



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

OCT 20 2009

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0006 0191 0615

Mr. Peter Ricca
President
Ricca Chemical Co., LLC
448 W. Fork Dr.
Arlington, Texas 76012

Consent Agreement and Final Order, Docket No. EPCRA-05-2010-0002


Dear Mr. Ricca:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on October 20, 2009, with the Regional Hearing Clerk.

The civil penalty in the amount of \$5,158 is to be paid in the manner described in paragraphs 33 and 34. In the comment or description field of the electronic funds transfer, please state: SKF Sealing Solutions, the docket number of this CAFO (above), and the following billing document number BD 2751044E003. Payment is due by November 19, 2009 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

for 
Robert Allen
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. EPCRA-05-2010-0002
)	
Ricca Chemical Co. d/b/a Red Bird Service)	Proceeding to Assess a Civil Penalty
Batesville, Indiana)	Under Section 325(c) of the Emergency
)	Planning and Community Right-to-Know
Respondent.)	Act of 1986, 42 U.S.C. § 11045(c)

Consent Agreement and Final Order
Commencing and Concluding a Proceeding

Preliminary Statement

RECEIVED
OCT 20 2009

REGIONAL HEARING CLERK
USEPA
REGION 5

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 (U.S. EPA), Region 5.
3. Respondent is Ricca Chemical Co. d/b/a Red Bird Service a corporation doing business in the State of Indiana.
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.

Jurisdiction and Waiver of Right to Hearing

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

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 U.S. 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, a Standard Industrial Classification (SIC) 2899 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 U.S. 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 U.S. EPA published the Toxic Chemical Release Inventory Reporting Form, U.S. 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, pursuant to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).

15. Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), authorizes the Administrator of U.S. 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 U.S. 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.

General Allegations

16. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
17. Respondent is a corporation "doing business" in the State of Indiana.
18. Respondent owned or operated a facility located at Railroad and Maple Streets, Osgood, Indiana during the calendar year 2005.
19. Respondent's facility consisted 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.
20. During calendar year 2005, 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.
21. Respondent's facility is covered by SIC Code 2899.
22. During calendar year 2005, Respondent "processed", as defined by 40 C.F.R. § 372.3, toxic chemicals identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65, in quantities exceeding the thresholds for reporting set forth at Section 313(f) and at 40 C.F.R. § 372.28.
23. On May 17, 2007, a representative of the U.S. EPA inspected Respondent's Batesville, Indiana facility.

Count I

24. The reporting threshold for mercury compounds that is manufactured (including imported); processed, or otherwise used during the 2005 calendar year is 10 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. 372.28.

25. During the 2005 calendar year, Respondent's facility processed 36 pounds of mercury compounds, a chemical category.

26. Mercury 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. § 371.65.

27. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of U.S. EPA and to Indiana a Form R for mercury compounds for the 2005 calendar year on or before July 1, 2006.

28. Respondent failed to submit to the Administrator of U.S. EPA and to Indiana a Form R for mercury compounds for the 2005 calendar year on or before July 1, 2006.

29. Respondent's failure to submit timely to the Administrator of U.S. EPA a Form R for mercury compounds for the 2005 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

30. 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

31. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$5,158. 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 U.S. EPA's *Enforcement Response Policy for Section 313 of the Emergency*

violations and facts alleged in the CAFO.

39. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

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

43. This CAFO shall terminate upon payment of the required penalty amount as set forth above.

44. 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.


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

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

**In the Matter of:
Ricca Chemical Co.**

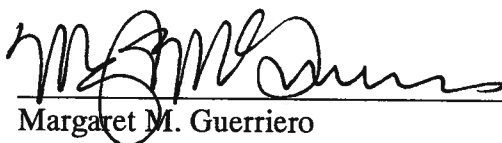
Ricca Chemical Co., Respondent

9/28/09
Date


Peter J. Ricca
President, Ricca Chemical Co.

United States Environmental Protection Agency, Complainant

October 14, 2009
Date


Margaret M. Guerriero
Director, Land and Chemicals Division

[Faint, illegible text]

[Faint, illegible text]

In the Matter of:
Ricca Chemical Co.
Docket No. EPCRA-05-2010-0002

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.

10/16/09
Date

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

RECEIVED
OCT 20 2009
REGIONAL HEARING CLERK
USEPA
REGION 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY

OCT 05 2009

OFFICE OF REGIONAL
COUNSEL

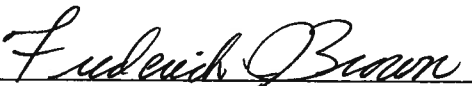
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Ricca Chemical Co., LLC, was filed on October 20, 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 0615, a copy of the original to the Respondents:

Mr. Peter Ricca
President
Ricca Chemical Co., LLC
448 W. Fork Dr.
Arlington, Texas 76012

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Andre Daugavietis, 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-05-2010-0002

RECEIVED
OCT 20 2009
REGIONAL HEARING CLERK
USEPA
REGION 5