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U.S. EPA, REGION IX
REGIONAL HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of:	**Docket No. EPCRA-09-2008-** 0021
Bay State Milling Company	**CONSENT AGREEMENT AND FINAL ORDER PURSUANT TO 40 C.F.R. §§ 22.13 AND 22.18**
Respondent	

I. CONSENT AGREEMENT

1. The Director of the Communities and Ecosystems Division ("Complainant"), United States Environmental Protection Agency ("EPA") EPA Region 9, and Bay State Milling Company("Respondent" or "Bay State"), the Parties herein, agree to settle this matter and consent to the entry of this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
2. This is a civil administrative proceeding initiated 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 ("EPCRA"), for violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated to implement Section 313 at 40 C.F.R. Part 372.
3. Complainant has been duly delegated the authority to file this action and sign a consent agreement settling this action. Respondent is a Minnesota corporation headquartered at 100 Congress Street, Quincy, Massachusetts 02169.

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

5. Section 313(a) of EPCRA, as implemented by 40 C.F.R. § 372.30, provides that an owner or operator of a facility that meets the criteria set forth in EPCRA Section 313(b) and 40 C.F.R. § 372.22, is required to submit annually to the Administrator of EPA and to the State in which the facility is located, no later than July 1st of each year, a toxic chemical release inventory reporting form (hereinafter "Form R") for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed or otherwise used at the facility during the preceding calendar year in quantities exceeding the thresholds established under EPCRA Section 313(f) and 40 C.F.R. §§ 372.25, 372.27 and 372.28.

6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that the requirements of Section 313(a) and 40 C.F.R. § 372.30 apply to an owner and operator of a facility that has 10 or more full-time employees; that is in a Standard Industrial Classification (SIC) (as in effect on January 1, 1987) major group or industry code listed in § 372.23(a), for which the corresponding North American Industry Classification System (NAICS) (as in effect on January 1, 2007, for reporting year 2008 and thereafter) subsector and industry codes are listed in 40 C.F.R. §§ 372.23(b) and (c); and that manufactures,

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processes, or otherwise uses one or more toxic chemicals listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of the applicable thresholds established under EPCRA Section 313(f) and 40 C.F.R. §§ 372.25, 372.27 and 372.28.

7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R. Part 19 authorize EPA to assess a penalty of up to $27,500 for each violation of Section 313 of EPCRA that occurred on or after January 30, 1997, but before March 15, 2004, and up to $32,500 for each violation of Section 313 of EPCRA that occurred on or after March 15, 2004.

8. Respondent is a "person," as that term is defined by Section 329(7) of EPCRA.

9. At all times relevant to this CAFO, Respondent was the owner and operator of a facility located at 421 South 99th Avenue, Tolleson, Arizona 85353 the "Facility"), which falls within the definition of a "facility" found in Section 329(4) of EPCRA and 40 C.F.R. § 372.3.

10. The Facility employed 10 or more "full-time employees," as that term is defined at 40 C.F.R. § 372.3 and was classified in NAICS Code 311211 - Flour Milling.

11. During calendar year 2003, Respondent processed approximately 33,350 pounds of chlorine, a chemical listed under 40 C.F.R § 372.65, at the Facility.

12. The quantity of chlorine Respondent processed at the Facility during calendar year 2003 exceeds the established threshold

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of 25,000 pounds set forth at 40 C.F.R. § 372.25(a).

13. Respondent failed to submit a Form R for chlorine processed at the Facility to the EPA Administrator and to the State of Arizona on or before July 1, 2004, for calendar year 2003.

14. Respondent's failure to submit a Form R before July 1 of 2004 for chlorine processed at the Facility during the preceding calendar year constitutes a violation of Section 313 of EPCRA and 40 C.F.R. § 372.30.

15. During calendar year 2004, Respondent processed approximately 37,200 pounds of chlorine, a chemical listed under 40 C.F.R § 372.65, at the Facility.

16. The quantity of chlorine Respondent processed at the Facility during calendar year 2004 exceeds the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25(a).

17. Respondent failed to submit a Form R for chlorine processed at the Facility to the EPA Administrator and to the State of Arizona on or before July 1, 2005, for calendar year 2004.

18. Respondent's failure to submit a Form R before July 1 of 2005 for chlorine processed at the Facility during the preceding calendar year constitutes a violation of Section 313 of EPCRA and 40 C.F.R. § 372.30.

