

USEPA – Region II
Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of	:
	:
Diemolding Corporation	:
	:
	:
Respondent.	:
	:
	:
	:
Proceeding under Section 325(c) of Title III	:
of the Superfund Amendments and Reauthorization Act	:
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CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET NUMBER
EPCRA-02-2021-4201

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 et seq. [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA")].

Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (hereinafter, "Consolidated Rules") where the parties agree to settlement of one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 2 (hereinafter "EPA" or "Complainant"), alleges that Diemolding Corporation ("Respondent" or "Diemolding") at 100 Donald Hicks Dew Drive, Wampsville, NY 13263 (hereinafter, "Respondent's facility"), violated the requirements of Section 313 of EPCRA (42 U.S.C. § 11023) and the regulations promulgated pursuant to that section, codified at 40 C.F.R. Part 372.

Under Section 313 of EPCRA and 40 C.F.R. § 372.22, owners or operators of a facility subject to the requirements of Section 313(b) are required to submit annually, no later than July 1 of each year, a complete and correct Toxic Chemical Release Inventory Reporting Form R report, EPA Form 9350-1 (hereinafter, "TRI Form R report") for each toxic chemical listed under 40 C.F.R. § 372.65 and/or 40 C.F.R. § 372.28 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. Each required TRI Form R report must be submitted to the Environmental Protection Agency and to the State or Territory in which the subject facility is located.

As an alternative to the requirements set forth above, pursuant to Section 313(f)(2) of EPCRA (42 U.S.C. § 11023(f)(2)) and 40 C.F.R. § 372.27, owners or operators of a facility subject to the requirements of Section 313(b) with respect to the "manufacture, process or otherwise use" of a toxic chemical may apply an alternate threshold of one million (1,000,000) pounds per year to that chemical if the conditions set forth in 40 C.F.R. § 372.27(a) are met. If the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators, in lieu of filing a TRI Form R report, therefore, may submit an "Alternate Threshold Certification Statement" ("TRI Form A report") pursuant to 40 C.F.R. § 372.27(b). Pursuant to 40 C.F.R. § 372.27(e), EPA has excluded the Persistent Bioaccumulative Toxic Chemicals listed in 40 C.F.R. § 372.28 from eligibility for the Alternate Thresholds described in 40 C.F.R. § 372.27(a). [59 FR 61502, Nov. 30, 1994, as amended at 64 FR 58750, Oct. 29, 1999; as amended at 71 FR 76944, Dec. 22, 2006; as amended at 74 FR 19005, Apr. 27, 2009]

EPA and Diemolding Corporation agree that settling this matter by entering into this CAFO, pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. § 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made. The following constitutes Complainant's findings of fact and conclusions of law based upon information EPA obtained as the result of the November 2020 Information Request Letter (IRL) sent by electronic mail to the facility, and subsequent communications with the facility.

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

1. Respondent is Diemolding Corporation (TRI Facility ID: 13163DMLDNDONAL).
2. At all times relevant hereto, Respondent has maintained a facility located at 100 Donald Hicks Dew Drive, Wampsville, NY 13263, which is the subject of this CAFO.
3. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. § 11049(7)).
4. Respondent is an owner of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. § 11049(4)) and by 40 C.F.R. § 372.3.
5. Respondent is an operator of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. § 11049(4)) and by 40 C.F.R. § 372.3.
6. Respondent's facility has ten (10) or more "full time employees" as that term is defined by 40 C.F.R. § 372.3.
7. Respondent's facility is in North American Industry Classification System "NAICS" code 326199 – All Other Plastics Product Manufacturing.
8. Respondent is subject to the requirements of Section 313(b) of EPCRA (42 U.S.C. § 11023(b)) and 40 C.F.R. § 372.22.
9. Ammonia (Chemical Abstract Service No.: 7664-41-7) is a listed chemical under 40 C.F.R. § 372.65.
10. Phenol (Chemical Abstract Service No.: 108-95-2) is a listed chemical under 40 C.F.R. § 372.65.
11. Respondent was required to submit a timely, complete, and correct TRI Form A or Form R report for Ammonia for calendar year 2017 on or before July 1, 2018 to the Administrator of the EPA and to the State of New York.
12. Respondent submitted a Form R report for Ammonia for calendar year 2017 on July 23, 2018.
13. Respondent's failure to submit a timely TRI Form A or Form R report for Ammonia for calendar year 2017 to the EPA constitutes a failure to comply with Section 313 of EPCRA 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

14. Respondent was required to submit a timely, complete, and correct TRI Form A or Form R report for Phenol for calendar year 2017 on or before July 1, 2018 to the Administrator of the EPA and to the State of New York.

15. Respondent submitted a Form R report for Phenol for calendar year 2017 on July 23, 2018.

16. Respondent's failure to submit a timely TRI Form A or Form R report for Phenol for calendar year 2017 to the EPA constitutes a failure to comply with Section 313 of EPCRA 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

17. Respondent was required to submit a timely, complete, and correct TRI Form A or Form R report for Ammonia for calendar year 2018 on or before July 1, 2019 to the Administrator of the EPA and to the State of New York.

18. Respondent submitted a Form R report for Ammonia for calendar year 2018 on July 3, 2019.

19. Respondent's failure to submit a timely TRI Form A or Form R report for Ammonia for calendar year 2018 to the EPA constitutes a failure to comply with Section 313 of EPCRA 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

20. Respondent was required to submit a timely, complete, and correct TRI Form A or Form R report for Phenol for calendar year 2018 on or before July 1, 2019 to the Administrator of the EPA and to the State of New York.

21. Respondent submitted a Form R report for Phenol for calendar year 2018 on July 3, 2019.

22. Respondent's failure to submit a timely TRI Form A or Form R report for Phenol for calendar year 2018 to the EPA constitutes a failure to comply with Section 313 of EPCRA 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

23. Respondent was required to submit a timely, complete, and correct TRI Form A or Form R report for Ammonia for calendar year 2019 on or before July 1, 2020 to the Administrator of the EPA and to the State of New York.

24. Respondent submitted a Form R report for Ammonia for calendar year 2019 on July 29, 2020.

25. Respondent's failure to submit a timely TRI Form A or Form R report for Ammonia for calendar year 2019 to the EPA constitutes a failure to comply with Section 313 of

EPCRA 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

26. Respondent was required to submit a timely, complete, and correct TRI Form A or Form R report for Phenol for calendar year 2019 on or before July 1, 2020 to the Administrator of the EPA and to the State of New York.

27. Respondent submitted a Form R report for Phenol for calendar year 2019 on July 30, 2020.

28. Respondent's failure to submit a timely TRI Form A or Form R report for Phenol for calendar year 2019 to the EPA constitutes a failure to comply with Section 313 of EPCRA 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 325(c) of EPCRA, and in accordance with the Consolidated Rules at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms.

1. Respondent hereby certifies that, as of the date of its signature to this Agreement, to the best of its knowledge and belief, it is now in full compliance with the provisions and statutory requirements of Section 313 of EPCRA and the regulations set forth at 40 C.F.R. Part 372.

2. For the purpose of this proceeding, Respondent knowingly and voluntarily: (a) admits that EPA has jurisdiction under EPCRA to enforce the provisions of the Act and the regulations promulgated thereunder; (b) neither admits nor denies the specific factual allegations and assertions set forth in the "Findings of Fact and Conclusions of Law" section; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

3. Respondent shall pay a civil penalty to EPA in the total amount of **FORTY-EIGHT THOUSAND ONE HUNDRED DOLLARS (\$48,100.00)**. The payment, in accordance with the terms and schedule of this Consent Agreement, shall be made by cashier's check, certified check, electronically via Fedwire or on-line. The payment shall be in accordance

with the instructions set forth in this paragraph. If Respondent makes payment by cashier's check or certified check, then each such check shall be *received* at the below-listed address on or before the date specified. If Respondent makes payment electronically, then each such Fedwire payment shall be *received* on or before the date specified.

- a. If Respondent chooses to make payment by cashier's check or by certified check, each such check shall be made payable to the **"Treasurer, United States of America"** and shall be identified with a notation thereon listing the following: ***In the Matter of Diemolding Corporation, EPCRA-02-2021-4201***. If payment is made by either form of check, such payment shall be mailed to the following address.

