



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

**VIA FEDERAL EXPRESS**

Michael Bourgeois  
Vice President  
Bear Metallurgical Company  
302 Midway Road  
Freeport, Texas 77541

January 7, 2010

Re: Bear Metallurgical Company, Docket No. EPCRA-03-2010-0085

Dear Mr. Bourgeois:

I have enclosed the final Consent Agreement and Final Order ("CA/FO") resolving the above-referenced matter.

Please contact me at (215) 814-2670 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "Catherine Mc Cool".

Catherine Mc Cool,  
Lead Paralegal Specialist  
Team Leader for the Audit Policy



27

MED  
10:05

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

**In the Matter of** :

**Bear Metallurgical Company** : **Docket No. EPCRA-03-2010-0085**

**679 East Butler Road** :

**Butler, PA 16002-9127** :

**Respondent** :

**Bear Metallurgical Company** :

**679 East Butler Road** :

**Butler, PA 16002-9127** :

**Facility** :

**Consent Agreement**

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

**CONSENT AGREEMENT**

**Preliminary Statement**

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and Bear Metallurgical Company ("Respondent" or "Bear") 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. Sections 22.13(b) and 22.18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO") simultaneously commence and conclude this proceeding to resolve the violations of EPCRA Section 313, as alleged herein, by Respondent at its Facility located at 679 East Butler Road in Butler, Pennsylvania.

2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

3. Except as provided in paragraph 2, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

4. Respondent agrees not to contest the jurisdiction of the U.S. Environmental Protection Agency ("EPA") with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

5. 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.

6. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

7. Respondent shall bear its own costs and attorney's fees.

#### **Findings of Fact and Conclusions of Law**

8. Complainant has determined that Respondent has violated EPCRA Section 313. In accordance with Sections 22.13(b), 22.18(b)(2) and (3), and 22.14(a)(2) and (3) of the Consolidated Rules of Practice, Complainant adopts the following findings of fact and conclusions of law:

- A. Bear does business in Pennsylvania and is a corporation, incorporated under the laws of the Commonwealth of Pennsylvania. As a Pennsylvania corporation, Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
- B. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. Section 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.
- C. Respondent owns and operates, and at the time of the violations alleged herein, owned and operated a facility that manufactures electrometallurgical products and is located at 679 East Butler Road in Butler, Pennsylvania (the "Facility").
- D. Respondent's Facility is a "facility" as defined in Section 329(4) of EPCRA and 40 C.F.R. § 372.3.
- E. Section 313 of EPCRA and 40 C.F.R. Section 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 (as in effect on July 1, 1985) between codes 20 and 39; and 3) manufactures, processes or otherwise uses a toxic chemical listed in 40 C.F.R. Section 372.65, in excess of the threshold quantities set forth in Section 313(f) of EPCRA, 42

U.S.C. Section 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.

- F. At the time of the violations alleged herein, Respondent employed 10 or more full-time employees at the Facility.
- G. At the time of the violations alleged herein, the Facility had a primary SIC code of 3313. This SIC code falls between the primary SIC codes of 20 (2000) and 39 (3900) (as in effect on July 1, 1985).
- H. For each toxic chemical listed in 40 C.F.R. Section 372.65 that the Respondent manufactured, processed, or otherwise used at its Facility in excess of the threshold quantity set forth in Section 313(f) of EPCRA during any calendar year, Respondent has been required by EPCRA Section 313, at all times relevant to this Consent Agreement, to complete and submit to EPA and the Commonwealth of Pennsylvania either a Form R or Form A by July 1 of the following calendar year.
- I. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA Section 313 shall be liable to the United States for a civil penalty.
- J. Bear self-disclosed EPCRA Section 313 violations in its August 19, 2008 and October 20, 2008 letters to EPA, pursuant to "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations." 65 Fed. Reg. 19618 (April 11, 2000) ("Self-Disclosure Policy").
- K. EPA evaluated Bear's Self-Disclosure letters and subsequent correspondence and determined that Bear did not meet criterion one of the Self-Disclosure Policy, in that the violations were not discovered by means of an audit or a through a Compliance Management System.

