

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)	
)	
Electric Motion Company, Inc.)	Docket No: EPCRA-01-2020-0035
157 Colebrook River Road)	
Winsted, Connecticut 06098)	
Respondent.)	CONSENT AGREEMENT AND FINAL ORDER
)	
Proceeding under Section 325(c) of the)	
Emergency Planning and Community)	
Right-to-Know Act, 42 U.S.C. § 11045(c))	
)	

CONSENT AGREEMENT

Complainant, the United States Environmental Protection Agency ("EPA"), alleges that Respondent, Electric Motion Company, Inc. ("Respondent"), violated Section 313 of the Emergency Planning and Community Right-to-Know Act ("EPCRA") and federal regulations promulgated thereunder.

This Consent Agreement and Final Order ("CAFO") simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 325(c) of EPCRA, 42 U.S.C. § § 11045(c). Complainant and Respondent (collectively, the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

I. STATUTORY AND REGULATORY FRAMEWORK

1. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated Toxic Chemical Release Reporting: Community Right-to-Know regulations at 40 C.F.R. Part 372.

2. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), requires owners or operators of a facility subject to the requirements of Section 313(b) to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, “Form R”), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25. If the owner or operator determines that the alternative reporting threshold specified in 40 C.F.R. § 372.27 applies, the owner or operator may submit an alternative threshold certification statement that contains the information required under 40 C.F.R. § 372.95 (the alternative threshold certification statement is also known as “Form A”). Each Form R or Form A (hereinafter, referred to together as “TRI Forms”) is required to be submitted to EPA and a designated state authority.

3. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. §§ 372.22 and 372.30 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification (“SIC”) code or North American Industry Classification System (“NAICS”) code set forth in 40 C.F.R. § 372.23; and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 in a quantity exceeding the established threshold during a calendar year, are required to submit TRI Forms to EPA and the state authority for each of these substances for that year.

4. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended through 2016 (“FCPIAA”), and the FCPIAA’s implementing regulations as promulgated and updated by EPA at 40 C.F.R. Part 19 (most recently at 85 Fed. Reg. 1751, 1755 (Jan. 13, 2020), together authorize the assessment of civil administrative penalties of up to \$58,328 for each violation of Section 313 of EPCRA that

occurred after November 2, 2015, and for which a penalty is assessed on or after January 13, 2020. Pursuant to Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day that an EPCRA Section 313 violation continues constitutes a separate violation.

II. GENERAL ALLEGATIONS

5. Respondent Electric Motion Company, Inc. was a corporation organized under the laws of the State of Connecticut and was, effective August 1, 2020, merged into Hubbell Power Systems, Inc., a direct wholly-owned subsidiary of Hubbell Incorporated, a publicly-traded corporation.

6. Respondent owns and operates an electric component manufacturing facility (“Facility”) located at 157 Colebrook River Road, Winsted, Connecticut.

7. In its manufacturing operations at the Facility, Respondent uses several raw materials including metals and ammonia. Ammonia is used as a precursor to create an inert atmosphere in the furnace to soften copper products during annealing.

8. On June 26, 2019, a duly authorized representative of EPA Region 1 conducted a compliance evaluation inspection of the Facility to determine its compliance with EPCRA reporting requirements.

9. As a corporation, Respondent is a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

10. Respondent owns and operates a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

11. The Facility has more than 10 “full-time employees,” as that term is defined by 40 C.F.R. § 372.3.

12. The Facility is classified in a SIC code or NAICS code set forth in 40 C.F.R. § 372.23.

13. During each of the calendar years 2015 and 2016, the Facility “otherwise used,” as defined in 40 C.F.R. § 372.3, ammonia, which is a toxic chemical listed under 40 C.F.R. § 372.65(a), in quantities greater than 10,000 pounds.

14. The EPCRA TRI reporting threshold set out at 40 C.F.R. § 372.25 for a facility that otherwise uses ammonia is 10,000 pounds per year.

15. The requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, apply to the Facility.

III. VIOLATIONS

Count 1: Failure to Timely File TRI Form for Ammonia for Calendar Year 2015

16. Paragraphs 1 through 18 are incorporated by reference herein.

17. During the calendar year 2015, Respondent otherwise used ammonia, a toxic chemical listed under 40 C.F.R. § 372.65(a), at the Facility in quantities greater than 10,000 pounds, the threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25. Respondent was, therefore, required to submit a TRI Form for ammonia to EPA on or before July 1, 2016.

18. Respondent failed to submit a TRI Form for ammonia to EPA on or before July 1, 2016.

19. Respondent’s failure to timely submit a TRI Form for ammonia was a violation of Section 313 of EPCRA and 40 C.F.R. §§ 372.25(d) and 372.30.

