



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 28 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Matthew Johnston, Corporate Manager
Worthington Cylinders Mississippi, LLC
Worthington Industries
200 Old Wilson Road
Columbus, Ohio 43085

Re: Worthington Cylinders Mississippi, LLC
Consent Agreement and Final Order
Docket No. EPCRA-04-2016-2018(b)

Dear Mr. Johnston:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also, enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Worthington Cylinders Mississippi, LLC on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document, "SEC" refers to the Securities and Exchange Commission.

Should you have any questions concerning this matter or Worthington Cylinders Mississippi, LLC's compliance status in the future, please contact Ellen Rouch of the EPA staff at (404) 562-9575.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief

Chemical Safety and Enforcement Branch

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV**

IN THE MATTER OF:)
)
Worthington Cylinders)
Mississippi, LLC)
)
Respondent.)
_____)

Docket Number: EPCRA-04-2016-2018(b)

2/17/2018 2:38 AM
HEAVENLY CREATIONS
OFFICE OF GENERAL COUNSEL

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region IV, United States Environmental Protection Agency, EPA. Respondent is Worthington Cylinders Mississippi, LLC.

2. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region IV, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region IV Delegation 22-3-A, dated November 8, 1994. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent is Worthington Cylinders Mississippi, LLC, a limited liability corporation doing business in the State of Mississippi.

5. Respondent is a "person" and owned and operated, at all times relevant to the allegations in Section III, a "facility" as those terms are defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), respectively.

6. Respondent's facility was located at 795 Sam Barkley Drive, New Albany, Mississippi 38652. Respondent sold the facility to a third party in May 2015.

III. EPA's Allegations of Violations

Violation of Section 313 of EPCRA

7. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30, require the owner or operator of a facility that (a) has 10 or more full-time employees; (b) is in a Standard Industrial Classification (SIC) major group or industry listed in 40 C.F.R. § 372.23(a) (for which the corresponding North American Industry Classification System subsector and industry codes are listed in 40 C.F.R. §§ 372.23(b) and 372.23(c)); and (c) manufactured, processed, or otherwise used a toxic chemical listed in Section 313(c) and 40 C.F.R. § 372.65, in excess of an applicable threshold quantity established under EPCRA Section 313(f) and set forth in 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory reporting Form R (EPA Form 9350-1) to the Administrator of the EPA and to the State in which the 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 the preceding calendar year.

8. As set forth under Section 313(f) of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds per calendar year. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds. The reporting threshold for manufacturing, processing, and otherwise using a chemical of special concern are listed under 40 C.F.R. § 372.28.

9. Respondent had 10 or more full-time employees, as defined at 40 C.F.R. § 372.3 at its facility.

10. Respondent's facility was classified under SIC code 3462 and NAICS Code 332112.

11. Respondent's facility was classified in a covered SIC code as described at 40 C.F.R. § 372.22 and in a covered NAICS code as described at 40 C.F.R. § 372.23.

12. Copper, nickel, manganese, nitric acid and lead are toxic chemicals, referenced at Section 313(c) of EPCRA, 42 U.S.C. § 11023, and listed under 40 C.F.R. § 372.65.

13. Respondent's facility processed the toxic chemicals nickel and manganese in excess of the 25,000 pound threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.25, during calendar years 2012 and 2013. Respondent's facility processed the toxic chemical lead in excess of the 100 pound threshold quantity

established under Section 313(f) of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.28, during calendar years 2012 and 2013. Respondent's facility otherwise used the toxic chemical nitric acid in excess of the 10,000 pound threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.25, during calendar years 2012 and 2013. Respondent's facility processed the toxic chemical copper in excess of the 25,000 pound threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.25, during calendar year 2013.

14. Respondent failed to submit a Form R for nickel, manganese, nitric acid and lead to the Administrator of the EPA and to the officials designated by the Governor of the State of Mississippi by July 1 of the reporting year for calendar year 2012 and also failed to submit a Form R for copper, nickel, manganese, nitric acid and lead to the Administrator of the EPA and to the officials designated by the Governor of the State of Mississippi by July 1 of the reporting year for calendar year 2013.

15. Respondent violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, at its facility for calendar years 2013 and 2012, and is therefore subject to the assessment of penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045.

16. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 for each violation of Section 313 that occurred after January 12, 2009 and December 6, 2013. Each day a violation of Section 313 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by an Administrative Order.

