

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

In the matter of:)	U.S. EPA Docket No.
)	RCRA 9-2008- 0013
)	
TRIUMPH PRECISION CASTINGS CO.)	CONSENT AGREEMENT
)	AND FINAL ORDER
EPA I.D. No. AZR 000 502 591)	PURSUANT TO
)	40 CFR SECTIONS
Respondent.)	22.13 AND 22.18
)	
)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §6928(a)(1), and 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, 40 CFR Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Triumph Precision Castings Co. ("Triumph").
2. Respondent owns and operates a facility on the Gila River Indian Community reservation ("GRIC"), located at 6519 West Allison Road, Chandler, Arizona 85226 (the "Facility"). The Facility produces castings for industrial and aerospace applications in the course of which Respondent generates and stores hazardous wastes. The Facility's EPA Identification Number is AZR 000 502 591.
3. This Consent Agreement and Final Order pursuant to 40 CFR Sections 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent failed to: (1) implement the Facility's contingency plan during an emergency in violation of 40 C.F.R. § 265.56(a); (2) include in the contingency plan the name, address and telephone number of the Facility's emergency coordinator in violation of 40 C.F.R. § 265.52(d); and (3) maintain records documenting that all Facility personnel had completed the training required for personnel handling hazardous wastes in violation of 40 C.F.R. § 265.16(d). These alleged violations are all in violation of Section 3001 et seq., of RCRA, 42 U.S.C. §6921 et seq., and regulations adopted pursuant thereto.

B. JURISDICTION

4. Arizona is authorized to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. However, the federal regulations apply here because Arizona is not authorized to administer the program in Indian country. *See, e.g.,* 65 FR 64369, 64371 (Oct. 27, 2000).
5. Respondent is a "person" as defined in 40 CFR § 260.10.
6. Respondent is the "operator" of a facility as defined in 40 CFR § 260.10.
7. Respondent is the "owner" of a facility as defined in 40 CFR § 260.10.
8. Respondent is engaged in "hazardous waste generation" as defined in Section 1004(6) of RCRA, 42 U.S.C. § 6903(6).
9. Respondent is a "Generator" of hazardous waste as defined in 40 CFR § 260.10.
10. At the Facility, Respondent generates a number of hazardous wastes as defined by Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 CFR §§ 260.10 and 261.3. These generated wastes include ignitable wastes (D001) and wastes that exhibit the characteristic of toxicity including D006 (cadmium), D007 (chromium), D008 (lead), D011 (silver), D035 (MEK), D040 (trichloroethylene), and F003 and F005 (non-halogenated solvents).
11. On May 22, 2007, representatives of the GRIC Department of Environmental Quality ("DEQ"), conducted an inspection of the Facility in response to notice of a spill at the Facility on May 18, 2007, that it had received from a third-party. The spill reportedly involved potassium hydroxide, a waste that exhibits the characteristic of corrosivity (D002).
12. On June 12, 2007, an EPA inspector, accompanied by GRIC DEQ personnel, conducted a RCRA compliance evaluation inspection ("CEI") at the Facility.
13. Based upon the findings made during the GRIC DEQ's spill inspection, EPA's CEI, and additional information obtained subsequent to the CEI, EPA determined that Respondent has violated Section 3001 *et seq.*, of RCRA, 42 U.S.C. §6921 *et seq.*, and therefore is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
14. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing civil penalties and/or requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of

RCRA et seq., 42 U.S.C. § 6921, et seq.

15. The Administrator has delegated the authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrator for Region IX, who has redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

Count I

Failure to Implement the Facility's Contingency Plan During an Emergency

16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
17. 40 C.F.R. § 265.56(a) provides that the emergency coordinator of a hazardous waste generator must, when there is an imminent or actual emergency situation at its facility, notify appropriate State or local agencies with designated response roles if their help is needed.
18. During the CEI, the EPA inspector reviewed the spill incident report letter describing the May 18, 2007 spill which Respondent filed with the GRIC DEQ at its request. The report letter states that the "Emergency Response Plan for the company was not followed to notify Fire, Lone Butte IP and Region IX EPA at the time of the incident." This statement was confirmed to EPA during the CEI by representatives of Triumph.
19. Therefore, EPA alleges that Respondent failed to comply with 40 C.F.R. § 265.56(a).