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

- b. If Respondent chooses to make payment by Fedwire, Respondent shall then provide the following information to its remitter bank when each such payment in accordance with this paragraph is being made:

- i. Amount of Payment;
- ii. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045;**
- iii. Account Code for Federal Reserve Bank of New York receiving payment: **68010727;**
- iv. Federal Reserve Bank of New York ABA routing number: **021030004;**
- v. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency;**
- vi. Name of Respondent: **Diemolding Corporation;** and
- vii. Docket Number: **EPCRA-02-2021-4201.**

- c. If Respondent chooses to make on-line payment, Respondent shall go to www.pav.gov and enter "SFO 1.1" in the search field on the tool bar on the Home Page; select "Continue" under "EPA Miscellaneous Payments – Cincinnati Finance Center;" and open the form and complete the required fields. Once payment has been effected, Respondent shall email proof of payment to crossmon.james@epa.gov with ***In the Matter of Diemolding Corporation, EPCRA-02-2021-4201*** as the subject line.

The payment amounting to Forty-Eight Thousand One Hundred Dollars (\$48,100) shall be received (if made by check) or effected (if implemented electronically) within thirty (30) calendar days after the Effective Date of this CAFO.

d. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

e. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

f. The civil penalty (including any payment of interest or late payment handling charge that come due) herein constitutes a “penalty” within the meaning of 26 U.S.C. § 162(f) and is not a deductible expenditure for purposes of federal or state law.

4. Execution of this Consent Agreement 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. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions or allegations contained in the “Findings of Fact and Conclusions of Law” section, above.

7. Respondent agrees not to contest the validity or any term of this CAFO in any action brought: a) by the United States, including EPA, to enforce this CAFO; or b) to enforce a judgment relating to this CAFO. Any failure by Respondent to perform fully any requirement

herein will be considered a violation of this CAFO and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CAFO. Respondent further waives any right it may have to appeal this CAFO.

8. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit.

9. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

10. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.

11. This Consent Agreement and any provision herein shall not be construed as an admission of any fact or of liability in any criminal or civil action or other administrative proceeding, except in an action, suit, or proceeding to enforce this Consent Agreement or any of its terms and provisions.

12. The signatory for the Respondent certifies that: (a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, provisions, and requirements set forth in this Consent Agreement, and (b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, provisions, and requirements of this Consent Agreement.

13. Each party shall bear its own costs and fees in this matter.

14. Complainant shall provide to Respondent, a copy of the fully executed CAFO. Respondent consents to service of this CAFO by electronic mail and consents to service upon it by an employee of EPA other than the Regional Hearing Clerk.

15. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent by electronic mail (unless not technically feasible given document type or size, then in hard copy) to the following.

James Crossmon, TRI Coordinator
U.S. Environmental Protection Agency, Region 2

2890 Woodbridge Avenue, MS-225
Edison, New Jersey 08837
Crossmon.james@epa.gov

16. Unless the above-named EPA contact is later advised otherwise in writing, EPA shall electronic mail any written communication related to this matter to Respondent at carlc@diemolding.com. However, in cases where electronic mail is not feasible given document type or size, such correspondence will be mailed to the following address.

Carl Cook, General Manager
Diemolding Corporation
100 Donald Hicks Dew Drive
Wampsville, NY 13263

17. EPA and Respondent agree that the parties may use electronic signatures for this matter.

RESPONDENT:

Diemolding Corporation

BY: 

Authorizing Signature

NAME: CARL B. COOK

(PLEASE PRINT)

TITLE: GENERAL MANAGER

DATE: 8/30/21

COMPLAINANT:

for **Dore LaPosta, Director**

Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

DATE: _____

In the Matter of Diemolding Corporation

Docket Number EPCRA-02-2021-4201

FINAL ORDER

The Acting Regional Administrator of the United States Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Diemolding Corporation, bearing Docket No. EPCRA-02-2021-4201. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. §§ 22.13(b) and 22.18(b)(3) and shall constitute an order issued under authority of Section 325(c) of EPCRA 42 U.S.C. § 11045(c).

Walter Mugdan

Acting Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

DATE: _____