

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

ON 2 APR 11 PM 1:44

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
	)	. Docket No. EPCRA-07-2012-0002
KLINGER PAINT COMPANY	)	
	)	CONSENT AGREEMENT
	)	AND FINAL ORDER
	)	
Respondent,	)	
	)	
Proceeding under Section 325(c) of the	)	
Emergency Planning and Community Right-to-	)	
Know Act, 42 U.S.C. § 11045(c)	)	
_____	)	

**CONSENT AGREEMENT AND FINAL ORDER**

The United States Environmental Protection Agency, Region 7 (“EPA”) and Klinger Paint Company (“Respondent”) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**ALLEGATIONS**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045(c).
2. This Consent Agreement and Final Order (“CA/FO”) serves as notice that EPA alleges that Respondent has violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder.

Parties

3. The Complainant, by delegation from the Administrator of EPA Region 7, and from the Regional Administrator, EPA Region 7, is the Director of the Air and Waste Management Division, EPA Region 7.

4. The Respondent is Klinger Paint Company, a company registered and authorized to do business in the State of Iowa. The company's paint production facility, which manufactures premium quality and custom paints, is located at 5555 Willow Creek Drive S.W., Cedar Rapids, Iowa 52404.

Statutory and Regulatory Requirements

5. 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 (a) has ten or more full-time employees; (b) that is an establishment with a primary SIC major group or industry code listed in 40 C.F.R. § 372.23(a) or a primary NAICS subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) that "manufactured, processed, or otherwise used" a toxic chemical listed under Subsection 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Section 313 (f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27 or 372.28 during the calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, for the preceding calendar year, for each toxic chemical known by the owner or operator to be "manufactured, processed, or otherwise used" in quantities exceeding the established threshold quantity during that preceding calendar year.

6. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30 is 25,000 pounds for any toxic chemical "manufactured or processed" and 10,000 pounds for any toxic chemical "otherwise used" for the applicable calendar year. Alternative reporting thresholds for certain other chemicals are set forth in 40 C.F.R. §§ 372.27 and 372.28.

7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, if, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 313, 42 U.S.C. § 11023. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of up to \$27,500 per day for each violation that occurs between January 30, 1997, and March 15, 2004; \$32,500 per day for each violation occurring between March 16, 2004, and January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

### Definitions

8. The regulations at 40 C.F.R. § 372.3 define “facility” as “all 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 (or by any person which controls, is controlled by, or under common control with such person). A facility may contain more than one establishment.”

9. The regulations at 40 C.F.R. § 372.3 define “full-time employees” as “2,000 hours per year of full-time equivalent employment. A facility would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.”

10. The regulations at 40 C.F.R. § 372.3 define “toxic chemical” as a “chemical or chemical category listed in 40 C.F.R. § 372.65.”

11. The regulations at 40 C.F.R. § 372.3 define “manufacture” as “to produce, prepare, import or compound a toxic chemical. Manufacture also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical mixture of chemicals as an impurity.”

12. “Process” means the preparation of a toxic chemical, after its manufacture, for distribution in commerce: (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance; or (2) as part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product. 40 C.F.R. § 372.3.

13. “Otherwise use” means any use of a toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms “manufacture” or “process.” Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless: (1) the toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; or (2) the toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or redistributing of the toxic chemical where no repackaging of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical. 40 C.F.R. § 372.3.

### Alleged Violations

14. EPA alleges that Respondent has violated EPCRA and federal regulations promulgated pursuant to EPCRA, as follows:

15. Respondent is, and at all times referred to herein was, a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. Respondent’s facility, located at 5555 Willow Creek Drive S.W., in Cedar Rapids, Iowa, is a “facility” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and by 40 C.F.R. § 372.3.

17. Respondent’s facility has ten or more “full-time employees” pursuant to Section 313(b)(1)(A) of EPCRA, 42 U.S.C. § 11023(b)(1)(A), and as defined by 40 C.F.R. § 372.3.

18. Respondent’s facility is classified as NAICS Code 325510 – paint and coating manufacturing.

19. Certain glycol ethers and xylene are “toxic chemicals” within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

20. During reporting year 2009, the toxic chemicals identified in Paragraph 19 were “manufactured, processed, or otherwise used” as those terms are defined by 40 C.F.R. § 372.3 at Respondent’s facility.

