

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

IN THE MATTER OF: :
 : Docket No. EPCRA-03-2010-0116
Coopers Creek Chemical Corporation :
 :
Respondent :
 :
Coopers Creek Chemical Corporation :
884 River Road : Proceeding under EPCRA §§ 313 and 325,
West Conshohocken, PA 19428 : 42 U.S.C. §§ 11023 and 11045
 :
Facility. :
 :

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant") and Coopers Creek Chemical Corporation ("Respondent"), pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22.

Pursuant to Sections 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules, this Consent Agreement and attached Final Order ("CA/FO") will simultaneously commence and conclude this proceeding to resolve Respondent's violations of Section 313 of EPCRA, 42 U.S.C. §§ 11022, and regulations promulgated thereunder concerning Respondent's obligations with respect to submitting toxic chemical release reports as required by 40 C.F.R. Part 372, for certain specified toxic chemicals for the reporting year 2005 for its facility located at 884 River Road, West Conshohocken, PA 19428.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CA/FO.

2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA/FO.
3. Respondent agrees not to contest the U.S. Environmental Protection Agency's ("EPA") jurisdiction with respect to the execution or the enforcement of this CA/FO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this CA/FO or to appeal the Final Order accompanying this Consent Agreement.
5. Respondent consents to the issuance of this CA/FO and agrees to comply with its terms.
6. Respondent agrees not to deduct for civil taxation purposes the civil penalty to be paid in settlement of this action as specified in this CA/FO.
7. Respondent shall bear its own costs and attorney's fees.
8. The provisions of this CA/FO shall be binding upon Complainant, Respondent and Respondent's officers, directors, successors and assigns.
9. By signing this Consent Agreement, Respondent certifies, upon investigation, to the best of its knowledge and belief, that the Facility covered by this CA/FO is currently in compliance with all applicable requirements of EPCRA Section 313, 42 U.S.C. § 11023.
10. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, for the specific violations alleged herein. Compliance with this CA/FO shall not be a defense to any action commenced at any time for any other violations of the federal laws and regulations administered by EPA.
11. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state and local law. Furthermore, EPA reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO following entry of this CA/FO. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules*.
12. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment.

13. The undersigned representative of Respondent certifies that she or he is fully authorized by Respondent to enter into the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.
14. This CA/FO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed herein.
15. The effective date of this Consent Agreement and the accompanying Final Order is the date upon which the Final Order, after signature by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

EPA's Findings of Fact and Conclusions of Law

16. In accordance with Section 22.18(b)(2) of the *Consolidated Rules*, Complainant adopts the following findings of fact and conclusions of law.

COUNTS 1 - 7

- a. Section 313 of EPCRA, 42 U.S.C. § 11023, requires the owner or operator of a facility that: 1) has 10 or more full-time employees; 2) is in a primary Standard Industrial Classification ("SIC") Code 20 through 39 (as in effect on July 1, 1985) or other SIC or industry code as set forth in 40 C.F.R. § 372.22(b); and 3) manufactured, processed or otherwise used a toxic chemical listed in 40 C.F.R. § 372.65 in excess of the threshold quantity established in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form is required, to complete and submit a toxic chemical release form ("Form R") or alternate threshold report ("Form A") for each toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year.
- b. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures and other stationary items that are located on a single site that are owned or operated by the same person.
- c. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines "person" to include any corporation.
- d. Respondent is a Pennsylvania corporation.

