



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUL 03 2006

**Certified Mail - Return Receipt Requested # 7004 1160 0003 0360 0252**

Philip Harper  
President  
612 South 45th Street  
Muskogee, Oklahoma 74403

**RE: In the Matter of American Foundry Group Alloy 2  
Docket No. EPCRA-06-2006-0513**

Dear Mr. Harper:

Enclosed is a copy of the fully executed Consent Agreement and Final Order (CAFO) that has been filed with the Regional hearing Clerk. You have (30) days from the effective date of the CAFO to pay the \$4,740 civil penalty as set forth in section V beginning on page 5 of the CAFO. The effective date is the date the CAFO is filed with the Regional Hearing Clerk.

In the event you should have any further questions or concerns regarding this matter please contact Stan Lancaster, at 214.665.8034. Your cooperation in expediting the settlement of this case is most appreciated.

Sincerely yours,

A handwritten signature in black ink, appearing to read "C. Edlund", with a long horizontal flourish extending to the right.

Carl E. Edlund, P.E.  
Director  
Multimedia Planning and  
Permitting Division

Enclosure (1)

06 JUL -2 PM 1:37  
REGIONAL HEARING ORDER  
EPA REGION VI

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS**

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<b>IN THE MATTER OF:</b>	§	<b>DOCKET NO. EPCRA 06-2006-0513</b>
	§	
<b>AMERICAN FOUNDRY GROUP ALLOY 2 MUSKOGEE, OKLAHOMA</b>	§	<b>COMPLAINT AND CONSENT AGREEMENT AND FINAL ORDER</b>
	§	
	§	
<b>RESPONDENT</b>	§	

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**COMPLAINT AND  
CONSENT AGREEMENT AND FINAL ORDER**

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency, Region 6 ("EPA") as Complainant, and American Foundry Group Alloy 2, located in Muskogee, Oklahoma (hereinafter "Respondent") in the above referenced action, have consented to the terms of this Complaint and Consent Agreement and Final Order ("Complaint" and "CAFO").

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this Consent Agreement and Final Order.

**I.  
PRELIMINARY STATEMENT**

1. This enforcement proceeding is instituted by EPA pursuant to Section 325(c) Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c), (also known as the Emergency Planning and Community Right-to-Know Act of 1986, ["EPCRA"]) which authorizes the Administrator to bring an administrative action to assess a penalty of up to

\$25,000<sup>1</sup> for each violation of Section 313 of EPCRA, 42 U.S.C. § 11023 (relating to submission of toxic chemical release forms). This proceeding was instituted by the issuance of a Complaint and Notice of Opportunity for Hearing [hereinafter "Complaint"] incorporated herein.

2. The Complaint alleges Respondent violated regulations promulgated pursuant to the Act.

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

4. Respondent consents to the issuance of this CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

5. By signature on this Complaint and CAFO, Respondent waives any right to an appeal of this proceeding.

6. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the 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, but not limited to, subsequent purchasers.

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<sup>1</sup>The Civil Penalty Inflation Adjustment Rule of December 31, 1996 (61 Fed. Reg. 69360) provides for increases in the statutory penalty provisions by ten percent (10%) from the original penalty matrix of EPCRA § 313. The ten percent (10%) increase is effective for violations which occur between the 1996 and the 2002 calendar years. For the aforementioned time period, the statutory maximum penalty has been increased from \$25,000 to \$27,500. The Civil Penalty Inflation Adjustment Rule of February 13, 2004 (69 Fed. Reg. 7121) provides for a further increase in the statutory maximum penalty by 17.23%, as well as for the entire penalty matrix, for violations beginning with the 2003 calendar year. Therefore, for violations of EPCRA § 313 which occur with the 2003 calendar year, and subsequently thereafter, the statutory maximum penalty has increased from \$27,500 to \$32,500.

