

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

In the Matter of: :
:
Zippo Manufacturing Company :
:
Respondent. :
:
Zippo Manufacturing Company :
33 Barbour Street :
Bradford, PA 16701, :
:
Facility. :
:
:

EPA Docket No. RCRA-03-2015-0186

Proceeding under Section 3008(a)
of the Resource Conservation and
Recovery Act, as amended, 42 U.S.C.
Section 6928(a) and EPCRA § 325, 42
U.S.C. § 11045

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 REGION III OFFICE
 ENVIRONMENTAL PROTECTION AGENCY
 PHILADELPHIA, PA

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA”, “Agency” or “Complainant”) and Zippo Manufacturing Company (“Respondent”) pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as “RCRA”), 42 U.S.C. §§ 6928(a) and (g), and 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, 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, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. This Consent Agreement (“CA”) and the accompanying Final Order (“FO”) (hereinafter jointly referred to as this “CAFO”) address alleged violations by Respondent of RCRA and the federally authorized Pennsylvania Hazardous Waste Management Regulations (“PaHWMR”), codified at 25 Pa. Code Chapters 260a – 266a, 266b, and 268a – 270a and Section 313 of EPCRA, 42 U.S.C. § 11023.

3. Effective January 30, 1986, the PaHWMR was authorized by the EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A and thereby became requirements of RCRA Subtitle C and enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). *See 51 Fed.Reg. 1791* (January 15, 1986), *65 Fed. Reg. 57734* (September 26, 2000), *69 Fed. Reg. 2674* (January 20, 2004) and *74 Fed. Reg. 19453* (April 29, 2009). The PaHWMR incorporate, with certain exceptions, specific provisions of Title 40 of the 1999 Code of Federal Regulations by reference. *See 25 Pa. Code § 260a.3(e)*.
4. Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, 40 C.F.R. § 22.13(b), this CAFO simultaneously commences and concludes an administrative proceeding against Respondent, brought under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), and Sections 313 and 325(c) of EPCRA, 42 U.S.C. §§ 11023 and 11045(c), to resolve alleged violations of RCRA and EPCRA at Respondent's facility at 33 Barbour Street, Bradford, Pennsylvania, 16701.
5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. For purposes of this proceeding only, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 5, above.
7. For the purposes of this proceeding only, Respondent agrees not to contest EPA's jurisdiction with respect to the execution and issuance of this CAFO, or the enforcement of the CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
10. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

Notice of Action to the Commonwealth of Pennsylvania

11. EPA has given the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PaDEP"), prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

12. Upon making a determination that any person has violated or is in violation of any requirement of RCRA Subtitle C, and upon satisfying the notification requirements of RCRA Section 3008(a)(2), 42 U.S.C. § 6928(a)(2), RCRA Section 3008(a)(1), 42 U.S.C. § 6928(a)(1), authorizes the Administrator of EPA to issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:

13. Respondent is, and was at the time of the violations alleged herein, a corporation of the Commonwealth of Pennsylvania.
14. Respondent is, and at the time of the violations alleged herein, a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903, 25 Pa. Code § 260a.10, and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
15. Respondent is, and at all times relevant to this Consent Agreement, was the “owner” and “operator” of a “facility”, described in paragraph 17, below, as the term “facility” is defined in 25 Pa. Code § 260a.10 and the terms “owner” and “operator” are defined in 40 C.F.R. § 260.10 as incorporated by reference in 25 Pa. Code § 260a.1.
16. Respondent's facility, described in paragraph 17, below, is and at all times relevant to this Consent Agreement, was a “facility” as defined in Section 329(4) of EPCRA and 40 C.F.R. § 372.3.
17. The facility referred to in Paragraphs 15 and 16, above, including all of its associated equipment and structures (hereinafter the “Facility”), is a manufacturing facility located at 33 Barbour Street, Bradford, Pennsylvania, 16701.
18. Respondent generates more than 1,000 kilograms of hazardous waste per month at its Facility. Respondent is assigned EPA ID No. PAD002101301.
19. Respondent is and, at all times relevant to this CAFO, has been a “generator” of, and has engaged in the “storage” in “containers” and “tanks” at the Facility of materials described below that are “solid wastes” and “hazardous wastes”, as those terms are defined in 40 C.F.R. § 260.10 as incorporated by reference by 25 Pa. Code § 260a.1, which with the exception of “storage” which is defined in 25 Pa. Code § 260a.10.
20. On August 13, 2014, representatives of EPA and the PaDEP conducted a RCRA Compliance Evaluation Inspection (“RCRA CEI”) at the Facility.

