



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 03 2009

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0006 0191 0424

Ms. Nancy Misch
Weber- Stephen Products Co.
200 E. Daniels Road
Palatine, Illinois 60067

Consent Agreement and Final Order, Docket No. **EPCRA-05-2010-0004**

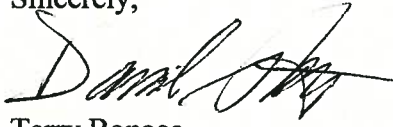
Dear Ms. Misch:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on November 3, 2009, with the Regional Hearing Clerk.

The civil penalty in the amount of \$61,382 is to be paid in the manner described in paragraphs 61 and 62. Please be certain that the number BD **2751044E006** and the docket number are written on both the transmittal letter and on the check. Payment is due by December 3, 2009, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,


for Terry Bonace
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. EPCRA-05-2010-0004
)	
Weber-Stephen Products Co.)	Proceeding to Assess a Civil Penalty
Huntley, Illinois,)	Under Section 325(c) of the Emergency
)	Planning and Community Right-to-Know
Respondent.)	Act of 1986, 42 U.S.C. § 11045(c)
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**Consent Agreement and Final Order
Commencing and Concluding a Proceeding**

**REGIONAL HEARING CLERK
USEPA
REGION 5**

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region 5.
3. Respondent is Weber-Stephen Products Co. (Weber), a corporation doing business in the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with Section 313 of EPCRA, 42 U.S.C. § 11023.

Statutory and Regulatory Background

10. The EPA promulgated the Toxic Chemical Release Reporting Community Right-to-Know Rule at 40 C.F.R. Part 372 pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048.

11. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that the requirements of Section 313 and Part 372 apply to any facility that has 10 or more full-time employees, is in Standard Industrial Classification (SIC) Codes 20 through 39 and that manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c) and listed at 40 C.F.R. § 372.65 in an amount that exceeds the threshold for reporting, as set forth in Section 313(f) and in 40 C.F.R. §§ 372.25, 372.27 and 372.28.

12. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 require the owner or operator of a facility subject to the requirements of Section 313 and Part 372 to

complete and submit to the Administrator of EPA and to the state in which the facility is located, no later than July 1, 1988 and each July 1 thereafter, a chemical release form published pursuant to Section 313(g) for each toxic chemical listed under Section 313(c) that was manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold established by Section 313(f).

13. The EPA published the Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (1-88) (Form R) at 40 C.F.R. § 372.85 pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g).

14. All persons required to report pursuant to Section 313(b) must use Form R according to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).

15. The Administrator of EPA may prescribe regulations as may be necessary to carry out EPCRA. 42 U.S.C. § 11048.

16. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65, that is processed during calendar years 2005 and 2006 is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

17. Barium compounds is a chemical category identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 during calendar years 2005 and 2006.

18. Manganese compounds is a chemical category identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 during calendar years 2005 and 2006.

19. Copper compounds is a chemical category identified at Section 313(c) of EPCRA,

42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 during calendar years 2005 and 2006.

20. Cobalt compounds is a chemical category identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 during calendar year 2006.

21. The term “processed” is defined at 40 C.F.R. § 372.55.

22. Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA, 42 U.S.C. § 11023. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that can be imposed pursuant to each agency’s statutes. The EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 that occurred after March 15, 2004, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

24. Respondent is a corporation incorporated in the State of Illinois.

25. Respondent owned or operated a facility located at 11811 Oak Creek Parkway, Huntley, Illinois during calendar years 2005 and 2006.

26. Respondent's facility consists of buildings, equipment and structures and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned by the same person, entity, or corporation.

27. During calendar years 2005 and 2006, Respondent employed at its facility the equivalent of at least 10 employees with total paid hours equal to or more than 20,000 hours per calendar year.

28. Respondent's facility is covered by SIC Code 3499.

29. On August 27, 2008, a representative of the EPA inspected Respondent's facility.

Barium Compounds

30. During calendar year 2005, Respondent's facility processed 28,328 pounds of barium compounds.

31. Respondent failed to submit to the Administrator of the EPA a Form R for barium compounds for calendar year 2005 on or before July 1, 2006.

32. During calendar year 2006, Respondent's facility processed 30,800 pounds of barium compounds.

33. Respondent failed to submit to the Administrator of the EPA a Form R for barium compounds for calendar year 2006 on or before July 1, 2007.

34. On September 11, 2008, Respondent submitted to the Administrator of EPA a Form R for barium compounds for calendar years 2005 and 2006.

Manganese Compounds

35. During calendar year 2005, Respondent's facility processed 51,344 pounds of manganese compounds.

36. Respondent failed to submit to the Administrator of the EPA a Form R for manganese compounds for calendar year 2005 on or before July 1, 2006.

37. During calendar year 2006, Respondent's facility processed 55,825 pounds of manganese compounds.

38. Respondent failed to submit to the Administrator of the EPA a Form R for manganese compounds for calendar year 2006 on or before July 1, 2007.

