

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2010 JUL 21 PM 2:07
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	§	
	§	
	§	DOCKET NO. EPCRA 06-2010-0511
FRYMASTER	§	
SHREVEPORT, LOUISIANA	§	COMPLAINT AND
	§	CONSENT AGREEMENT AND
	§	FINAL ORDER
RESPONDENT	§	
	§	
	§	

CONSENT AGREEMENT AND FINAL ORDER

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Frymaster (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order ("CAFO").

I.
PRELIMINARY STATEMENT

1. This proceeding for assessment of civil penalties pursuant to Section 325(c) the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C § 11045(c), is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13 (b) and 22.18 (b)(2) and (3).
2. For purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.
3. The Respondent explicitly waives any right to contest the allegations and its rights to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

5. The Respondent consents to the issuance of this CAFO, to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this.

6. The Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

7. The Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

8. The Respondent hereby certifies that, as of the date of its execution of CAFO, Frymaster, Shreveport, Louisiana has corrected the violation alleged in the Complaint and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

II. STATUTORY AND REGULATORY BACKGROUND

9. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22, 372.23, and 372.30, require the owner or operator of a facility that: (a) has 10 or more full-time employees; (b) is an establishment with a primary Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), or a primary North American Industry Classification System (NAICS) subsector or industry code listed in § 372.23(b) or (c); and c) "manufactures, processes, or otherwise uses" a toxic 313 chemical listed under subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA and EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.25, 372.27, and 372.28

during the calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator or 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 during that preceding calendar year.

10. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023 (f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(f) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30, is 25,000 pound for any toxic chemicals "manufactured or processed" and 10,000 pounds for any toxic chemical "otherwise used" for the applicable calendar year. Alternative reporting thresholds are set forth in 40 C.F.R. § 372.27 and 372.28.

III.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

11. The Respondent is a corporation incorporated under the laws of the State of Louisiana, and authorized to do business in Louisiana.

12. The Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

13. The Respondent owns and operates Frymaster located in 8700 Line Avenue, Shreveport, Louisiana.

14. Frymaster identified in Paragraph 13 is a "facility", as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3

15. Respondent's facility has 10 or more "full-time employees," as that term is defined by 40 C.F.R. § 372.3.

16. Respondent's facility is in SIC Code 3499, fabricated metal products, nec, or NAICS Code 332999, other miscellaneous fabricated product manufacturing.

17. Lead is a "toxic chemical" with the meaning of 40 C.F.R. §§ 372.4 and 372.65.

18. During calendar years 2008, the toxic chemicals listed in Paragraph 17 of this CAFO were "manufactured, processed or otherwise used" as those terms are defined by 40 C.F.R. § 372.3, at Respondent's facility.

19. On July 29 & 30, 2009, a duly authorized representative from EPA, Region 6, conducted an inspection of Respondent's facility located at 8700 Line Avenue, Shreveport, Louisiana.

B. VIOLATIONS

20. During calendar year 2008, the Respondent "manufactured, processed, or otherwise used" lead at the Respondent's facility in excess of the applicable threshold quantities.

21. The Respondent filed a Form R for lead 34 days late with the EPA and the State of Louisiana for lead for calendar year 2008.

22. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit complete and accurate Form R's for lead for calendar year 2008 to EPA and to the State of Louisiana by July 1, 2009

IV. CIVIL PENALTY AND TERMS OF SETTLEMENT

23. For the reasons set forth above, the Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c),

which authorizes EPA to assess a civil penalty of up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500)¹ per day for each violation of EPCRA.¹ Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the nature, circumstances, extent and gravity of the alleged violations, and with respect to the Respondent, its culpability, history of prior EPCRA Section 313 violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and factors as justice may require, it is ORDERED that Respondent be assessed a civil penalty of **SEVEN THOUSAND THREE HUNDRED THIRTY-EIGHT DOLLARS AND NO CENTS (\$7,338)**.

24. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check , cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail(including certified mail), overnight mail, or wire transfer. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

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

with a phone number of (314) 418-1028.

¹ *Ibid.*

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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"

As an alternative to the above methods of payment, EPA now has the flexibility to accept payment via credit cards and bank transfers over the internet. Visit www.pay.gov and see Attachment 1 for directions if remittance is to be made in this manner.

PLEASE NOTE: Docket number EPCRA 06-2010-0511 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Stan Lancaster
Toxics Section (6PD-T)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733;

and

Lorena Vaughn
Region 6 Hearing Clerk
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

25. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

26. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f), to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

27. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will 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. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective 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. Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period of the debt is overdue. *See* 40 C.F.R. § 13.11(b).

28. EPA will also 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) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c)

Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent *See* 31 C.F.R. § 901(d). Other penalties for failure to make a payment may also apply.

29. This document is a "Final Order" as that term is defined in the "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)," dated August 10, 1992; Amended, April 21, 2001; for the purpose of demonstrating a history of "prior such violations" This document is a "Final Order" as that term is defined in the 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), dated August 10, 1992, for the purpose of demonstrating a history of "prior such violations."

B. RETENTION OF ENFORCEMENT RIGHTS

30. The EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal laws, regulations, statutes, or permitting conditions.

31. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C § 11023, and 40 C.F.R. Part 372.

32. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment or prevent, abate, or minimize an actual or threatened release of hazardous substance, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

C. COSTS

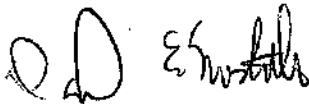
23. Each party shall bear its own costs and attorneys fees. Furthermore, the Respondent specifically waives its rights to seek reimbursement of its cost and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date:

July 12, 2010

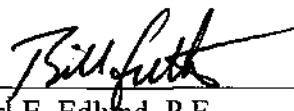


Dave Mosteller
Executive Vice President / General Manager
Frymaster
Shreveport, LA 71106

FOR THE COMPLAINANT:

Date:

21 July 2010

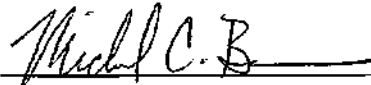


Carl E. Edlund, P.E.
Director
Multimedia Planning and Permitting Division
U.S. EPA Region 6
Dallas, TX 75214

FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case 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 Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated July 21, 2010



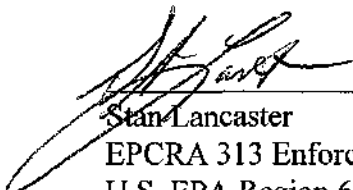
Michael C. Barra
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of July, 2010, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order ("Complaint and CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL RETURN RECEIPT REQUESTED #7010 1060 0002 1871 9331

Russell Shields
Industrial Engineering Manager
Frymaster
8700 Line Avenue
Shreveport, LA 71106



Stan Lancaster
EPCRA 313 Enforcement Officer
U.S. EPA Region 6
Dallas, Texas