



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

1 JUN 2017

CERTIFIED MAIL – RETURN RECEIPT REQUESTED # 7007-3020-0000-1522-8434

Jesse Lopez, President
Liberty Forge, Inc.
1507 Fort Worth Street
Liberty, Texas 77575

RE: In the Matter of Liberty Forge, Inc.-Docket No. EPCRA-06-2017-0512

Dear Mr. Lopez:

Enclosed is the fully executed Consent Agreement and Final Order (CAFO) filed with the Regional Hearing Clerk. Liberty Forge, Inc. has 30 days from the effective date of the CAFO to submit your payment of \$10,000. The effective date is the date the CAFO is stamped in the top right corner of the document.

If you have any questions, or concerns regarding this matter, please contact Stan Lancaster at 214.665.8034 or myself at 214.665.8151. Your cooperation in the settlement of this case is appreciated.

Respectfully,

A handwritten signature in blue ink, appearing to read "Nathaniel Moore".

Nathaniel Moore
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6

Enclosure (1)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2017 JUN -1 AM 9:45
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	§	EPA DOCKET NO.
	§	EPCRA-06-2017-0512
LIBERTY FORGE, INC.	§	
	§	CONSENT AGREEMENT
LIBERTY, TEXAS	§	AND FINAL ORDER
	§	
RESPONDENT	§	
	§	

CONSENT AGREEMENT

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

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c), is simultaneously commenced and concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

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

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

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

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

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

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

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

II. STATUTORY AND REGULATORY BACKGROUND

9. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that: (a) has ten or more full-time employees; (b) is a facility in a Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), for which the corresponding North American Industry Classification System (NAICS) subsector or industry codes are listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) manufactured, processed, or otherwise used a toxic chemical in excess of an applicable threshold

quantity of that chemical set forth in 40 C.F.R. §§ 372.25, 372.27, or 372.28 listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Subsection 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, or 372.28 during the calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, for the preceding calendar year, for each toxic chemical known by the owner or operator to be “manufactured, processed, or otherwise used” in quantities exceeding the established threshold quantity during that preceding calendar year.

10. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30, is 25,000 pounds for any toxic chemical manufactured or processed, and 10,000 pounds for any toxic chemical otherwise used for the applicable calendar year. Alternative reporting thresholds are set forth in 40 C.F.R. §§ 372.27 and 372.28.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

11. Respondent is a corporation incorporated under the laws of the State of Texas, and is authorized to do business in the State of Texas.

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

13. Respondent owns and operates the facility at 1507 Forth Worth Street in Liberty, Texas, 77575.

14. Respondent’s plant identified in Paragraph 13 is a “facility” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

15. Respondent's facility has ten (10) or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.

16. Respondent's facility is in NAICS code 322111 (Iron and Steel Forging).

17. During the calendar years 2012 through 2015, manganese, nickel, and chromium were "manufactured, processed or otherwise used" as those terms are defined by Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.3, at Respondent's facility.

18. Manganese, nickel, and chromium are toxic chemicals within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

19. During the calendar years 2011 through 2014, manganese was "manufactured, processed or otherwise used" in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.

20. During the calendar years 2011 through 2014, nickel was "manufactured, processed or otherwise used" in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.

21. During the calendar years 2011 through 2014, chromium was "manufactured, processed or otherwise used" in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.

22. An inspection of Respondent's facility was originally conducted on October 6, 2015 by a duly authorized representative of the EPA's Region 6 office. Based on information provided by Respondent, the following violations are alleged.

B. VIOLATIONS

a. Manganese

23. During calendar years 2011, 2012, 2013, and 2014, Respondent processed manganese in excess of the applicable threshold quantity.

24. Respondent failed to submit the required Form R for manganese by July 1 of 2012, 2013, 2014, and 2015, following the years when Respondent processed manganese in excess of the applicable threshold quantity.

25. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for manganese for calendar years 2011, 2012, 2013, and 2014 to EPA and to the State of Texas by the applicable due date.

b. Nickel

26. During calendar years 2011, 2012, 2013, and 2014, Respondent processed nickel in excess of the applicable threshold quantity.