21. On August 13, 2014, “hazardous wastes” generated by Respondent, identified below in paragraphs 22 – 24, were in “storage” in containers and tanks at the Facility.
22. Respondent generates plating waste at the Facility which is hazardous waste within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. §§ 261.21 – .24 and .31, because it exhibits the characteristics for ignitability (D001), corrosivity (D002), reactivity (D003), and/or toxicity (D007, D018 and D035) or because it has been listed as a hazardous waste (F003, F005, F006, F007 and F009) on the basis of one of those characteristics.
23. Respondent generates waste solvents at the Facility which are a hazardous waste (D001) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.21, because they exhibit the characteristic for ignitability.
24. Respondent generates waste chromium at the Facility which is a hazardous waste (D007) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.22, because it exhibits the characteristic for toxicity.
25. 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; and
 - vii. 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis).
 - 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.

26. At the times of the violations alleged herein, Respondent employed 10 or more full-time employees at the Facility.
27. At the times of the violations alleged herein, the Facility had a primary Standard Industrial Code of 3499 (cigarette lighters), Major Group 34. This SIC code falls between the primary SIC codes of 20 (2000) and 39 (3900) (as in effect on July 1, 1987).
28. At all times herein relevant, Respondent has been required, by Section 323 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.27 and 372.30, 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”) for each toxic chemical listed in 40 C.F.R. § 372.65 that Respondent 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), and 40 C.F.R. § 372.25 during any calendar year.

COUNT I

(Operating Without Qualifying for a Permit Exemption or Obtaining Interim Status or a Permit)

29. The preceding paragraphs are incorporated by reference.
30. 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), provide, in pertinent part, that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.
31. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i), provides, in pertinent part, that a generator may accumulate hazardous waste in containers on-site for 90 days or less without a permit or interim status provided that, among other things, while being accumulated on-site, the generator complies with the requirements of 40 C.F.R. § 265.173(a), which requires each container holding hazardous waste to be closed during storage, except when necessary to add or remove waste.
32. At the time of the August 13, 2014 RCRA CEI, Respondent did not keep a container holding D002 hazardous waste solvents closed during storage except when necessary to add or remove waste, as required by 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i) and the container use and management requirements of 40 C.F.R. § 265.173(a).

33. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(4) provides, in pertinent part, that a generator may accumulate hazardous waste in containers on-site for 90 days or less without a permit or interim status provided that, among other things, while being stored on-site, the generator complies with the applicable requirements of 40 C.F.R. § 265.16(d)(2), which requires, among other things, that the owner or operator maintain at the facility a written job description for each position at the facility related to hazardous waste management.
34. At the time of the August 13, 2014 RCRA CEI, Respondent did not maintain at the Facility a written job description for each position at the Facility related to hazardous waste management as required by 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(4) and the document and record maintenance requirements of 40 C.F.R. § 265.16(d)(2).
35. Respondent failed to qualify for the “less than 90-day” generator accumulation exemption of 25 Pa. Code § 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a), by failing to satisfy the conditions for such exemptions as set forth in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) and (d), referred to in Paragraphs 31 and 33, above, and as described in Paragraphs 32 and 34, above.
36. From at least August 14, 2009 through August 13, 2014, Respondent utilized a commercial evaporator to treat approximately chromium-contaminated (D007) hazardous waste rinse water generated by its plating operations.
37. The process identified in Paragraph 36, immediately above, constitutes “thermal treatment” within the meaning and definition of 25 Pa. Code § 260a.1, which incorporates by reference the definition set forth at 40 C.F.R. § 260.10 and defines that term to mean “the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste.”
38. From at least August 14, 2009 until August 13, 2014, Respondent operated a thermal treatment unit to treat chromium-contaminated (D007) hazardous waste at its Facility without a permit for such treatment unit.
39. By storing hazardous waste at the Facility without meeting the criteria for an exemption from permitting or interim status under 40 C.F.R. § 262.34(a), and by using a thermal treatment unit to treat chromium-contaminated (D007) hazardous waste, the Facility became a hazardous waste treatment, storage or disposal “facility”, as that term is defined by 25 Pa. Code § 260a.10.

