

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

ELECTRO-COATINGS OF IOWA, INC.)

Respondent)

) Docket No. EPCRA-07-2011-0003
)
)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 and Electro-Coatings of Iowa, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325(c) of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11045(c).

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023 and the regulations promulgated thereunder.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Electro-Coatings of Iowa, Inc., located at 911 Shaver Road NE in Cedar Rapids, Iowa. The primary activity at Respondent's facility is chrome, nickel, and zinc plating.

Statutory and Regulatory Requirements

5. Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. Part 372.22 and 372.30 require the owner or operator of a facility that (a) has ten or more full-time employees; (b) that is an establishment with a primary Standard Industrial Classification major group or industry code listed in 40 C.F.R. Part 372.23(a) or a primary North American Industry Classification System subsector or industry code listed in 40 C.F.R. Part 372.23(b) or (c); and (c) "manufactured, processed, or otherwise used" a toxic chemical listed under Subsection 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. Part 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. Part 11023(f), and 40 C.F.R. Part 372.25, 372.27 or 372.78 during the calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator of the EPA and to the state in which the subject facility is located by July 1, for the preceding calendar year, for each toxic chemical known by the owner or operator to be "manufactured, processed, or otherwise used" in quantities exceeding the established threshold quantity that preceding calendar year.

6. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and 40 C.F.R. Part 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. Part 372.30, is 25,000 pounds for any toxic chemical "manufactured or processed" and 10,000 pounds for any toxic chemical "otherwise used" for the applicable calendar year. Alternative reporting threshold for certain other chemicals, including lead, are set forth in 40 C.F.R. Part 372.27 and 372.28. Specifically, 40 C.F.R. Part 372.28 establishes a reporting threshold for manufacturing, processing, and otherwise using lead of 100 pounds.

7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 313, 42 U.S.C. § 11023. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of up to \$27,500 per day of for each violation that occurs between January 30, 1997, and March 15, 2004; \$32,500 per day for each violation occurring between March 16, 2004, and January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

Definitions

8. The regulations at 40 C.F.R. § 372.3 define “facility” as “all 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 (or by any person which controls, is controlled by, or under common control with such person). A facility may contain more than one establishment.”

9. The regulations at 40 C.F.R. § 372.3 define “full time employees” as “2,000 hours per year of full-time equivalent employment. A facility would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.”

10. The regulations at 40 C.F.R. Part 372.3 define “toxic chemical” as a “chemical or chemical category listed in 40 C.F.R. Part 372.65.”

11. The regulations at 40 C.F.R. Part 372.3 define “manufacture” as “to produce, prepare, import or compound a toxic chemical. “Manufactures” also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use or disposal of another chemical or mixture of

chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical mixtures of chemicals as an impurity.”

12. “Process” means the preparation of a toxic chemical, after its manufacture, for distribution in commerce: (1) in the same form or physical state as, or in a different form or physical state from that in which it was received by the person so preparing such substance; or (2) as part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product. 40 C.F.R. Part 372.3.

13. “Otherwise use” means any use of toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms “manufacture” or “process.” Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless: (1) the toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; (2) the toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or re-distributing of the toxic chemical with no repackaging of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical. 40 C.F.R. Part 372.3.

Alleged Violations

14. The EPA alleges that Respondent has violated EPCRA and federal regulations, promulgated pursuant to EPCRA, as follows:

15. Respondent is, and at all times referred to herein, was a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. Respondent's facility located at 911 Shaver Road NE in Cedar Rapids, Iowa, is a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. Part 372.3.

17. The Respondent's facility has ten (10) or more "full-time employees" pursuant to Section 313(b)(1)(A) of EPCRA and as defined by 40 C.F.R. Part 372.3.

18. The Respondent's facility is in NAICS Code 332813 - Electroplating, Plating, Polishing, Anodizing, and Coloring.

19. The following is a "toxic chemical" within the meaning of 40 C.F.R. Part 372.3 and 372.65: lead.

20. During calendar years 2007-2009, lead was "manufactured, processed, or otherwise used," as those terms are defined by 40 C.F.R. Part 372.3, at the Respondent's facility.