39. On September 11, 2008, Respondent submitted to the Administrator of EPA a Form R for manganese compounds for calendar years 2005 and 2006.

Copper Compounds

40. During calendar year 2005, Respondent's facility processed 31,869 pounds of copper compounds.

41. Respondent failed to submit to the Administrator of the EPA a Form R for copper compounds for calendar year 2005 on or before July 1, 2006.

42. During calendar year 2006, Respondent's facility processed 34,650 pounds of copper compounds.

43. Respondent failed to submit to the Administrator of the EPA a Form R for copper compounds for calendar year 2006 on or before July 1, 2007.

44. On September 11, 2008, Respondent submitted to the Administrator of EPA a Form R for copper compounds for calendar years 2005 and 2006.

Cobalt Compounds

45. During calendar year 2006, Respondent's facility processed 32,100 pounds of copper compounds.

46. Respondent failed to submit to the Administrator of the EPA a Form R for cobalt compounds for calendar year 2006 on or before July 1, 2007.

47. On September 11, 2008, Respondent submitted to the Administrator of EPA a Form R for cobalt compounds for calendar year 2006.

Count 1

48. Complainant incorporates paragraphs 1 through 47 of this Complaint as if set forth in this paragraph.

49. Respondent's failure to submit to the Administrator of EPA a Form R for barium compounds for calendar year 2005 on or before July 1, 2006 violates Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

50. Respondent's violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 CFR § 372.30 makes Respondent liable to the United States for a civil penalty under Section 325 of EPCRA, 42 U.S.C. § 11045(c).

Count 2

51. Complainant incorporates paragraphs 1 through 47 of this Complaint as if set forth in this paragraph.

52. Respondent's failure to submit to the Administrator of EPA a Form R for barium compounds for calendar year 2006 on or before July 1, 2007 violates Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

53. Respondent's violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 CFR § 372.30 makes Respondent liable to the United States for a civil penalty under Section 325 of EPCRA, 42 U.S.C. § 11045(c).

Count 3

54. Complainant incorporates paragraphs 1 through 47 of this Complaint as if set forth in this paragraph.

55. Respondent's failure to submit to the Administrator of EPA a Form R for manganese compounds for calendar year 2005 on or before July 1, 2006 violates Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

56. Respondent's violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 CFR § 372.30 makes Respondent liable to the United States for a civil penalty under Section 325 of EPCRA, 42 U.S.C. § 11045(c).

Count 4

57. Complainant incorporates paragraphs 1 through 47 of this Complaint as if set forth in this paragraph.

58. Respondent's failure to submit to the Administrator of EPA a Form R for copper compounds for calendar year 2005 on or before July 1, 2006 violates Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

59. Respondent's violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 CFR § 372.30 makes Respondent liable to the United States for a civil penalty under Section 325 of EPCRA, 42 U.S.C. § 11045(c).

Civil Penalty

60. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$61,382. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered EPA's *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) (amended April 12, 2001)*.

61. Within 30 days after the effective date of this CAFO, Respondent must pay a \$61,382 penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

Checks sent by regular U.S. Postal Service mail:

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

Checks sent by express mail:

U.S. Bank
Government Lockbox 979077 EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must note the case title, the docket number of this CAFO and the billing document number.

62. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Terry Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Nidhi O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

63. This civil penalty is not deductible for federal tax purposes.

64. If Respondent does not pay the civil penalty timely, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and

appropriateness of the civil penalty are not reviewable in a collection action.

65. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

66. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

67. This CAFO does not 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.

68. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state, and local laws.

69. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for Section 313 of EPCRA.

70. The terms of this CAFO bind Respondent, its successors, and assigns.

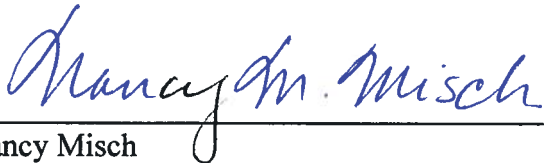
71. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

72. Each party agrees to bear its own costs and attorney's fees in this action.

73. This CAFO constitutes the entire agreement between the parties.

Weber-Stephen Products Co.


14 October 2009
Date



Nancy Misch
Vice President of Business & Legal Affairs
Weber-Stephen Products Co.

United States Environmental Protection Agency, Complainant

10.27.09
Date



for Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:

Weber-Stephen Products Co.

Docket No.

EPCRA-05-2010-0004

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10/28/09
Date

Walter W. Kwak
for
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

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CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Weber- Stephen Products Co., was filed on November 3, 2009, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed, by Certified Mail, Receipt No. 7001 0320 0006 0191 0424, a copy of the original to the Respondents:

Ms. Nancy Misch
Weber- Stephen Products Co.
200 E. Daniels Road
Palatine, Illinois 60067

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi O'Meara, Counsel for Complainant ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. EPCRA-05-2010-0004

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