

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)	
)	
Nichols Portland, LLC)	
2400 Congress Street)	Docket No: EPCRA-01-2021-0041
Portland, Maine 04102,)	
)	
Respondent.)	CONSENT AGREEMENT AND FINAL ORDER
)	
Proceeding under Section 325(c) of the)	
Emergency Planning and Community)	
Right-to-Know Act, 42 U.S.C. § 11045(c))	
)	

CONSENT AGREEMENT

The United States Environmental Protection Agency (“EPA”), Region 1 (“Complainant”), alleges that Nichols Portland, LLC (“Respondent”) violated the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11001 - 11050, and the federal regulations promulgated thereunder.

Complainant and Respondent (together, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), set out at 40 C.F.R. Part 22, Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

Therefore, before any hearing, and without adjudication of any issue of fact or law, the Parties agree to comply with the terms of this CAFO as follows:

I. STATUTORY AND REGULATORY AUTHORITY

1. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated Toxic Chemical Release Reporting: Community Right-to-Know regulations at 40 C.F.R. Part 372.

2. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), requires owners or operators of a facility subject to the requirements of Section 313(b) of EPCRA to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, “Form R”), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25 and 372.28. If an owner or operator determines that the alternative reporting threshold specified in 40 C.F.R. § 372.27 applies, the owner or operator may instead submit an alternative threshold certification statement that contains the information required under 40 C.F.R. § 372.95 (“Form A”). Each Form R or Form A (hereinafter, referred to together as “TRI Forms”) must be submitted to EPA and a designated state authority.

3. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. §§ 372.22 and 372.30 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification (“SIC”) code or North American Industry Classification System (“NAICS”) code set forth in 40 C.F.R. § 372.23; and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 in a quantity exceeding the established threshold during a calendar year, must submit TRI Forms to EPA and the state authority for each of these substances for that year.

4. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended through 2016 (“FCPIAA”), and the FCPIAA’s

implementing regulations as promulgated and updated by EPA at 40 C.F.R. Part 19 (most recently at 85 Fed. Reg. 83818, 83821 (Dec. 23, 2020)), together authorize the assessment of civil administrative penalties of up to \$59,017 for each violation of Section 313 of EPCRA that occurs after November 2, 2015. Pursuant to Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day that an EPCRA Section 313 violation continues constitutes a separate violation.

II. GENERAL ALLEGATIONS

5. Respondent is a limited liability company organized under the laws of the State of Delaware. Respondent operates a facility at 2400 Congress Street, Portland, Maine (“the Facility”) and manufactures pump components and related parts from metal powders that are blended and then pressed into a form. The material then undergoes the sintering process, which bonds the powder particles together into a solid (hardened) metal part.

6. Respondent is a “person” within the meaning of 42 U.S.C. § 11049(7).

7. Respondent operates a “facility” within the meaning of 42 U.S.C. § 11049(4) and 40 C.F.R. § 372.3.

8. The Facility has more than 10 “full-time employees” within the meaning of 40 C.F.R. § 372.3.

9. The Facility is classified in a NAICS code set forth in 40 C.F.R. § 372.23.

10. The requirements of 42 U.S.C. § 11023 apply to the Facility.

III. VIOLATIONS

Count 1: Failure to Timely Submit TRI Form For Copper for Calendar Year 2018

11. During calendar year 2018, Respondent processed copper, a toxic chemical listed under 40 C.F.R. § 372.65(a), at the Facility in quantities greater than the 25,000-pound threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25(b).

12. Respondent was therefore required to submit a TRI Form for copper for calendar year 2018 to EPA on or before July 1, 2019. *See* 42 U.S.C. § 11023(a) and 40 C.F.R. §§ 372.30 (a) and (d).

13. After being contacted by EPA on April 16, 2020, Respondent submitted a TRI Form for copper for calendar year 2018 to EPA on April 24, 2020.

14. Respondent failed to submit a TRI Form for copper for calendar year 2018 to EPA on or before July 1, 2019.

15. Respondent's failure to timely submit a TRI Form for copper for calendar year 2018 violated Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 2: Failure to Timely Submit TRI Form For Nickel for Calendar Year 2018

16. During the calendar year 2018, Respondent processed nickel, a toxic chemical listed under 40 C.F.R. § 372.65(a), at the Facility in quantities greater than the 25,000-pound threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25(b).