**II.**  
**STATUTORY AND REGULATORY BACKGROUND**

8. Section 313 of EPCRA, and 40 C.F.R. §§ 372.22 and 372.30, require the owner or operator of a facility that: (a) has 10 or more full-time employees; (b) has a Standard Industrial Classification Code of 20 through 39; and (c) “manufactures, processes, or otherwise uses” a toxic chemical listed under subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25 during the calendar year, to complete and submit a Toxic Chemical Release Inventory Form R or Form A 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.

9. As set forth in Section 313(f) of EPCRA and 40 C.F.R. § 372.25, the reporting threshold amount for chemicals “manufactured or processed” at a facility is 25,000 pounds for calendar years subsequent to and including 1989. The reporting threshold for a toxic chemical “otherwise used” at a facility is 10,000 pounds for calendar years subsequent to and including 1987.

**III.**  
**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

10. American Foundry Group Alloy 2 is a corporation authorized to do business in the State of Oklahoma. The Respondent’s principle place of business is located at 612 South 45th Street, Muskogee, Oklahoma, 74403.

11. Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

12. Respondent is the owner or operator of a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

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

14. Respondent's facility is in Standard Industrial Classification Code 3325, Steel foundries.

15. During calendar years 2003 and 2004, the toxic chemicals listed in Paragraph 16 of this Complaint and CAFO were either "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.

16. Diisocyanates is a toxic chemical category within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

17. The chemicals listed in Paragraph 16 above were "otherwise used" in excess of threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.

18. Respondent's late submission of Form A's constitutes a failure to timely report, a violation of 40 C.F.R. § 372.30.

19. On or about October 27, 2005, Respondent consented to the inspection of the facility by a representative of the U.S. EPA, pursuant to Section 313 of EPCRA.

20. According to information supplied by Respondent during the inspection on October 27, 2005, the chemicals listed in paragraph 16 were "otherwise used" in amounts less than ten times (10x) the respective threshold for calendar years 2003 and 2004. In addition, for the year specified, Respondent had more than 50 employees and gross revenue less than \$10 million dollars.

#### **IV.** **VIOLATIONS**

21. Specifically, respondent failed to submit a Form A for diisocyanates for the calendar years 2003 and 2004.

#### **V.** **CIVIL PENALTY AND** **TERMS OF SETTLEMENT**

22. 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 Twenty-Seven Thousand Five Hundred Dollars (\$25,000.00)<sup>2</sup> per day for each violation of EPCRA. 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 the Respondent, its culpability, history of prior

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<sup>2</sup>The Civil Penalty Inflation Adjustment Rule of December 31, 1996 (61 Fed. Reg. 69360) provides for increases in the statutory penalty provisions by ten percent (10%) from the original penalty matrix of EPCRA § 313. The ten percent (10%) increase is effective for violations which occur between the 1996 and the 2002 calendar years. For the aforementioned time period, the statutory maximum penalty has been increased from \$25,000 to \$27,500. The Civil Penalty Inflation Adjustment Rule of February 13, 2004 (69 Fed. Reg. 7121) provides for a further increase in the statutory maximum penalty by 17.23%, as well as for the entire penalty matrix, for violations beginning with the 2003 calendar year. Therefore, for violations of EPCRA § 313 which occur with the 2003 calendar year, and subsequently thereafter, the statutory maximum penalty has increased from \$27,500 to \$32,500.

Section 313 of EPCRA violations, and ability to continue in business, it is ORDERED that Respondent be assessed a civil penalty of **FOUR THOUSAND SEVEN HUNDRED FORTY DOLLARS (\$4,740)**.

23. Within thirty (30) days of the effective date of this fully executed Complaint and CAFO, Respondent shall pay the assessed civil penalty by cashier's or certified check, 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 mail, overnight mail, or wire transfer. For U.S. Postal mail, the check(s) should be remitted to:

Regional Hearing Clerk  
U.S. EPA, Region 6  
P.O. Box 371099M  
Pittsburgh, PA 15251  
contact = Patricia McKaveney at 412-234-5805

For Fedex and other non-US Postal Service express mail, the check(s) should be remitted to:

Mellon Client Service Center  
ATTN: Shift Supervisor, Room 0690  
Lockbox 371099M Account 9109125  
500 Ross Street  
Pittsburgh, PA 15262-0001

with a phone number of 412.234.5805.

