



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

OCT 01 2009

REPLY TO THE ATTENTION OF: SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Gregory J. Wohlfert
President
Paw Paw Plating, Inc.
139 Commercial Avenue
Post Office Box 221
Paw Paw, Michigan 49079

Re: Paw Paw Plating, Inc., Paw Paw, Michigan, Consent Agreement and Final Order,
Docket No. EPCRA-05-2010-0001

Dear Mr. Wohlfert:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on OCT 01 2009.

Please pay the EPCRA civil penalty in the amount of \$9,000.00 plus interest in the manner prescribed in paragraph 45, and reference your checks with the billing document number 2751064E001 and the docket number EPCRA-05-2010-0001.

Your first payment is due within 30 days of filing date, the second payment is due within 365 days of the filing date, and the third payment is due within 730 days of the filing date.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to John P. Stekete, Associate Regional Counsel, at (312) 886-0558. Thank you for your assistance in resolving this matter.

Sincerely,

Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Paw Paw Plating, Inc.,)
Paw Paw, Michigan,)
)
Respondent.)
_____)

Docket No. EPCRA-05-2010-0001
Proceeding to Assess a Civil Penalty
Under Section 325(c)(1) of the Emergency
Planning and Community Right-to-Know
Act of 1986, 42 U.S.C. § 11045(c)(1)

RECEIVED
OCT 01 2009

L. Whittaker

Consent Agreement and Final Order

Preliminary Statement

REGIONAL HEARING CLERK
USEPA
REGION 5

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), 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, by lawful delegation, the Chief, Emergency Response Branch 1, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).
3. Respondent is Paw Paw Plating, Inc, a corporation doing business in the State of Michigan.
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.

Statutory and Regulatory Background

9. 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 Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC), and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier 1 or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

12. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, to \$32,500 per day of violation for violations that occurred from March 15, 2004 through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

13. Respondent is a corporation, therefore, is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

14. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 139 Commercial Avenue, Paw Paw, Michigan (facility).

15. At all times relevant to this CAFO, Respondent was an employer at the facility.

16. Respondent’s facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person, therefore, Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

17. Sulfuric acid and nitric acid are listed as toxic and hazardous substances under OSHA at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

18. Sulfuric acid (CAS #7664-93-9) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

19. Nitric acid (CAS #7697-37-2) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

20. Sulfuric acid (CAS #7664-93-9) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

21. Nitric acid (CAS #7697-37-2) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

22. Sulfuric acid (CAS #7664-93-9) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

23. Nitric acid (CAS #7697-37-2) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

24. OSHA requires Respondent to prepare, or have available, an MSDS for sulfuric acid.

25. OSHA requires Respondent to prepare, or have available, an MSDS for nitric acid.

26. During at least one period of time in calendar year 2004, sulfuric acid and nitric acid were present at the Facility in an amount equal to or greater than the minimum threshold level.

27. Respondent was required to submit to the SERC, LEPC, and fire department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid for calendar year 2004, on or before March 1, 2005.

28. During at least one period of time in calendar year 2005, sulfuric acid and nitric acid were present at the Facility in an amount equal to or greater than the minimum threshold level.

29. Respondent was required to submit to the SERC, LEPC, and fire department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid for calendar year 2005, on or before March 1, 2006.

30. At all times relevant to this Complaint, the Michigan State Emergency Response Commission was the SERC for Michigan, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

31. At all times relevant to this Complaint, the Van Buren County Local Emergency Planning Committee was the LEPC for Van Buren County Michigan, under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

32. At all times relevant to this Complaint, the Village of Paw Paw Fire Department was the fire department with jurisdiction over the Facility.

33. As of August 15, 2006, Respondent had not submitted to the SERC, the LEPC, or the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid for calendar year 2004.

34. Each day Respondent failed to submit to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid by March 1, 2005, for calendar year 2004 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

35. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid on July 20, 2006, for calendar year 2005.

36. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid by March 1, 2006, for calendar year 2005 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

37. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid on July 20, 2006, for calendar year 2005.

38. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid by March 1, 2006, for calendar year 2005 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a)..

39. Respondent submitted to the Village of Paw Paw Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid on July 20, 2006, for calendar year 2005.

