

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7

2019 NOV -4 PM 4: 27

11201 RENNER BOULEVARD LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )
Edwards Fiberglass, Inc. )
1415 East Boonville Street )
Sedalia, Missouri 65301 )
Respondent. )
Proceeding under Section 325(c) of the )
Emergency Planning and Community Right-to )
Know Act, 42 USC § 11045(c) )

CONSENT AGREEMENT

Docket No. EPCRA-07-2020-0018

I. PRELIMINARY STATEMENT

1. The United States Environmental Protection Agency, Region 7 (EPA or Complainant) and Edwards Fiberglass, 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 CFR §§ 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 USC § 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 USC § 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 CFR § 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 CFR § 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 Enforcement and Compliance Assurance Division, EPA Region 7.

8. The Respondent is Edwards Fiberglass, Inc., a company registered and authorized to do business in the State of Missouri. The Respondent owns and operates a fiberglass storage tank manufacturing facility at 1415 East Boonville Street, in Sedalia, Missouri (“Respondent’s facility”).

### **IV. Statutory and Regulatory Requirements**

9. Section 313 of EPCRA, 42 USC § 11023, and 40 CFR §§ 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 CFR § 372.23(a) or a primary NAICS subsector or industry code listed in 40 CFR §§ 372.23(b) or (c); and
- c. “manufactured, processed, or otherwise used” a toxic chemical listed under Subsection 313(c) of EPCRA, 42 USC § 11023(c), and 40 CFR § 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 USC § 11023(f), and 40 CFR §§ 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 USC § 11023(f), and 40 CFR § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 USC § 11023(b), and 40 CFR § 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 CFR §§ 372.27 and 372.28.

11. Section 325(c) of EPCRA, 42 USC § 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 USC § 11023. Section 325(c) of EPCRA, 42 USC § 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 through November 2, 2015, and to no more than \$57,317 per day for each violation occurring after November 2, 2015.

#### **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 CFR § 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 CFR § 372.3.

14. The term “toxic chemical” means a “chemical or chemical category listed in 40 CFR § 372.65.” 40 CFR § 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 CFR § 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 CFR § 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 CFR § 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 USC § 11049(7).

20. Respondent’s facility, located at 1415 East Boonville Drive in Sedalia, Missouri (“Respondent’s facility”), is a “facility” as that term is defined by Section 329(4) of EPCRA, 42 USC § 11049(4), and by 40 CFR § 372.3.

21. Respondent’s facility has ten or more “full-time employees” pursuant to Section 313(b)(1)(A) of EPCRA, 42 USC § 11023(b)(1)(A), and as defined by 40 CFR § 372.3.

22. Respondent’s facility is classified as NAICS Code 326121 – Unlaminated Plastics Profile Shape Manufacturing.

23. Styrene is a listed chemical pursuant to 40 CFR § 372.65 and therefore a “toxic chemical” within the meaning of 40 CFR § 372.3.

24. During reporting years 2015, 2016, and 2017, the toxic chemical identified in Paragraph 23 was “manufactured, processed, or otherwise used” as those terms are defined by 40 CFR § 372.3 at Respondent’s facility.

25. On March 27, 2019, following a review of records, a duly authorized representative from EPA, Region 7, conducted a telephone conference with a representative of the Respondent. EPA met with the Respondent on April 4, 2019.

### **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 26 are incorporated by reference as if fully set forth herein.

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

29. The toxic chemical styrene was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantities during reporting years 2015, 2016, and 2017.

30. Respondent failed to file a Form R report for styrene with the Administrator of EPA and the State of Missouri for 2015 by the July 1, 2016, deadline. Respondent filed the Form R report on or about May 17, 2019.

31. Respondent failed to file a Form R report for styrene with the Administrator of EPA and the State of Missouri for 2016 by the July 1, 2017, deadline. Respondent filed the Form R report on or about May 17, 2019.

32. Respondent failed to file a Form R report for styrene with the Administrator of EPA and the State of Missouri for 2017 by the July 1, 2018, deadline. Respondent filed the Form R report on or about May 17, 2019.

33. The failure to timely submit a Form R report for styrene is a violation of Section 313(a) of EPCRA, 42 USC § 11023(a), and 40 CFR § 372.30.

34. Pursuant to Section 325(c) of EPCRA, 42 USC § 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**

35. For the purpose of this proceeding, as required by 40 CFR § 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.

36. 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.

37. 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 USC § 11023, and all regulations promulgated thereunder.

#### **A. Penalty Payment**

38. Respondent agrees that, in settlement of the claims alleged in this Agreement, Respondent shall pay a civil penalty of Thirty-One Thousand Three Hundred Seventy-six Dollars and Forty-Eight Cents (\$31,376.48). EPA has considered the appropriateness of the penalty pursuant to the Emergency Response and Community Right to Know Act Penalty Policy and has determined that based on the substantiated financial information, the penalty of \$31376.48 may be paid in installments. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay the civil penalty of \$31,376.48, plus interest of One Hundred Seventy Dollars and Twenty Cents (\$170.20) over a period of one (1) year for a total payment of Thirty-One Thousand Five Hundred and Forty-Six Dollars and Sixty-Eight Cents (\$31,546.68). The payments shall be made in monthly payments of Two Thousand Six Hundred Twenty-eight Dollars and Eighty-nine Cents (\$2,628.89). The first payment must be received in accordance with Paragraph 39 below on or before December 1, 2019. Each subsequent payment shall be paid in monthly installments after the previous payment.

39. 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](http://www.pay.gov)  
Enter “SFO 1.1” in the search field  
Open form and complete fields

40. 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:

Sara Hertz Wu  
Senior Counsel  
United States Environmental Protection Agency – Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

41. Late Payment Provisions. Pursuant to 31 USC § 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 CFR § 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 CFR §§ 901.9(c) and (d).

42. 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 USC § 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**

43. 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.

44. The effect of settlement described in Paragraph 43 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 35 of this Agreement.

45. In accordance with 40 CFR § 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

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

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


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





**COMPLAINANT:**

U. S. Environmental Protection Agency

Date: 10/29/19 By:   
David Cozad  
Director  
Enforcement and Compliance Assurance Division

Date: Oct. 29, 2019 By:   
*for* Sara Hertz Wu  
Senior Counsel  
Office of Regional Counsel

**RESPONDENT:**

Edwards Fiberglass, Inc.

Date: 10.24.19 By: 

Shawn L Edwards  
Printed Name

vice President  
Title

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

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Know Act, 42 USC § 11045(c) )  
\_\_\_\_\_ )

**FINAL ORDER**

Docket No. EPCRA-07-2019-00XX

Pursuant to 40 CFR § 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 USC § 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: Nov. 4, 2019

By: Karina Borromeo

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

In the matter of Edwards Fiberglass, Inc.  
EPCRA-07-2020-0018

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Consent Agreement and Final Oder was sent by first class mail, on November 4, 2019, to:

Shaun Edwards  
Vice President  
Edwards Fiberglass, Inc.  
1415 East Boonville Street  
Sedalia, Missouri 65301

And via email to the following:

Sara Hertz Wu, Region 7  
Sean Bergin, Region 7

Dated:

11/04/2019



*for* Lisa Haugen  
Hearing Clerk, Region 7