- e. Respondent is, and was at all times relevant to this CA/FO, a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. §11049(7).
- f. Respondent owned and operated a “facility”, as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), located at 884 River Road, West Conshohocken, PA 19428 (“Facility”), at the time of the violations alleged herein.
- g. Respondent had 10 or more full-time employees at the Facility during the period of violations alleged herein.
- h. Respondent's Facility had a primary SIC Code of 2865 at the time of the violations alleged herein.
- i. Respondent was required to complete and submit a Form R or Form A for each toxic chemical listed in 40 C.F.R. § 372.65 which was manufactured, processed or otherwise used at the Facility in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form was required, to EPA and the Commonwealth of Pennsylvania by July 1 of the following calendar year.
- j. “Biphenol,” “Phenol,” “Cresol,” “Anthracene,” “1,2,4-Trimethylbenzene,” “Polycyclic Aromatic Compounds,” and “Creosote” are toxic chemicals as defined by 40 C.F.R. § 372.3 and are listed in 40 C.F.R. § 372.65.
- k. As set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical which is processed or manufactured at a facility is 25,000 pounds, except as provided in 40 C.F.R. §§ 372.27 and .28.
- l. 40 C.F.R. § 372.28 creates lower reporting thresholds for chemicals of special concern. These chemicals are listed in 40 C.F.R. § 372.28(a)(1). Polycyclic Aromatic Compounds is listed in 40 C.F.R. § 372.28(a)(1) as a chemical of special concern, and its reporting threshold is set at 100 pounds.
- m. Respondent processed more than 25,000 pounds of “Biphenol,” “Phenol,” “Cresol,” “Anthracene,” “1,2,4-Trimethylbenzene,” and “Creosote” at its Facility during the 2005 calendar year.
- n. Respondent processed more than 100 pounds of “Polycyclic Aromatic Compounds” at its Facility during the 2005 calendar year.

- o. On December 12, 2008, EPA conducted a compliance evaluation inspection of the Facility to evaluate the Respondent's compliance with the reporting requirements of EPCRA Section 313 (the "Inspection").
- p. Based on information provided to EPA during the Inspection, EPA determined that Respondent failed to submit the required Form R or Form A for the toxic chemicals "Biphenol," "Phenol," "Cresol," "Anthracene," "Polycyclic Aromatic Compounds," and "1,2,4-Trimethylbenzene" processed at its Facility during the 2005 calendar year to EPA and the Commonwealth of Pennsylvania by July 1, 2006.
- q. EPA further determined, based on the information provided during the Inspection, that although the Respondent timely submitted a Form R to EPA and the Commonwealth of Pennsylvania for "Creosote" processed at its Facility during the 2005 calendar year, Respondent underreported its fugitive air emissions for creosote during the 2005 reporting year.
- r. On March 10, 2009, EPA requested that Respondent complete the required Form Rs for the toxic chemicals listed in Paragraphs 16.p. and 16.q., above. Respondent submitted the completed Form Rs on or about April 1, 2009.
- s. Respondent's failure to submit, for the 2005 reporting year, the required Form Rs or Form As for "Biphenol," "Phenol," "Cresol," "Anthracene," "1,2,4-Trimethylbenzene," and "Polycyclic Aromatic Compounds," by July 1, 2006, and Respondent's underreporting of "Creosote" to EPA and the Commonwealth of Pennsylvania, as described in Paragraphs 16.p. and 16.q., above, constitutes seven separate violations of Section 313 of EPCRA, 42 U.S.C. § 11023.
- t. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) provides that any person who violates Section 313 of EPCRA, 42 U.S.C. § 11023, shall be liable to the United States for a civil penalty of up to \$25,000 per violation.
- u. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised (64 Fed. Reg. 7121 (February 13, 2004)), violations of Section 313 of EPCRA, 42 U.S.C. § 11023, occurring after January 30, 1997, and before March 16, 2004, are subject to an increased statutory maximum penalty of \$27,500 per violation, and violations occurring after March 15, 2004, are subject to an increased statutory maximum penalty of \$32,500 per violation.

Civil Penalty

17. In settlement of EPA's civil claims for penalties for the violations alleged in this CA/FO, Respondent consents to the assessment of a civil penalty of **Forty-Four Thousand One Hundred Dollars (\$44,100.00)**. Respondent agrees to pay the above-mentioned civil penalty in accordance with Paragraphs 19 and 20, below. Such civil penalty shall become due and payable immediately upon Respondents receipt of a true and correct copy of the CA/FO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, as described in Paragraph 20, below, Respondent must pay such civil penalty no later than THIRTY (30) CALENDAR DAYS after the date on which a true and correct copy of the signed and executed CA/FO is mailed or hand-delivered to Respondent.
18. The aforesaid settlement is based upon a consideration of the factors set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and the Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act ("ERP"), dated August 10, 1992.
19. Payment of the civil penalty amount described in Paragraph 17, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
 - a. All payments by Respondent shall reference its name and address, and the Docket Number of this action, *i.e.*, EPCRA-03-2010-0116;
 - b. All checks shall be made payable to "**United States Treasury**";
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Eric Volck 513-487-2105
 - d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

