



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
EDISON, NEW JERSEY 08837

MAR 09 2017

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

Article No.: 7012 3460 0002 1650 5170

Ms. Tameka M. Beckford-Young, Legal Counsel
Kawasaki Rail Car, Inc.
29 Wells Avenue, Building 4
Yonkers, NY 10701

Re: In the Matter of Kawasaki Rail Car, Inc.
29 Wells Avenue, Yonkers, NY 10701
TRI Facility ID.: 10701KWSKR29WEL
FRS No.: 110028155074
Docket No. EPCRA-02-2017-4201

Dear Ms. Beckford-Young:

Enclosed is a copy of the Consent Agreement and Final Order in the above referenced proceeding, signed by the Regional Judicial Officer of the United States Environmental Protection Agency, Region 2.

Please note that the forty-five (45) day period for the payment of the civil penalty commences as of the date this Final Order is signed by the Regional Judicial Officer. Please arrange for payment of this penalty according to the instructions given in the Consent Agreement (see "Terms of Consent Agreement"). Specifically, please remember to send a copy of the company's payment check to the Complainant, as detailed in the Consent Agreement.

Sincerely yours,


for John Gorman, Chief
Pesticides and Toxic Substances Branch

Enclosure

cc: Ms. Suzanne Wither
Division of Environmental Remediation
Office of Air and Waste Management
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7020

Mr. David Beitz, Kawasaki, EHS Administrator

Internet Address (URL) • <http://www.epa.gov>

Mr. William Moore, Kawasaki, VP-Operations
Mr. Yochiro Araki, Kawasaki, COO

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
: **CONSENT AGREEMENT**
: **AND**
: **FINAL ORDER**
: **DOCKET NUMBER**
: **EPCRA-02-2017-4201**
: **Respondent.**
: **Proceeding under Section 325(c) of Title III**
: **of the Superfund Amendments and Reauthorization Act**
: -----X

2017 MAR 10 12:21

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 et seq. [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA")].

Pursuant to 40 C.F.R. § 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (40 C.F.R. Part 22 (July 1, 2000)) where the parties agree to settlement of one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2, ("EPA" or "Complainant") alleges that Kawasaki Rail Car, Inc. ("Respondent") located at 29 Wells Ave, Yonkers, New York 10701 (hereinafter, "Respondent's facility"), violated the requirements of Section 313 of EPCRA (42 U.S.C. § 11023) and the regulations promulgated pursuant to that Section, codified at 40 C.F.R. Part 372.

Under Section 313 of EPCRA and 40 C.F.R. § 372.22, owners or operators of a facility subject to the requirements of Section 313(b) are required to submit annually, no later than July 1 of each year, a complete and correct Toxic Chemical Release Inventory Reporting Form R report, EPA Form 9350-1 (hereinafter, "TRI Form R report") for each toxic chemical listed under 40 C.F.R. § 372.65 and/or 40 C.F.R. § 372.28 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. Each required TRI Form R report must be submitted to the Regional Administrator of the Environmental Protection Agency and to the State in which the subject facility is located.

As an alternative to the requirements set forth above, pursuant to Section 313(f)(2) of EPCRA (42 U.S.C. § 11023(f)(2)) and 40 C.F.R. § 372.27, owners or operators of a facility subject to the requirements of Section 313(b) with respect to the "manufacture, process or otherwise use" of a toxic chemical may apply an alternate threshold of one million (1,000,000) pounds per year to that chemical if the conditions set forth in 40 C.F.R. § 372.27(a) are met. If the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators, in lieu of filing a TRI Form R report, therefore, may submit an "Alternate Threshold Certification Statement" ("TRI Form A report") pursuant to 40 C.F.R. § 372.27(b). Pursuant to 40 C.F.R. § 372.27(e), EPA has excluded the Persistent Bioaccumulative Toxic Chemicals listed in 40 C.F.R. § 372.28 from eligibility for the Alternate Thresholds described in 40 C.F.R. § 372.27(a). [59 FR 61502, Nov. 30, 1994, as amended at 64 FR 58750, Oct. 29, 1999; as amended at 71 FR 76944, Dec. 22, 2006; as amended at 74 FR 19005, Apr. 27, 2009]

EPA and Kawasaki Rail Car, Inc. agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO"), pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. § 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated Findings of Fact or Conclusions of Law have been made. The following constitutes EPA's Findings of Fact and Conclusions of Law based upon information EPA obtained during and subsequent to an EPCRA Section 313 inspection conducted at the facility on August 4, 2016.

