

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

MEMORANDUM

SUBJECT: Consent Agreement and Final Order
IMO Inolex Chemical Company
Docket No. RCRA-03-2015-0011
EPCRA

FROM: John A. Armstead, Director
Land and Chemicals Division

Marcia E. Mulkey JH 6/24/14
Regional Counsel 11/13/14

TO: Heather Gray
Regional Judicial Officer

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EPA REGION III PHILA. TA

The attached Consent Agreement and Final Order both commences and concludes a matter negotiated in settlement of alleged violations of Section 313 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, pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22.13(b).

The attached Final Order directs Respondent to pay a civil penalty in the amount of \$30,179.00.

We recommend that you sign the attached Final Order. After you execute the Final Order, please return the documents to Joyce Howell, x2644, for further processing.

Attachments

cc: Joyce Howell
David Plimpton

5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees.

Findings of Fact and Conclusions of Law

7. Complainant has determined that Respondent has violated EPCRA Section 313, and adopts the following findings of fact and conclusions of law in accordance with Sections 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice.
8. Respondent does business in and is incorporated in the Commonwealth of Pennsylvania.
9. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
10. 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.
11. Respondent owns and operates, and, at the time of the violations alleged herein, owned and operated a manufacturing plant located at 2101 S. Swanson Street, Philadelphia, PA 19148 (the "Facility"). At the time of the violations alleged herein, Respondent's manufacturing operations at the Facility consisted of manufacturing esters for use in cosmetics. The Respondent processes n-Butyl Alcohol and Ethylene Glycol.
12. Respondent's Facility is a "facility" as defined in Section 329(4) of EPCRA and 40 C.F.R. § 372.3.
13. Section 313 of EPCRA and 40 C.F.R. § 372.22 require, *inter alia*, that the owner or operator of a facility that:
 - a) has 10 or more employees;
 - b) has a primary Standard Industrial Classification ("SIC") Code of 20 [2000] through 39 [3900] (as in effect on January 1, 1987), or, has an SIC code in one or more of the following categories:
 - i. between 1000 and 1099, except 1011, 1081, and 1094;
 - ii. between 1200 and 1299, except 1241;
 - iii. 2000 through 3900
 - iv. 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce);
 - v. 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. §§ 6921-6939(f);
 - vi. 5169 or 5171;
 - vii. 7389 (limited to facilities primarily engaged in solvent recovery services.

on a contract or fee basis); and

- c) 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,

must submit a completed toxic chemical release reporting form ("Form R"), or appropriate alternative threshold report ("Form A") if applicable, for each such toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year.

- 14. At the time of the violations alleged herein, Respondent employed 10 or more full-time employees at the Facility.
- 15. At the time of the violations alleged herein, the Facility had a primary Standard Industrial Code of 2869 (industrial organic chemicals, not elsewhere classified), Major Group 28. This SIC code falls between the primary SIC codes of 20 (2000) and 39 (3900) (as in effect on July 1, 1987).
- 16. For each toxic chemical listed in 40 C.F.R. § 372.65 manufactured, processed, or otherwise used by Respondent 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, Respondent has been required by EPCRA § 313, at all times relevant to this Consent Agreement, to complete and submit to EPA and the Commonwealth of Pennsylvania, by July 1 of the following calendar year, a toxic chemical release form (Form R or Form A) pursuant to 40 C.F.R. §§ 372.27 and 372.30.
- 17. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA § 313 shall be liable to the United States for a civil penalty.

COUNTS I – II

- 18. The chemical substance "n-Butyl Alcohol" is a "toxic chemical" as defined in EPCRA Sections 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
- 19. The chemical substance "Ethylene Glycol" is a "toxic chemical" as defined in EPCRA Sections 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
- 20. During calendar year 2012, Respondent "processed" more than 25,000 pounds of each of n-Butyl Alcohol and Ethylene Glycol, as that term is used in EPCRA § 313(b)(1)(A), 42 U.S.C. § 11023(b)(1)(A), and defined in 40 C.F.R. § 372.3. Such amount exceeded the threshold quantity for reporting for n-Butyl Alcohol and Ethylene Glycol set forth in 40 C.F.R. § 372.25(a), which set the threshold quantity for a toxic chemical processed at a facility to 25,000 pounds.

