

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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In the Matter of:)	
J. H. Miles and Company, Inc.)	EPA Docket No.EPCRA-03-2008-0379
902 Southampton Avenue)	
Norfolk, Virginia 23510,)	
)	
Respondent,)	
)	Proceedings Pursuant to Sections 311,
J. H. Miles and Company, Inc.)	312 and 325 of the Emergency
902 Southampton Avenue)	Planning and Community Right-to-
Norfolk, Virginia 23510,)	Know Act, 42 U.S.C.
)	§§ 11021, 11022 and 11045
Facility.)	
)	

CONSENT AGREEMENT AND FINAL ORDER

Statutory Authority

This Consent Agreement ("CA") is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22, ("Part 22"), in Section 22.18(b)(2). The Administrator has delegated that authority and the authority delegated to him under Section 325 of EPCRA, 42 U.S.C. § 11045, to the Regional Administrator of EPA, Region III, who has redelegated those authorities to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

Preliminary Statement and Stipulations

The Respondent, J. H. Miles and Company, Inc., ("Respondent"), by its attorney or other authorized representative, and EPA stipulate as follows:

I. EPA issued an Administrative Complaint ("Complaint") against Respondent, docketed at No. EPCRA-03-2008-0379, on July 23, 2008.

2. The Complaint alleges that Respondent had not complied with EPCRA's emergency preparedness and right-to-know requirements at its clam-processing facility located at 902 Southampton Avenue in Norfolk, Virginia (the "Facility") by failing to provide complete and accurate reports pursuant to Section 311 of EPCRA, 42 U.S.C. § 11021, to the State Emergency Response Commission ("SERC") and the local fire department. During calendar year 2007, three hazardous chemicals, ammonia, No. 4 fuel oil and liquid nitrogen were present in quantities that exceeded their respective reporting thresholds, 500 pounds, 10,000 pounds and 10,000 pounds. The Complaint alleges that Respondent violated Section 311 of EPCRA by failing to provide Material Safety Data Sheets ("MSDSs"), or a complete and accurate list of MSDS chemicals, for these three chemicals present at its Facility in quantities equal to, or greater than, their respective thresholds to the SERC. The Complaint also alleges that Respondent violated Section 311 of EPCRA by failing to provide MSDSs, or a complete and accurate list of MSDS chemicals, for ammonia present at its Facility in quantities equal to, or greater than, its threshold to the local fire department.

3. The Complaint also alleges that Respondent failed to provide complete and accurate Emergency and Hazardous Chemical Inventory Forms containing Tier I or Tier II information pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, to the SERC and the local fire department for calendar years 2005, 2006 and 2007. Specifically, during calendar years 2005, 2006 and 2007, an extremely hazardous substance ("EHS") and hazardous chemicals were present at the Facility in amounts exceeding their reporting thresholds. Accordingly, the Facility was required by Section 312 of EPCRA, 42 U.S.C. § 11022, to furnish an Emergency and Hazardous Chemical Inventory Form containing Tier I or Tier II information by March 1, with respect to the preceding calendar year, for the EHSs and hazardous chemicals to the SERC and the local fire department. The Facility did not submit an Emergency and Hazardous Chemical Inventory Form containing Tier I or Tier II information for calendar years 2005, 2006 or 2007 to the SERC. Further, Respondent did not identify ammonia on its Hazardous Chemical Inventory Form submitted to the local fire department for calendar years 2005, 2006 and 2007. The Complaint alleges that Respondent violated Section 312 of EPCRA by failing to provide complete and accurate Emergency and Hazardous Chemical Inventory Forms containing Tier I or Tier II information for calendar years 2005, 2006 and 2007 to the SERC and the local fire department.

4. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations of the Complaint.

5. For the purpose of this proceeding, Respondent neither admits nor denies the specific factual allegations contained in the Complaint, but expressly waives any of its rights to contest said allegations.

6. For the purpose of this proceeding, Respondent expressly waives its rights to a hearing and to appeal this CA and accompanying Final Order (collectively, the "CA/FO") under Section 325 of EPCRA, 42 U.S.C. § 11045.

7. EPA incorporates by reference the factual allegations contained in the Complaint as the Findings of Fact for this CA.

8. Based upon the Findings of Fact, EPA concludes that Respondent violated the provisions of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021, 11022, by failing to provide complete and accurate reports to the SERC and the local fire department for calendar years 2005, 2006 and 2007.

