



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

MAR 23 2007

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0198 4708

Patricia Hlavka, CSP
Senior Safety and Health Engineer
Benchmark Electronics, Inc.
3535 Technology Dr.
Rochester, MN 55901

Consent Agreement and Final Order, Docket No. EPCRA-05-2007-0010

Dear Ms. Hlavka:

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 March 23, 2007, with the Regional Hearing Clerk.

The civil penalty in the amount of \$9,632 is to be paid in the manner prescribed in paragraphs 28 and 29. Please be certain that the number **BD** 2750744E011 and the docket number are written on both the transmittal letter and on the check. The payment is due by April 23, 2007.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Robert Allen".

Robert Allen
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Joseph Williams, 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-05-2007-0010
)	
Pemstar Company, Inc.)	Proceeding to Assess a Civil Penalty
Rochester, Minnesota)	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 Pemstar Company, Inc., (Pemstar) a corporation doing business in the State of Minnesota.

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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.

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

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

Statutory and Regulatory Background

9. 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. § 372.28, 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.

10. 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 lead manufactured, processed, or otherwise used at a facility is 100 pounds for calendar years including and subsequent to 2001.

11. 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

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

13. At all times relevant to this CAFO, Respondent was an owner or operator of a facility which did business at 4260 Norex Drive, Chaska, Minnesota (Chaska facility).

14. At all times relevant to this CAFO, Respondent had at the Chaska facility “the equivalent of at least 10 full-time employees with the total paid hours equal to or more than 20,000 hours during each of the relevant years,” as defined Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. § 372.3.

15. 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.

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

17. The Chaska facility has a primary 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.

18. In conformity with the “Final Policy Statement on Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations” (the Self-Disclosure Policy), 65 Fed. Reg. 19618 (April 11, 2000), the violation of Section 313 of EPCRA, 42 U.S.C. § 11023, at Respondent’s Chaska facility for calendar year 2002 which is included in this CAFO was voluntarily disclosed to U.S. EPA by letters dated July 21, 2004, September 2, 2004, and September 21, 2005.

Count 1

19. During calendar year 2002, Respondent's Chaska facility processed, as that term is defined at 40 C.F.R. § 372.3, lead, CAS No. 7439-92-1, listed under 40 C.F.R. § 372.65, in the amount of 406 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 Minnesota a Form R for lead for calendar year 2002 by July 1, 2003.

21. Respondent submitted Form R for lead to the Administrator of U.S. EPA and to Minnesota on August 27, 2004 for calendar year 2002.

22. Respondent's failure to submit timely a Form R for lead to the Administrator of U.S. EPA and to Minnesota for calendar year 2002 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 2

23. During calendar year 2003, Respondent's Chaska facility processed, as that term is defined at 40 C.F.R. § 372.3, lead, CAS No. 7439-92-1, listed under 40 C.F.R. § 372.65, in the amount of 482 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.

24. Respondent was required to submit to the Administrator of U.S. EPA and to Minnesota a Form R for lead for calendar year 2003 by July 1, 2004.

25. Respondent submitted Form R for lead to the Administrator of U.S. EPA and to Minnesota on August 27, 2004 for calendar year 2003.

26. Respondent's failure to submit timely a Form R for lead to the Administrator of U.S. EPA and to Minnesota for calendar year 2003 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Civil Penalty

27. In consideration of Respondent having disclosed the violation at the Chaska facility for lead for calendar years 2002 and 2003, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$9,632.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$9,632 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," : for checks sent by regular U.S. Postal Service mail to:

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

for checks sent by express mail:

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

The check must note the following: the case title, the docket number of this CAFO and the billing document number.

28. 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:

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

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

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

29. This civil penalty is not deductible for federal tax purposes.
30. If Respondent does not timely pay the civil penalty, 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.
31. 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.

General Provisions

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

33. 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.

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

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

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

37. 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.

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

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

Pemstar Company, Inc., Respondent

February 15, 2007
Date

Thomas J. Harko, CSP
Respondent Representative

United States Environmental Protection Agency, Complainant

3/2/07
Date

for Anthony J. Restaino
Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

3/5/07
Date

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

**In the Matter of:
Pemstar Company Inc.
Docket No. EPCRA-05-2007-0010**

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.

3-20-07
Date

Mary A. Gade
Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

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REGIONAL HEARING CLERK
REGION 5

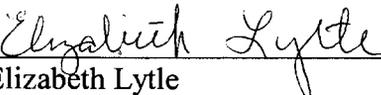
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Pemstar Company, Inc., was filed on March 23, 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 0006 0198 4708, a copy of the original to the Respondents:

Patricia Hlavka, CSP
Senior Safety and Health Engineer
Benchmark Electronics, Inc.
3535 Technology Dr.
Rochester, MN 55901

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Joseph Williams, ORC/C-14J (w/Encl.)
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-05-2007-0010**

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