
28

RJZ 9/24/08

- 1 26. The terms of this CAFO constitute a full settlement of the  
2 civil administrative matter filed under the docket number  
3 above.
- 4 27. EPA's final policy statement on Incentives for Self-Policing:  
5 Discovery, Disclosure, Correction and Prevention of  
6 Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit  
7 Policy") has several important goals, including encouraging  
8 greater compliance with the laws and regulations which  
9 protect human health and the environment and reducing  
10 transaction costs associated with violations of the laws EPA  
11 is charged with administering. If certain specified criteria  
12 are met, reductions in gravity-based penalties of up to 100%  
13 are available under the Audit Policy. These criteria are (1)  
14 discovery of the violation(s) through an environmental audit  
15 or a compliance management system; (2) voluntary disclosure;  
16 (3) prompt disclosure; (4) discovery and disclosure  
17 independent of government or third party plaintiff; (5)  
18 correction and remediation; (6) prevention of recurrence; (7)  
19 no repeat violations; (8) exclusion of the policy's  
20 applicability to certain types of violations, including those  
21 resulting in serious actual harm to the environment and those  
22 that may have presented an imminent and substantial  
23 endangerment to the public health or the environment; and (9)  
24 cooperation.
- 25 28. Complainant has determined that Respondent has satisfied all  
26 of the criteria under the Audit Policy and thus qualifies for  
27  
28

*R.J. 9/25/08*

1 the elimination of civil penalties in this matter.

2 Accordingly, the civil penalty assessed in this matter is  
3 zero (\$0) dollars.

4 29. Complainant's finding that Respondent has satisfied the  
5 criteria of the Audit Policy is based upon documentation that  
6 Respondent has provided to establish that it satisfies these  
7 criteria. Complainant and Respondent agree that, should any  
8 material fact upon which Complainant relied in making its  
9 finding subsequently prove to be other than as represented by  
10 Respondent, this CAFO may be voided in whole or in part.

11 30. Nothing in this CAFO modifies, affects, exempts or relieves  
12 Respondent's duty to comply with all applicable provisions of  
13 EPCRA and other federal, state or local laws and permits. In  
14 accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves  
15 Respondent's liability for federal civil penalties for the  
16 violations and facts specifically alleged in this CAFO.  
17 Nothing in this CAFO is intended to or shall be construed to  
18 resolve (i) any civil liability for violations of any  
19 provision of any federal, state, or local law, statute,  
20 regulation, rule, ordinance, or permit not specifically  
21 alleged in this CAFO; or (ii) any criminal liability. EPA  
22 specifically reserves any and all authorities, rights, and  
23 remedies available to it (including, but not limited to,  
24 injunctive or other equitable relief or criminal sanctions)  
25 to address any violation of this CAFO or any violation not  
26 specifically alleged in this CAFO.

*RPT 9/24/08*

1 31. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b),  
2 this CAFO shall be effective on the date that the final order  
3 contained in this CAFO, having been approved and issued by  
4 either the Regional Judicial Officer or Regional  
5 Administrator, is filed.

6 32. The provisions of this CAFO shall be binding upon Respondent,  
7 its agents, successors or assigns. Respondent's obligations  
8 under this Consent Agreement, if any, shall end when  
9 Respondent has performed all of the terms of the Consent  
10 Agreement in accordance with the Final Order. Complainant  
11 and Respondent consent to the entry of the CAFO without  
12 further notice.

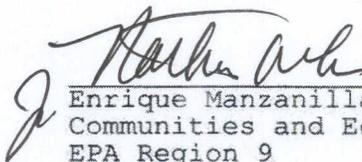
13  
14 FOR RESPONDENT:

15  
16 9/24/08  
Date

  
Randy Frank  
Plant Manager  
Bay State Milling Company

17  
18  
19 FOR COMPLAINANT:

20  
21 9/25/08  
Date

  
Enrique Manzanilla, Director  
Communities and Ecosystems Division  
EPA Region 9

*R.F. 9/24/08*

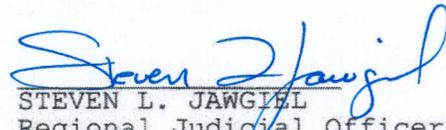
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

II. FINAL ORDER

Complainant EPA Region IX and Respondent Bay State Milling Company, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-09-2008-0021) be entered.

09/26/08  
Date

  
STEVEN L. JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency, Region 9

RJL 9/26/08

1 CERTIFICATE OF SERVICE

2 I certify that the original of the foregoing Consent Agreement  
3 and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket  
4 No. EPCRA-09-2008-0021 was filed this day with the Regional  
5 Hearing Clerk, United States Environmental Protection Agency,  
6 Region IX, 75 Hawthorne Street, San Francisco, California 94105,  
7 and that a true and correct copy thereof was placed in the United  
8 States Mail, certified mail, return receipt requested, addressed  
9 to the following address:

10 Mr. Randy Frank  
11 Plant Manager  
12 Bay State Milling Company  
13 421 South 99<sup>th</sup> Avenue  
14 Tolleson, AZ 85353

15 Certified Mail No. 7000 1670 0011 9907 4598

16  
17 SEP 26 2008  
18 Date: \_\_\_/\_\_\_/2008

19 By: Danielle E Carr  
20 DANIELLE CARR  
21 Regional Hearing Clerk  
22 United States Environmental  
23 Protection Agency, Region IX  
24 75 Hawthorne Avenue  
25 San Francisco, California 94105-3143  
26  
27  
28