



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

SEP 27 2007

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0185 8344

Cory Steeby, President
EBW Electronics, Inc
13110 Ransom Street
Holland, MI 49424

Consent Agreement and Final Order, Docket No. **EPCRA-05-2007-0036**

Dear Mr. Steeby:

I have enclosed an original signed copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 27, 2007, with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,836 is to be paid in the manner prescribed in paragraphs 29 and 30. Please be certain that the number **BD** 2750744E033 and the docket number are written on both the transmittal letter and on the check. The payment is due by October 29, 2007.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "David Star".

David Star
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Craig Melodia, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. EPCRA-05-2007-0036
)
EBW Electronics, Inc.) Proceeding to Assess a Civil Penalty
Holland, Michigan) Under Section 325(c) of the Emergency
Respondent) Planning and Community Right-to-Know
Act of 1986, 42 U.S.C. § 11045(c)
)

2007 SEP 27 AM 11:09

REGIONAL HEARING ROOM
EPCRA

Consent Agreement and Final Order

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), 22.18(b)(2), and 22.18(b)(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 EBW Electronics, 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.

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 and 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 and a Standard Industrial Classification (SIC) Code of 3679, 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) or pursuant to Section 313(f)(2).

13. The U.S. EPA published the Toxic Chemical Release Inventory Reporting Form, U.S. EPA Form 9350-1 (1-88) (Form R), as described 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 U.S. EPA may prescribe regulations as may be necessary to carry out EPCRA. 42 U.S.C. § 11048.

16. 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. § 2462 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.

Factual Allegations and Alleged Violations

17. Respondent is a *person*, as that term is defined at Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

18. At all times relevant to this CAFO, Respondent was an owner and operator of the facility located at 701 Commerce Court, Holland, Michigan (Commerce Court Facility).

19. At all times relevant to this CAFO, Respondent had 10 or more *full-time employees*, as that term is defined at 40 C.F.R. § 372.3, and was an employer at the facility.

20. Respondent's Commerce Court 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 were owned by the same person, entity, or corporation.

21. Respondent's Commerce Court Facility is a *facility*, as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

22. During calendar year 2004, the facility had an SIC code of 3679, which is a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

23. During calendar year 2004, the Commerce Court Facility *processed*, as that term is defined at 40 C.F.R. § 372.3, lead, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 1,403 pounds, which is greater than 100 pounds, the threshold for reporting, as set forth in Section 313(f)(2) of EPCRA, 42 U.S.C. § 11023(f)(2), and 40 C.F.R. § 372.28.

24. Respondent was required to submit to the Administrator of U.S. EPA and to Michigan a Form R for lead (CASRN 7439-92-1) for calendar year 2004 by July 1, 2005.

25. Respondent did not submit to the Administrator of U.S. EPA and to Michigan a Form R for lead for calendar year 2004 by July 1, 2005.

26. Respondent submitted a Form R for lead to the Administrator of U.S. EPA and to Michigan on July 13, 2006 for calendar year 2004.

27. Respondent's failure to timely submit a Form R for lead to the Administrator of U.S. EPA and to Michigan for calendar year 2004 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Civil Penalty

28. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$3,836. 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 its agreement to perform a supplemental environmental project, and any other matters as justice may require. Complainant also considered U.S. 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). Respondent has the choice of three payment methods, as described below: payment by check, payment by debit or credit card, or payment by electronic funds transfer.

29. Within 30 days of the effective date of this CAFO, Respondent must pay a \$3,836 civil penalty for the EPCRA violation.

30. Respondent must submit the civil penalty identified in paragraph 29 of this CAFO by using one of the three payment methods listed below:

a. If Respondent chooses to pay the penalty by check via standard U.S. mail, send a cashier's check or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA – Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

b. If Respondent chooses to pay the penalty by check via certified or overnight mail, send a cashier's check or certified check, payable to "Treasurer, United States of America," to:

Mellon Client Service Center
Attn: Shift Supervisor
Lockbox 371531
500 Ross Street
Pittsburgh, PA 15262 – 0001

c. If Respondent chooses to pay penalty by check, 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 the following addressees:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

d. If Respondent chooses to pay the penalty by check, the check must note the case title, the docket number of this CAFO, and the billing document number.

e. If Respondent chooses to pay the penalty online using an ACH debit or credit card, please visit www.pay.gov. Using the *Search Public Forms* option on the tool bar on the left side of the page, enter *SFO 1.1* in the search field. Open the form and complete the information requested.

f. If Respondent chooses to pay the penalty using an electronic funds transfer, make the transfer payable to "Treasurer, United States of America," and send it 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:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the case title, the docket number of this CAFO and the billing document number.

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

32. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 39 of this CAFO, 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.

