

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

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In the Matter of	:	<u>CONSENT AGREEMENT</u>
	:	<u>AND</u>
Sulzer Metco (US) Inc.	:	<u>FINAL ORDER</u>
	:	
Respondent	:	DOCKET NUMBER
	:	EPCRA-02-2011-4206
	:	
Proceeding under Section 325(c) of Title III of	:	
the Superfund Amendments and Reauthorization Act :	:	
-----X		

**U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 SEP 30 P 2:30
REGIONAL HEARING
CLERK**

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §11001 *et seq.* [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA")]. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc." (40 C.F.R. Part 22 (July 1, 2000)) provide in 40 C.F.R. §22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§22.18(b) (2) and (3).

The Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2, ("EPA or Complainant") alleges that Sulzer Metco (US) Inc., located at 1101 Prospect Avenue in Westbury, New York 11590, violated the requirements of Section 313 of EPCRA (42 U.S.C. §11023) and the regulations promulgated pursuant to that Section, codified at 40 C.F.R. Part 372.

Under Section 313 of EPCRA and 40 C.F.R. §372.22, owners or operators of a facility subject to the requirements of Section 313(b) are required to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form R, EPA Form 9350-1 (hereinafter, "Form R") for each toxic chemical listed under 40 C.F.R. §372.65 and/or 40 C.F.R. §372.28 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. A complete and correct Form R is required to be submitted to the Regional Administrator of the Environmental Protection Agency and to the State in which the subject facility is located.

EPA and Sulzer Metco (US) Inc. agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO"), pursuant to 40 C.F.R. §22.13(b) and 40 C.F.R. §22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated Findings of Fact or Conclusions of Law have been made. The following constitutes EPA's Findings of Fact and Conclusions of Law based upon information EPA obtained through August 9, 2011.

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

1. Respondent is Sulzer Metco (US) Inc. (TRI Facility No.: 11590PRKLN1101P).
2. At all times relevant hereto, Respondent has maintained a facility located at 1101 Prospect Avenue, Westbury, New York 11590, which is the subject of this Consent Agreement and Final Order (hereinafter, "Respondent's facility").
3. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. §11049).
4. Respondent is an owner of 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.
5. Respondent is an operator of 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.
6. Respondent's facility has ten (10) or more "full time employees" as that term is defined by 40 C.F.R. §372.3.
7. Respondent's facility is in the North American Industry Classification System (NAICS) Code 33217 (Powder Metallurgy Part Manufacturing).

8. Respondent's facility is subject to the requirements of Section 313(b) of EPCRA (42 U.S.C. §11023(b)) and 40 C.F.R. §372.22.

9. Chromium (CAS No.: 7440-47-3) and chromium compounds are listed under 40 C.F.R. §372.65.

10. Respondent processed approximately 158,824 pounds of chromium and chromium compounds in calendar year 2009.

11. Respondent was required to submit a complete and correct Form R report for chromium or chromium compounds for calendar year 2009 to the Administrator of the EPA and to the State of New York by July 1, 2010.

12. Respondent submitted separate Form R reports for chromium and chromium compounds to the EPA for calendar year 2009 on February 2, 2011. The Form R reports were submitted 216 days late.

13. Respondent's failure to submit a timely, complete and correct Form R report for chromium or chromium compounds for calendar year 2009 constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. §11023, and with 40 C.F.R. Part 372.

14. Cobalt (CAS No.: 7440-48-4) is listed under 40 C.F.R. §372.65.

15. Respondent processed approximately 68,972 pounds of cobalt in calendar year 2009.

16. Respondent was required to submit a complete and correct Form R report for cobalt for calendar year 2009 to the Administrator of the EPA and to the State of New York by July 1, 2010.

17. Respondent submitted a Form R report for cobalt to the EPA for calendar year 2009 on February 2, 2011. The Form R report was submitted 216 days late.

18. Respondent's failure to submit a timely, complete and correct Form R report for cobalt for calendar year 2009 constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. §11023, and with 40 C.F.R. Part 372.

19. Copper (CAS No.: 7440-50-8) is listed under 40 C.F.R. §372.65.

20. Respondent processed approximately 83,755 pounds of copper in calendar year 2009.

21. Respondent was required to submit a complete and correct Form R report for copper for calendar year 2009 to the Administrator of the EPA and to the State of New York by July 1, 2010.

22. Respondent submitted a Form R report for copper to the EPA for calendar year 2009 on February 2, 2011. The Form R report was submitted 216 days late.

23. Respondent's failure to submit a timely, complete and correct Form R report for copper for calendar year 2009 constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. §11023, and with 40 C.F.R. Part 372.

