

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

2015 MAR 30 AM 10:49

11201 RENNER BOULEVARD
LENEXA, KANSAS 66215

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
) Docket No. EPCRA-07-2015-0002
)
HUGGINS METAL FINISHING, INC.)
d/b/a SULLIVAN PRECISION METAL)
FINISHING, INC.)
)
) COMPLAINT AND
) CONSENT AGREEMENT/
) FINAL ORDER
Respondent,)
)
)
Proceeding under Section 325(c) of the)
Emergency Planning and Community Right-to-)
Know Act, 42 U.S.C. § 11045(c))
_____)

PRELIMINARY STATEMENT

The United States Environmental Protection Agency, Region 7 (“EPA”) and Huggins Metal Finishing, Inc., doing business as Sullivan Precision Metal Finishing, 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

COMPLAINT

Jurisdiction

1. This 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).

2. This Complaint and Consent Agreement/Final Order (“CA/FO”) 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

3. The Complainant, by delegation from the Administrator of EPA Region 7, and from the Regional Administrator, EPA Region 7, is the Director of the Air and Waste Management Division, EPA Region 7.

4. The Respondent is Huggins Metal Finishing, Inc., doing business as Sullivan Precision Metal Finishing, Inc., a company registered and authorized to do business in the State of Missouri. The company's metal finishing facility is located at 995 N. Service Road W, in Sullivan, Missouri.

Statutory and Regulatory Requirements

5. 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) that is an establishment with a primary SIC major group or industry code listed in 40 C.F.R. § 372.23(a) or a primary NAICS subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) that "manufactured, processed, or otherwise used" a toxic chemical listed under Subsection 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, processed, or otherwise used" in quantities exceeding the established threshold quantity during that preceding calendar year.

6. 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.

7. 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. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of up to \$27,500 per day for each violation that occurs between January 30, 1997, and March 15, 2004; \$32,500 per day for each violation occurring between March 16, 2004, and January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

Definitions

8. The regulations at 40 C.F.R. § 372.3 define “facility” as “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.”

9. The regulations at 40 C.F.R. § 372.3 define “full-time employees” as “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.”

10. The regulations at 40 C.F.R. § 372.3 define “toxic chemical” as a “chemical or chemical category listed in 40 C.F.R. § 372.65.”

11. The regulations at 40 C.F.R. § 372.3 define “manufacture” as “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.”

12. “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.

13. “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.

Alleged Violations

14. EPA alleges that Respondent has violated EPCRA and federal regulations promulgated pursuant to EPCRA, as follows:

15. 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).

16. Respondent’s facility, located at 995 N Service Road W, in Sullivan, Missouri, 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.

17. Respondent’s facility has 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.

18. Respondent’s facility is classified as NAICS Code 332813 – Electroplating, Plating, Polishing, Anodizing, and Coloring.

19. Nitric acid is a “toxic chemical” within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

20. During reporting years 2012 and 2013, the toxic chemical identified in Paragraph 19 was “manufactured, processed, or otherwise used” as those terms are defined by 40 C.F.R. § 372.3 at Respondent’s facility.

21. On October 24, 2012, a duly authorized representative from EPA, Region 7, conducted an inspection of Respondent’s facility.

22. On May 24, 2011, the EPA, Region 7, sent Respondent a letter requesting information regarding Respondent’s toxic chemical release reporting for 2009 and 2012.

Count 1

23. Paragraphs 1 through 22 are incorporated by reference as if fully set forth herein.

24. Pursuant to 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing nitric acid is 25,000 pounds, and the threshold reporting quantity for otherwise using nitric acid is 10,000 pounds.

25. The toxic chemical nitric acid was manufactured, processed, and/or otherwise used at Respondent’s facility in excess of the applicable threshold quantities during reporting years 2012 and 2013.

26. Respondent failed to file a Form R report for nitric acid with the Administrator of EPA and the State of Missouri for 2012 by the July 1, 2013, deadline or for 2013 by the July 1, 2014, deadline. Respondent filed the Form R reports on or about October 6, 2014.

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

28. 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 in Paragraph 1 of the Final Order below.

CONSENT AGREEMENT

29. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

30. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.

31. Respondent neither admits nor denies the factual allegations set forth above.

32. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CA/FO.

33. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees incurred as a result of this action.

34. Respondent certifies by signing this CA/FO that, to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and all regulations promulgated thereunder.

35. Based on Respondent's representations in Paragraph 34 above, this CA/FO addresses, fully resolves and settles, and Complainant hereby agrees to release Respondent from, all civil and administrative claims for the alleged EPCRA violations identified in Paragraph 27 above. Complainant reserves the right to take an enforcement action with respect to any other violations of EPCRA or other applicable law.

36. Respondent consents to the issuance of the Final Order hereinafter recited, consents to the payment of the civil penalty as set forth in the Final Order, and consents to the performance of a Supplemental Environmental Project.

37. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental and/or public health benefits. Respondent shall donate eight self-contained breathing apparatus masks to the Sullivan Fire Protection District, as described in Attachment A which is incorporated herein by reference. The SEP shall be completed no later than three months from the effective date of the Final Order.

38. The total expenditure for the SEP shall be no less than One Thousand Two Hundred Dollars (\$1,200), in accordance with the specifications set forth in Attachment A. All

work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

39. Within 60 days of execution of this CA/FO, Respondent shall submit a SEP Completion Report to EPA as follows:

- a. The SEP Completion Report shall contain the following:
 - i. a detailed description of the SEP as implemented;
 - ii. itemized costs, documented by copies of purchase orders, receipts, or canceled checks;
 - iii. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible); and
 - iv. certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO.

- b. Respondent shall submit all notices and reports required by this CA/FO by first class mail to the following:

Fatima Ndiaye
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

- c. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

40. Respondent agrees to the payment of stipulated penalties as follows:

- a. In the event Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP as set forth in Paragraph 37 of this CA/FO and/or to the extent that the actual expenditures of the SEP do not equal or exceed the cost of the SEP

described in Paragraph 38 of this CA/FO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- i. Except as provided in subparagraph a.ii. and a.iii. of this paragraph, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in Paragraph 37 of this CA/FO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of One Thousand Four Hundred and Forty Dollars (\$1,440) (150% of the amount by which the settlement penalty was mitigated on account of the SEP), minus any documented expenditures determined by EPA to be acceptable for the SEP.
 - ii. If Respondent fails to timely and completely submit the SEP Completion Report required by Paragraph 39, Respondent shall be liable for and shall pay a stipulated penalty in the amount of Two Hundred and Fifty Dollars (\$250) per day. This stipulated penalty shall begin to accrue on the first day after the SEP Completion Report is due and continue to accrue through the day the SEP Completion report is submitted.
 - iii. If the SEP is not completed in accordance with Paragraphs 37 and 38 of this CA/FO, but EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90% of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
 - c. Respondent shall pay stipulated penalties not more than fifteen days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 1 of the Final Order portion of this CA/FO. Interest and late charges shall be paid as stated in Paragraph 46 herein.

41. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

42. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent

further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

43. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

44. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of the chemical accident prevention provisions of the Clean Air Act and the hazardous chemical reporting provisions of the Emergency Reporting and Community Right-to-Know Act and underlying regulations."

45. Nothing in this CA/FO shall be construed as a release from any other action under law and/or regulation administered by EPA. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

46. **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).

47. 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.

48. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Five Thousand Nine Hundred and Forty-Three Dollars (\$5,943.00) within thirty days of the effective date of this Final Order. Payment shall be made by cashier's or certified check, made payable to the "United States Treasury," and shall be remitted to:

U.S. Environmental Protection Agency, Region 7
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

This payment shall reference docket number EPCRA-07-2015-0002.

2. A copy of the check should be sent to:

√ Regional Hearing Clerk
United States Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

√ Erin Weekley
Assistant Regional Counsel
United States Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of the CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This 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 CA/FO.

5. The effective date of this Final Order shall be the date on which it is signed by the Regional Judicial Officer.

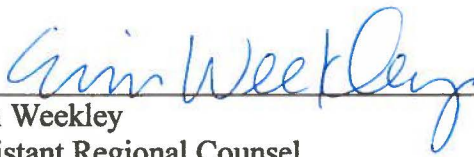
COMPLAINANT:

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 3-12-15

By: 
Becky Weber
Director
Air and Waste Management Division

Date: 3/12/15

By: 
Erin Weekley
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:

HUGGINS METAL FINISHING, INC.
d/b/a SULLIVAN PRECISION METAL FINISHING, INC.

Date: 2-23-15 By: William Huggins

Printed Name: William Huggins

Title: President

IT IS SO ORDERED. This Order shall become effective immediately.

Date: 3-30-2015

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

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy ^{emailed} ~~hand delivered~~ to Attorney for Complainant:

Erin Weekley
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219

Copy by ^{First Class} ~~certified mail~~, return receipt requested to:

William Huggins Jr.
Huggins Metal Finishing, Inc.
995 North Service Road, West
Sullivan, Missouri 63080

Dated: 3/30/15

By: Kathy Robinson
Kathy Robinson
Hearing Clerk
United States Environmental Protection Agency
Region 7

ATTACHMENT A

Invoice



Sullivan Fire Protection District

PO Box 475

Sullivan, MO 63080-0475

Date	Invoice #
9/8/14	

Bill To
Sullivan Precision Metal 995 N Jennie Rd Sullivan, MO 63080

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
8	Scott SCBA masks	\$150.00	\$1200.00
<p>This was a donation to the Sullivan Fire Protection District 9/8/2014</p>			

Phone #
573-468-6161

Total \$1200.00