Violations of Section 312 of EPCRA

17. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, on or before March 1 annually, a completed emergency and hazardous chemical inventory form (Tier I or Tier II) as described in 40 C.F.R. Part 370, containing the information required by that part for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds and containing the information required by that part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less.

18. At some time during calendar years 2014 and 2013, nitric acid and sulfuric acid were present at the facility in amounts equal to or greater than their TPQs of 500 pounds.

19. Sulfuric acid and nitric acid are "hazardous chemicals" as defined under Section 329(5) of EPCRA, 42 U.S.C. § 11049(5) and 40 C.F.R. § 355.61, and each is an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40

C.F.R. § 355.61, for which Respondent is required to prepare or have available an MSDS under OSHA at its facility. Sulfuric acid and nitric acid are also listed as extremely hazardous substances in 40 C.F.R. Part 355, Appendices A and B.

20. Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for nitric acid and sulfuric acid to the SERC, the LEPC, and fire department with jurisdiction over the facility for calendar years 2014 and 2013, by March 1 of the following year.

21. The EPA alleges that Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facility for calendar years 2014 and 2013, and is therefore subject to the assessment of civil penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

22. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 C.F.R. Part 19, the EPA may assess a “maximum statutory” penalty for each violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a). Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

IV. Consent Agreement

23. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

24. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

25. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

26. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

27. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

28. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public’s interest and that this CAFO is consistent with the applicable requirements of EPCRA.

V. Final Order

29. Respondent shall pay a civil penalty of **ONE HUNDRED FIFTY-NINE THOUSAND THREE HUNDRED AND THIRTY-SIX DOLLARS (\$159,336)**, for the

violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

30. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to the following address:

BY MAIL

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, Missouri 63197-9000

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(513) 487-2091

BY ELECTRONIC TRANSFER*

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: US Environmental Protection Agency

*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the U.S. EPA.

The payment shall reference on its face the name and the Docket Number of the CAFO.

31. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Erika White
U.S. EPA Region 4
Air, Pesticides and Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

32. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

33. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

34. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

35. This CAFO shall be binding upon the Respondent, its successors and assigns.

36. The following individual is authorized to receive service for the EPA in this proceeding:

Robert W. Bookman
U.S. EPA Region 4
Air, Pesticides and Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9169

37. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

The remainder of this page intentionally left blank.

VI. Effective Date

38. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

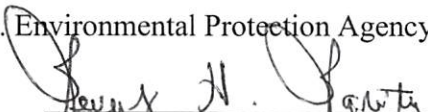
Worthington Cylinders Mississippi, LLC

By:  (Signed) Date: 1/27/17

Name: DALE T BRENKMAN (Typed or Printed)

Title: VICE PRESIDENT (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 2/23/17

Beverly H. Banister

Director

Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 27th day of March, 2017.



Tanya Floyd

Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Worthington Industries, Docket Number: EPCRA- 04-2016-2018(b), on the parties listed below in the manner indicated:

Robert W. Bookman (Via EPA's internal mail)
U.S. EPA Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street
Atlanta, Georgia 30303

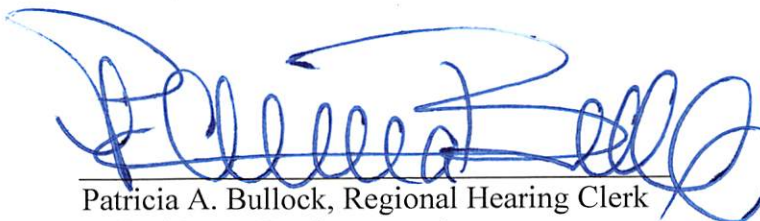
Robert Caplan (Via EPA's internal mail)
Senior Attorney
U.S. EPA Region 4
Office of Regional Counsel
61 Forsyth Street
Atlanta, Georgia 30303

Ellen Rouch (Via EPA's internal mail)
Associate Regional Council
U.S. EPA Region 4
Office of Regional Counsel
61 Forsyth Street
Atlanta, Georgia 30303

Worthington Cylinders Mississippi, LLC (Certified Mail—Return Receipt Requested)
C/o Matthew Johnston
Corporate Manager
Worthington Industries
200 Old Wilson Road
Columbus, Ohio 43085

Date:

3-28-17



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511