40. Each day Respondent failed to submit to the Village of Paw Paw Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and nitric acid by March 1, 2006, for calendar year 2005 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

41. On April 30, 2009, U.S. EPA issued to Respondent a Notice of Intent to File an Administrative Complaint (Notice of Intent) notifying Respondent that U.S. EPA intended to file a complaint assessing a proposed civil penalty of \$52,659 against respondent for the alleged violations and providing Respondent an opportunity to present any relevant information that Respondent believed U.S. EPA should consider before filing the subject complaint.

42. On May 5, 2009, Respondent replied to U.S. EPA's Notice of Intent and subsequently provided Complainant with copies of five (5) years of corporate tax returns in order to demonstrate an inability to pay the proposed civil penalty.

43. On July 1, 2009, U.S. EPA completed an analysis of the financial information provided to the Complainant by Respondent concluding that Respondent was unable to pay the civil penalty proposed in U.S. EPA's Notice of Intent.

Civil Penalty

44. In consideration of the facts alleged herein, and after considering the nature, circumstances, extent and gravity of the violations, the Respondent's ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violations, and any other matters that justice requires, Complainant proposes that the Administrator assess a civil penalty against Respondent of Nine Thousand Dollars and No Cents (\$9,000) for the EPCRA violations alleged herein.

45. Respondent shall pay the \$9,000 civil penalty to the United States pursuant to the following payment schedule which includes the payment of interest for any payment not submitted within thirty (30) days after the effective date of this CAFO. Within thirty (30) days after the effective date of this CAFO, Respondent must pay Three Thousand Dollars (\$3,000) to the United States. Within Three Hundred and Sixty Five (365) days after the effective date of this CAFO, Respondent shall pay Three Thousand, One Hundred and Eighty Dollars (\$3,180) to the United States (second payment). Within Seven Hundred and Thirty (730) days after the effective date of this CAFO, Respondent shall pay Three Thousand and Ninety Dollars (\$3,090) to the United States (third payment). Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

For checks sent by regular U.S. postal service:

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

For checks sent by express mail:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Each check must note the following: Paw Paw Plating, Inc., the docket number of this CAFO and the billing document number 2751064E001.

For electronic funds transfer, Respondent must pay by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: Paw Paw Plating, Inc., the docket number of this CAFO and the billing document number 2751064001

For online payments using debit or credit card, Respondent must pay online using ACH debit or credit card. For payments online using ACH debit or credit card please visit www.pay.gov. Using the Search Public Forms option on the tool bar (left side of page), enter SFO 1.1 in the search field. Open the form and complete the information requested.

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

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

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

James Entzminger, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

John P. Steketee, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

48. If Respondent does not timely pay the civil penalty, U.S. 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.

49. 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, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

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

51. 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.

52. Respondent certifies that it is complying with Section 312 of EPCRA, 42 U.S.C. § 11021.

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

54. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 312 of EPCRA.

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

56. Each person signing this consent 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.

57. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

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

In the Matter of:
Paw Paw Plating, Inc., Paw Paw, Michigan
Docket No. _____

Paw Paw Plating, Inc., Respondent

9/24/09
Date

Gregory J Wohlfer
Gregory Wohlfer
President
Paw Paw Plating, Inc.

U.S. Environmental Protection Agency, Complainant

9-28-09
Date

Jason H. El-Zein
Jason H. El-Zein, Chief
Emergency Response Branch 1
Superfund Division

9-29-09
Date

Richard C. Karl
Richard C. Karl, Director
Superfund Division

In the Matter of:
Paw Paw Plating, Inc., Paw Paw, Michigan
Docket No. EPCRA-05-2010-0001

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.

9-30-09
Date

Rohit C. Kishore for
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

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USEPA
REGION 5

L. Mitchell

In the Matter of:

Paw Paw Plating, Inc., Paw Paw, Michigan

Docket No. EPCRA-05-2010-0001

Certificate of Service

I, James Entzminger, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Paw Paw Plating, Inc., by placing them in the custody of the United States Postal Service addressed as follows:

Gregory Wohlfert, President
Paw Paw Plating, Inc.
139 Commercial Avenue
P.O. Box 221
Paw Paw, MI 49079

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OCT 01 2009
REGIONAL HEARING CLERK
USEPA
REGION 5

on the 1 day of October, 2009

J. Whitehead

James Entzminger
James Entzminger
U.S. Environmental Protection Agency
Region 5