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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. EPCRA-10-2012-0027
)	
Frazier Industrial Company)	CONSENT AGREEMENT AND
3770 Pole Line Road)	FINAL ORDER
Pocatello, Idaho 83202)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045.

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to EPCRA Section 325, 42 U.S.C. § 11045, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,”

40 C.F.R. Part 22, EPA issues, and Frazier Industrial Company (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to EPCRA Section 325, 42 U.S.C. § 11045, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of Section 313 of EPCRA is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of EPCRA together with the specific provisions of EPCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 Under Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.22 and 372.30, the owner or operator of a facility covered by Section 313 must submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (“Form R”) for each toxic chemical referenced in Section 313(c) of EPCRA and listed in 40 C.F.R. § 372.65 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical threshold specified in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, and 372.28.

3.2 Under 40 C.F.R. § 372.22, a facility that meets each of the following criteria in a calendar year is a covered facility for that calendar year and must report under 40 C.F.R.

§ 372.30:

- a. the facility has 10 or more full-time employees;
- b. the facility is in a Standard Industrial Classification (SIC) major group or industry code or North American Industrial Classification System (NAICS) code listed in 40 C.F.R. § 372.23; and
- c. the facility manufactured (including imported), processed, or otherwise used a toxic chemical in excess of an applicable threshold quantity of that chemical set forth in 40 C.F.R. § 372.25, 40 C.F.R. § 372.27, or 40 C.F.R. § 372.28.

3.3 The toxic chemicals which are subject to the reporting requirement of 40 C.F.R. § 372.30 are listed at 40 C.F.R. § 372.65.

3.4 Respondent is the owner and operator of a facility located at 3770 Pole Line Road, Pocatello, Idaho (the "Facility").

3.5 During calendar year 2009, the Facility had 10 or more full-time employees.

3.6 The Facility is included in NAICS code 337215, which is included in the list of covered industry codes found at 40 C.F.R. § 372.23.

3.7 "1,2,4-trimethylbenzene" is a toxic chemical listed in 40 C.F.R. § 372.65. The threshold quantity for 1,2,4-trimethylbenzene reporting is 10,000 pounds otherwise used for the year, as set forth at 40 C.F.R. § 372.25.

3.8 The Facility otherwise used more than 10,000 pounds of 1,2,4-trimethylbenzene during calendar year 2009.

3.9 Respondent failed to file a Form R with EPA and the state of Idaho for 1,2,4-trimethylbenzene for calendar year 2009 by July 1, 2010. Respondent filed a Form R report for 1,2,4-trimethylbenzene covering calendar year 2009 on April 18, 2011 (291 days late).

3.10 Respondent, owner and operator of a facility with more than ten employees, operating under NAICS code 337215, who otherwise used more than 10,000 pounds of 1,2,4-trimethylbenzene during calendar 2009, violated 40 C.F.R. § 372.30 by failing to file the required Form R for calendar year 2009 by July 1, 2010.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. In light of the nature of the violation, Respondent's actions to correct the violations after having been notified by Complainant, and Respondent's willingness to settle this matter without litigation, and in accordance with the *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act and Section 6607 of the Pollution Prevention Act*, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is four thousand one hundred dollars (\$4,100).

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order contained in Section V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Graham Kim, EPCRA Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-164
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under EPCRA Section 325(f), 42 U.S.C. § 11045(f), together with interest, handling charges, and additional non-payment penalties described below.

4.7.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid in accordance with the payment schedule established in Paragraph 4.4.

4.7.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

4.7.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay a nonpayment penalty in an amount equal to six percent (6%) per annum on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Section III and is currently in compliance with all applicable EPCRA requirements at each of the facilities under its control.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

11/14/2011

FOR RESPONDENT:

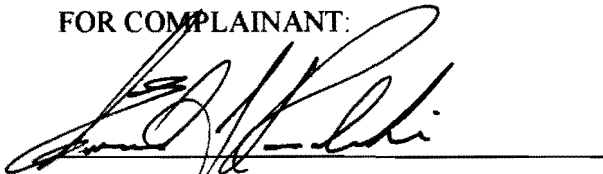


RICHARD PEAKE, Environmental Manager
Frazier Industrial Company

DATED:

11/17/2011

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

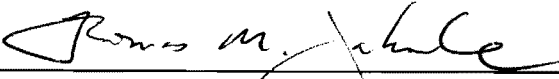
V. **FINAL ORDER**

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to EPCRA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of EPCRA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 22nd day of November, 2011.


THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Frazier Industrial Company, DOCKET NO.: EPCRA-10-2012-0027** was filed with the Regional Hearing Clerk on November 22, 2011.


On November 22, 2011 the undersigned certifies that a true and correct copy of the document was delivered to:

Jillian Bunyan
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on November 22, 2011, to:

Richard Peake
Environmental Manager
Frazier Industrial Company
1111 West Jefferson Street, Suite 530
Boise, Idaho 83702

DATED this 22nd day of November 2011.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10