Count II

Failure to Include in the Contingency Plan the Name, Address and Telephone Number of the Facility's Emergency Coordinators

20. Paragraphs 1 through 19 above are incorporated herein by this reference as if they were set forth here in their entirety.
21. 40 C.F.R. § 265.52(d) provides that a facility's required contingency plan must include an up-to-date list of the names, addresses and phone numbers of all persons qualified to act as the emergency coordinator.
22. During the CEI, the EPA inspector reviewed the Facility's contingency plan and found that it did not include the names, addresses and phone numbers of the emergency coordinators.
23. Therefore, EPA alleges that Respondent failed to comply with 40 C.F.R. § 265.52(d).

Count III

Failure to Maintain Records Documenting That all Facility Personnel had Completed the Training Required for Personnel Handling Hazardous Wastes

24. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.
25. 40 C.F.R. § 265.16(d)(4) provides that a hazardous waste generator must maintain records which document that the training required by 40 C.F.R. § 265.16(a-c) has been given to, and completed by, facility personnel.
26. During the CEI, the EPA inspector reviewed the training records maintained by the Facility and found no documentation that one of the employees in the Facility's etch room had received the required training in the handling of hazardous waste.
27. Therefore, EPA alleges that Respondent failed comply with 40 C.F.R. § 265.16(d)(4).

D. CIVIL PENALTY

28. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, (*see* 61 Fed. Reg. 69360 (Dec. 31, 1996) and 69 Fed. Reg. 7121 (Feb. 13, 2004)), authorizes a civil penalty of up to THIRTY-TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after March 15, 2004.
29. Complainant EPA proposes, and Respondent consents to, the assessment of a civil penalty in the amount of **TEN THOUSAND DOLLARS (\$10,000.00)** in full satisfaction of all claims for civil penalties for the violations alleged in Section C of this CA/FO. This settlement amount was calculated based on the facts alleged herein and upon those factors which the Complainant must consider pursuant to RCRA Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), and in accordance with the applicable provisions of the "June 2003 RCRA Civil Penalty Policy."

E. ADMISSIONS AND WAIVERS

30. Respondent admits and agrees that the EPA Administrator and Region IX Administrator have jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 CFR §§ 22.4 and 22.37. Further, for the purposes of this proceeding, Respondent admits to the jurisdictional allegations of facts and law set forth in Section B of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to

impose sanctions for violations of this CA/FO.

31. Neither this CA/FO, nor Respondent's execution of this CA/FO, nor any actions taken by Respondent in accordance with this CA/FO constitute an admission or a denial of any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

32. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns and upon all persons acting under or for Respondent, until such time as the civil penalty required under Section D has been paid. At such time as the required payment is made in full, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
33. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
34. Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer until the termination of this CA/FO.
35. The undersigned representative of Respondent hereby certifies s/he is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

36. Respondent consents to the assessment of and agrees to pay a civil penalty of **TEN THOUSAND DOLLARS (\$10,000.00)** in full settlement of the civil penalty claims made in this CA/FO.
37. Respondent shall submit payment of the **TEN THOUSAND DOLLARS (\$10,000.00)** civil penalty within thirty (30) calendar days of the Effective Date of this CA/FO as defined in Paragraph 56. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action. Payment shall be made by one of the methods set forth immediately below in subparagraphs a - e.

- a. A check sent by regular U.S. Postal Service mail, made payable to

“Treasurer, United States of America” and addressed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

b. A wire transfer directed to the Federal Reserve Bank of New York as follows:

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”

c. A check sent by overnight mail made payable to “Treasurer, United States of America” and addressed to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

d. ACH (also known as REX or remittance express), using the following information:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548

ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 310006
CTX Format

e. The on-line payment option available through the U.S. Department of Treasury, accessed at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing required fields.

