



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 27 2018

REPLY TO THE ATTENTION OF:

LC-17J

Mark Magnarini
Aavid Allcast, LLC
217 Weis Street
Allenton, Wisconsin 53002

RE: Consent Agreement and Final Order in the Matter of: Aavid Allcast, LLC **EPCRA-05-2018-0012**

Dear Mr. Magnarini:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 27, 2018 with the Regional Hearing Clerk.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth Zolnierczyk".

Kenneth Zolnierczyk
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



IN THE MATTER OF:)
)
Aavid Allcast, LLC)
d/b/a Allcast, LLC)
Allenton, Wisconsin)
)
RESPONDENT.)
_____)

Docket No.
EPCRA-05-2018-0012

Proceeding to Assess a Civil Penalty
Under Section 325(c) of the Emergency
Planning and Community Right-to-know
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. Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Aavid Allcast, LLC d/b/a Allcast, LLC, a corporation registered in the State of Wisconsin.
4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
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 terms of this CAFO, including the assessment of the civil penalty specified herein.

Jurisdiction and Waiver of Right to Hearing

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. 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

10. EPA promulgated the Toxic Chemical Release 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, is covered by certain North American Industry Classification System (NAICS) codes or Standard Industrial Classification (SIC) codes, and 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 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).

13. EPA published the Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (1-88) (Form R) 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 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 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 Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015), amending 28 U.S.C. § 2461 note, and the implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$42,290 per day of violation that occurred after November 2, 2015 and is assessed on or after January 15, 2017, pursuant to Section 325(c)(1) and (3) of EPCRA, § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

Allegations of Fact and Liability

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

18. Respondent is a corporation doing business in the State of Wisconsin.

19. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 217 Weis Street, Allenton, Wisconsin, during the calendar year 2015.

20. Respondent's facility consists of buildings, equipment, and structures and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned by the same person, entity, or corporation.

21. During the calendar year 2015, Respondent employed at this facility the equivalent of at least 10 employees with total paid hours equal to or more than 20,000 hours per calendar year.

22. Respondent's facility is covered by NAICS Code 331523.

23. During the calendar year 2015, Respondent "processed," as defined by 40 C.F.R. 372.3, toxic chemicals identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65, in quantities exceeding the thresholds for reporting set forth at Section 313(f) and at 40 C.F.R. §§ 372.25 and 372.28.

24. On September 16, 2016, a representative of EPA inspected Respondent's facility.

Count I

25. Complainant incorporates paragraphs 1 through 24 of the Complaint as if set forth in this paragraph.

26. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 that is processed during the 2015 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

27. During the 2015 calendar year, Respondent's facility processed 100,000 pounds of copper, CAS No. 7440-50-8.

28. Copper is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

29. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Wisconsin a Form R for copper for the 2015 calendar year on or before July 1, 2016.

30. Respondent failed to submit to the Administrator of EPA and to Wisconsin a Form R for copper for the 2015 calendar year on or before July 1, 2016.

31. On October 12, 2016 Respondent submitted to the Administrator of EPA a Form R for copper for the 2015 calendar year.

32. Respondent's failure to submit timely to the Administrator of EPA a Form R for copper for the 2015 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count II

33. Complainant incorporates paragraphs 1 through 24 of this Complaint as if set forth in this paragraph.

34. The reporting threshold for lead that is manufactured (including imported), processed, or otherwise used during the 2015 calendar year is 100 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. 372.28.

35. During the 2015 calendar year, Respondent's facility processed 1,700 pounds of lead, CAS No. 7439-92-1.

36. Lead is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 371.65.

37. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Wisconsin a Form R for lead for the 2015 calendar year on or before July 1, 2016.

38. Respondent failed to submit to the Administrator of EPA and to Wisconsin a Form R for lead for the 2015 calendar year on or before July 1, 2016.

39. On October 12, 2016, Respondent submitted to the Administrator of EPA a Form R for lead for the 2015 calendar year.

40. Respondent's failure to submit timely to the Administrator of EPA a Form R for lead for the 2015 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Civil Penalty

41. Pursuant to section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$26,565. 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 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).

42. Within 30 days after the effective date of this CAFO, Respondent must pay a \$26,565 civil penalty for the EPCRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note the caption and the docket number of this CAFO.

43. Respondent must send a notice of payment that states Respondent's name 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

Ken Zolnierczyk (LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

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

45. If Respondent does not pay timely the civil penalty, 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. Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

46. 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.

General Provisions

47. Consistent with 40 C.F.R. § 22.6, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: goeller.jon@epa.gov (for Complainant), and mark.magnarini@boydcorp.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

48. Respondent certifies that it is complying with section 313 of EPCRA, 42 U.S.C. § 11023.

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

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

51. This CAFO is a "final order" for purposes of EPA's enforcement response policy for section 313 of EPCRA.

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

53. 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.

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

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

Aavid Allcast, LLC , Respondent

9-20-18
Date

mark magnatini
Mark Magnatini
President

United States Environmental Protection Agency, Complainant

9-26-18
Date

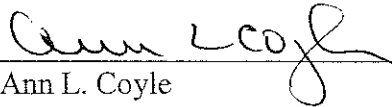
Tink G. Hyde
Tink G. Hyde
Division Director
Land and Chemicals Division

In the Matter of:
Aavid Allcast, LLC
Docket No. EPCRA-05-2018-0012

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.

9/26/18
Date


Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the Matter of: Aavid Allcast, LLC
Docket No. EPCRA-05-2018-0012

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on September 27, 2018 in the following manner to addresses:

Copy by e-mail to

Respondent:

Mark Magnarini
Aavid Allcast, LLC
217 Weis Street
Allenton, WI 53002
Mark.magnarini@boydcorp.com

Copy by e-mail to

Attorney for Complainant:

Jon Micah Goeller (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604
Goeller.jon@epa.gov

Copy by e-mail to

Regional Judicial Officer:

Ann Coyle
Coyle.ann@epa.gov

Dated: September 27, 2018



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5