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"

- g. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

j. Copies of all checks and/or copies of all electronic fund transfers made in payment of the penalty described in Paragraph 17 shall be sent simultaneously to:

Donzetta Thomas
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

20. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

- a. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of the civil penalty not paid within 30 calendar

days will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

- b. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
- c. A late payment penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

Tax Deductibility

- 21. Respondent specifically agrees not to deduct for civil taxation purposes the civil penalty specified in this CA/FO, and any additional penalties paid pursuant to this CA/FO.

Full and Final Satisfaction

- 22. This CA/FO constitutes a full, complete and final settlement by EPA of all claims for civil penalties pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, for the specific violations alleged herein. Compliance with this CA/FO shall not be a defense to any action commenced at any time for any other violations of the federal laws and regulations administered by EPA.

Authority to Bind the Parties

- 23. The undersigned certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and bind Respondent hereto.
- 24. Failure by Respondent to comply with the requirements of this CA/FO may subject Respondent to additional enforcement action, including, but not limited to, the issuance of an Administrative Complaint and imposition of penalties, as provided by Section 325 of EPCRA, 42 U.S.C. § 11045, or the accompanying Final Order.

For Respondent:

Coopers Creek Chemical Corporation

Feb 19, 2010

Date

E. Alan Morris

E. Alan Morris, President

For Complainant:

U.S. Environmental Protection Agency, Region III

2/24/10

Date

Donzetta Thomas

Donzetta Thomas, Senior Assistant Regional Counsel

After reviewing the Findings of Fact and Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the U.S. Environmental Protection Agency, Region III, hereby recommends that the Regional Administrator or his designee, the Regional Judicial Officer, issue the attached Final Order.

3/3/10

Date

Abraham Ferdas

Abraham Ferdas, Director
Land and Chemicals Division

IN THE MATTER OF:	:	
	:	Docket No. EPCRA-03-2010-0116
Coopers Creek Chemical Corporation	:	
	:	
Respondent	:	
	:	
	:	
Coopers Creek Chemical Corporation	:	
884 River Road	:	
West Conshohocken, PA 19428	:	Proceeding under EPCRA §§ 313 and 325, 42 U.S.C. §§ 11023 and 11045
	:	
Facility.	:	

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Coopers Creek Chemical Corporation, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth fully herein.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(c), which authorizes the assessment of a civil penalty for violations of EPCRA, and having determined on the basis of the representation of the parties hereto that the civil penalty agreed to in the Consent Agreement is based upon a consideration of the factors set forth in EPCRA § 325, 42 U.S.C. § 11045, IT IS HEREBY ORDERED that Respondent comply with the terms and conditions of the attached Consent Agreement and pay a civil penalty of Forty-Four Thousand One Hundred Dollars (\$44,100.00), as specified in the Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA, Region III, or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

3/9/10
Date

Renee Sarajian
Renee Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

IN THE MATTER OF:	:	
	:	Docket No. EPCRA-03-2010-0116
Coopers Creek Chemical Corporation	:	
	:	
Respondent	:	
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	:	
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3/9/10
Date

Renee Sarajian
Renee Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

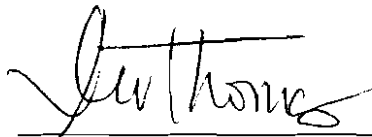
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order, EPA Docket No. EPCRA-03-2010-0116, were filed today with the Regional Hearing Clerk, EPA, Region III, and that one copy of the Consent Agreement and Final Order was sent via FedEx, to:

Katherine L. Vaccaro, Esq.
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 500
Bala Cynwd, PA 19004

3/9/10

Date



Donzetta Thomas (3RC30)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
(215) 814-2474