

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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In the Matter of:) Docket No. EPCRA-05-2011-0002
)
AAF-McQuay Inc.) Proceeding to Assess a Civil Penalty
d/b/a McQuay International) Under Section 325(c) of the Emergency
Fairbault, Minnesota,) Planning and Community Right-to-Know
) Act of 1986, 42 U.S.C. § 11045(c)
Respondent.)

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. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is AAF-McQuay, Inc., a corporation doing business in the State of Minnesota. AAF-McQuay, Inc. operates under the assumed name of McQuay International.
4. Where the parties agree to settle one or more causes of action without 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 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.

Jurisdiction and Waiver of Right to Hearing

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

8. 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.

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

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, a Standard Industrial Classification (SIC) 3585 and that manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(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) of EPCRA, 42 U.S.C. § 11023(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 EPCRA Section 313 and 40 C.F.R. 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) of EPCRA, 42 U.S.C. § 11023(g), for each toxic chemical listed under Section 313(c) of EPCRA, 42 U.S.C. § 11023(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) of EPCRA, 42 U.S.C. § 11023(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 according to Section 328 of 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 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 may be assessed pursuant to each agency's statutes. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 of EPCRA, 42 U.S.C. § 11023, that occurred after March 15, 2004 through January 12, 2009, 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 Allegations

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

18. Respondent owned or operated a facility located at 300 24th Street, Fairbault, Minnesota (Fairbault facility) during the calendar years 2005, 2006 and 2007.

19. Respondent owned or operated a facility located at 1001 21st Avenue Northwest, Owatonna, Minnesota (Owatonna facility) during the calendar years 2005, 2006 and 2007.

20. Respondent’s Fairbault and Owatonna facilities consist of buildings, equipment, structures, and other stationary items which are located, respectively, on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

21. Respondent’s Fairbault and Owatonna facilities are each a “facility” as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

22. During the calendar years 2005, 2006 and 2007, Respondent employed at its Fairbault facility and at its Owatonna facility, respectively, the equivalent of at least 10 employees with total paid hours equal to or more than 20,000 hours per calendar year.

23. Respondent’s Fairbault and Owatonna facility are each covered by SIC code 3585.

24. During the calendar years 2005, 2006 and 2007, Respondent processed, as defined by 40 C.F.R. § 372.65, toxic chemicals in quantities exceeding the thresholds for reporting set forth at Section 313(f) and at 40 C.F.R. § 372.25, at its Fairbault facility and at its Owatonna facility, respectively.

Count I

25. Complainant incorporates paragraph 1 through 24 of this CAFO 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 was processed during the 2005 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

27. During the 2005 calendar year, Respondent's Fairbault facility processed 108,800 pounds of Diisocyanates, chemical category N120.

28. Diisocyanates is a chemical identified at 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 Minnesota a Form R for Diisocyanates for calendar year 2005 by July 1, 2006.

30. Respondent failed to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2005 by July 1, 2006.

31. On May 5, 2010, Respondent submitted to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2005.

32. Respondent's failure to submit timely a Form R for Diisocyanates processed at the Fairbault facility to the Administrator of EPA and to Minnesota for calendar year 2005 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 CAFO as if set forth in this paragraph.

34. 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 was processed during the 2006 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

35. During the 2006 calendar year, Respondent's Fairbault facility processed 214,200 pounds of Diisocyanates, chemical category N120.

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

37. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2006 by July 1, 2007.

38. Respondent failed to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2006 by July 1, 2007.

39. On May 5, 2010, Respondent submitted to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2006.

40. Respondent's failure to submit timely a Form R for Diisocyanates processed at the Fairbault facility to the Administrator of EPA and to Minnesota for calendar year 2006 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count III

41. Complainant incorporates paragraphs 1 through 24 of this CAFO as if set forth in this paragraph.

42. 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 was processed during the 2007 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

43. During the 2007 calendar year, Respondent's Fairbault facility processed 224,400 pounds of Diisocyanates, chemical category N120.

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

45. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2007 by July 1, 2008.

46. Respondent failed to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2007 by July 1, 2008.

47. On May 5, 2010, Respondent submitted to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2007.

48. Respondent's failure to submit timely a Form R for Diisocyanates processed at the Fairbault facility to the Administrator of EPA and to Minnesota for calendar year 2007 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count IV

49. Complainant incorporates paragraphs 1 through 24 of this CAFO as if set forth in this paragraph.

50. 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 was processed during the 2005 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

51. During the 2005 calendar year, Respondent's Owatonna facility processed 176,800 pounds of Diisocyanates, chemical category N120.

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

53. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2005 by July 1, 2006.

