

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

<b>In the Matter of</b>	:	
	:	
<b>D.L. Martin Company</b>	:	<b>Docket No. EPCRA-03-2010-0328</b>
<b>25 E. Harbaugh Drive</b>	:	
<b>Mercersburg, PA 17236</b>	:	
	:	
<b>Respondent</b>	:	<b>CONSENT AGREEMENT</b>
	:	
	:	
<b>D.L. Martin Company</b>	:	
<b>25 E. Harbaugh Drive</b>	:	
<b>Mercersburg, PA 17236</b>	:	<b>Proceeding under EPCRA 325(c)</b>
	:	<b>42 U.S.C. § 11045(c)</b>
<b>Facility</b>	:	

**CONSENT AGREEMENT**

**Preliminary Statement**

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, ("Complainant"), and D.L. Martin Company ("Respondent" or "D.L. Martin") 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), for violations of 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. Sections 22.13(b) and 22.18(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 the violations of EPCRA Section 313, as alleged herein, by Respondent at its Facility located at 25 E. Harbaugh Drive in Mercersburg, Pennsylvania.

2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

3. Except as provided in paragraph 2, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

4. Respondent agrees not to contest the jurisdiction of the U.S. Environmental Protection Agency ("EPA") with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

5. 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.

6. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

7. Respondent shall bear its own costs and attorney's fees.

#### **Findings of Fact and Conclusions of Law**

8. Complainant has determined that Respondent violated EPCRA Section 313. In accordance with Sections 22.13(b), 22.18(b)(2) and (3), and 22.14(a)(2) and (3) of the Consolidated Rules of Practice, Complainant adopts the following findings of fact and conclusions of law:

- A. D.L. Martin does business in Pennsylvania and is a corporation, incorporated under the laws of the Commonwealth of Pennsylvania. As a Pennsylvania corporation, Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
- B. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. Section 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.
- C. Respondent owns and operates, and at the time of the violations alleged herein, owned and operated a facility that manufactures general industry machinery and is located at 25 E. Harbaugh Drive in Mercersburg, Pennsylvania (the "Facility").
- D. Respondent's Facility is a "facility" as defined in Section 329(4) of EPCRA and 40 C.F.R. § 372.3.
- E. Section 313 of EPCRA and 40 C.F.R. Section 372 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 (as in effect on July 1, 1985) between codes 20 and 39; and 3) manufactures, processes or otherwise uses a toxic chemical listed in 40 C.F.R. Section 372.65, in excess of the threshold quantities set forth in Section 313(f) of EPCRA, 42

U.S.C. Section 11023(f), during the calendar year for which the form is required, to complete and submit a toxic chemical release form ("Form R") or appropriate alternative threshold report ("Form A") for each such toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year.

- F. At the time of the violations alleged herein, Respondent employed 10 or more full-time employees at the Facility.
- G. At the time of the violations alleged herein, the Facility had a primary SIC code of 3569. This SIC code falls between the primary SIC codes of 20 (2000) and 39 (3900) (as in effect on July 1, 1985).
- H. For each toxic chemical listed in 40 C.F.R. Section 372.65 that the Respondent manufactured, processed, or otherwise used at its Facility in excess of the threshold quantity set forth in Section 313(f) of EPCRA during any calendar year, Respondent has been required by EPCRA Section 313, at all times relevant to this Consent Agreement, to complete and submit to EPA and the Commonwealth of Pennsylvania either a Form R or Form A by July 1 of the following calendar year.
- I. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA Section 313 shall be liable to the United States for a civil penalty.
- J. American Westech, Inc., a consulting firm hired by D.L. Martin, disclosed potential EPCRA Section 313 violations in its January 5, 2009 e-mail to EPA on behalf of D.L. Martin, pursuant to "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 Fed. Reg. 19618 (April 11, 2000) ("Self-Disclosure Policy").
- K. Upon review of the information D.L. Martin provided, EPA determined that D.L. Martin violated Section 313 of EPCRA by failing to submit Toxic Chemical Release Inventory ("TRI") Forms R for Chromium, Nickel, and Manganese processed at its Facility during calendar years 2005 and 2006, and for Lead processed at its Facility during calendar years 2005, 2006, and 2007.
- L. Furthermore, EPA determined that D.L. Martin did not meet criterion two of the Self-Disclosure Policy, in that D.L. Martin did not voluntarily discover the violations for Chromium, Nickel, and Manganese for 2005 and 2006, and did not voluntarily discover the violations for Lead for 2005, 2006, and 2007, as required under Section D(2) of the Audit Policy.