40. Respondent does not have, and never had, a hazardous waste treatment or storage permit, or interim status pursuant to 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), or Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), for the treatment or storage of hazardous waste at the Facility.
41. Respondent was required by 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to obtain a permit for the hazardous waste thermal treatment and storage activities described in this count.
42. Respondent violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste treatment and storage facility without a permit, interim status or a valid exemption to the permit requirement.

COUNT II
(Container Management)

43. The preceding paragraphs are incorporated by reference.
44. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), requires owners and operators that treat, store or dispose of hazardous waste to keep hazardous waste containers closed during storage, except when it is necessary to add or remove waste.
45. On August 13, 2014, Respondent was storing (D001) hazardous waste solvents at the Facility in a 55 gallon drum container that it failed to keep closed at a time when it was not necessary to add or remove waste from the container.
46. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), by failing to keep a 55 gallon hazardous waste container holding hazardous waste solvents closed at a time when it was not necessary to add or remove waste.

COUNT III
(Job Descriptions)

47. The preceding paragraphs are incorporated by reference.
48. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(2), requires owners and operators of facilities that treat, store or dispose of hazardous waste to maintain at the facility a written job description for each position at the Facility related to hazardous waste management.
49. On August 13, 2014, Respondent did not maintain at the Facility a written job description for each position at the Facility related to hazardous waste management, as required by

25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(2).

50. Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(2), by failing to maintain at the Facility a written job description for each position at the Facility related to hazardous waste management.

COUNT IV

(Universal Waste Storage-Closed Containers)

51. The preceding paragraphs are incorporated by reference.
52. 25 Pa. Code Section 266b.1 incorporates by reference the requirements of 40 C.F.R. Part 273, including the “Standards for Small Quantity Handlers of Universal Waste” which requirements are set forth in 40 C.F.R. Part 273, Subpart B, and include the universal waste lamp management standards of 40 C.F.R. § 273.13(d).
53. 40 C.F.R. § 273.13(d) provides, in pertinent part that “[a] small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows: (1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.”
54. At all times relevant to the allegations herein, Respondent was a small quantity handler of universal waste lamps.
55. At the time of the August 13, 2014 RCRA CEI, the EPA inspector observed universal waste lamps being stored on open racks and in open containers at the Facility.
56. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), by failing to store universal waste lamps in containers and to keep such containers of universal waste lamps closed during storage.

COUNT V

(Universal Waste Storage-Labeling)

57. The preceding paragraphs are incorporated by reference.
58. Pursuant to 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), Respondent is required to label containers of universal waste lamps with the words “Universal Waste–Lamps” or “Waste Lamps” or “Used Lamps.”

59. At the time of the August 13, 2014 RCRA CEI, the EPA inspector observed boxes of universal waste lamps that were not labeled with the words “Universal Waste–Lamps” or “Waste Lamps” or “Used Lamps.”
60. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), by failing to keep containers of universal waste lamps labeled with the words “Universal Waste–Lamps” or “Waste Lamps” or “Used Lamps.”