24. Nickel (CAS No.: 7440-02-0) is listed under 40 C.F.R. §372.65.

25. Respondent processed approximately 552,431 pounds of nickel in calendar year 2009.

26. Respondent was required to submit a complete and correct Form R report for nickel for calendar year 2009 to the Administrator of the EPA and to the State of New York by July 1, 2010.

27. Respondent submitted a Form R report for nickel to the EPA for calendar year 2009 on February 2, 2011. The Form R report was submitted 216 days late.

28. Respondent's failure to submit a timely, complete and correct Form R report for nickel for calendar year 2009 constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. §11023, and with 40 C.F.R. Part 372.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 325(c) of EPCRA, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc., 40 C.F.R. §22.18 (hereinafter, "Consolidated Rules"), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

1. Respondent certifies herein that any and all EPA Toxic Chemical Release Inventory Forms submitted for the above-described violations comply with the requirements of Section 313 of EPCRA and the regulations set forth at 40 C.F.R. Part 372.

2. For the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of this Consent Agreement as applied to the facility as set forth in paragraphs 1 through 28, inclusive; and (b) neither admits nor denies the Findings of Fact and Conclusions of Law section, above.

3. Respondent shall pay a civil penalty totaling **EIGHTY THOUSAND NINE HUNDRED DOLLARS (\$80,900)**. Payment shall be made by cashier's or certified check or by electronic fund transfer (EFT) in two installments. If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

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

Each check shall be identified with a notation thereon listing the following: **In The Matter of Sulzer Metco (US) Inc.** and shall bear thereon the **Docket Number EPCRA-02-2011-4206**. The first payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date"). The second payment must be received on or before 12 months after the date of signature of the Final Order at the end of this document. If Respondent chooses to make the payments by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: **Sulzer Metco (US) Inc.**
- 7) Case Number: **EPCRA-02-2011-4206**.

Such EFT must be received on or before 45 calendar days after the date of signature of the Final Order at the end of this document. Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Ms. Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866

and

Mr. John Gorman, Chief
Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency - Region 2
2890 Woodbridge Avenue (Bldg. 10, MS-105)
Edison, New Jersey 08837

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice for collection.

b. Further, 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, on the overdue amount from the due date through the date of payment. In addition, a late payment handling fee of \$15 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of all civil liabilities under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11001 et seq.) and the regulations promulgated thereunder, 40 C.F.R. Part 372, that attach or might have attached as a result of the Findings of Fact and Conclusions of Law set out above.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Sulzer Metco (US) Inc. has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and to abide by its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

7. Sulzer Metco (US) Inc. waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

8. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

10. Each party hereto agrees to bear its own costs and fees in this matter.

11. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

Sulzer Metco (US) Inc.

BY: W. G. Wuest
Authorizing Signature

NAME: W. G. Wuest
(PLEASE PRINT)

TITLE: Director QESH

DATE: 19-Sept-2011

COMPLAINANT:

Dore LaPosta
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

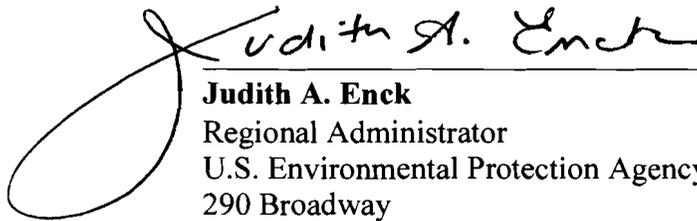
DATE: SEPTEMBER 22, 2011

FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement (including Attachment A) in the case of **In the Matter of Sulzer Metco (US) Inc.**, bearing **Docket No. EPCRA-02-2011-4206**. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. §§ 22.13(b) and 22.18(b)(3) and shall constitute an order issued under authority of Section 325(c) of EPCRA 42 U.S.C. § 11045(c).

DATE: _____

9/23/11



Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

In the Matter of Sulzer Metco (US) Inc.

Docket No. EPCRA-02-2011-4206

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

Original and One Copy
by Interoffice Mail:

Ms. Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency -Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Mr. Richard G. Rudolf, Esq.
Vice President, General Counsel
Sulzer Metco (US) Inc.
245 Park Avenue, 27th Floor
New York, New York 10167

Copy by Mail:

Mr. W. Gregory Wuest, Director
Materials Quality Environment Safety and Health
Sulzer Metco (US) Inc.
1101 Prospect Avenue
Westbury, New York 11590-0201

Mr. Alfonso Rolli, Manager
Environmental Health and Safety Engineering Manager
Sulzer Metco (US) Inc.
1101 Prospect Avenue
Westbury, New York 11590-0201

Ms. Suzanne Wither, Division of Environmental Remediation
NYS Department of Environmental Conservation
625 Broadway - 11th Floor
Albany, New York 12233

Dated: 9/29/11



Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency - Region 2
2890 Woodbridge Avenue (MS-105)
Edison, New Jersey 08837-3679