21. In reporting its releases of n-Butyl Alcohol and Ethylene Glycol at the Facility during the year 2012, Respondent was required to submit to EPA and the Commonwealth of Pennsylvania a completed Form R or Form A, whichever was applicable, by the July 1, 2013 reporting deadline, pursuant to Section 313 of EPCRA. On January 14, 2014 Respondent submitted the required Form Rs for both n-Butyl Alcohol and Ethylene Glycol, for the calendar year 2012.
22. Respondent had not submitted its toxic chemical release forms to the EPA and the Commonwealth of Pennsylvania to report its processing of n-Butyl Alcohol and Ethylene Glycol at the Facility during 2012 by July 1 of the following year. Thus, Respondent has violated Section 313 of EPCRA by failure to timely submit, to the EPA and the Commonwealth of Pennsylvania, its toxic chemical release forms for n-Butyl Alcohol and Ethylene Glycol for calendar year 2012.
23. Respondent's failure to submit to EPA and the Commonwealth of Pennsylvania, by July 1 of 2013, completed Form Rs or Form As to report its processing of n-Butyl Alcohol and Ethylene Glycol at the Facility during the calendar year 2012, constitutes two separate violations of Section 313 of EPCRA, for which Respondent is liable for civil a penalty pursuant to Section 325(c) of EPCRA.

Civil Penalty

24. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **\$30,179**. 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 the parties, signed by the Regional Administrator or the Regional Judicial Officer, and filed with the Regional Hearing Clerk.
25. The aforesaid settlement amount is based upon Complainant's consideration of the facts and circumstances of this case, the statutory factors set forth in § 325(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). Complainant has also considered the applicable Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, the November 16, 2009 Memorandum by EPA Waste and Chemical Enforcement Division Director Rosemarie A. Kelley *Adjusted Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule* ("Kelley Memorandum"). The settlement in this proceeding is consistent with the provisions and objectives of EPCRA § 313 and 40 C.F.R. Part 372.
26. Payment of the civil penalty amount assessed in paragraph 24, above, and any interest therein, 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 Respondent's name and address, and the Docket Number of this action, *i.e.* EPCRA-03-2015-0011;
- 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
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Craig Steffen 513-487-2091

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

United States Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1818

- E. 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"

- F. 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: John Schmid 202-874-7026 OR REX, 1-866-234-5681

- G. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

- H. Point Of Contact regarding payment questions (i.e. how to make payment via wire, ACH, check, pay.gov):
Craig Steffen, 513-487-2091, steffen.craig@epa.gov

Additional payment guidance is available at:
<http://www2.epa.gov/financial/makepayment>.

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

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

and

and

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

27. 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, failure to make timely payment may result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

28. Interest on the civil penalty assessed in this CAFO begins 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).
29. 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.
30. A late payment penalty of six percent (6%) 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). The late payment penalty on any portion of the civil penalty that remains delinquent for more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
31. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Certifications

32. The individual who signs this Consent Agreement on behalf of Respondent certifies that the violations alleged in this Consent Agreement have been corrected, and that the Facility is currently in compliance with all applicable requirements of EPCRA Section 313.

Other Applicable Laws

33. 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

34. This Consent Agreement and the accompanying Final Order resolve only EPA's civil claims for the specific violation of EPCRA § 313 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

35. 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

36. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, 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

37. 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

38. 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 violation 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: Inolex Chemical Company

Date: 10/14/2014

By: 

David Plimpton
Chief Executive Officer
Inolex Chemical Company

For Complainant:

Date: 10/28/2014

By: 

Joyce A. Howell
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: 11/19/2014

By: 

John A. Armstead, Director
Land and Chemicals Division