### COUNT I - COUNT IX

- M. The chemical substances Chromium, Lead, Nickel, and Manganese are "toxic chemicals" as defined in EPCRA Section 313(c) - (d), 42 U.S.C. § 11023(c) - (d), and 40 C.F.R. Section 372.3, and are listed in 40 C.F.R. Section 372.65.
- N. As set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25, the reporting threshold amount for Chromium, Nickel, and Manganese which is processed at a facility is 25,000 pounds.
- O. During the calendar years 2005 and 2006, the Respondent processed Chromium in an amount that exceeded the 25,000 pound threshold quantity for reporting set forth in Section 313(f) of EPCRA, as that term is defined in EPCRA § 313(b)(1)(C)(ii), 42 U.S.C. § 11023(b)(1)(C)(ii), and 40 C.F.R. § 372.3.
- P. During calendar years 2005 and 2006, the Respondent processed Nickel in an amount that exceeded the 25,000 pound threshold quantity for reporting set forth in Section 313(f) of EPCRA, as that term is defined in EPCRA § 313(b)(1)(C)(ii), 42 U.S.C. § 11023(b)(1)(C)(ii), and 40 C.F.R. § 372.3.
- Q. During the calendar years 2005 and 2006, the Respondent processed Manganese in an amount that exceeded the 25,000 pound threshold quantity for reporting set forth in Section 313(f) of EPCRA, as that term is defined in EPCRA § 313(b)(1)(C)(ii), 42 U.S.C. § 11023(b)(1)(C)(ii), and 40 C.F.R. § 372.3.
- R. As set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.27, the reporting threshold amount for Lead which is processed at a facility is 100 pounds.
- S. During calendar years 2005, 2006 and 2007, the Respondent processed Lead in an amount that exceeded the 100 pound threshold quantity for reporting set forth in Section 313(f) of EPCRA, as that term is defined in EPCRA § 313(b)(1)(C)(ii), 42 U.S.C. § 11023(b)(1)(C)(ii), and 40 C.F.R. § 372.3.
- T. Respondent submitted to EPA and the Commonwealth of Pennsylvania its Forms R for Chromium, Nickel, and Manganese for calendar years 2005

and 2006, as well as for Lead for calendar years 2005, 2006, and 2007, on or around February 24, 2009, after the deadlines for submitting the forms.

- U. Respondent's failure to timely submit the required Forms R for Chromium, Nickel, and Manganese released at its Facility during calendar years 2005 and 2006, and for Lead during calendar years 2005, 2006, and 2007, constitutes nine violations of Section 313 of EPCRA, for which Respondent is liable for a civil penalty pursuant to EPCRA Section 325(c).

### Civil Penalty

9. To resolve EPA's claim for civil monetary penalties for the violations cited above, Respondent consents to the assessment of a civil penalty of Sixty Five Thousand Dollars (\$65,000.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed by certified mail return receipt requested.

10. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the particular facts and circumstances of this case and EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (August 10, 1992) and the Self-Disclosure Policy. The settlement in this proceeding is consistent with the provisions and objectives of EPCRA and 40 C.F.R. Part 372.

11. Payment of the civil penalty amount required under the terms of Paragraph 9, above, 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 its name and address and the Docket Number of this action (EPCRA-03-2010-0328).
- b. All check s 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: 314-418-1082

- 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](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

h. On-Line Payment Option:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. At the same time that payment is made, Respondents shall mail copies of any corresponding check, or written notification confirming any electronic write transfer to:

Bevin Esposito  
Lead Paralegal Specialist  
Team Leader for the Audit Policy  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC44)  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

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

12. Pursuant to 31 U.S.C. Section 3717 and 40 C.F.R. Section 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, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a 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. Section 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the 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.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

13. Respondent agrees not to deduct for federal taxation purposes the civil penalty paid pursuant to this CAFO.

#### **Certifications**

14. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Facility referred to in this Consent Agreement is currently in compliance with all applicable requirements of EPCRA Section 313.

#### **Other Applicable Laws**

15. 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**

16. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged in this CAFO. 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 and the regulations promulgated thereunder, to enforce the provisions of this CAFO and any other federal laws or regulations for which EPA has jurisdiction, following the filing of this CAFO with the Regional Hearing Clerk.

#### **Full and Final Satisfaction**

17. Payment of the penalty specified in paragraph 9, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 325 of EPCRA for the specific violations alleged in paragraphs 8.A through 8.U, above. Compliance with this 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**

18. 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**

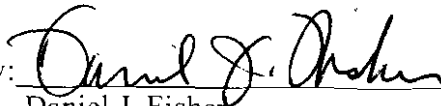
19. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA - Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules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

**Entire Agreement**

20. 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 violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

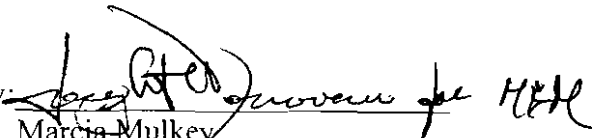
**For Respondent:**

Date 7/13/10

By:   
Daniel J. Fisher  
President/CEO  
D.L. Martin Co.

**For Complainant:**

Date 7/21/10

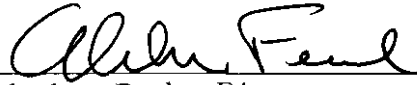
By:   
Marcia Mulkey  
Regional Counsel

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

Date:

8/13/10

By:



Abraham Ferdas, Director  
Land and Chemicals Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

IN RE:

DL Martin Company  
25 E. Harbough Drive  
Mercersburg Pennsylvania, 17236

Docket No. EPCRA-03-2010-0328

Respondent.

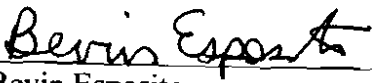
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the attached Consent Agreement and Final Order was served, via hand delivery, to Ms. Lydia A. Guy, Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029

I further certify that a true and correct copy of the attached Consent Agreement and Final Order was served by Certified Mail, Return Receipt Requested, Postage Prepaid to:

Daniel J. Fisher  
President/CEO  
D.L. Martin Company  
25 E. Harbaugh Drive  
Mercersburg, Pennsylvania 17236

9/16/10  
DATE

  
Bevin Esposito  
Lead Paralegal Specialist  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2637