

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2016 MAY -2 AM 11:34

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:

Aero Transportation Products, Inc.
3300 E. Geospace Drive
Independence, Missouri 64056

Respondent.

Proceeding under Section 325(c) of the
Emergency Planning and Community Right-to
Know Act, 42 U.S.C. § 11045(c)

CONSENT AGREEMENT

Docket No. EPCRA-07-2016-0003

I. PRELIMINARY STATEMENT

1. The United States Environmental Protection Agency, Region 7 (EPA or Complainant) and Aero Transportation Products, 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).

2. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

II. Jurisdiction

3. This proceeding 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).

4. This Consent Agreement 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.

5. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.4(a) and 22.18(b).

6. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. Parties

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

8. The Respondent is Aero Transportation Products, Inc., a company registered and authorized to do business in the State of Missouri. The Respondent owns and operates a fiberglass rail car cover manufacturing facility at 3300 E. Geospace Drive, in Independence, Missouri ("Respondent's facility").

IV. Statutory and Regulatory Requirements

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. 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. "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.

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 for certain other chemicals are set forth in 40 C.F.R. §§ 372.27 and 372.28.

11. 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.

A. Definitions

12. The term “facility” means “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.” 40 C.F.R. § 372.3.

13. The term “full-time employees” means “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.” 40 C.F.R. § 372.3.

14. The term “toxic chemical” means a “chemical or chemical category listed in 40 C.F.R. § 372.65.” 40 C.F.R. § 372.3.

15. The term “manufacture” means “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.” 40 C.F.R. § 372.3.

16. The term “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.

17. The term “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.

B. Factual Allegations

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

19. 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).

20. Respondent’s facility, located at 3300 E. Geospace Drive, in Independence, Missouri (“Respondent’s facility”), 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.

21. 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.

22. Respondent’s facility is classified as NAICS Code 336510 – Railroad Rolling Stock Manufacturing.

23. Toluene is a listed chemical pursuant to 40 C.F.R. § 372.65 and therefore a “toxic chemical” within the meaning of 40 C.F.R. § 372.3.

24. During reporting year 2011, the toxic chemical identified in Paragraph 23 was “manufactured, processed, or otherwise used” as those terms are defined by 40 C.F.R. § 372.3 at Respondent’s facility.

25. On September 24, 2015, a duly authorized representative from EPA, Region 7, conducted an inspection of Respondent’s facility.

V. Alleged Violations of Law

26. The Complainant hereby states and alleges that Respondent has violated EPCRA and federal regulations promulgated thereunder, as follows:

Count 1

27. Paragraphs 18 through 25 are incorporated by reference as if fully set forth herein.

28. Pursuant to 40 C.F.R. § 372.25, the threshold reporting quantity for manufacturing or processing toluene is 25,000 pounds, and the threshold reporting quantity for otherwise used toluene is 10,000 pounds.

29. The toxic chemical toluene was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantities during reporting year 2011.

30. Respondent failed to file a Form R report for toluene with the Administrator of EPA and the State of Missouri for 2011 by the July 1, 2012, deadline. Respondent filed the Form R reports on or about November 17, 2015.

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

32. 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.

VI. CONSENT AGREEMENT

33. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. Admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
- b. Neither admits nor denies the alleged violations of law stated above;
- c. Consents to the assessment of a civil penalty as stated below;
- d. Consents to the issuance of any specified compliance or corrective action order;
- e. Consents to the conditions specified in this Agreement;
- f. Consents to any stated Permit Action;
- g. Waives any right to contest the alleged violations of law set forth in Section V of this Agreement; and
- h. Waives its rights to appeal the Order accompanying this Agreement.

34. 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.

35. Respondent certifies by signing this Agreement 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.

A. Penalty Payment

36. Respondent agrees that, in settlement of the claims alleged in this Agreement, Respondent shall pay a civil penalty of Ten Thousand Eight Hundred Forty-Five Dollars (\$10,845) within thirty (30) days of the effective date of this Final Order. Payment shall be made by cashiers or certified check or on-line. Payment must identify the docket number for this matter, be 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.

Wire transfers should be directed to the Federal Reserve Bank of New York:
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"

On-line payments shall be made at:

www.pay.gov
Enter "SFO 1.1" in the search field
Open form and complete fields

37. A copy of the check shall be sent to:

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

and to:

44. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

45. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

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

47. This Agreement 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 Agreement.

48. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

49. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

50. The effective date of the Final Order shall be the date on which it is filed by the Regional Hearing Clerk.

Jonathan Meyer
Assistant Regional Counsel
United States Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

38. 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).

39. 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.

B. Effect of Consent Agreement and Final Order

40. Payment of the civil penalty in full shall resolve all civil and administrative claims for all violations of EPCRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of EPCRA or any other applicable law and/or regulation administered by the EPA.


41. The effect of settlement described in Paragraph 40 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 35 of this Agreement.

42. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

43. Nothing in this Agreement shall be construed as a release from any other action under law and/or regulation administered by EPA. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

COMPLAINANT:

U. S. Environmental Protection Agency

Date: 4/25/16 By: 
for Becky Weber
Director
Air and Waste Management Division

Date: 4/26/16 By: 
Jonathan Meyer
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:

Aero Transportation Products, Inc.

Date: April 15, 2016 By: Paul T. Lyon, Chairman

PAUL T. LYON
Printed Name

CHAIRMAN
Title

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

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Aero Transportation Products, Inc.)
3300 E. Geospace Drive)
Independence, Missouri 64056)
)
Respondent.)
)
Proceeding under Section 325(c) of the)
Emergency Planning and Community Right-to)
Know Act, 42 U.S.C. § 11045(c))
_____)

FINAL ORDER

Docket No. EPCRA-07-2016-0003

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

IT IS SO ORDERED.

Date: 5-2-2016 By: Karina Borrromeo
Karina Borrromeo
Regional Judicial Officer
United States Environmental Protection Agency
Region 7

IN THE MATTER Of Aero Transportation Products, Inc., Respondent
Docket No. EPCRA-07-2016-0003

CERTIFICATE OF SERVICE

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

Copy emailed to Attorney for Complainant:

meyer.jonathan@epa.gov

Copy mailed First Class mail to Respondent:

Paul T. Lyon, Chairman
Aero Transportation Products, Inc.

3300 E. Geospace Drive

Independence, Missouri 64056

Dated: 5/2/14



Kathy Robinson

Hearing Clerk, Region 7

