



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
April 30, 2013

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7641 4494

Mr. Skip Swanson  
Phillips Plastics Corporation  
428 Tech Drive  
Menomonie, Wisconsin 54751

Consent Agreement and Final Order, In the Matter of  
Phillips Plastics Corporation, Docket No. **EPCRA-05-2013-0013**

Dear Mr. Swanson:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on April 30, 2013, with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,100 is to be paid in the manner described in paragraphs 25 and 26. In the comment or description field of the electronic funds transfer, please state: Phillips Plastics Corporation, and the docket number of this CAFO (above), and the following billing document number. Payment is due by May 30, 2013 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Meghan Dunn".

Meghan Dunn  
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: ) Docket No. EPCRA-05-2013-0013  
)  
Phillips Plastics Corporation ) Proceeding to Assess a Civil Penalty  
Menomonie, Wisconsin ) 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

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 (EPA), Region 5.
3. Respondent is Phillips Plastics Corporation, a corporation doing business in the State of Wisconsin.
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 exceeding an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of 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. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years including and subsequent to 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

12. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), 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. 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 may be assessed pursuant to each agency's statutes. EPA may assess a civil penalty of up to \$37,500 per day for each violation of Section 313 of EPCRA that occurred after January 12, 2009, 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 428 Tech Drive, Menomonie, Wisconsin (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 NAICS code 332117 which corresponds to 3499 SIC code, 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 2010, Respondent's facility otherwise used, as that term is defined at 40 C.F.R. § 372.3, nitric acid, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 30,480 pounds which is greater than 10,000 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.

§ 372.25.

20. Respondent was required to submit to the Administrator of EPA and to Wisconsin a Form R for nitric acid for calendar year 2010 by July 1, 2011.

21. Respondent did not submit to the Administrator of EPA and to Wisconsin a Form R for nitric acid for calendar year 2010 by July 1, 2011.

22. Respondent submitted Form R for nitric acid to the Administrator of EPA and to Wisconsin on September 22, 2011 for calendar year 2010.

23. Respondent's failure to submit timely a Form R for nitric acid to the Administrator of EPA and to Wisconsin for calendar year 2010 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

**Civil Penalty**

24. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$2,100. 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 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).

25. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,100 civil penalty for the EPCRA violations by sending a cashier's or certified check by express mail, payable to "Treasurer, United States of America," to:

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

The check must note "Phillips Plastics Corporation" and the docket number of this CAFO.

26. Respondent must send a notice of payment that states Respondent's name, complete address and the case docket number to EPA at the following addresses when it pays the penalty:

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

Meghan Dunn (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Sheila McAnaney (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

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

29. 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.

#### **Supplemental Environmental Project**

30. Respondent must complete a supplemental environmental project (SEP) designed to protect public health and the environment by purchasing technological equipment for the City of Menomonie Level B Hazmat Team to improve the team's ability to plan for and respond to emergencies.

31. Respondent must complete the SEP as follows:

Purchase technological equipment for the City of Menomonie Level B Hazmat Team, part of the Dunn County Local Emergency Planning Committee. The purchased equipment must serve the function of replacing outdated equipment or providing new equipment to enhance the Hazmat Team's communication capabilities and improve emergency planning and response abilities. The equipment must be purchased within 6 months of the filing date of this CAFO.

The SEP purchases may include but are not limited to the following: laptop computer with accessories, flash drive, digital camera, SD card, printer and accessories, optical range finder, weather station, digital pH meter, wide-angle binoculars, Level A/B suit drying rack, wedge kit, non-sparking kit, portable de-con spray hoop, sodium sesquicarbonate.

32. Respondent must spend at least \$7,875 to purchase the equipment.

33. Respondent certifies as follows:

I certify that Phillips Plastics Corporation is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Phillips Plastics Corporation has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Phillips Plastics Corporation is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible.) For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

34. 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 EPA no later than 7 months after the filing date of this CAFO. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. 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;
- c. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- d. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

36. Respondent must submit all notices and reports required by this CAFO by first class mail to Meghan Dunn of the Pesticides and Toxics Compliance Section at the address provided



in paragraph 26, above.

37. In each report that Respondent submits as provided by this CAFO, it 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, it 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, EPA must notify Respondent in writing that:

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

39. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not complete the SEP as required by 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. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO including the

schedule in paragraph 31, Respondent must pay a penalty of \$7,875

- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 32, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 32, Respondent must pay a penalty of \$1,575.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

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

41. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

42. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use a 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, "Phillips Plastics Corporation undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Phillips Plastics Corporation for violations of the Emergency Planning and Community Right-to-Know Act."

44. If an event occurs which causes or may cause a delay in completing the SEP as

required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above.

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

46. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

#### **General Provisions**

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

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

49. This CAFO does not affect Respondent's responsibility to comply with EPCRA and

other applicable federal, state and local laws.

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

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


52. 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.

53. Each party agrees to bear its own costs and attorneys fees in this action.

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


**Phillips Plastics Corporation, Respondent**

3-11-2013  
Date

  
Ralph Swanson  
Plant Manager  
Phillips Plastics Corporation

**United States Environmental Protection Agency, Complainant**

4/25/2013  
Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**Phillips Plastics Corporation**  
**Docket No. EPCRA-05-2013-0013**

**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.

4-29-13  
Date



---

Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

**RECEIVED**  
**APR 30 2013**  
**REGIONAL HEARING CLERK**  
**U.S. ENVIRONMENTAL**  
**PROTECTION AGENCY**

**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 Philips Plastic Corporation, was filed on April 30, 2013, 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. 7009 1680 0000 7641 4494, a copy of the original to the Respondents:

Mr. Skip Swanson  
Phillips Plastics Corporation  
428 Tech Drive  
Menomonie, Wisconsin 54751

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Sheila McAnaney, 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-05-2013-0013



APR 30 2013

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY