



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

MAY 31 2007

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8910 5225

Mr. Christopher Jones
Calfee, Halter & Griswold LLP
110 Fifth Third Center
21 East State Street
Columbus, Ohio 43215-4243

Consent Agreement and Final Order, Docket No. EPCRA-05-2007-0024

Dear Mr. Jones:

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 May 31, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$5,483 is to be paid in the manner prescribed in paragraph 24. Please be certain that the number BD 2750744E021 and the docket number are written on both the transmittal letter and on the check. The payment is due by July 2, 2007.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Thomas Crosetto".

Thomas Crosetto
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Brian Barwick, ORC/C-14J (w/Encl.)
Eric Volck, USEPA Cincinnati Finance/NWD (w/Encl)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. EPCRA-05-2007-0024
)	
APSCO Incorporated)	Proceeding to Assess a Civil Penalty
Perry, Ohio,)	Under Section 325(c) of the Emergency
)	Planning and Community Right-to-Know
Respondent.)	Act of 1986, 42 U.S.C. § 11045(c)
<hr/>)	

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) 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 Chief of the Pesticides and Toxics Branch, United States Environmental Protection Agency (U.S. EPA), Region 5. The authority to settle this matter has been delegated to the Director of the Waste, Pesticides and Toxics Division, U.S. EPA, Region 5.
3. Respondent is APSCO Incorporated, a corporation doing business in the State of Ohio.
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. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed, or otherwise used a toxic chemical in an amount in excess of an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. §§ 372.25 and 372.28, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of U.S. EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed, or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28, the reporting threshold amount for all forms of lead (CASRN 7439-92-1) manufactured, processed, or otherwise used at a facility is 100 pounds for calendar years including and subsequent to 2001.

12. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), 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. 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 of EPCRA 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 of EPCRA 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

13. Respondent is a "person" as that term is defined at 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 3700 Lane Road, Perry, Ohio (facility).

15. At all times relevant to this CAFO, Respondent had "10 or more full-time employees," as defined at 40 C.F.R. § 372.3, and 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.

17. Respondent's facility is a "facility" as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

18. The facility has a SIC code of 3679, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

Count 1

19. During calendar year 2003, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, lead (CASRN 7439-92-1), a chemical category or CASRN listed under 40 C.F.R. § 372.65, in the amount of approximately 12,589 pounds which is greater than 100 pounds, the threshold for reporting as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

20. Respondent was required to submit to the Administrator of U.S. EPA and to the Ohio Environmental Protection Agency a Form R for lead (CASRN 7439-92-1) for calendar year 2003 by July 1, 2004.

21. Respondent submitted Form R for lead (CASRN 7439-92-1) to the Administrator of U.S. EPA and to the Ohio Environmental Protection Agency on May 25, 2005 for calendar year 2003.

22. Respondent's failure to submit timely a Form R for lead (CASRN 7439-92-1) to the Administrator of U.S. EPA and to the Ohio Environmental Protection Agency for calendar year 2003 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Civil Penalty

23. In consideration of the nature, circumstances, extent and gravity of the violation and Respondent's agreement to perform a Supplemental Environmental Project (SEP), U.S. EPA has determined that an appropriate civil penalty to settle this action is \$5,483.

24. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,483 civil penalty for the EPCRA violation. Respondent must pay the penalty by electronic funds transfer made payable to the "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 is: "D 68010727
Environmental Protection Agency"

25. In the comment or description field of the electronic funds transfer, state the following: In the Matter of APSCO, Incorporated, Perry, Ohio, the docket number of this CAFO and the billing document number.

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

27. If Respondent does not pay the civil penalty timely, or any stipulated penalties due under paragraph 40, below, 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.

28. 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.

Supplemental Environmental Project

29. Respondent must complete a SEP designed to protect the environment and public health by reducing the use of lead in Respondent's soldering operations. Respondent solders electrical components into circuit boards for use in various products distributed globally in commerce. At the end of their useful life, such products are disposed of or recycled. Therefore, this SEP, which will expand Respondent's lead-free soldering capacity, will reduce the distribution of lead into the environment.

30. By May 31, 2007, at its Perry, Ohio facility Respondent must complete the SEP by purchasing, installing, and commencing continuous operation of two reflow ovens and one wave soldering machine.

31. Respondent must spend at least \$200,000 to engineer, purchase and install the two reflow ovens and one wave soldering machine which will be used to produce circuit boards with lead-free solder for use in the United States. Respondent estimates that during calendar year 2007, use of this equipment in its operations will reduce its processing of lead by 2,000 pounds as compared to the amount of lead Respondent otherwise would have processed during 2007 without using this equipment. For calendar year 2007, Respondent shall create records showing the actual reduction in the quantity of lead processed for products intended for the U.S. market, and make those records available to U.S. EPA upon request. Respondent shall retain such records through at least December 31, 2008.

32. In the lead-free soldering process, Respondent must not use any chemical that is more toxic or hazardous than lead. Respondent must use Material Safety Data Sheets to determine the chemical's toxic and hazardous characteristics.

33. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date Respondent signs 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.

34. The U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

35. Respondent must submit a SEP Completion Report to U.S. EPA by July 31, 2007. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP, documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and lead use reductions, if feasible, or provide reasonable estimates).

36. Respondent must submit all notices and reports required by this CAFO by first class mail to Thomas Crosetto, mailstop DT-8J, U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

37. In each report that Respondent submits as provided by this CAFO, Respondent must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

38. Following receipt of the SEP Completion Report described in paragraph 35, above, U.S. EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 40.

39. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 40, below.

40. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. Regarding paragraph 31 above, if Respondent spends less than \$200,000 but more than \$100,000 to fully implement its project, Respondent must pay a stipulated penalty of \$10,000.
- b. Regarding paragraph 31 above, if Respondent spends less than \$100,000 to fully implement its project, Respondent must pay a stipulated penalty of \$21,930.
- c. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay a stipulated penalty of \$10,000.
- d. If Respondent halts or abandons work on the SEP, the Respondent must pay a stipulated penalty of \$21,930. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- e. If Respondent fails to comply with the schedule in paragraph 30 for implementing the SEP or fails to submit timely the SEP Completion Report, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$250	15 th through 30 th day
\$500	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

f. In no circumstance will Respondent pay total stipulated penalties calculated in accordance with this paragraph 40 in an amount greater than \$21,930.

41. The U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

42. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 25, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

43. Any public statement that Respondent makes referring to the SEP must include the following language, "APSCO, Incorporated undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against APSCO, Incorporated for violations of Section 313 of EPCRA, 42 U.S.C. § 11023."

44. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by the Respondent in connection with the SEP under the terms of this CAFO.

General Provisions

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

46. 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.

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

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

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

50. 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.

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

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

APSCO, Incorporated, Respondent

May 2, 2007
Date


[Name] **MARK R. KRAY**
[Title] **VICE PRESIDENT AND GENERAL MANAGER**
APSCO, Inc.
Changed to TT APSCO INC

United States Environmental Protection Agency, Complainant

May 18, 2007
Date


Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

May 22, 2007
Date


Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division

EPCRA-05-2007-0024

In the Matter of:
APSCO, Incorporated
Docket No. **EPCRA-05-2007-0024**

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.

5/27/07
Date

Walter W. Kovalchuk
for
Mary A. Gade
Regional Administrator
United States 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 APSCO Incorporated, was filed on May 31, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8910 5225, a copy of the original to the Respondent's attorney:

Mr. Christopher Jones
Calfee, Halter & Griswold LLP
110 Fifth Third Center
21 East State Street
Columbus, Ohio 43215-4243

and forwarded copies (intra-Agency) to:

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



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

Docket No. **EPCRA-05-2007-0024**