COUNT VI
(Universal Waste Storage-Accumulation Time)

61. The preceding paragraphs are incorporated by reference.
62. Pursuant to 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:
 - (1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;
 - (2) Marking or labeling each individual item of universal waste with the date it became a waste or was received;
 - (3) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;
 - (4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;
 - (5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or
 - (6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.
63. At the time of the August 13, 2014 RCRA CEI, Respondent did not employ any method described in 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), to clearly demonstrated the length of time that the universal waste lamps at the Facility had been accumulated from the date such universal waste lamps became a waste or were received.

64. Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), by failing to demonstrate the length of time that the universal waste lamps observed at the Facility by the EPA inspector on August 13, 2014 had been accumulated from the date such universal waste lamps became a waste or were received.

COUNTS VII – IX

(Failure to File a Form R for Chromium for 2011, 2012 and 2013)

65. The preceding paragraphs are incorporated by reference.
66. The chemical substance “Chromium” 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 as a chemical to which the requirements of 40 C.F.R. Part 372, Subpart D, applies.
67. During each of calendar years 2011, 2012, and 2013, Respondent “processed” more than 25,000 pounds of Chromium, 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 25,000 pound threshold quantity for reporting a toxic chemical processed in a calendar year at a facility as set forth in EPCRA Section 313(f)(1)(B)(iii), 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25(a).
68. Pursuant to Section 313 of EPCRA, 42 U.S. C. § 11023, and 40 C.F.R. § 372.30(d), Respondent was required to report its processing of Chromium at the Facility, during each of the calendar years 2011, 2012, and 2013, by submitting to EPA and the Commonwealth of Pennsylvania a completed Form R or Form A, as applicable, by July 1 of each following calendar year.
69. Respondent failed to submit its toxic chemical release forms (Form R or Form A) to the EPA and to the Commonwealth of Pennsylvania to report its processing of Chromium at the Facility during calendar years 2011, 2012, and 2013 by July 1 of each respective following year.
70. Respondent violated Section 313 of EPCRA, 42 U.S. C. § 11023, and 40 C.F.R. § 372.30(d), by failing to timely submit, to the EPA and the Commonwealth of Pennsylvania, toxic chemical release forms (Form R or Form A) for the Chromium processed at the Facility during each of the calendar years 2011, 2012 and 2013.
71. Respondent's failure to submit to EPA and the Commonwealth of Pennsylvania, completed toxic chemical release forms (Form R or Form A) to report its processing of Chromium at the Facility during the calendar years 2011, 2012, and 2013 by July 1 of each respective following year, constitutes three separate violations of EPCRA Section 313, 42 U.S. C. § 11023, and 40 C.F.R. § 372.30(d), for which Respondent is liable for civil a penalty pursuant to Section 325(c) of EPCRA, 42 U.S. C. § 11045(c).

COUNTS X - XII

(Failure to File a Form R for Nickel for 2011, 2012 and 2013)

72. The preceding paragraphs are incorporated by reference.
73. The chemical substance "Nickel" 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 65 as a chemical to which the requirements of 40 C.F.R. Part 372, Subpart D, applies.
74. During each of calendar years 2011, 2012, and 2013, Respondent "processed" more than 25,000 pounds of Nickel, 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 25,000 pound threshold quantity for reporting a toxic chemical processed in a calendar year at a facility as set forth in EPCRA Section 313(f)(1)(B)(iii), 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25(a).
75. Pursuant to Section 313 of EPCRA, 42 U.S. C. § 11023, and 40 C.F.R. § 372.30(d), Respondent was required to report its processing of Nickel at the Facility during each of the calendar years 2011, 2012, and 2013 by submitting to EPA and the Commonwealth of Pennsylvania a completed Form R or Form A, as applicable, by July 1, of each following calendar year.
76. Respondent failed to submit its toxic chemical release forms (Form A or Form R) to the EPA and to the Commonwealth of Pennsylvania to report its processing of Nickel at the Facility during calendar years 2011, 2012, and 2013 by July 1 of each respective following year.
77. Respondent violated Section 313 of EPCRA, 42 U.S. C. § 11023, and 40 C.F.R. § 372.30(d), by failing to timely submit, to the EPA and the Commonwealth of Pennsylvania, toxic chemical release forms (Form R or Form A) for the Nickel processed at the Facility during each of the calendar years 2011, 2012 and 2013.
78. Respondent's failure to submit to EPA and the Commonwealth of Pennsylvania, completed toxic chemical release forms (Form R or Form A) to report its processing of Nickel at the Facility during the calendar years 2011, 2012, and 2013 by July 1 of each respective following year constitutes three separate violations of EPCRA Section 313, 42 U.S. C. § 11023, and 40 C.F.R. § 372.30(d), for which Respondent is liable for civil a penalty pursuant to Section 325(c) of EPCRA, 42 U.S. C. § 11045(c).

COUNTS XIII – XV

(Failure to File a Form R for Copper for 2011, 2012 and 2013)

79. The preceding paragraphs are incorporated by reference.

80. The chemical substance "Copper" 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 as a chemical to which the requirements of 40 C.F.R. Part 372, Subpart D, applies.
81. During each of calendar years 2011, 2012, and 2013, Respondent "processed" more than 25,000 pounds of Copper, 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 25,000 pound threshold quantity for reporting a toxic chemical processed in a calendar year at a facility as set forth in EPCRA Section 313(f)(1)(B)(iii), 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25(a).
82. Pursuant to Section 313 of EPCRA, 42 U.S. C. § 11023, and 40 C.F.R. § 372.30(d), Respondent was required to report its processing of Copper at the Facility, during each of the calendar years 2011, 2012, and 2013, by submitting to EPA and the Commonwealth of Pennsylvania a completed Form R or Form A, as applicable, by July 1 of each respective calendar year.
83. Respondent failed to submit its toxic chemical release forms (Form A or Form R) to the EPA and to the Commonwealth of Pennsylvania to report its processing of Copper at the Facility during calendar years 2011, 2012, and 2013 by July 1 of each respective following year.
84. Respondent violated Section 313 of EPCRA, 42 U.S. C. § 11023, and 40 C.F.R. § 372.30(d), by failing to timely submit, to the EPA and the Commonwealth of Pennsylvania, toxic chemical release forms (Form R or Form A) for the Copper processed at the Facility during each of calendar years 2011, 2012 and 2013.
85. Respondent's failure to submit to EPA and the Commonwealth of Pennsylvania, completed toxic chemical release forms (Form R or Form A) to report its processing of Copper at the Facility during the calendar years 2011, 2012, and 2013 by July 1 of each respective following year, constitutes three separate violations of EPCRA Section 313, 42 U.S. C. § 11023, and 40 C.F.R. § 372.30(d), for which Respondent is liable for a civil penalty pursuant to Section 325(c) of EPCRA, 42 U.S. C. § 11045(c).

III. CIVIL PENALTIES

86. Respondent agrees to pay a civil penalty in the amount of **\$185,998.00** in settlement of the alleged violations set forth in this CAFO, 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 the executed and filed 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 the executed and filed CAFO is mailed or hand-delivered to Respondent.
87. The Parties represent that the settlement terms are reasonable and consistent with the provisions and objectives of RCRA Section 3008(a), 42 U.S.C. § 6928(a), and EPCRA Section 313, 42 U.S.C. § 11023, and are based upon EPA's consideration of a number of factors, including: the penalty criteria set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements, which factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), and which reflect the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g); the statutory factors set forth in § 325(b)(1)(C) of EPCRA, 42 USC § 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)* (April 12, 2001). EPA has also considered and applied the appropriate Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, and the November 16, 2009 memorandum by EPA Waste and Chemical Enforcement Division Director Rosemary A. Kelley entitled *Adjusted Penalty Policy Matrices Based on the 2008 Monetary Penalty Inflation Adjustment Rule* ("Kelley Memorandum").
88. Respondent shall remit the full penalty pursuant to paragraphs 86, above, and/or any administrative fees and late payment penalties, by 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.*, RCRA-03-2015-0186.
 - 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:

U.S. Environmental Protection Agency
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>.

