

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	
	:	
Steel Management Systems, LLC	:	Docket No. EPCRA-03-2011-0211
3045 Bath Pike	:	
Nazareth, PA 18064	:	
	:	
	:	CONSENT AGREEMENT
	:	
Respondent	:	Proceeding under
	:	Section 325(c) of EPCRA
	:	42 U.S.C. § 11045(c)
	:	

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant") and Steel Management Systems, LLC ("Respondent") pursuant to Sections 313 and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11023 and 11045(c), the regulations implementing EPCRA Section 313, as set forth at 40 C.F.R. Part 372, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Pursuant to 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO") simultaneously commence and conclude this proceeding to resolve violations of EPCRA § 313, as alleged herein, by Respondent at its facility located at 3045 Bath Pike, Nazareth, PA 18064.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.
3. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
4. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees.

Findings of Fact and Conclusions of Law

7. Complainant has determined that Respondent has violated EPCRA Section 313, and adopts the following findings of fact and conclusions of law in accordance with Sections 22.18(b)(2) and .14(a)(2) and (3) of the Consolidated Rules of Practice.
8. Respondent does business in Pennsylvania and is a limited liability corporation organized under the laws of the State of Delaware.
9. As a limited liability corporation, Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
10. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures, and other stationary items that are located on a single site and that are owned or operated by the same person.
11. Respondent owns and operates, and, at the time of the violations alleged herein, owned and operated a manufacturing plant located at 3045 Bath Pike, Nazareth, PA 18064 (the "Facility"). At the time of the violations alleged herein, Respondent's manufacturing operations at the Facility consisted of coating steel beams, pipes and structures provided by its customers with paint. The paint contains xylene.
12. Respondent's Facility is a "facility" as defined in Section 329(4) of EPCRA and 40 C.F.R. § 372.3.
13. Section 313 of EPCRA and 40 C.F.R. § 372.22 require, *inter alia*, that the owner or operator of a facility that:
 - 1) has 10 or more employees;
 - 2) has a primary Standard Industrial Classification ("SIC") Code of 20 [2000] through 39 [3900] (as in effect on January 1, 1987), or, has an SIC code in one or more of the following categories:
 - i. between 1000 and 1099, except 1011, 1081, and 1094;
 - ii. between 1200 and 1299, except 1241;
 - iii. 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce);
 - iv. 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. §§ 6921-6939e);
 - v. 5169 or 5171;

vi. 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); and

- 3) manufactured, processed or otherwise used a toxic chemical listed in 40 C.F.R. § 372.65, in excess of the threshold quantities established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form is required,

must submit a completed toxic chemical release reporting form ("Form R") for each such toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year.

14. At the time of the violations alleged herein, Respondent employed 10 or more full-time employees at the Facility.
15. At the time of the violations alleged herein, the Facility had a primary Standard Industrial Code of 3479 (coating, engraving, allied services), Major Group 34. This SIC code falls between the primary SIC codes of 20 (2000) and 39 (3900) (as in effect on July 1, 1985).
16. For each toxic chemical listed in 40 C.F.R. § 372.65 manufactured, processed, or otherwise used by Respondent at the Facility in excess of the threshold quantity set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during any calendar year, Respondent has been required by EPCRA § 313, at all times relevant to this Consent Agreement, to complete and submit to EPA and the Commonwealth of Pennsylvania, by July 1, of the following calendar year, a Form R pursuant to 40 C.F.R. §§ 372.30.
17. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA § 313 shall be liable to the United States for a civil penalty.