19. During calendar year 2005, Respondent processed approximately 35,350 pounds of chlorine, a chemical listed under 40 C.F.R § 372.65, at the Facility.

20. The quantity of chlorine Respondent processed at the Facility during calendar year 2005 exceeds the established threshold

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of 25,000 pounds set forth at 40 C.F.R. § 372.25(a).

21. Respondent failed to submit a Form R for chlorine processed at the Facility to the EPA Administrator and to the State of Arizona on or before July 1, 2006, for calendar year 2005.

22. Respondent's failure to submit a Form R before July 1 of 2006 for chlorine processed at the Facility during the preceding calendar year constitutes a violation of Section 313 of EPCRA and 40 C.F.R. § 372.30.

23. The EPA Enforcement Response Policy for EPCRA Section 313 dated August 10, 1992, as amended by 40 C.F.R. Part 19, provides for a penalty of nineteen thousand, three hundred ($19,300) for these violations.

24. In executing this CAFO, Respondent certifies that (1) it has now fully completed and submitted to EPA all required Form Rs, in compliance with Section 313 of EPCRA and the regulations promulgated to implement Section 313; and (2) it has complied with all other EPCRA requirements at all facilities under its control.

25. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) admits the violations and facts alleged in this CAFO; (iii) consents to the terms of this CAFO; (iv) waives any right to contest the allegations in this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

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26. The terms of this CAFO constitute a full settlement of the civil administrative matter filed under the docket number above.

27. EPA's final policy statement on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit Policy") has several important goals, including encouraging greater compliance with the laws and regulations which protect human health and the environment and reducing transaction costs associated with violations of the laws EPA is charged with administering. If certain specified criteria are met, reductions in gravity-based penalties of up to 100% are available under the Audit Policy. These criteria are (1) discovery of the violation(s) through an environmental audit or a compliance management system; (2) voluntary disclosure; (3) prompt disclosure; (4) discovery and disclosure independent of government or third party plaintiff; (5) correction and remediation; (6) prevention of recurrence; (7) no repeat violations; (8) exclusion of the policy's applicability to certain types of violations, including those resulting in serious actual harm to the environment and those that may have presented an imminent and substantial endangerment to the public health or the environment; and (9) cooperation.

28. Complainant has determined that Respondent has satisfied all of the criteria under the Audit Policy and thus qualifies for

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the elimination of civil penalties in this matter. Accordingly, the civil penalty assessed in this matter is zero ($0) dollars.

29. Complainant's finding that Respondent has satisfied the criteria of the Audit Policy is based upon documentation that Respondent has provided to establish that it satisfies these criteria. Complainant and Respondent agree that, should any material fact upon which Complainant relied in making its finding subsequently prove to be other than as represented by Respondent, this CAFO may be voided in whole or in part.

30. Nothing in this CAFO modifies, affects, exempts or relieves Respondent's duty to comply with all applicable provisions of EPCRA and other federal, state or local laws and permits. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in this CAFO.

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31. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

32. The provisions of this CAFO shall be binding upon Respondent, its agents, successors or assigns. Respondent's obligations under this Consent Agreement, if any, shall end when Respondent has performed all of the terms of the Consent Agreement in accordance with the Final Order. Complainant and Respondent consent to the entry of the CAFO without further notice.

FOR RESPONDENT:

9/24/08
Date

Randy Frank
Plant Manager
Bay State Milling Company

FOR COMPLAINANT:

9/25/08
Date

Enrique Manzanilla, Director
Communities and Ecosystems Division
EPA Region 9

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II. FINAL ORDER

Complainant EPA Region IX and Respondent Bay State Milling Company, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-09-2008-0021) be entered.

09/26/08
Date

STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 9

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. EPCRA-09-2008-0021, was filed this day with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail, return receipt requested, addressed to the following address:

Mr. Randy Frank
Plant Manager
Bay State Milling Company
421 South 99th Avenue
Tolleson, AZ 85353

Certified Mail No. 7000 1670 0011 9907 4598

Date: SEP 26 2008 By: Danielle E. Carr

DANIELLE CARR
Regional Hearing Clerk
United States Environmental
Protection Agency, Region IX
75 Hawthorne Avenue
San Francisco, California 94105-3143