

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2016 NOV -2 AM 10:24  
REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF:

LONGWOOD ELASTOMERS, INC  
BRENHAM, TEXAS

RESPONDENT

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DOCKET NO. EPCRA-06-2017-0500

**CONSENT AGREEMENT AND FINAL ORDER**

The Complainant, Director of the Compliance Assurance and Enforcement Division, United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Longwood Elastomers, Inc. (Respondent), in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

**I. PRELIMINARY STATEMENT**

1. This proceeding 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), is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

5. Respondent consents to the issuance of this CAFO, to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

6. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

7. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

8. The Respondent hereby certifies that as of the date of the execution of this CAFO, Respondent has corrected the violations alleged in this CAFO and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

## **II. STATUTORY AND REGULATORY BACKGROUND**

9. 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 Standard Industrial Classification (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 Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity

established under Subsection 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.

10. 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 are set forth in 40 C.F.R. §§ 372.27 and 372.28.

11. According to 40 C.F.R. § 372.10, each person subject to the reporting requirements of Section 313 of EPCRA must retain records, including documentation supporting the report, for a period of three years from the date of the submission of the Form R report.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **A. PRELIMINARY ALLEGATIONS**

12. Respondent is a corporation authorized to do business in the State of Texas.

13. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

14. Respondent owns and operates a manufacturing facility located at 1901 Longwood Drive, Brenham, Texas.

15. The facility identified in Paragraph 13 is a “facility”, as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

16. Respondent's facility had ten or more “full-time employees” as that term is defined by 40 C.F.R. § 372.3 for calendar years 2011 through 2014.

17. Respondent's facility's primary North American Industrial Classification System (NAICS) subsector or industry code 326291 (Rubber product manufacturing for mechanical use) is covered under 40 C.F.R. Part 372 and applies to a facility with these primary codes.

18. During calendar years 2011 through 2014, Respondent's facility “manufactured, processed, or otherwise used” lead compounds, zinc compounds, manganese, chromium, copper, and nickel as those terms are defined by Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.3.

19. Lead compounds, zinc compounds, manganese, chromium, copper, and nickel are toxic chemicals within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

20. On June 17, 2015, a representative from EPA conducted an on-site inspection of Longwood Elastomers, Inc., located at 1901 Longwood Drive, Brenham, Texas.

## **B. VIOLATIONS**

### **1. Failure to Timely Report Lead Compounds**

21. The allegations in Paragraphs 1-20 are realleged and incorporated by reference.

22. During calendar years 2011 to 2014, Respondent “manufactured, processed, or otherwise used” lead compounds in excess of the applicable threshold quantity.

23. For each of those years, Respondent failed to submit the required Form R for lead compounds by July 1<sup>st</sup> of the following year in violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

**2. Failure to Timely Report Zinc Compounds**

24. The allegations in Paragraphs 1-20 are realleged and incorporated by reference.

25. During calendar years 2011 to 2014, Respondent “manufactured, processed, or otherwise used” zinc compounds in excess of the applicable threshold quantity.

26. For calendar years 2011, 2013, and 2014, Respondent failed to submit the required Form R for zinc compounds by July 1<sup>st</sup> of the following year in violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

**3. Failure to Timely Report Manganese**

27. The allegations in Paragraphs 1-20 are realleged and incorporated by reference.

28. During calendar years 2011 to 2014, Respondent “manufactured, processed, or otherwise used” manganese in excess of the applicable threshold quantity.

29. For calendar years 2011, 2013, and 2014, Respondent failed to submit the required Form R for manganese by July 1<sup>st</sup> of the following year in violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

**4. Failure to Timely Report Chromium**

30. The allegations in Paragraphs 1-20 are realleged and incorporated by reference.

31. During calendar years 2012 and 2014, Respondent “manufactured, processed, or otherwise used” chromium in excess of the applicable threshold quantity.

32. For calendar year 2014, Respondent failed to submit the required Form R for chromium by July 1<sup>st</sup> of 2015 in violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

**5. Failure to Maintain Complete Records**

33. The allegations in Paragraphs 1-20 are realleged and incorporated by reference.

34. During calendar year 2012, Respondent “manufactured, processed, or otherwise used” chromium, copper, manganese, nickel, and zinc compounds in excess of the applicable threshold quantity.

35. Respondent filed timely Form R reports for each of these chemicals for calendar year 2012.

36. During EPA’s inspection of the facility, Respondent could not provide complete records supporting the Form R reports submitted for calendar year 2012, in violation of 40 C.F.R. § 372.10.

**IV. TERMS OF SETTLEMENT**

**A. CIVIL PENALTY**

37. For the reasons set forth above, the Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), which authorizes EPA to assess a civil penalty of up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500) per day for each violation of EPCRA occurring after January 12, 2009 and before November 2, 2015.<sup>1</sup> Upon consideration of the entire record herein, including the

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<sup>1</sup> The maximum penalty under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to up to \$37,500 per day for violations which occurred after January 12, 2009. Under the Federal Civil Penalties Inflation Adjustment Act Improvement

Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the nature, circumstances, extent and gravity of the alleged violations, and other factors as justice may require including Respondent's cooperation and good faith efforts to comply, it is **ORDERED** that Respondent be assessed a civil penalty of **One Hundred Fifty One Thousand Two Hundred Dollars (\$151,200)**.

38. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to Treasurer, United States of America.

39. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

40. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

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Act (2015), EPA may penalize up to \$40,779 per day for violations occurring after November 2, 2015. The violations in this CAFO occurred before November 2, 2015.

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank  
Government Lockbox 979077 US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted 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 message should read "D 68010727 Environmental Protection Agency"

**PLEASE NOTE: Docket number EPCRA 06-2017-0500 shall be clearly typed on the check, or other method of payment, to ensure proper credit.** If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:



David Riley  
EPCRA 313 Enforcement  
Waste Compliance III Section (6EN-H3)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733;

Lorena Vaughn  
Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

41. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

42. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f), to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

43. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will 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. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. 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). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

44. EPA will also 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) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

45. This document is a "Final Order" as that term is defined in the "Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)," dated August 10, 1992; Amended, April 12, 2001; for the purpose of demonstrating a history of "prior such violations".

#### **B. RETENTION OF ENFORCEMENT RIGHTS**

46. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

47. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

48. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public

health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

**C. COSTS**

49. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

**D. TERMINATION**

50. At such time as the Respondent believes that it has complied with all terms and conditions of this CAFO, it may request that EPA concur whether the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing as expeditiously as possible. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondent has been notified by EPA in writing that this CAFO has been satisfied and terminated.


**E. EFFECTIVE DATE**

51. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**


**FOR THE RESPONDENT:**

Date: 10/28/16

  
JAMES M SCOTT  
VP & Secretary

**FOR THE COMPLAINANT:**

Date: 10-31-16


  
Stephen A. Gilrein, P.E.  
Acting Director  
Compliance Assurance and  
Enforcement Division

**V. 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, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

11/1/16

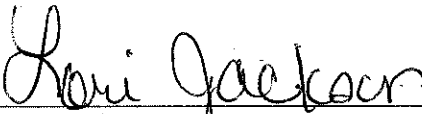
  
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Renea Ryland  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of November, 2016, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following individual(s) by the method indicated below:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED #** 7014 0150 0000 2454 5200

**Via Email (PDF):**

  
\_\_\_\_\_  
Ms. Lori Jackson  
Paralegal