21. On May 24, 2011, the EPA, Region 7, sent Respondent a letter requesting information regarding Respondent’s reporting for 2009. Respondent’s responses to the letter state that Respondent did not file Form R reports for 2009.

Count 1

22. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

23. Pursuant to 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing certain glycol ethers is 25,000 pounds, and the threshold reporting quantity for otherwise using certain glycol ethers is 10,000 pounds.

24. The toxic chemical certain glycol ethers was manufactured, processed, and/or otherwise used at Respondent’s facility in excess of the applicable threshold quantities during reporting year 2009.

25. Respondent failed to file a Form R report for certain glycol ethers with the Administrator of EPA and the State of Iowa by the July 1, 2010, deadline. Respondent filed the Form R report on or about June 20, 2011.

26. The failure to timely submit a Form R report for certain glycol ethers is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

Count 2

27. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

28. Pursuant to 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing xylene is 25,000 pounds, and the threshold reporting quantity for otherwise using xylene is 10,000 pounds.

29. The toxic chemical xylene was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantities during reporting year 2009.

30. Respondent failed to file a Form R report for xylene with the Administrator of EPA and the State of Iowa by the July 1, 2010, deadline. Respondent filed the Form R report on or about June 20, 2011.

31. The failure to timely submit a Form R report for xylene is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

CONSENT AGREEMENT

32. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

33. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.

34. Respondent neither admits nor denies the factual allegations and conclusions of law set forth above.

35. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CA/FO.

36. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees incurred as a result of this action.

37. Respondent certifies by signing this CA/FO that, to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and all regulations promulgated thereunder.

38. Based on Respondent's representations in Paragraph 37 above, this CA/FO addresses, fully resolves and settles, and Complainant hereby agrees to release Respondent from, all civil and administrative claims for the alleged EPCRA violations identified in this document.

Complainant reserves the right to take an enforcement action with respect to any other violations of EPCRA or other applicable law.

39. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

40. Nothing in this CA/FO shall be construed as a release from any other action under law and/or regulation administered by EPA. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

41. **Late Payment Provisions.** 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. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of the debt collection, including processing and handling costs and attorneys' fees. In addition, a non-payment penalty charge of six (6) 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. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

42. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

43. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to legally bind Respondent to it.

### **FINAL ORDER**

Pursuant to the provisions of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

44. Respondent shall pay a civil penalty of Eight Thousand Two Hundred and Eighty Dollars and No Cents (\$8,280.00) within thirty days of the effective date of this Final Order. Payment shall be made by cashier's or certified check, made payable to the "United States Treasury," and shall be remitted to:

U.S. Environmental Protection Agency, Region 7  
Fines and Penalties

Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

This payment shall reference docket number EPCRA-07-2012-0002.

45. A copy of the check should be sent to:

Regional Hearing Clerk  
United States Environmental Protection Agency – Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101

and to:

Erin Weekley  
Assistant Regional Counsel  
United States Environmental Protection Agency – Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101.

46. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of the CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

47. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer. Complainant shall promptly advise Respondent's counsel of the effective date.

48. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/3/12 By: Becky Weber  
Becky Weber  
Director  
Air and Waste Management Division

Date: 4/3/12 By: Erin Weekley  
Erin Weekley  
Assistant Regional Counsel  
Office of Regional Counsel

RESPONDENT:

KLINGER PAINT COMPANY

Date: 3/27/12 By: John W. O'Deen  
Printed Name: John W. O'Deen  
Title: General Manager

**IT IS SO ORDERED.** This Order shall become effective immediately.

Date: Apr. 4, 2012

By:   
Robert L. Patrick  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 7

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to Attorney for Complainant:

Erin Weekley  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by certified mail, return receipt requested to:

Jane B. McAllister  
Ahlers & Cooney, P.C.  
100 Court Avenue, Suite 600  
Des Moines, Iowa 50309-2231

and to

Douglas Klinger  
Registered Agent  
Klinger Paint Company  
333 5<sup>th</sup> Avenue SE  
Cedar Rapids, Iowa 52401

Dated: 4/4/12

By: Kathy Robinson  
Kathy Robinson  
Hearing Clerk  
United States Environmental Protection Agency  
Region 7