21. On August 30, 2010, a duly authorized representative from the EPA, Region 7, conducted an inspection of Respondent's facility.

Count 1

Failure to File Form Rs for Calendar Year 2007

22. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

23. Lead was "manufactured, processed, or otherwise used" at the Respondent's facility in excess of the 100-pound threshold quantity for calendar year 2007.

24. The Respondent failed to file Form Rs with the Administrator of the EPA and the state of Iowa for the toxic chemical lead by July 1, 2008.

25. Respondent's failure to submit Form Rs for lead is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and 40 C.F.R. Part 372.30.

Count 2

Failure to File Form Rs for Calendar Year 2008

26. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.
27. Lead was “manufactured, processed, or otherwise used” at the Respondent’s facility in excess of the 100-pound threshold quantity for calendar year 2008.
28. The Respondent failed to file Form Rs with the Administrator of the EPA and the state of Iowa for the toxic chemical lead by July 1, 2009.
29. Respondent’s failure to submit Form Rs for lead is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and 40 C.F.R. Part 372.30.

Count 3

Failure to Maintain Complete Records and Failure to Calculate or Provide Reasonable Estimates of Releases for the Reporting Years 2008 and 2009.

30. Paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.
31. Lead was “manufactured, processed, or otherwise used” at the Respondent’s facility in excess of the 100-pound threshold quantity for calendar years 2008 and 2009.
32. The Respondent failed to provide adequate documentation supporting the calculations of the quantity of each toxic chemical released to the environment and failed to calculate or provide reasonable estimates of the lead compound releases captured on the 2008 and 2009 Form Rs.
33. Respondent’s failure to provide adequate documentation supporting the calculations of the quantity of lead released to the environment and failure to calculate or provide reasonable estimates of lead compound releases for calendar years 2008 and 2009 is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and 40 C.F.R. Part 372.30.

CONSENT AGREEMENT

34. Respondent and the EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

35. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

36. Respondent neither admits nor denies the factual allegations set forth above.

37. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CAFO.

38. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

39. This CAFO addresses all civil administrative claims for the EPCRA violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of EPCRA other applicable law.

40. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 313 EPCRA, 42 U.S.C. § 11023, and all regulations promulgated thereunder.

41. The effect of settlement described in paragraph 39 is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in paragraph 40, above, of this CAFO.

42. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

43. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

44. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the CAFO and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of EPCRA, 42 U.S.C. § 11045, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Nine Thousand Six Hundred and Seventy-Nine Dollars (\$9,679) which shall be due within thirty days of entry of this Final Order. Payments shall be paid by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

The payments shall reference docket number EPCRA-07-2011-0003.

2. Copies of the checks should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
901 N. Fifth Street
Kansas City, Kansas 66101

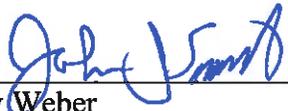
and to:

Kristen Nazar
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
901 N. Fifth Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date 6/16/2011

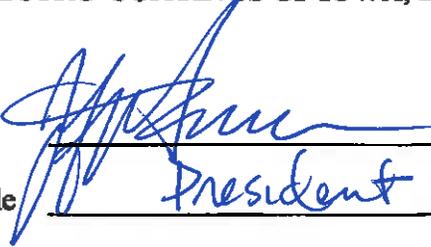
By 
Becky Weber
Director
Air and Waste Management Division

Date 6/15/2011

By 
Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
ELECTRO-COATINGS OF IOWA, INC.

Date 6/14/2011

By  (Jeff Garvens)

Title President



IT IS SO ORDERED. This Final Order shall become effective immediately.

Date June 16, 2011

By Robert L. Patrick
ROBERT L. PATRICK
Regional Judicial Officer

IN THE MATTER OF Electro-Coatings of Iowa, Inc., Respondent
Docket No. EPCRA-07-2011-0003

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kristen Nazar
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Jeff Garvens
14400 Northbrook Suite #120
San Antonio, Texas 78232

Dated: 6/16/11


Kathy Robinson
Hearing Clerk, Region 7