9. As a result of EPA's conclusion that Respondent violated Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021, 11022, EPA has determined that Respondent is liable for a civil penalty. In determining the amount of the civil penalty, the following factors have been taken into consideration: the nature, circumstances, extent and gravity of the violation or violations, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such matters as justice may require. The penalty is consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (September 30, 1999)*.

10. Based on the foregoing Stipulations and Findings, the parties, by their attorneys or authorized officials, hereby agree to the following.

Settlement

11. Pursuant to Section 325 of EPCRA, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of \$9,408.00.

12. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph and to the performance of the Supplemental Environmental Project.

Supplemental Environmental Project

13. The following Supplemental Environmental Project ("SEP") is consistent with applicable EPA policy and guidelines, specifically EPA's Supplemental Environmental Projects Policy, effective May 1, 1998.

14. Respondent agrees to implement a risk management program at the Facility, prepare piping and instrumentation drawings and a process flow diagram for the Facility and provide training to the Facility's employees ("SEP"). The SEP will include, *inter alia*, training by factory-authorized representatives. It is described further in Respondent's Supplemental

Environmental Project Proposal (“SEP Proposal”), attached hereto as Attachment A and incorporated herein by reference. Respondent shall complete the SEP within ninety (90) days of the effective date of this CA/FO.

15. Respondent’s total expenditure for the SEP shall not be less than \$18,540.00, in accordance with the specifications set forth in the SEP Proposal. The SEP has been valued at \$18,240.00 pursuant to EPA’s Project Model, with a mitigation value of \$14,592.00. The SEP has been accepted by EPA as part of this settlement. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in Paragraph 19 below.

16. Respondent hereby certifies that, as of the date of this CA, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulations; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

17. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

18. Respondent shall notify EPA, c/o Cynthia T. Weiss at the address noted in Paragraph 19, below, when such implementation is complete. EPA may grant Respondent an extension of time to fulfill its SEP obligations to install if EPA determines, in its sole and unreviewable discretion, that, through no fault of Respondent, Respondent is unable to complete the SEP obligations within the time frame required by Paragraph 14 and this Paragraph. Requests for any extension must be made in writing within 48 hours of any event, the occurrence of which renders the Respondent unable to complete the SEP within the required time frame (“force majeure event”), and prior to the expiration of the allowed SEP completion deadline. Any requests should be directed to Cynthia T. Weiss at the address noted in Paragraph 19, below.

19. SEP Completion Report

a. Respondent shall submit a SEP Completion Report to EPA, c/o Cynthia T. Weiss, U.S. EPA Region III, 1650 Arch Street (Mailcode 3RC42), Philadelphia, PA 19103, within fourteen (14) days of completing the implementation of the SEP as set forth in Paragraph 14. The SEP Completion Report shall contain the following information:

- (i) documentation of risk management program, as implemented;
- (ii) documentation of training provided;
- (iii) itemized costs; and
- (iv) documentation of the expenditures made in connection with the SEP.

b. Respondent shall, by its officers, sign the reports required by this Paragraph 19 and certify under penalty of law, that the information contained therein is true, accurate, and not misleading by including and signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

c. Respondent agrees that failure to submit reports required by this Paragraph 19 shall be deemed a violation of this CA/FO and, in such an event, Respondent will be liable for stipulated penalties pursuant to Paragraph 22 below.

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

20. Respondent agrees that EPA may inspect the facilities at which the SEP is implemented at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

21. EPA Acceptance of SEP Completion Report

a. Upon receipt of the SEP Completion Report, EPA may exercise one of the following options:

- (i) notify the Respondent in writing that the SEP Completion Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional thirty (30) days to correct those deficiencies;
- (ii) notify the Respondent in writing that EPA has concluded that the project has been satisfactorily completed; or
- (iii) notify the Respondent in writing that EPA has concluded that the project has not been satisfactorily completed, and seek stipulated penalties in accordance with Paragraph 22 herein.

b. If EPA elects to exercise option (i) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the respective SEP Completion Reports. If agreement cannot be reached within this thirty (30) day period, EPA shall provide to the Respondent a written statement of its decision on the adequacy of the completion of the SEP, which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CA/FO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 22 herein.

