

FILED

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**U.S. EPA REGION 7
HEARING CLERK**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:

Bennett-Rogers Pipe Coating, Inc.
900 Kindleberger Rd
Kansas City, Kansas 66115

Respondent.

Proceeding under Section 325(c) of the
Emergency Planning and Community
Right-to-Know Act, 42 U.S.C. § 11045(c)

Docket No. EPCRA-07-2023-0110

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant) and Bennett-Rogers Pipe Coating, Inc. (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 and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

2. This proceeding 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).

3. This Consent Agreement and Final Order 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

4. Complainant, by delegation from the Administrator of EPA and the Regional Administrator of Region 7, is the Director of the Enforcement and Compliance Assurance Division, Region 7.

5. Respondent is Bennett-Rogers Pipe Coating, Inc., a company incorporated and currently operating as a business in the State of Kansas. Respondent owns and operates the facility at 900 Kindleberger Road, Kansas City, Kansas 66115 (“Respondent’s facility”).

Statutory and Regulatory Requirements

6. The Emergency Planning and Community Right-to-Know Act of 1986 was created to help communities plan for chemical emergencies. It requires industry to report on the storage, use and release of hazardous substances to federal, state, and local governments. EPCRA requires state and local governments and Indian tribes to use this information to prepare for and protect their communities from potential risks.

7. 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. is an establishment with a primary Standard Industrial Code (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a) or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and
- c. “manufactured, processed, or otherwise used” a toxic chemical listed under Section 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 (including imported), processed, or otherwise used at the facility.

8. 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.

9. 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. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$67,544 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 6, 2023.

Definitions

10. The term “facility” means “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.” Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

11. The term “person” means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

12. The term “full-time employees” means “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.” 40 C.F.R. § 372.3.

13. The term “toxic chemical” means a “chemical or chemical category listed in 40 C.F.R. § 372.65.” 40 C.F.R. § 372.3.

14. The term “manufacture” means “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.” 40 C.F.R. § 372.3.

15. The term “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.

16. The term “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.

Factual Allegations

17. 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).

18. Respondent’s facility, located at 900 Kindleberger Road, Kansas City, Kansas 66115, 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.

19. At all times relevant herein, Respondent’s facility had 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.

20. Respondent’s facility is classified as NAICS Code 332812, Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.

21. Chromium and Copper are listed chemicals pursuant to 40 C.F.R. § 372.65 and therefore are each a “toxic chemical” within the meaning of 40 C.F.R. § 372.3.

22. During reporting year 2020, the toxic chemicals identified in Paragraph 21 were “manufactured, processed, or otherwise used,” as those terms are defined by 40 C.F.R. § 372.3, at Respondent’s facility.

23. On November 12, 2021, the EPA, Region 7 requested information concerning toxic chemical reporting at Respondent’s facility. The purpose of the investigation was to determine the facility’s compliance with the requirements of Section 313 of EPCRA and the implementing regulations. Respondent provided a response on March 16, 2022.

Alleged Violations of Law

24. Complainant hereby states and alleges that Respondent has violated EPCRA and federal regulations promulgated thereunder, as follows:

Count 1

25. Paragraphs 17 through 23 are incorporated by reference as if fully set forth herein.

26. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing Chromium is 25,000 pounds, and/or the threshold reporting quantity for otherwise using Chromium is 10,000 pounds.

27. The toxic chemical Chromium was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantities during calendar year 2020.

28. Respondent failed to file a Form R report for Chromium with the Administrator of EPA and the State of Kansas for reporting year 2020 by the July 1, 2021, deadline. Respondent filed the Form R report on or about January 31, 2022.

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

Count 2

30. Paragraphs 17 through 23 are incorporated by reference as if fully set forth herein.

31. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing Copper is 25,000 pounds, and/or the threshold reporting quantity for otherwise using Copper is 10,000 pounds.

32. The toxic chemical Copper was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantities during calendar year 2020.

33. Respondent failed to file a Form R report for Copper with the Administrator of EPA and the State of Kansas for reporting year 2020 by the July 1, 2021, deadline. Respondent filed the Form R report on or about January 31, 2022.

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

35. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), it is proposed that a civil penalty be assessed against Respondent for the violations of EPCRA identified above, the amount of which is set forth below.

CONSENT AGREEMENT

36. For the purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action;
- g. waives any right to contest the allegations set forth herein; and
- h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

37. Respondent consents to the issuance of this Consent Agreement Final Order and agrees to comply with the terms of this Consent Agreement and Final Order.

38. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

39. The parties consent to service of this Consent Agreement and Final Order electronically at the following e-mail addresses: *stillwagon.angela@epa.gov* (for Complainant) and *ccbennett@everestkc.net* (for Respondent). Respondent understands that the Consent Agreement and Final Order will become publicly available upon filing.

Penalty Payment

40. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Twelve-Thousand Six-Hundred and Fifty Dollars (\$12,650.00).

41. Respondent shall pay the penalty within thirty (30) days of the effective date of this Consent Agreement and Final Order. Such payment shall identify Respondent by name and docket number and shall be by cashiers or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency, Region 7
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

42. A copy of the check or other information confirming payment shall simultaneously be e-mailed to:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov;

and to:

Angela Stillwagon
stillwagon.angela@epa.gov.

43. 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).

44. 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.

Effect of Settlement and Reservation of Rights

45. Full payment of the civil penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of EPCRA or any other applicable law and/or regulation administered by the EPA.

46. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the paragraph directly below.

47. Respondent certifies by signing this Consent Agreement that it is presently in compliance with all requirements of EPCRA and its implementing regulations.

48. Nothing in this Agreement shall be construed as a release from any other action under law and/or regulation administered by EPA. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

49. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

50. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

51. This Consent Agreement and Final Order constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

52. The undersigned representative of Respondent certifies that they are fully authorized to enter the terms and conditions of this Consent Agreement and to legally bind Respondent to it.

53. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

54. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Agreement.

55. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

COMPLAINANT:

U.S. Environmental Protection Agency

Date: _____ By: _____
David Cozad
Director
Enforcement and Compliance Assurance Division

Date: _____ By: _____
Angela Stillwagon
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:

BENNETT-ROGERS PIPE COATING, INC.

Date: 9-15-23

By:  _____

C. BENNETT
Printed Name

PRES.
Title

FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date: _____ By: _____
Karina Borromeo
Regional Judicial Officer
United States Environmental Protection Agency
Region 7

CERTIFICATE OF SERVICE

(to be completed by EPA)

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of Bennett-Rogers Pipe Coating, Inc., EPA Docket No. EPCRA-07-2023-0110, was sent this day in the following manner to the addressees:

Copy via E-mail to Complainant:

Angela Stillwagon
Office of Regional Counsel
stillwagon.angela@epa.gov

Sean Bergin
Enforcement and Compliance Assurance Division
bergin.sean@epa.gov

Milady Peters
Office of Regional Counsel
peters.milady@epa.gov

And

Copy via Email to Respondent:

Champ Bennett
Bennett-Rogers Pipe Coating, Inc.
900 Kindleberger Road
Kansas City, Kansas 66115
ccbennett@everestkc.net

Dated this _____ day of _____, 2023.

Signed