33. Pursuant to 31 C.F.R. § 901.9, Respondent must pay interest, penalty, and/or charges 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% per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

34. Respondent agrees to take the steps required in this CAFO to complete a Supplemental Environmental Project (SEP) to abate and/or mitigate lead-based paint hazards in selected residential housing units located in the Holland, Michigan area (the Selected Projects). The Selected Projects have been selected and will be monitored by the State of Michigan Department of Community Health, Lead and Healthy Homes Section (Michigan DCH), and completed by a qualified lead abatement contractor.

35. Within 30 days of receipt of the fully executed CAFO, Respondent will fund the Selected Projects in the amount of \$11,509 (Respondent's SEP Funds). Respondent will complete and submit a SEP Completion Report to U.S. EPA following expenditure of

Respondent's SEP Funds on the Selected Projects. The SEP Completion Report shall include the following information:

- a. The addresses at which the Selected Projects have been completed and the dates on which the work was completed;
- b. The dates on which Michigan DCH disbursed all or part of Respondent's SEP Funds;
- c. A summary of the work performed at each address, and the name and address of each contractor which performed the work; and
- d. Documentation that clearance was conducted after such lead-based paint hazard abatement and/or mitigation activities were performed at each of the Selected Projects, to determine that the hazard abatement activities are complete and that no settled dust-lead hazards exist.

36. Respondent will procure from the Michigan DCH the information necessary to complete the SEP Completion Report within 30 days of completion of the last of the Selected Projects. Respondent agrees to provide a Status Report to U.S. EPA every 90 days from the effective date of this CAFO, until the SEP is complete and Respondent submits the Completion Report. Each SEP Status Report shall contain a report of the current status of each of the Selected Projects, the amount of money spent to date, and the anticipated completion date of each uncompleted Selected Project.

37. On or before June 30, 2008, Respondent will ensure that Michigan DCH completes each of the Selected Projects and has spent the entirety of Respondent's SEP Funds. If Michigan DCH has not completed each of the Selected Projects by June 30, 2008,

Respondent must provide U.S. EPA a verified statement, by August 1, 2008, that Michigan DCH has not completed each of the Selected Projects or to have spent the entirety of Respondent's SEP Funds.

38. Respondent certifies that it is not required to perform the SEP by any law, regulation, grant, order, or any other agreement, or as injunctive relief as of the date Respondent sign this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

39. Respondent must submit copies of all documents or reports required by this CAFO to be submitted to U.S. EPA to David Star by first class mail at the address in paragraph 30(c) of this CAFO.

40. If Respondent violates requirements of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States in addition to the \$3,836 penalty described in paragraph 29 of this CAFO, as follows:

a. If Respondent fails to pay Michigan DCH Respondent's SEP Funds in full, in the time period specified in paragraph 35, Respondent agrees to pay the U.S. EPA a stipulated penalty of \$100 for each day the full payment is overdue.

b. If Respondent fails to submit to U.S. EPA any document required by paragraphs 35 or 36 of this CAFO, Respondent must pay U.S. EPA a stipulated penalty of \$50 for each day the document is overdue.

c. In no circumstance will Respondent pay stipulated penalties due to U.S. EPA under terms of this CAFO in an amount exceeding \$12,000.

41. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. All penalties shall begin to accrue on the first date of noncompliance, and shall continue to accrue through the date of completion. Respondent will use the one of the three methods of payment detailed in paragraph 30 of this CAFO, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

42. Complainant will consider Respondent to have completed the terms of the SEP when Michigan DCH has fully expended Respondent's SEP Funds, when Respondent has paid any stipulated penalties that may be due under paragraph 40 of this CAFO, and when Respondent has ensured that U.S. EPA has received copies of the following documents:

- a. The cancelled check for Respondent's SEP Funds;
- b. Any necessary SEP Status Reports; and
- c. The SEP Completion Report.

General Provisions

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

44. 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.

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

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

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

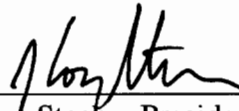
48. Each person signing this agreement certifies that he or she has the authority to sign this agreement for the party whom he or she represents and to bind that party to its terms.

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

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


EBW Electronics, Inc., Respondent

9/14/07
Date


Cory Steeby, President
EBW Electronics, Inc.

United States Environmental Protection Agency, Region 5, Complainant

9/21/07
Date


Margaret M. Guerriero, Director
Land and Chemicals Division

EPCRA-05-2007-0036

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REGIONAL FIELD CLERK
US EPA REGION 5
FEDERAL GOVERNMENT

In the Matter of:
EBW Electronics, Inc.
Docket No. EPCRA-05-2007-0036

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.

9/24/07
Date

Walter W. Handberg for
Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

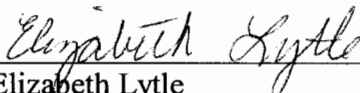
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving EBW Electronics, Inc., was filed on September 27, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0185 8344, a copy of the original to the Respondents:

Cory Steeby, President
EBW Electronics, Inc
13110 Ransom Street
Holland, MI 49424

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Craig Melodia, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD (w/Encl.)



Elizabeth Lytle
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **EPCRA-05-2007-0036**

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