#### COUNT I - COUNT VII

- L. The chemical substances Lead Compounds, Aluminum (fume or dust) and Manganese Compounds are "toxic chemicals" as defined in EPCRA Section 313(c) - (d), 42 U.S.C. § 11023(c) - (d), and 40 C.F.R. Section 372.3, and are listed in 40 C.F.R. Section 372.65.
- M. During the calendar years 2005, 2006 and 2007, the Respondent manufactured and processed lead compounds, and manufactured

aluminum in an amount that exceeded the respective 100 and 25,000 pound threshold quantities for reporting set forth in Section 313(f) of EPCRA, as that term is defined in EPCRA § 313(b)(1)(C)(ii), 42 U.S.C. § 11023(b)(1)(C)(ii), and 40 C.F.R. § 372.3.

- N. During the calendar year 2007, the Respondent manufactured and processed manganese compounds in an amount that exceeded the 25,000 pound threshold quantity for reporting set forth in Section 313(f) of EPCRA, as that term is defined in EPCRA § 313(b)(1)(C)(ii), 42 U.S.C. § 11023(b)(1)(C)(ii), and 40 C.F.R. § 372.3.
- O. Respondent's failure to submit the required Form Rs for lead compounds, aluminum and manganese compounds released at its Facility during calendar years 2005, 2006 and 2007 constitutes seven violations of Section 313 of EPCRA, for which Respondent is liable for a civil penalty pursuant to EPCRA Section 325(c).

#### Civil Penalty

9. To resolve EPA's claim for civil monetary penalties for the violations cited above, Respondent consents to the assessment of a civil penalty of Twenty Thousand and Seventy-Seven Dollars (\$20,077), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

10. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the particular facts and circumstances of this case and EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (August 10, 1992) and the Self-Disclosure Policy. The settlement in this proceeding is consistent with the provisions and objectives of EPCRA and 40 C.F.R. Part 372.

11. Payment of the civil penalty amount required under the terms of Paragraph 9, 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 (EPCRA-03-2010-0085).
- b. All check s shall be made payable to "United States Treasury"

- c. All payment made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Natalie Pearson, 314-418-4087

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

U.S. Environmental Protection Agency B Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

- e. 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 transfer message should read:  
AD 68010727 Environmental Protection Agency"

- f. All electronic payments made though the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:  
Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact: Jesse White, 301-887-6548

ABA = 051036706  
Transaction Code 22 - Checking

Environmental Protection Agency  
Account 310006  
CTX Format

**g. On-Line Payment Option:**

**WWW.PAY.GOV**

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

**h. Customer Service phone numbers for the above payment centers are:**

212-720-5000 (wire transfers, Federal Reserve Bank of New York) and 800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment\\_cin.htm](http://www.epa.gov/ocfo/finservices/make_a_payment_cin.htm)

**i. At the same time that payment is made, Respondents shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer to :**

**Catherine Mc Cool  
Lead Paralegal Specialist  
Team Leader for the Audit Policy  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC42)  
1650 Arch Street  
Philadelphia, PA 19103-2029**

**and**

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

12. Pursuant to 31 U.S.C. Section 3717 and 40 C.F.R. Section 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 or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a 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. Section 13.11(a).

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.

A 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).

13. Respondent agrees not to deduct for federal taxation purposes the civil penalty paid pursuant to this CAFO.

#### Certifications

14. 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.

#### Other Applicable Laws

15. 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

16. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged in this CAFO. 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 and the regulations promulgated thereunder, to enforce the provisions of this CAFO and any other federal laws or regulations for which EPA has jurisdiction, following the filing of this CAFO with the Regional Hearing Clerk.

#### **Full and Final Satisfaction**

17. Payment of the penalty specified in paragraph 9, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 325 of EPCRA for the specific violations alleged in paragraphs 8.A through 8.O, above. Compliance with this 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**

18. 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**


19. 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**

20. 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.

