

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) **Docket No. EPCRA-05-2014-0016**
)
Plastics Engineering Company) **Proceeding to Assess a Civil Penalty**
Sheboygan, Wisconsin) **Under Section 325(c) of the Emergency**
) **Planning and Community Right-to-Know**
Respondent.) **Act of 1986, 42 U.S.C. § 11045(c)**
_____)

Consent Agreement and Final Order

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.
3. Respondent is Plastics Engineering Company, a corporation doing business in the State of Wisconsin.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

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

Statutory and Regulatory Background

10. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed or otherwise used a toxic chemical in an amount exceeding an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years

including and subsequent to 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

12. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that may be assessed pursuant to each agency's statutes. EPA may assess a civil penalty of up to \$37,500 per day for each violation of Section 313 of EPCRA that occurred after January 12, 2009, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

14. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 2732 N. 15th Street, Sheboygan, Wisconsin (facility).

15. At all times relevant to this CAFO, Respondent had "10 or more full-time employees," as defined at 40 C.F.R. § 372.3, and was an employer at the facility.

16. Respondent's facility consists of 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.

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

18. The facility has a SIC code of 2821, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

19. In conformity with the Final Policy Statement on Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations (the Self-Disclosure Policy), 65 Fed. Reg. 19618 (April 11, 2000), the violations of Section 313 of EPCRA, 42 U.S.C. § 11023, at Respondent's facility which are the subject of this CAFO were voluntarily disclosed to EPA by electronic disclosure dated June 17, 2011 and by Respondent's affidavit dated November 13, 2011.

Count 1

20. During calendar year 2008, Respondent's facility manufactured, processed or otherwise used, as that term is defined at 40 C.F.R. § 372.3, Styrene, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 62,736 pounds which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

21. Respondent was required to submit to the Administrator of EPA and to Wisconsin a Form R for Styrene for calendar year 2008 by July 1, 2009.

22. Respondent did not submit to the Administrator of EPA and to Wisconsin a Form R for Styrene for calendar year 2008 by July 1, 2009. Instead it filed a Form A.

23. Respondent submitted Form R for Styrene to the Administrator of EPA and to Wisconsin on June 24, 2011 for calendar year 2008.

24. Respondent's failure to submit timely a Form R for Styrene to the Administrator of EPA and to Wisconsin for calendar year 2008 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 2

25. During calendar year 2009, Respondent's facility manufactured, processed or otherwise used, as that term is defined at 40 C.F.R. § 372.3, Styrene, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 58,384 pounds which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

26. Respondent was required to submit to the Administrator of EPA and to Wisconsin a Form R for Styrene for calendar year 2009 by July 1, 2010.

27. Respondent did not submit to the Administrator of EPA and to Wisconsin a Form R for Styrene for calendar year 2009 by July 1, 2010. Instead it filed a Form A.

28. Respondent submitted Form R for Styrene to the Administrator of EPA and to Wisconsin on June 24, 2011 for calendar year 2009.

29. Respondent's failure to submit timely a Form R for Styrene to the Administrator of EPA and to Wisconsin for calendar year 2008 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Civil Penalty

30. Based upon the initial self-disclosure and the information in Respondent's subsequently submitted affidavit, Complainant has determined that Respondent has satisfied eight of the nine Self-Disclosure Policy criteria. The only criteria Respondent's disclosure did not meet was criteria 1, systematic discovery. Therefore, a 75 percent reduction of the gravity-based portion of the civil penalty to be assessed in this matter is appropriate under the Self-Disclosure Policy. Complainant has determined that there was no economic benefit associated with the alleged violations. Therefore, Complainant has determined that the appropriate penalty

to settle this action is \$7,085.

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,085 civil penalty for the EPCRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note Plastics Engineering Company and the docket number of this CAFO.

32. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Maynard Shaw (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Maria Gonzalez (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

34. If Respondent does not pay timely the civil penalty, 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.

35. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

36. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

37. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

39. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for Section 313 of EPCRA.

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

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

42. Each party agrees to bear its own costs and attorneys fees in this action.

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

In the Matter of:
Plastics Engineering Company
Docket No. EPCRA-05-2014-0016

Plastics Engineering Company, Respondent

5/28/14 ^{msb}
Date

Michael R. Brotz
Michael R. Brotz
President
Plastics Engineering Company

United States Environmental Protection Agency, Complainant

6/23/2014
Date

Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

6/23/2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

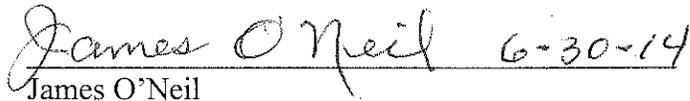
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Plastic Engineering, was filed on June 30, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed, by Certified Mail, Receipt No. 7009 1680 0000 7649 9354, a copy of the original to the Respondents:

Mr. Michael R. Brotz
Plastics Engineering Company
P.O. Box 758
Sheboygan, Wisconsin 53083

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Maria Gonzalez, Counsel for Complainant ORC/C-14J
Eric Volck, Cincinnati Finance/MWD

 James O'Neil 6-30-14

James O'Neil
Pesticide and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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