Count 2: Failure to Timely File TRI Form for Ammonia for Calendar Year 2016

20. Paragraphs 1 through 22 are incorporated by reference herein.

21. During the calendar year 2016, Respondent otherwise used ammonia, a toxic chemical listed under 40 C.F.R. § 372.65(a), at the Facility in quantities greater than 10,000

pounds, the threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25.

Respondent was, therefore, required to submit a TRI Form for ammonia to EPA on or before July 1, 2017.

22. Respondent failed to submit a TRI Form for ammonia to EPA on or before July 1, 2017.

23. Respondent's failure to timely submit a TRI form for ammonia was a violation of Section 313 of EPCRA and 40 C.F.R. §§ 372.25(d) and 372.30.

IV. TERMS OF CONSENT AGREEMENT

24. Respondent certifies that it has corrected the alleged violations cited in the Complaint and will operate the Facility in compliance with Section 313 of EPCRA, 42 U.S.C. § 11023, and regulations promulgated thereunder at 40 C.F.R. Part 372.

25. Respondent admits, for the purposes of this proceeding, that Complainant has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states claims upon which relief may be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue.

26. Respondent waives its right to a judicial or administrative hearing on any issue of law or fact set forth in the Complaint and waives its right to appeal the Final Order.

27. Without admitting or denying the facts and violations alleged in the Complaint, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of the civil penalty set forth herein. The provisions of this CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns.

28. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and taking into account the particular facts and circumstances of this case with reference to relevant statutory penalty

criteria, applicable penalty policies, and penalty calculation factors therein, Complainant has determined that it is fair and proper that Respondent pay a total civil penalty in the amount of \$36,006 (thirty-six thousand six dollars) to resolve the violations alleged in the Complaint.

29. Within thirty (30) days of the effective date of this CAFO, Respondent shall submit a company, bank, cashier's, or certified check in the amount of \$36,006, payable to the order of the "Treasurer, United States of America." The check should be sent via regular mail to:

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

or, Respondent may make payment by electronic funds transfer via:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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"

Respondent shall include the case name and docket number ("In the Matter of Electric Motion Company, Inc., Docket No. EPCRA-01-2020-0035") on the face of the check or wire transfer confirmation. In addition, at the time of payment, Respondent shall simultaneously send notice of the payment and a copy of the check or electronic wire transfer confirmation to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code ORC 4-6
Boston, MA 02109-3912
santiago.wanda@epa.gov

and

Andrea Simpson
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code ORC 4-2
Boston, MA 02109-3912
simpson.andrea@epa.gov

30. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that Respondent does not fully pay the civil penalty when due as required by Paragraphs 28 and 29 of this CAFO, the unpaid penalty shall be payable with accrued interest from the original due date to the date of payment, with the interest calculated at the rate established in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees. In addition, a penalty charge of six percent per year, compounded annually, will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due, with the charge accruing from the date of delinquency in accordance with 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

31. The civil penalty paid under this CAFO, and any interest, nonpayment penalties, and other charges paid pursuant to any penalty collection action arising from this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and shall not be deductible for purposes of federal, state, or local taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R.

§ 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

32. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA for the violations alleged in the Complaint. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

33. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent violates this CAFO or continues to violate the statutes and regulations upon which the allegations in the Complaint are based, or if Respondent violates of any other applicable provision of federal, state, or local law.

34. Each of the undersigned representatives of the Parties certifies that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and to legally bind his or her respective Party to it.

35. Each Party shall bear its own costs and attorneys' fees in this proceeding and specifically waives any right to recover such costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

36. Complainant and Respondent, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CAFO, by electronic mail, to the following

address: EScott@rc.com. Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing Order, dated June 19, 2020. Electronic signatures shall comply with, and be maintained in accordance with, that Order.

37. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties, and approval of a Regional Judicial Officer.

38. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed with the Regional Hearing Clerk.

FOR COMPLAINANT:

Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

Date: _____

FOR RESPONDENT:

Wes Thornton

Date: *9-15-2020*

Wes Thornton, Esq.
Vice President and Assistant Secretary
Hubbell Power Systems, Inc. (as successor-in-interest to Electric Motion Company, Inc.)

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the Consolidated Rules, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent Electric Motion Corporation is ordered to pay the civil penalty amount specified in the Consent Agreement in the manner indicated therein. The terms of the Consent Agreement shall become effective on the date that the CAFO is filed with the Regional Hearing Clerk.

LeAnn Jensen
Regional Judicial Officer
U.S. EPA, Region 1

Date: _____