For wire transfer, the payment should be remitted to:

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

with a phone number of 412.234.5805

**Docket number EPCRA-06-2006-0513 and the Respondent's name and address shall be clearly listed on the check to ensure proper credit.** Respondent shall send a notice of such payment, including a photocopy of the cashier's or certified check to the following personnel:

Stan Lancaster  
EPCRA § 313 Enforcement Officer  
Toxics Section (6PD-T)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733;

The check shall reference Respondent's name and address, the case name, and docket number of the administrative complaint, and the check shall be accompanied by a transmittal letter. A photocopy of each check and its accompanying transmittal letter shall be mailed to:

Lorena Vaughn  
Region 6 Hearing Clerk  
U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

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

24. 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.

25. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties or debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent shall pay the following amounts:



a. Interest. If EPA does not receive payment within thirty (30) days of the due date, and the Respondent cannot provide evidence that payment was properly sent, interest will accrue on the amount due from the due date at the current annual rate prescribed and published by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) and 40 C.F.R. § 102.13(c).

b. Handling Charge. Pursuant to 31 U.S.C. § 3717 (e)(1), a monthly handling charge of \$15.00 dollars shall be paid if any portion of the assessed penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of six (6) percent per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the day the underlying penalty first becomes past due. 40 C.F.R. §§ 102.13(d) and (e).

26. The provisions of this CAFO shall be binding on Respondent, its officers, directors, agents, servants, authorized representatives, employees, successors, and assigns.

27. 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, for the purpose of demonstrating a history of "prior such violations."

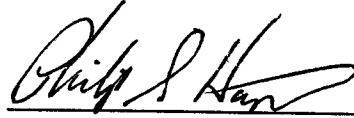
## **VI.** **COSTS**

28. Each party shall bear its own costs and attorneys fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

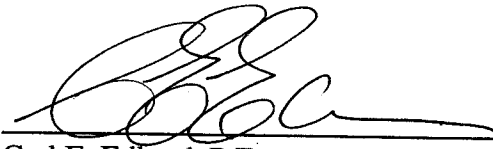
Date: 05/11/06



Philip Harper, President  
American Foundry Group Alloy 2

FOR THE COMPLAINANT:

Date: 5/17/06

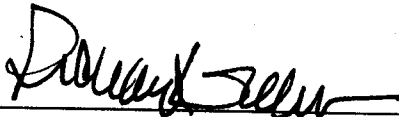


Carl E. Edlund, P.E.  
Director  
Multimedia Planning and  
Permitting Division

**VII.**  
**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 Complaint. 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. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. 40 C.F.R. § 22.31(b) provides that this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 06-29-06

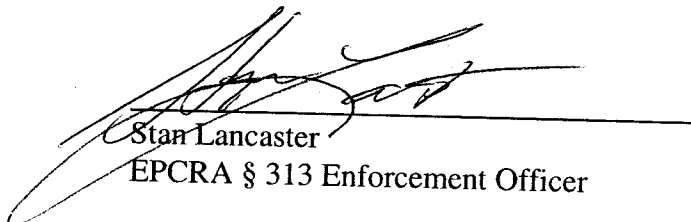
  
\_\_\_\_\_  
Richard E. Greene  
Regional Administrator

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of July, 2006, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order ("Complaint and 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 was delivered to the following individual by the method indicated below:

**CERTIFIED MAIL RETURN RECEIPT REQUESTED # 7004 1160 0003 0360 0252**

Mr. Philip Harper  
612 South 45th Street  
Muskogee, Oklahoma 74403

  
Stan Lancaster  
EPCRA § 313 Enforcement Officer