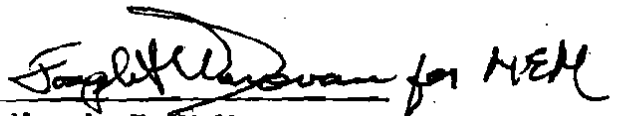
**For Respondent:**

Date: 09/09/09

By:   
Michael C. Bourgeois  
Vice President  
Bear Metallurgical Company


**For Complainant:**

Date: 11/1/09

By:  for NEH  
Marcia E. Mulkey  
Regional Counsel

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

Date: 12/8/09

By:   
Abraham Ferdas, Director  
Land and Chemicals Division

**In the Matter of Bear Metallurgical Company, Docket No. EPCRA-03-2010-0085**

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I caused to be sent the attached Consent Agreement and Final Order to the following parties:

Original By Hand Delivery to:

Regional Hearing Clerk, Region III,  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

Copy by Hand Delivery to:

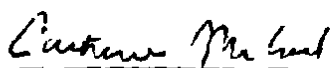
Regional Judicial Officer, Region III  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

Copy by Federal Express to:

Michael Bourgeois  
Vice President  
Bear Metallurgical Company  
302 Midway Road  
Freeport, Texas 77541

Gregory D. Timmons, Esq.  
Eramet North America, Inc.  
Airport Office Park Building 4 - Suite 300  
333 Rouser Road  
Coraopolis, Pennsylvania 15108

Date: 12/30/2009

  
\_\_\_\_\_  
Catherine Mc Cool  
Lead Paralegal Specialist

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

<b>In the Matter of:</b>	:	
<b>Bear Metallurgical Company</b>	:	<b>Docket No. EPCRA-03-2010-0085</b>
<b>679 East Butler Road</b>	:	
<b>Butler, PA 16002</b>	:	
	:	
<b>Respondent</b>	:	<b>FINAL ORDER</b>
	:	
<b>Bear Metallurgical Company</b>	:	
<b>679 East Butler Road</b>	:	
<b>Butler, PA 16002</b>	:	<b>Proceeding under EPCRA 325(c),</b>
	:	<b>42 U.S.C. § 11045(c)</b>
	:	
<b>Facility</b>	:	

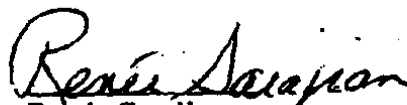
**FINAL ORDER**

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Bear Metallurgical Company, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with 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 (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 into this Final Order as if fully set forth at length 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), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (August 10, 1992), IT IS HEREBY ORDERED that Respondent pay a civil penalty of Twenty Thousand and Seventy-Seven Dollars (\$20,077), and comply with the terms and conditions of the Consent Agreement.

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.

Date: 12/29/09



Renée Sarajian  
Regional Judicial Officer  
U.S. EPA - Region III

**In the Matter of Bear Metallurgical Company, Docket No. EPCRA-03-2010-0085**

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I caused to be sent the attached Consent

Agreement and Final Order to the following parties:

Copy by Federal Express to:

Michael Bourgeois  
Vice President  
Bear Metallurgical Company  
302 Midway Road  
Freeport, Texas 77541

Date: 1/7/2010

Catherine Mc Cool  
Catherine Mc Cool  
Lead Paralegal Specialist

**In the Matter of Bear Metallurgical Company, Docket No. EPCRA-03-2010-0085**

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I caused to be sent the attached Consent Agreement and Final Order to the following parties:

Original By Hand Delivery to:

Regional Hearing Clerk, Region III,  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

Copy by Hand Delivery to:

Regional Judicial Officer, Region III  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

Copy by Federal Express to:

Michael Bourgeois  
Vice President  
Bear Metallurgical Company  
302 Midway Road  
Freeport, Texas 77541

Gregory D. Timmons, Esq.  
Eramet North America, Inc.  
Airport Office Park Building 4 - Suite 300  
333 Rouser Road  
Coraopolis, Pennsylvania 15108

Date: 12/30/2009

Catherine Mc Cool  
Catherine Mc Cool  
Lead Paralegal Specialist