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

1. Respondent is Kawasaki Rail Car, Inc. (TRI ID: 10701KWSKR29WEL).
2. At all times relevant hereto, Respondent has maintained a facility located at 29 Wells Avenue, Yonkers, NY 10701 which is the subject of this Consent Agreement and Final Order.
3. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. § 11049(7)).
4. Respondent is an owner of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. § 11049(4)) and by 40 C.F.R. § 372.3.
5. Respondent is an operator of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. § 11049(4)) and by 40 C.F.R. § 372.3.
6. Respondent's facility has ten (10) or more "full time employees" as that term is defined by 40 C.F.R. § 372.3.
7. Respondent's facility is in North American Industry Classification System "NAICS" code 336510 (Railroad Rolling Stock Manufacturing).
8. Respondent is subject to the requirements of Section 313(b) of EPCRA (42 U.S.C. § 11023(b)) and 40 C.F.R. § 372.22.
9. Chromium (Chemical Abstract No.: 7440-47-3) is a listed chemical category under 40 C.F.R. § 372.65.
10. Respondent was required to submit a timely, complete and correct TRI Form R report for chromium for calendar year 2014 on or before July 1, 2015 to the Administrator of the EPA and to the State of New Jersey.
11. Respondent submitted a Form R report for chromium for calendar year 2014 that had significant data quality errors.
12. Respondent's failure to submit an accurate TRI Form R report for chromium for calendar year 2014 to the EPA, constitutes a failure to comply with Section 313 of EPCRA 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.
13. Respondent was required to submit a timely, complete and correct TRI Form R report for chromium for calendar year 2013 on or before July 1, 2014 to the Administrator of the EPA and to the State of New Jersey.

14. Respondent submitted a Form R report for chromium for calendar year 2013 that had significant data quality errors.

15. Respondent's failure to submit an accurate TRI Form R report for chromium for calendar year 2013 to the EPA, constitutes a failure to comply with Section 313 of EPCRA 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 325(c) of EPCRA, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc., 40 C.F.R. § 22.18 (hereinafter, "Consolidated Rules"), it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with the following terms:

1. Respondent certifies herein that the EPA Toxic Chemical Release Inventory Form R reports submitted for the above-described violations comply with the requirements of Section 313 of EPCRA and the regulations set forth at 40 C.F.R. Part 372.

2. For the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of this Consent Agreement as applied to each facility as set forth in paragraphs 1 through 15, inclusive, and (b) neither admits nor denies the Findings of Fact and Conclusions of Law section, above.

3. Respondent shall pay a civil penalty totaling **THIRTY-ONE THOUSAND TWO HUNDRED EIGHTY DOLLARS (\$31,280)**. The check must be identified with a notation thereon listing the following: In The Matter of Kawasaki Rail Car, Inc. and the Docket Number: EPCRA-02-2017-4201. Payment must be received at the address below on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date"). Payment should be made by cashier's or certified check or by electronic fund transfer (EFT).

If the payment is made by check, then the check should be made payable to the "Treasurer, United States of America," and mailed to:

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

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment;
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045;
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727;
- 4) Federal Reserve Bank of New York ABA routing number: 021030004;
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency;"
- 6) Name of Respondent: Kawasaki Rail Car, Inc.; and
- 7) Docket Number: EPCRA-02-2017-4201.

Such EFT must be received on or before each due date of this CAFO. Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor (1631)
New York, NY 10007-1866

and

John Gorman, Chief
Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-105)
Edison, NJ 08837

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to

31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling fee of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of all civil liabilities under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.) and the regulations promulgated thereunder, 40 C.F.R. Part 372, that attach or might have attached as a result of the Findings of Fact and Conclusions of Law set out above.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Respondent has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and to abide by its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

7. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

8. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

9. Each party hereto agrees to bear its own costs and fees in this matter.

10. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT: **Kawasaki Rail Car, Inc.**

BY: 
Authorizing Signature

NAME: Yoichiro Arai
(PLEASE PRINT)

TITLE: Chief Operating Officer

DATE: 2/21/17

COMPLAINANT: 

Kathleen Anderson, Acting Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

FEB 28 2017

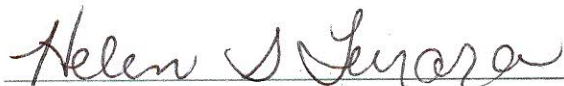
DATE: _____

In the Matter of Kawasaki Rail Car, Inc.

Docket Number EPCRA-02-2017-4201

FINAL ORDER

The Regional Judicial Officer of the United States Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Kawasaki Rail Car, Inc. bearing Docket No. EPCRA-02-2017-4201. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. §§ 22.13(b) and 22.18(b)(3) and shall constitute an order issued under authority of Section 325(c) of EPCRA 42 U.S.C. § 11045(c).



Helen S. Ferrara, Regional Judicial Officer

Office of Regional Counsel

U.S. Environmental Protection Agency, Region 2

290 Broadway

New York, New York 10007

DATE: March 7, 2017

In the Matter of Kawasaki Rail Car, Inc.

Docket No. EPCRA-02-2017-4201

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

Original and One Copy
by Interoffice Mail:

Ms. Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Ms. Tameka M. Beckford-Young, Legal Counsel
Kawasaki Rail Car, Inc.
29 Wells Avenue, Building 4
Yonkers, NY 10701

Copy by Mail:


Ms. Suzanne Wither
Division of Environmental Remediation
Office of Air and Waste Management
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7020

Mr. William Moore, Vice President of Operations
Kawasaki Rail Car, Inc.
29 Wells Avenue, Building 4
Yonkers, NY 10701

Mr. David Beitz,, EHS Administrator
Kawasaki Rail Car, Inc.
29 Wells Avenue, Building 4
Yonkers, NY 10701

Mr. Yochiro Araki, COO
Kawasaki Rail Car, Inc.
29 Wells Avenue, Building 4
Yonkers, NY 10701

Dated: 3/9/17



Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-105)
Edison, New Jersey 08837-3679