

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

Carlisle Industrial Brake & Friction, Inc. : **Docket No. EPCRA-03-2011-0279**
250 South Clinton St., Ste. 201 :
Syracuse, NY 13202 :

Respondent : **CONSENT AGREEMENT**

Motion Control Industries, Inc. :
1000 Cycle Lane :
South Hill, VA 23970 :

Facility : **Proceeding under EPCRA § 325(c),**
42 U.S.C. § 11045(c)

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EPA REGION III PHILA. PA

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and Carlisle Industrial Brake & Friction, Inc. ("Respondent", f/k/a Motion Control Industries, Inc.), pursuant to Sections 313 and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11023 and 11045(c), the regulations implementing EPCRA Section 313, as set forth at 40 C.F.R. Part 372, and the 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. Pursuant to 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively, "CAFO") simultaneously commence and conclude this proceeding to resolve violations of EPCRA § 313, 42 U.S.C. § 11023, as alleged herein, by Respondent at its former facility located at 1000 Cycle Lane, South Hill, Virginia 23970.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

3. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
4. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

Findings of Fact and Conclusions of Law

7. In accordance with Sections 22.13(b) and .18(b)(2) of the Consolidated Rules, Complainant adopts the following findings of fact and conclusions of law.
8. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372 require, *inter alia*, that the owner or operator of a facility that: 1) has 10 or more employees; 2) has a primary Standard Industrial Classification ("SIC") Code of 20 [2000] through 39 [3900] (as in effect on July 1, 1985), or other SIC or industry code as set forth in 40 C.F.R. Section 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 quantities established under 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 appropriate alternative threshold report ("Form A") for each such toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year.
9. 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 and that are owned or operated by the same person.
10. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines "person" to include any corporation.
11. Respondent is incorporated in the State of Delaware and is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
12. During calendar years 2008, 2009 and 2010 until October 2010, and at the time of the violations alleged herein, Respondent owned and operated a manufacturing plant located at 1000 Cycle Lane, South Hill, Virginia, 23970 ("Facility"). Respondent advised EPA that it began shutting down operations at the Facility in 2008 with production ceasing at the end of May 2009. After June 2009, the only Facility employees were a skeleton maintenance crew.

Respondent sold the Facility in October 2010. Therefore, based on Respondent's assertions, Respondent's status as an operator of the Facility during this period was as an operator of an active but diminishing manufacturing facility from at least January 1, 2008 through approximately May 31, 2009, when it became the operator of a non-active facility from June 1, 2009 until it sold the Facility in October 2010 (although it continued to send out products from pre-existing purchase orders during June 2009 until existing stock was exhausted).

13. Respondent's Facility is a "facility" as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.
14. During calendar year 2008, Respondent employed 10 or more full-time employees at the Facility.
15. During calendar year 2008, the Facility had a primary SIC code of 3714.
16. 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 set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during any calendar year, to EPA and the Commonwealth of Virginia by July 1 of the following calendar year.

Count I – Phenol 2008

17. "Phenol" is a "toxic chemical" as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
18. 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 phenol which is processed at a facility is 25,000 pounds.
19. Respondent processed more than 25,000 pounds of phenol at the Facility during the 2008 calendar year.
20. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), Respondent was required to submit to the Administrator of EPA and the Commonwealth of Virginia by July 1 of 2009, a completed Form R or Form A for the phenol processed at the Facility during calendar year 2008.
21. Respondent filed the required Form R for the toxic chemical phenol processed at the Facility during calendar year 2008 with the Administrator of EPA and the Commonwealth of Virginia on or about November 21, 2009.
22. Respondent's failure to timely file its Form R for the toxic chemical phenol processed at the Facility during calendar year 2008 constitutes one violation of Section 313 of EPCRA, 42 U.S.C. § 11023.

Count II – Copper 2008

23. "Copper" is a "toxic chemical" as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
24. 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 copper which is processed at a facility is 25,000 pounds.
25. Respondent processed more than 25,000 pounds of copper at the Facility during the 2008 calendar year.
26. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), Respondent was required to submit to the Administrator of EPA and the Commonwealth of Virginia by July 1 of 2009, a completed Form R or Form A for the copper processed at the Facility during calendar year 2008.
27. Respondent filed the required Form R for the toxic chemical copper processed at the Facility during calendar year 2008 with the Administrator of EPA and the Commonwealth of Virginia on or about November 21, 2009.
28. Respondent's failure to timely file its Form R for the toxic chemical copper processed at the Facility during calendar year 2008 constitutes one violation of Section 313 of EPCRA, 42 U.S.C. § 11023.

Civil Penalty

29. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA § 313, 42 U.S.C. § 11023, shall be liable to the United States for a civil penalty of up to \$25,000 per violation. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised (73 Fed. Reg. 75340-46 (December 11, 2008), violations of Section 313 of EPCRA, 42 U.S.C. § 11023, which occurred between March 16, 2004 and January 12, 2009, are subject to an increased statutory maximum penalty of \$32,500 per violation and that the maximum inflation-adjusted penalty for violations occurring after January 12, 2009 is \$37,500 per violation.
30. In settlement of EPA's claims for civil monetary penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of NINE THOUSAND DOLLARS (\$9,000.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by all parties, signed by the Regional Administrator or the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil

penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.

31. The aforesaid civil penalty set forth above in Paragraph 30, above, is based on a number of factors, including, but not limited to, the facts and circumstances of this case, the statutory factors set forth in EPCRA § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C), and the penalty criteria set forth in EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (August 10, 1992), as amended. Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, the June 6, 2006 memorandum by Acting EPA Toxics and Pesticides Enforcement Division Director Stephanie P. Brown entitled *Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Inflation Adjustment Rule* ("Brown Memorandum") and the April 6, 2010 memorandum from EPA Waste and Chemical Division Director Rosemarie Kelley entitled *Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009* ("Kelly Memorandum") The settlement in this proceeding is consistent with the provisions and objectives of EPCRA § 313, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
32. Respondent shall pay the civil penalty amount assessed in Paragraph 30, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 33, 34, 35, and 36, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, EPCRA-03-2011-0279;
- 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 to:

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

Customer service contact: 513-487-2105

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery 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
US 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 No. = 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: 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. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

James Heenehan
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

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

33. 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. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
34. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, 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 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).

35. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a 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.
36. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that 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).
37. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Certification

38. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Facility referred to in this Consent Agreement is currently in compliance with all applicable requirements of EPCRA Section 313, 42 U.S.C. § 11023.

Other Applicable Laws

39. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

40. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil penalties for the specific violations of EPCRA Section 313, 42 U.S.C. § 11023, alleged herein. 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. 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 of Practice. Further, 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 CAFO, following its filing with the Regional Hearing Clerk.

Scope of Settlement

41. The settlement set forth in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations alleged herein. Compliance with the CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

42. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents, and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

Effective Date

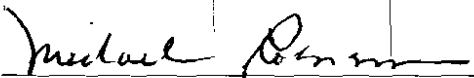
43. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

44. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent:

Date: 8/24/2011

By: 
Name: MICHAEL ROBESON
Carlisle Industrial Brake & Friction, Inc.

For Complainant:

Date: 8/29/11

By: James Heenehan
James Heenehan
Senior Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 9/2/11

By: Abraham Ferdas
Abraham Ferdas, Director
Land and Chemicals Division