89. At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or electronic transfer, as appropriate, to:

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

and

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

90. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
91. 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 in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
92. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the executed and filed 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).

93. 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.
94. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly 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).

IV. EFFECT OF SETTLEMENT

95. Payment of the penalty specified in Paragraph 86 above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Sections 3008(a) and (g) and EPCRA Sections 11023 and 11045 for the specific violations alleged in Counts I through XV, 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.

V. RESERVATION OF RIGHTS

96. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged in the 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 RCRA, 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. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

VI. OTHER APPLICABLE LAWS

97. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

VII. CERTIFICATION OF COMPLIANCE

98. Respondent certifies to EPA that, upon investigation, to the best of Respondent's knowledge and belief, Respondent is currently in compliance with all applicable provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g, the federally authorized PaHWMR, EPCRA Section 313, 42 U.S.C. § 11023, and its 40 C.F.R. Part 372 implementing regulations, for which violations are alleged in this CA.

VIII. PARTIES BOUND

99. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

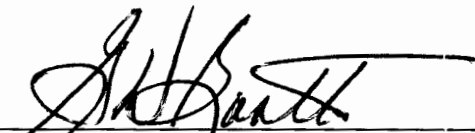
IX. EFFECTIVE DATE

100. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

For Respondent, Zippo Manufacturing, ~~Inc.~~^{Company}

Date: July 10, 2015

By:



Gregory W. Booth
President and Chief Executive Officer
Zippo Manufacturing Company, ~~Inc.~~

For Complainant, United States Environmental Protection Agency, Region III:

Date: July 21, 2015

By: Joyce A. Howell
Joyce A. Howell
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

7-30-15
Date

By: Catherine A. Roberts for
John A. Armstead
Director
Land and Chemicals Division

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

In the Matter of: :
:
Zippo Manufacturing Company :
:
Respondent, :
:
Zippo Manufacturing Company, Inc. :
33 Barbour Street :
Bradford, PA 16701, :
:
Facility. :
:
_____ :

EPA Docket No. RCRA-03-2015-186

Proceeding under Section 3008(a)
of the Resource Conservation and
Recovery Act, as amended, 42 U.S.C.
Section 6928(a) and EPCRA § 325
42 U.S.C. § 11045

RECEIVED
2015 AUG -14 PM 3:56
REGIONAL HEARINGS OFFICE
EPA REGION III PHILADELPHIA

FINAL ORDER

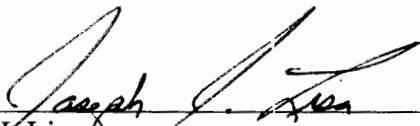
Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Zippo Manufacturing Company, have executed a document entitled "Consent Agreement" which I hereby ratify in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. 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 3008(a) of the Resource Conservation and Recovery Act of 1976, as amended by, inter alia, the Hazardous and Solid Waste Amendments of 1984 (RCRA), 42 U.S.C. Section 6928(a), Section 325 of the

Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11045, and the Consolidated Rules of Practice, and having determined, on the basis of the parties' representations in the Consent Agreement, that the penalty agreed to therein by the parties is based on a consideration of the factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) and Section 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C), it is hereby ordered that Respondent pay \$185,998.00 in accordance with the Consent Agreement and comply with the terms and conditions of this Consent Agreement.

The effective date of this Consent Agreement and Final Order is the date on which such Final Order is filed with the Regional Hearing Clerk.

Aug. 4, 2015
Date



Joseph J. Lisa,
Regional Judicial Officer

