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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. EPCRA-10-2014-0131
)	
STACK METALLURGICAL)	CONSENT AGREEMENT AND
SERVICES, INC.,)	FINAL ORDER
)	
Portland, Oregon,)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045, and Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9609.

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegate this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 109 of CERCLA, 42 U.S.C. § 9609, and in accordance with the “Consolidated Rules of Practice

Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Stack Metallurgical Services, Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 109 of CERCLA, 42 U.S.C. § 9609, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of EPCRA and CERCLA are proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of EPCRA and CERCLA together with the specific provisions of EPCRA and CERCLA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), requires the owner or operator of a facility where a release of an extremely hazardous substance at or above the reportable quantity occurs to provide notice, pursuant to Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), immediately after the release to the state emergency response commission (“SERC”).

3.2 Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), “facility” means all buildings, equipment, structures, and other stationary items that 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, or under common control with, such person).

3.3 Under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), “person” means, *inter alia*, a corporation.

3.4 Under 40 C.F.R. Part 355, Appendix A, promulgated pursuant to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2), ammonia is listed as an extremely hazardous substance with a reportable quantity of 100 pounds.

3.5 Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility where a release of a hazardous substance at or above the reportable quantity occurs to immediately notify the National Response Center (“NRC”).

3.6 Under Section 101(9)(A) of CERCLA, 42 U.S.C. § 9601(9)(A), “facility” means any building, structure, installation equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft.

3.7 Under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), “person” means, *inter alia*, a corporation.

3.8 Under 40 C.F.R. Table 302.4, promulgated pursuant to Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), ammonia is listed as a hazardous substance with a reportable quantity of 100 pounds.

3.9 Respondent is a corporation, incorporated in the State of Oregon.

3.10 Respondent owns and operates a facility located at 5938 North Basin Avenue, Portland, Oregon (“Stack Facility”).

3.11 Respondent provides heat treating services for metals at the Stack Facility.

3.12 On October 20, 2013, at approximately 4:15 a.m., approximately 412 pounds of ammonia was released at the Stack Facility.

3.13 On October 20, 2013, at approximately 8:25 a.m., Respondent notified the SERC of the release.

3.14 On October 20, 2013, at approximately 8:25 a.m., Respondent notified the NRC of the release.

3.15 Respondent failed to immediately notify the SERC of the release, in violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

3.16 Respondent failed to immediately notify the NRC of the release, in violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

3.17 Under Section 325 of EPCRA, 42 U.S.C. § 11045, Section 109(a) of CERCLA, 42 U.S.C. § 9609(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 per violation per day.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$17,710.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 in three payments according to the following schedule calculated from the effective date of the Final Order: the first payment of \$5,910 due no later than 30 days after the effective date; the second payment of \$6,018 (which includes \$118 interest) due no later than 60 days after the effective date; the third payment of \$5,959 (which includes \$59 interest) due no later than 90 days after the effective date. Payments as shown include interest on the total amount of the penalty still outstanding at the time of each payment at the rate established by the Secretary of the Treasury.

4.5. Payment under this CAFO may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.6, or proof of alternative method of payment, on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Suzanne Powers
U.S. Environmental Protection Agency
Region 10, Washington Operations Office
300 Desmond Dr. S.E., Suite 102
Lacey, WA 98503

4.7. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect any unpaid penalty under EPCRA and CERCLA, together with interest, handling charges, and nonpayment penalties described below.

4.8. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.13. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.14. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

15 JULY 2014

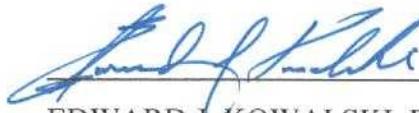
Nels H Plough

Nels Plough, President
Stack Metallurgical Services, Inc.

DATED:

7/24/2014

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

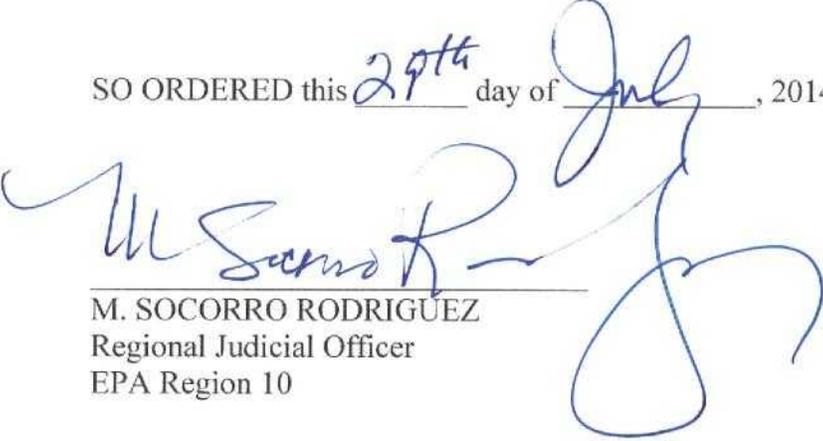
V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties under EPCRA and CERCLA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of EPCRA and CERCLA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 29th day of July, 2014.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Stack Metallurgical Services, Inc., Docket No.: EPCRA-10-2014-0131**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Kris Leefers, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Nels Plough, President
Stack Metallurgical Services, Inc.
P.O. Box 17176
Portland, Oregon 97217-0176

DATED this 29th day of July, 2014.


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10