17. Respondent was therefore required to submit a TRI Form for nickel for calendar year 2018 to EPA on or before July 1, 2019. *See* 42 U.S.C. § 11023(a) and 40 C.F.R. §§ 372.30 (a) and (d).

18. After being contacted by EPA on April 16, 2020, Respondent submitted a TRI Form for nickel for calendar year 2018 to EPA on April 24, 2020.

19. Respondent failed to submit a TRI Form for nickel for calendar year 2018 to EPA on or before July 1, 2019.

20. Respondent's failure to timely submit a TRI Form for nickel for calendar year 2018 violated Section 313 of EPCRA and 40 C.F.R. Part 372.

IV. TERMS OF SETTLEMENT

21. Respondent certifies that it has corrected the alleged violations cited in this CAFO and will operate its Facility in compliance with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder at 40 C.F.R. Part 372.

22. Respondent admits, for the purposes of this proceeding, that Complainant has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states claims upon which relief may be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue.

23. Respondent waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives its right to appeal the Final Order.

24. Without admitting or denying the facts and violations alleged in Section III of this CAFO, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of the civil penalty set forth herein. The provisions of this CAFO shall be binding on Respondent and Respondent's officers, directors, agents, employees, successors and assigns.

25. Pursuant to the relevant factors for penalties issued pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and taking into account any such matters as justice may require, Complainant has determined that it is fair and proper that Respondent pay a total civil penalty in the amount of \$36,943 to resolve the violations alleged in Section III of this CAFO.

26. Within thirty (30) days after the effective date of this CAFO, Respondent shall submit a company, bank, cashier's, or certified check in the amount of \$36,943 payable to the order of the "Treasurer, United States of America." The check should be sent via regular mail to:

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

or, Respondent may make payment by electronic funds transfer via:

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"

Respondent shall include the case name and docket number ("In the Matter of Nichols Portland, LLC, Docket No. EPCRA-01-2021-0041") on the face of the check or wire transfer confirmation. In addition, at the time of payment, Respondent shall simultaneously send notice of the payment and a copy of the check or electronic wire transfer confirmation by email to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code 4-6
Boston, MA 02109-3912
R1_Hearing_Clerk_Filings@epa.gov

and

Sarah Meeks
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code 4-3
Boston, MA 02109-3912
meeks.sarah@epa.gov

27. 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. In the event that Respondent does not fully pay the civil penalty required by Paragraphs 25 and 26 of this CAFO when due, the unpaid penalty shall be payable with accrued interest from the original due date to the date of payment, with the interest calculated at the rate established in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees. In addition, a penalty charge of six 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, with the charge accruing from the date of delinquency in accordance with 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

28. The civil penalty under this CAFO and any interest, nonpayment penalties, and other charges paid pursuant to any penalty collection action arising from this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and shall not be deductible for purposes of federal, state, or local taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

29. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA for the violations specifically alleged in Section III of this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

30. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent is in violation of this CAFO or continues to be in violation of the statutes and regulations upon which the allegations in this CAFO are based, or if Respondent violates any other applicable provision of federal, state, or local law.

31. Each of the undersigned representatives of the Parties certifies that he or she is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that Party to it.

32. Complainant and Respondent, by entering into this CAFO, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CAFO, by electronic mail, to the following address of its attorney: dvanslyke@preti.com. Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database. Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic

Filing and Service of Documents Standing order, dated June 19, 2020. Electronic signatures shall comply with, and be maintained in accordance with, that Order.

33. Each Party shall bear its own costs and attorneys' fees in this proceeding and specifically waives any right to recover such costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

34. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and approval of the Regional Judicial Officer.

35. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed, either in person or electronically via email, with the Regional Hearing Clerk.

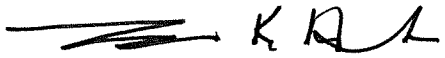
For COMPLAINANT:

James Chow, Deputy Director *for* Karen McGuire, Director
Enforcement and Compliance Assurance Division
EPA Region 1

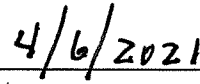
Date



For RESPONDENT:



Thomas K. Houck
President and Chief Executive Officer
Nichols Portland, LLC



Date



FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the Consolidated Rules, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent Nichols Portland, LLC is ordered to pay the civil penalty amount specified in the Consent Agreement in the manner indicated therein. The terms of the Consent Agreement shall become effective on the date that the CAFO is filed, either in person or electronically via email, with the Regional Hearing Clerk.

LeAnn Jensen
Regional Judicial Officer
EPA Region 1

Date