



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029

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 EPA REGION III PHILA. PA

In the Matter of:) EPA Docket No.: EPCRA-03-2012-0060
)
 MXI Environmental Services, LLC)
 26319 Old Trail Road)
 Abingdon, Virginia, 24210,)
)
 Respondent.)
) Proceedings Pursuant to Sections 312 and 325
) of the Emergency Planning and Community
 MXI Environmental Services, LLC) Right-to-Know Act of 1986,
 26319 Old Trail Road) 42 U.S.C. §§ 11022, 11045
 Abingdon, Virginia, 24210,)
)
 Facility.)

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency Region III (“EPA” or “Complainant”), and MXI Environmental Services (“MXI” or “Respondent”), in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (“CAFO”).

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA” or “the Agency”) by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045, and under the authority provided by 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, (“Part 22 ”), in Section 22.18(b)(2). The Administrator has delegated the authority under Section 325 of EPCRA, 42 U.S.C. § 11045, to the Regional Administrator of EPA, Region III, who has redelegated those authorities to the Director of the Hazardous Site Cleanup Division of EPA Region III (“Complainant”).

EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a corporation with its primary place of business located at 26319 Old Trail Road, Abingdon, Virginia, 24210.

2. As a corporation, Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.
3. Beginning in or about 1997, continuing through the date of filing this CAFO, and at all times relevant to this CAFO, Respondent has owned and operated the MXI Environmental Services facility located at 26319 Old Trail Road, Abingdon, Virginia, 24210 ("Facility"), within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022.
4. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.
5. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility where hazardous chemicals are present during a calendar year in a quantity equal to or greater than its applicable minimum threshold for reporting ("MTL") or equal to or greater than its threshold planning quantity ("TPQ"), who are in turn required to prepare or have available a Material Safety and Data Sheet ("MSDS") for a hazardous chemical in accordance with the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, to submit by March 1st of the following year, a completed Emergency and Hazardous Chemical Inventory Form ("Chemical Inventory Form"). The Chemical Inventory form must identify the hazardous chemical and provide the information described in Section 312(d)(1) of EPCRA, 42 U.S.C. § 11022(d)(1) and be submitted to the appropriate State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and the local fire department for the facility.
6. For the purpose of submissions pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, the SERC for the Facility is, and has been at all times relevant to this CAFO, the Virginia Emergency Response Council, which mailing address is P.O. Box 1105, Richmond, VA, 23218.
7. The LEPC for the Facility is, and has been at all times relevant to this CAFO, the Washington County Department of Emergency Management, located at 20281 Rustic Lane, Abingdon Virginia, 24210.
8. The local fire department for the Facility is the Abingdon Volunteer Fire Department located at 316 Park Street, Abingdon, Virginia, 24210.
9. No. 2 diesel fuel and no. 4 diesel fuel are "hazardous chemical[s]" for purposes of Section 312(c) of EPCRA, 42 U.S.C. § 11022(c), 40 C.F.R. § 370.66, and 29 C.F.R. § 1910.1200(c).
10. Pursuant to 40 C.F.R. § 370.10(a)(2)(i), the MTL for diesel fuel oil is 10,000 pounds.
11. At all times relevant to this CAFO, Respondent was a person engaged in a business where chemicals were used, distributed, or produced for use or distribution.