COUNTS I - III

18. The chemical substance "xylene" is a "toxic chemical" as defined in EPCRA Sections 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
19. During calendar years 2007, 2008 and 2009, Respondent "otherwise used" more than 10 pounds of xylene, as that term is used in EPCRA § 313(b)(1)(A), 42 U.S.C. § 11023(b)(1)(A), and defined in 40 C.F.R. § 372.3. Such amount exceeded the threshold quantity for reporting for xylene set forth in 40 C.F.R. § 372.25(b), which set the threshold quantity for a toxic chemical "otherwise used" at a facility to 10 pounds.
20. In reporting its releases of xylene at the Facility during the years 2007, 2008 and 2009, Respondent was required to submit to EPA and the Commonwealth of Pennsylvania a completed Form R, by the respective deadlines of July 1, 2008, 2009 and 2010, pursuant to Section 313 of EPCRA.

21. On July 19, 2010, Respondent submitted to EPA for the first time completed Form Rs to report its releases of xylene at the Facility during 2007, 2008 and 2009. Thus, Respondent submitted these forms well after the applicable deadlines.
22. Respondent's failure to submit to EPA, by July 1 of 2008, 2009 and 2010, completed Form Rs to report its releases of xylene at the Facility during the years 2007, 2008 and 2009, constitutes three separate violations of Section 313 of EPCRA, for which Respondent is liable for civil a penalty pursuant to Section 325(c) of EPCRA.

Civil Penalty

23. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Eleven Thousand Dollars (\$11,000.00)**. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by the parties, signed by the Regional Administrator or the Regional Judicial Officer, and filed with the Regional Hearing Clerk. However, Respondent may pay such penalty amount, and interest thereon, in accordance with the following schedule:
 - a. No later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent, Respondent shall pay \$3,666.66 in civil penalties.
 - b. No later than thirty (90) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent, Respondent shall pay \$3,672.77 (which constitutes \$3,666.66 in civil penalties, plus \$6.11 interest).
 - c. No later than thirty (150) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent, Respondent shall pay \$3,678.90 (which constitutes \$3,666.68 in civil penalties, plus \$12.22 interest).
24. The aforesaid settlement amount is based upon Complainant's consideration of the facts and circumstances of this case and the penalty criteria set forth in EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (August 10, 1992). Complainant has also considered the applicable Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19. The settlement in this proceeding is consistent with the provisions and objectives of EPCRA § 313 and 40 C.F.R. Part 372.
25. Payment of the civil penalty amount assessed in paragraph 23, above, and any interest therein, 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-03-2011-0211;

- B. All checks shall be made payable to “**United States Treasury**”;
- C. All payments made by 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

- D. All payments made by 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

- 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:

Natalie L. Katz
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

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

26. 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, failure to make timely payment may result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
27. Interest on the civil penalty assessed in this CAFO begins to accrue on the date that a true and correct 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.

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).

28. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 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 payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
29. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent for more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
30. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Certifications

31. The individual who signs this Consent Agreement on behalf of Respondent certifies that the violations alleged in this Consent Agreement have been corrected, and that the Facility is currently in compliance with all applicable requirements of EPCRA Section 313.

Other Applicable Laws

32. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

33. This Consent Agreement and the accompanying Final Order resolve only EPA's civil claims for the specific violation of EPCRA § 313 alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Scope of Settlement

34. The settlement set forth in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations alleged herein.

Compliance with the CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

35. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents, and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of 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 this Consent Agreement and the accompanying Final Order.

Effective Date

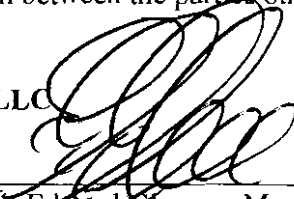
36. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

37. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violation alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent: Steel Management Systems, LLC

Date: 6/21/2011

By: 
Edward Gleason, Managing Member
Steel Management Systems, LLC

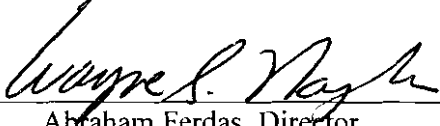
For Complainant:

Date: 6/22/2011

By: 
Natalie L. Katz
Senior Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 6/24/11

By: 
Abraham Ferdas, Director
Land and Chemicals Division