27. Respondent failed to submit the required Form R for nickel by July 1 of 2012, 2013, 2014, and 2015, following the years when Respondent processed nickel in excess of the applicable threshold quantity.

28. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for nickel for calendar years 2011, 2012, 2013, and 2014 to EPA and to the State of Texas by the applicable due date.

c. Chromium

29. During calendar years 2011, 2012, 2013, and 2014, Respondent processed chromium in excess of the applicable threshold quantity.

30. Respondent failed to submit the required Form R for chromium by July 1 of 2012, 2013, 2014, and 2015, following the years when Respondent processed chromium in excess of the applicable threshold quantity.

31. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for chromium for calendar years 2011, 2012, 2013, and 2014 to EPA and to the State of Texas by the applicable due date.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

32. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), which authorizes EPA to assess a civil penalty of up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500) per day for each violation of EPCRA.¹ Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the nature, circumstances, extent and gravity of the alleged violations, and with respect to Respondent's ability to pay, history of prior EPCRA Section 313 violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and other factors as justice may require, it is ORDERED that Respondent, based on

¹ The amount of penalty that can be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$27,500 per day, for violations occurring between January 30, 1997 and March 15, 2004, and \$32,500 per day for violations which occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for violations which occurred after January 12, 2009

EPA's analysis of Respondent's ability to pay, be assessed a civil penalty of **TEN THOUSAND DOLLARS (\$10,000.00)**.

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

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

For U.S. Postal Service mail, the check(s) should be remitted to:

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

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

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

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental
Protection Agency"

PLEASE NOTE: Docket number EPCRA 06-2017-0512 shall be clearly typed on the check, or other method of payment, to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference Respondent's name and address, the case name, and docket number of the CAFO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

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

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

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

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

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

37. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b)

38. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

39. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

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

B. RETENTION OF ENFORCEMENT RIGHTS

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

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

43. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of Federal, State, or local agencies or departments to obtain penalties or injunctive relief under Federal, State, or local laws or regulations.

C. COSTS

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

D. TERMINATION

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

E. EFFECTIVE DATE

46. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

Liberty Forge, Inc.
Docket No. EPCRA 06-2017-0512

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

FOR THE RESPONDENT:

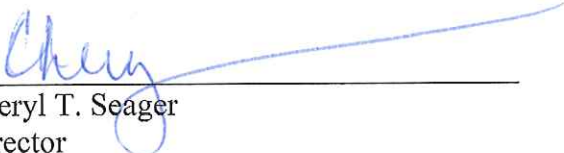
Date: 5-15-2017



Jesse Lopez
President
Liberty Forge, Inc.

FOR THE COMPLAINANT:

Date: 5/25/2017

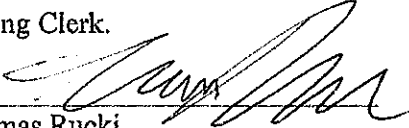


Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 5-31-17


Thomas Rucki
Regional Judicial Officer

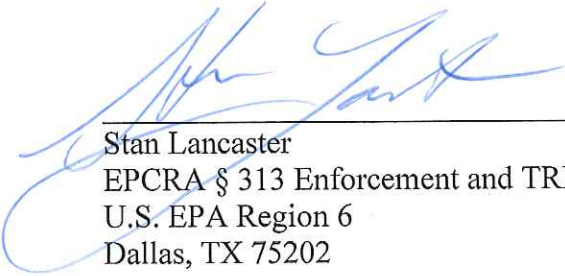
Liberty Forge, Inc.
Docket No. EPCRA 06-2017-0512

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 2017, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED # 7007 3020 0000 1522 8434

Jesse Lopez, President
Liberty Forge, Inc.
1507 Fort Worth Street
Liberty, Texas 77575



Stan Lancaster
EPCRA § 313 Enforcement and TRI Program
U.S. EPA Region 6
Dallas, TX 75202