12. At all times relevant to this CAFO, Respondent was an "employer" as that term is defined at 29 U.S.C. § 1910.1200(c).
13. At all times relevant to this CAFO, Respondent was required to have MSDSs at the Facility for each hazardous chemical it uses, pursuant to 29 C.F.R. § 1910.1200(g).
14. On November 9, 2010, EPA conducted an inspection of the Facility to determine its compliance with the requirements of Sections 302-312 of EPCRA, 42 U.S.C. §§ 11002-11022.
15. For calendar year 2007, Respondent submitted its Tier II reports to the SERC, LEPC, and the local fire department on June 16, 2008, 107 days late, and without including no. 2 diesel fuel and no. 4 diesel fuel, which Respondent had present at the Facility in a quantity exceeding the applicable TPQ at any one time during calendar year 2007.
16. For calendar year 2008, Respondent submitted its Tier II reports to the SERC, LEPC, and the local fire department without including no. 2 diesel fuel and no. 4 diesel fuel, which Respondent had present at the Facility in a quantity exceeding the applicable threshold planning quantity at any one time during calendar year 2008.
17. For calendar year 2009, Respondent submitted its Tier II reports to the SERC, LEPC, and the local fire department on March 14, 2010, 13 days late, and without including no. 2 diesel fuel and no. 4 diesel fuel, which Respondent had present at the Facility in a quantity exceeding the applicable TPQ at any one time during calendar year 2009.
18. On September 29, 2011 EPA issued a Show Cause Letter to Respondent indicating that the Agency was considering the assessment of penalties against Respondent for alleged violations of Section 312 of EPCRA, 42 U.S.C. § 11022.
19. EPA concludes that Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, for calendar year 2007 by failing to submit by March 1, 2008 complete and accurate Emergency and Hazardous Chemical Inventory Forms to the SERC, LEPC, and the local fire department.
20. EPA concludes that Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, for calendar year 2008 by failing to submit complete and accurate Emergency and Hazardous Chemical Inventory Forms to the SERC, LEPC, and the local fire department.
21. EPA concludes that Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, for calendar year 2009 by failing to submit by March 1, 2010 complete and accurate Emergency and Hazardous Chemical Inventory Forms to the SERC, LEPC, and the local fire department .

CIVIL PENALTY

22. In full settlement and resolution of all allegations referenced in the foregoing EPA's Findings of Fact and Conclusions of Law, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the alleged violations of EPCRA Section 312, 42 U.S.C. § 11022, set forth above, in the amount of **\$8,302**.

PAYMENT TERMS

23. Payment of the civil penalty amount assessed above shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.* **EPCRA-03-2012-0060**;
- B. All checks shall be made payable to "**United States Treasury**";
- C. All payments made by cashier check and sent by regular mail shall be addressed to:

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

Contact: Eric Volck 513-487-2105

The Respondent shall note on the cashier's check the title and docket number of the case.

- D. All payments made by cashier check and sent by overnight delivery service shall be addressed for delivery to:

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

Contact: 314-418-1028

The Respondent shall note on the cashier's check the title and docket number of the case.

E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

F. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – Checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737
Contact: John Schmid 202-874-7026 OR REX, 1-866-234-5681

G. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

I. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Ms. Jacquin Milhouse
U.S. Environmental Protection Agency, Region III (3RC41)
Office of Regional Counsel
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

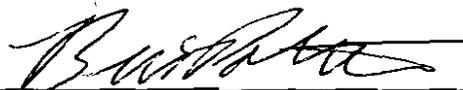
24. The EPCRA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and is consistent with 40 C.F.R. Part 19, the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).
25. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions in this CAFO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.
26. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue, which is the final due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
27. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.
28. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).
29. Failure by the Respondent to pay the \$8,302 penalty assessed by the Final Order in full by the final due date, which is 30 days after this CAFO becomes effective, may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to

Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

30. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.
31. For the purpose of this proceeding, Respondent agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of the CAFO.
32. For the purpose of this proceeding, and with the exception stated in Paragraph 30, above, Respondent neither admits nor denies the factual allegations set forth in this CAFO, but expressly waives its rights to contest said allegations.
33. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 325 of EPCRA, 42 U.S.C. § 11045.
34. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.
35. This CAFO resolves only those civil claims that are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition that Complainant determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nothing in this CAFO shall be construed to limit the United States' authority to pursue criminal sanctions.
36. Each party to this action shall bear its own costs and attorney's fees.
37. By entering into this CAFO, Respondent does not admit any liability for the civil claims alleged herein.

FOR MXI Environmental Services, LLC



Brian Potter
Vice President of Operations

12/22/2011

DATE

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Ronald J. Borsellino, Director
Hazardous Site Cleanup Division

December 20, 2011
DATE

B-17