38. At the time payment is so made, a notice of the payment shall be sent to:

Danielle Carr
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Daniel Fernandez (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

39. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the Effective Date of this CA/FO ("Due Date") to avoid additional charges. If payment is not received by the Due Date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 CFR § 13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the Due Date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

40. In the event Respondent fails to submit payment to EPA by the time required in this CA/FO, Respondent shall pay stipulated penalties of: **FIVE HUNDRED DOLLARS (\$500)** per day for first to fifteenth day of delay, **ONE THOUSAND DOLLARS (\$1,000)** per day for sixteenth to thirtieth day of delay, and **FIFTEEN HUNDRED DOLLARS (\$1,500)** per day for each day of delay thereafter.
41. All stipulated penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.

accrue on the unpaid balance at the end of the thirty-day period.

43. Unless otherwise directed by EPA, payments of stipulated penalties shall be made in accordance with one of the methods set forth in Paragraph 37. ~~At the time payments are made, a copy of the check shall be sent to Danielle Carr and Daniel Fernandez as described above in Paragraph 38.~~
44. All stipulated penalty payments shall indicate the name of the Facility, EPA identification ~~number of the Facility, the Respondent's name and address, and the EPA docket number~~ of this action.
45. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
46. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's ~~failure to comply with any of the requirements of this CA/FO.~~

I. RESERVATION OF RIGHTS

47. Other than Respondent's liability for civil penalties for the alleged violations of RCRA, which are the subject matter of this CA/FO, which liability is resolved under this CA/FO, EPA hereby reserves (i) all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO, and (ii) all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation the assessment of penalties under Section 2002(c) of RCRA 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, except as to those alleged violations which are ~~the subject matter of this CA/FO~~, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States.
48. Respondent reserves all rights that it may have against any other person under all federal, state and local laws.
49. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws.

and regulations.

50. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.
51. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

J. OTHER CLAIMS

52. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.


K. MISCELLANEOUS

53. By signing this CAFO, Respondent without admitting or denying them, certifies that all of the alleged violations set forth in Section C of this CAFO, which are or were capable of correction, have been corrected.
54. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
55. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
56. The Effective Date of this CA/FO is the date the CA/FO, once signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

6/20/08

Date


JUL 1 2008
Nancy Lindsay, Director
Waste Management Division
United States Environmental Protection Agency.
Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order ("CA/FO") (U.S. EPA Docket No. RCRA-9-2008-0013) be entered and that, within thirty (30) days after the Effective Date of this Consent Agreement and Final Order, Respondent Triumph Precision Castings Co. pay a civil penalty of **TEN THOUSAND DOLLARS (\$10,000.00)** by one of the methods set forth in Paragraph 37 of this Consent Agreement and Final Order. A notice of the payment shall be sent to the EPA Region IX addresses specified in Section G of this Consent Agreement and Final Order within such 30-day period.

This Final Order, once signed, shall be effective immediately upon it being filed with the Regional Hearing Clerk.

06/25/08

Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection
Agency, Region IX

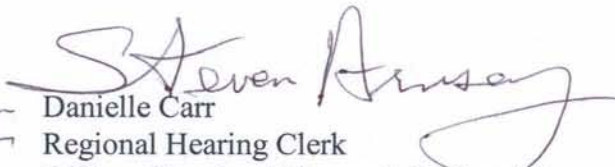
CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Complaint, Consent Agreement and Final Order, was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by certified mail, return receipt requested, to:

Dean Evans
President
Triumph Precision Castings Co.
6519 W. Allison Road
Chandler, AZ 85226

Glenn L. Unterberger, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market St., 51st Floor
Philadelphia, PA 19103

June 27, 2008
Date

for 
Danielle Carr
Regional Hearing Clerk
Office of Regional Counsel, Region IX