22. Stipulated Penalties

a. In the event that Respondent fails to comply with any of the terms or provisions of this CA relating to the performance of the SEP described in Paragraph 14 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the costs of the SEP described in Paragraph 15 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subParagraph (ii) below, if the SEP has not been completed satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty to EPA in the amount of \$14,592.00.
- (ii) If the SEP is not completed in accordance with Paragraph 14, but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- (iii) If the SEP is completed in accordance with Paragraph 14, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to EPA in the amount of \$2,188.80.
- (iv) If the SEP is completed in accordance with Paragraph 14, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
- (v) For failure to submit the SEP Completion Report required by Paragraph 19 above, Respondent shall pay a stipulated penalty in the

amount of \$500.00 for each day after the report was originally due until the report is submitted.

b. The determination of whether the SEP has been satisfactorily implemented and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties, in accordance with the provisions of Paragraphs 23-24 below. The penalty shall be payable to the United States Treasury. Interest and late charges shall be paid as set forth in Paragraphs 25-28 below.

Payment Terms

23. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CA/FO, Respondent must pay the civil penalty no later than 30 days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondent.

a. Payment of the EPCRA penalty may be made by sending a cashier's check in the amount of **\$9,408.00** made payable to the "United States Treasury." If the payment of the EPCRA is sent via regular or US Postal Service express mail, the payment should be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Natalie Pearson (314-418-4087)

If the payment of the EPCRA penalty is sent via FedEx or other non-US Postal Service express mail, the payment should be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson, (314-418-4087)

b. Payment of the EPCRA penalty made by made via wire transfer/EFT 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 wire transfer message should read:
"D 68010727 Environmental Protection Agency")

c. Payment of the EPCRA penalty may be made via Automated Clearing House (ACH) Transfers for receiving U.S. currency (also known as REX or remittance express) to:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact for ACH: Jessie White 301 887-6548
ABA = 051036706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking

24. The Respondent shall note on the penalty payment checks the title and docket numbers of this case. The Respondent shall submit copies of the checks to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Cynthia T. Weiss (3RC42)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

25. 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, as well as 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 or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

26. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO 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).

27. 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 final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

28. A penalty charge of six (6) 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).

29. Failure by the Respondent to pay the \$9,408.00 penalty assessed by the FO in full by the final due date, or to pay any stipulated penalties assessed under this CA/FO, may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

General Provisions

30. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this CA on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this CA and to legally bind Respondent to the terms and conditions of the CA and accompanying FO.

31. The CA/FO does not constitute a waiver, suspension or modification of the requirements of Sections 311 or 312 of EPCRA, 42 U.S.C. §§ 11021, 11022, or any regulations promulgated thereunder.

32. This CA/FO resolves only those civil claims which are alleged in the Complaint. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant 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 the reservation of rights of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, Complainant reserves any rights and remedies available

to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk.


33. Each party to this action shall bear its own costs and attorney's fees.

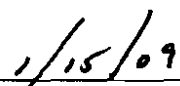
34. By entering into this CA/FO, the Respondent does not admit any liability for the civil claims alleged in the Complaint.

J. H. Miles and Company, Inc.

EPA Docket No. EPCRA-03-2008-0379

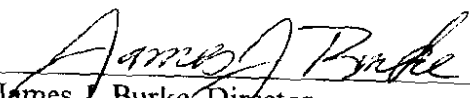
FOR J.H. MILES AND COMPANY, INC.



SIGNATURE


DATE

Name: John R. Miles
Title: Chief Executive Officer

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY


James J. Burke, Director
Hazardous Site Cleanup Division


DATE

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

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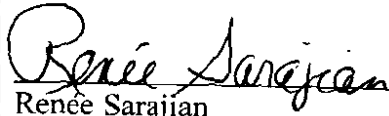
FINAL ORDER

Pursuant to Sections 311, 312 and 325 of EPCRA, 42 U.S.C. §§ 11021, 11022, and 11045, and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, and having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the following factors: the nature, circumstances, extent and gravity of the violation or violations, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such matters as justice may require, and is consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999), the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

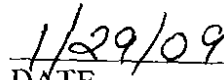
Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY



Renee Sarajian
Regional Judicial Officer
EPA, Region III



DATE