

RECEIVED
17 APR 11 AM 8:11
HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
) DOCKET NO. EPCRA-10-2017-0089
)
MUKILTEO POWDER COATING, INC.,)
D/B/A PRODUCTION PLATING INC.,)
)
Mukilteo, Washington,)
)
Respondent.)

I. STATUTORY AUTHORITY

I.1. This Consent Agreement is issued 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.

I.2. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, Mukilteo Powder Coating, Inc., d/b/a Production Plating Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of EPCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of EPCRA together with the specific provisions of EPCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Administration (“OSHA”) to prepare or have available a material safety data sheet (“MSDS”)¹ for a hazardous chemical, to prepare and submit an Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II as described in 40 C.F.R. Part 370) to the State Emergency Response Commission (“SERC”), the Local Emergency Planning Committee (“LEPC”), and the fire department with jurisdiction over the facility (“fire

¹ Effective May 25, 2012, OSHA changed the term “material safety data sheet” to “safety data sheet.” 77 Fed. Reg. 17574 (March 26, 2012). For purposes of this Consent Agreement, the term “material safety data sheet” shall mean “safety data sheet,” and vice versa.

department”) by March 1, 1988, and annually thereafter on March 1. The form must contain the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), covering all hazardous chemicals required by OSHA to have an MSDS that are present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds or, in the case of an Extremely Hazardous Substance (“EHS”), in amounts equal to or exceeding 500 pounds or the Threshold Planning Quantity (“TPQ”), whichever is lower.

3.2. Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), “facility” means all buildings, equipment, structures, and other stationary items that 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, or under common control with, such person).

3.3. Under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), “person” means, *inter alia*, any corporation.

3.4. The OSHA Hazard Communication Standard (“OSHA Standard”), 29 C.F.R. § 1910.1200(b), requires employers to provide information to their employees about hazardous chemicals to which they are exposed by means of, *inter alia*, an MSDS. The section applies to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.

3.5. Sulfuric acid is defined as a hazardous chemical under the OSHA Standard.

3.6. The OSHA Standard requires an MSDS to be prepared, or available, for sulfuric acid.

3.7. Sulfuric acid is listed in Appendices A and B of 40 C.F.R. Part 355 and is therefore an EHS under 40 C.F.R. § 370.66.

3.8. The TPQ for sulfuric acid is 1,000 pounds, according to Appendices A and B of 40 C.F.R. Part 355. Because sulfuric acid is an EHS, the lower planning threshold of 500 pounds applies.

3.9. Respondent is a corporation established under the laws of the State of Washington, and is therefore a person under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

3.10. Respondent owns and operates a facility located at 4412 Russell Road, Mukilteo, Washington ("the Facility").

3.11. During calendar years 2012, 2013, 2014, and 2015, Respondent stored more than 500 pounds of sulfuric acid at the Facility.

3.12. Respondent violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.20 by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for sulfuric acid to the SERC, LEPC, and the fire department for calendar year 2012 by March 1, 2013.

3.13. Respondent violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.20 by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for sulfuric acid to the SERC, LEPC, and the fire department for calendar year 2013 by March 1, 2014.

3.14. Respondent violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.20 by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for sulfuric acid to the SERC, LEPC, and the fire department for calendar year 2014 by March 1, 2015.

3.15. Respondent violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.20 by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for sulfuric acid to the SERC, LEPC, and the fire department for calendar year 2015 by March 1, 2016.

3.16. Under Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 for each violation occurring on or before November 2, 2015.

3.17. Under Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$54,789 for each violation occurring after November 2, 2015.

IV. TERMS OF SETTLEMENT

- 4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.
- 4.3. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$87,028 (the "Assessed Penalty").
- 4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.
- 4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
young.teresa@epa.gov

Erin Williams
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
williams.erin@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 325(f)(1) of EPCRA, 42 U.S.C. § 11045(f)(1), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

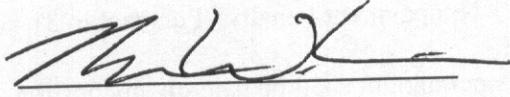
4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

APRIL 5TH, 2017

FOR RESPONDENT:

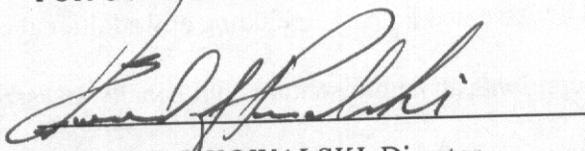


MARC WISLEN, Owner
Mukilteo Powder Coating, Inc., d/b/a
Production Plating Inc.

DATED:

April 6, 2017

FOR COMPLAINANT:

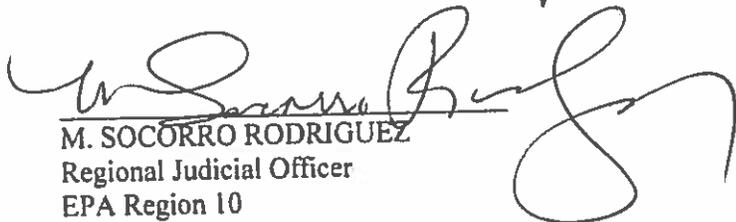


EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

1.4. This Final Order shall become effective upon filing with the Regional Hearing

Clerk.

SO ORDERED this 10th day of April, 2017.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Mukilteo Powder Coating, Inc., d/b/a Production Plating Inc., Docket No.: EPCRA-10-2017-0089**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Danielle Meinhardt
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Marc Wislen
Owner
Mukilteo Powder Coating, Inc., d/b/a Production Plating Inc.
4412 Russell Road
Mukilteo, Washington 98275

DATED this 11 day of April, 2017.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10