54. Respondent failed to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2005 by July 1, 2006.

55. On May 5, 2010, Respondent submitted to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2005.

56. Respondent's failure to submit timely a Form R for Diisocyanates processed at the Owatonna facility to the Administrator of EPA and to Minnesota for calendar year 2005 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count V

57. Complainant incorporates paragraphs 1 through 24 of this CAFO as if set forth in this paragraph.

58. 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 was processed during the 2006 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

59. During the 2006 calendar year, Respondent's Owatonna facility processed 306,000 pounds of Diisocyanates, chemical category N120.

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

61. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2006 by July 1, 2007.

62. Respondent failed to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2006 by July 1, 2007.

63. On May 5, 2010, Respondent submitted to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2006.

64. Respondent's failure to submit timely a Form R for Diisocyanates processed at the Owatonna facility to the Administrator of EPA and to Minnesota for calendar year 2006 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count VI

65. Complainant incorporates paragraphs 1 through 24 of this CAFO as if set forth in this paragraph.

66. 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 was processed during the 2007 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).

67. During the 2007 calendar year, Respondent's Owatonna facility processed 319,600 pounds of Diisocyanates, chemical category N120.

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

69. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2007 by July 1, 2008.

70. Respondent failed to submit to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2007 by July 1, 2008.

71. On May 5, 2010, Respondent submitted to the Administrator of EPA and to Minnesota a Form R for Diisocyanates for calendar year 2007.

72. Respondent's failure to submit timely a Form R for Diisocyanates processed at the Owatonna facility to the Administrator of EPA and to Minnesota for calendar year 2007 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Civil Penalty

73. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$61,000. 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).

74. Within 30 days after the effective date of this CAFO, Respondent must pay a \$61,000 civil penalty for the EPCRA violations by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D68010727 Environmental Protection Agency"

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

76. 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. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

77. 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.

Compliance Management System

78. Respondent must update its compliance management system to encompass the company's documented systematic efforts to prevent, detect and correct violations of EPCRA Section 313, 42 U.S.C. § 11023.

79. The updated compliance management system must contain the following:

- (a) Compliance policies, standards and procedures that identify how employees and agents are to meet EPCRA § 313;
- (b) Assignment of overall responsibility for overseeing compliance with EPCRA § 313 policies, standards, and procedures, and assignment of specific responsibility for assuring compliance at each facility;
- (c) Mechanisms for systematically assuring that EPCRA § 313 compliance policies, standards and procedures are being carried out, including monitoring and auditing systems reasonable designed to detect and correct violations, periodic evaluation of the overall performance of the compliance management system, and a means for employees or agents to report violations without fear of retaliation;
- (d) Efforts to communicate effectively the regulated entity's EPCRA § 313 standards and procedures to all employees and other agents;

- (e) Appropriate incentives to managers and employees to perform in accordance with the EPCRA § 313 compliance policies, standards and procedures, including consistent enforcement through appropriate disciplinary mechanisms; and,
- (f) Procedures for the prompt and appropriate correction of any violations of EPCRA Section 313, and any necessary modifications to Respondent's compliance management system to prevent future violations.

80. Respondent must provide a written certification that it updated its compliance management system by July 4, 2011 to:

Maynard Shaw (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

81. Respondent's certification that its compliance management system is true and complete must include the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

General Provisions

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

83. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

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

87. 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.

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

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

AAF-McQuay Inc. d/b/a/ McQuay International, Respondent

January 17, 2011
Date

Paul M. Heim
Paul Heim
Vice President and General Counsel
AAF-McQuay Inc. d/b/a McQuay International

United States Environmental Protection Agency, Complainant

1/31/11
Date


Bruce F. Sypniewski
Bruce F. Sypniewski
Acting Director
Land and Chemicals Division

**In the Matter of:
AAF-McQuay Inc.
d/b/a McQuay International
Docket No.**

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.

2-1-11
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY
JAN 27 2011
OFFICE OF REGIONAL
COUNCIL

In the Matter of:
AAF-McQuay Inc. d/b/a McQuay International
Docket No.

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Certificate of Service

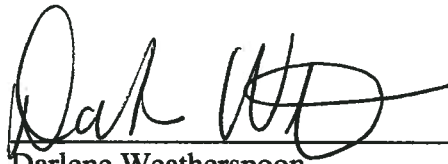
I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7099 3400 0000 9598551 the second original copy to Respondent, addressed as follows:

Charles F. Helston
Hinshaw & Culberston, LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389

and that I delivered a correct copy by intra-office mail, addressed as follows:

Marcy Toney, Regional Judicial Officer (C-14J)

on this third day of February, 2011.



Darlene Weatherspoon
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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