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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
)
Delta Marine Industries) Docket No. EPCRA-10-2009-0209
25802 Pacific Highway, South)
Kent, Washington) CONSENT AGREEMENT AND
) FINAL ORDER
Respondent.)
)
_____)

I. 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. 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 in turn has redelegated this authority to the Regional Judicial Officer.

1.2 Pursuant to Section 325 of EPCRA, and in accordance with Section 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues and Delta Marine Industries ("Respondent") hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

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II. PRELIMINARY STATEMENT

2.1 In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(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 Respondent owns and operates a boat-building facility in Seattle, Washington located at 1608 South 96th Street ("the Facility").

2.3 A concise statement of the factual basis for alleging violations of the Act, together with specific references to the provisions of the Act and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

2.4 Under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), the EPA Administrator may assess a civil penalty of up to \$25,000 for each day of violation of Section 313 of EPCRA, 42 U.S.C. § 11023. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 42 C.F.R. Part 19, increased these statutory maximum penalties to \$32,500 per day of violation occurring after March 15, 2004.

III. ALLEGATIONS

3.1 Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know regulations in 40 C.F.R. Part 372.

3.2 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, 42 U.S.C. § 11023(c), 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.

3.3 A Form R must be submitted when the following conditions are met:

a. The facility has 10 or more full-time employees (or the equivalent of 20,000 hours per year) as specified in Section 313(a)(1) of EPCRA, 42 U.S.C. § 11023(a)(1), and defined in 40 C.F.R. §§ 372.3 and 372.22(a); and

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, processed, or otherwise used a toxic chemical listed under Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65 in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, 372.27, or 372.28 during the calendar year.

3.4 Respondent, Delta Marine Industries, is a corporation formed under the laws of the State of Washington.

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

3.6 Respondent is the owner or operator of a "facility," as that term is defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3, in Seattle, Washington.

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

3.8 Respondent's facility is included in NAICS code 336611, which is included in the list of covered industry codes listed in 40 C.F.R. § 372.23.

3.9 EPA alleges the following violations of Section 313 of EPCRA occurred:

a. **Violation 1:** During calendar year 2003, Respondent "processed," as defined in 40 C.F.R. 372.3, styrene at its facility in quantities exceeding the reporting threshold in 40 C.F.R. § 372.25, 372.27, or 372.28 and failed to submit a Form R for styrene for that year to EPA and the State of Washington by July 1, 2004. Styrene was a chemical category included in Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed in 40 C.F.R. Part 372. Failure to report is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

b. **Violation 2:** During calendar year 2004, Respondent "processed," as defined in 40 C.F.R. 372.3, styrene at its facility in quantities exceeding the reporting threshold in 40 C.F.R. § 372.25, 372.27, or 372.28 and failed to submit a Form R for styrene for that year to EPA and the State of Washington by July 1, 2005. Styrene was a chemical category included in

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Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed in 40 C.F.R. Part 372. Failure to report is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

c. **Violation 3:** During calendar year 2005, Respondent "processed," as defined in 40 C.F.R. 372.3, styrene at its facility in quantities exceeding the reporting threshold in 40 C.F.R. § 372.25, 372.27, or 372.28 and failed to submit a Form R for styrene for that year to EPA and the State of Washington by July 1, 2006. Styrene was a chemical category included in Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed in 40 C.F.R. Part 372. Failure to report is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

d. **Violation 4:** During calendar year 2007, Respondent "processed," as defined in 40 C.F.R. 372.3, styrene at its facility in quantities exceeding the reporting threshold in 40 C.F.R. § 372.25, 372.27, or 372.28 and failed to submit a Form R for styrene for that year to EPA and the State of Washington by July 1, 2008. Styrene was a chemical category included in Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed in 40 C.F.R. Part 372. Failure to report is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

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.

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4.3 Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

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

4.5 Except as provided in Paragraph 4.10, below, each party shall bear its own costs in bringing or defending this action.

4.6 Based on Respondent's willingness to settle this matter without litigation, the nature of the violations, Respondent's actions to correct the violations after having been notified by the Complainant, voluntary pollution reductions undertaken by Respondent after EPA inspected its facility, and other relevant factors, 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 that an appropriate penalty to settle this action is thirty-seven thousand and fifty dollars (\$37,050.00). Respondent consents to payment of the civil penalty, with interest, according to the following schedule:

From Effective Date of CAFO	Principal	Interest	Total
30 days	\$3,500.00		\$3,500.00
1 year	\$3,500.00	\$1,006.50	\$4,506.50
2 years	\$15,025.00	\$901.50	\$15,926.50
3 years	\$15,025.00	\$ 450.75	\$15,475.75

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If any installment payment is received more than 10 days after it is due, the entire amount of this debt will become immediately due and payable, with interest thereon from the effective date of the CAFO, at the option and sole discretion of EPA. If Delta Marine is sold or ownership interests are transferred during the period of the above described installment payment schedule, the remaining principal and accrued interest shall be due and payable as of the effective date of the sale or transfer. Respondent may pay any portion of the civil penalty earlier than the payment schedule set forth in this paragraph.

4.7 Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty cited in Paragraph 4.6.

4.8 Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "U.S. Treasury" and shall be 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 shall note on the check the title and docket number of this case.

4.9 Respondent shall submit a photocopy of the check described above to:

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

Graham Kim
U.S. Environmental Protection Agency

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Region 10, Mail Stop AWT-128
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.10 Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action under EPCRA Section 325(f), 42 U.S.C. § 11045(f), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.11 Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. 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.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid 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.

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4.12 This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, and local law.

4.13 Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original. A facsimile signature shall be treated as an original.

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

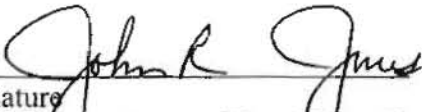
4.15 Respondent explicitly waives its right to contest the allegations contained in this CAFO and to appeal the Final Order contained herein.

4.16 Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III above.

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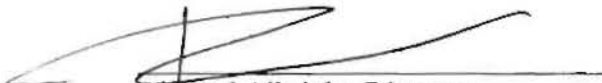
STIPULATED AND AGREED:

DELTA MARINE INDUSTRIES


Signature
Print Name: JOHN R. JONES
Title: Vice President

Dated: 8/5/09

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 10


Richard Albright, Director
Office of Air, Waste and Toxics

Dated: 8/12/09

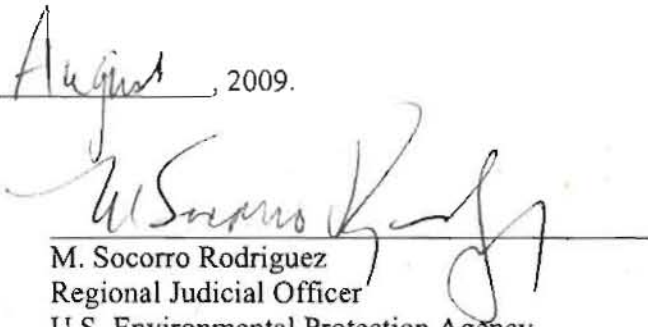
V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to EPCRA for the particular violations alleged in Part III, above. 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 the Act and regulations and permits issued thereunder.

This Final Order shall become effective upon filing.

SO ORDERED this 13th day of August, 2009.


M. Socorro Rodriguez
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: DELTA MARINE INDUSTRIES, DOCKET NO.: EPCRA-10-2009-0209** was filed with the Regional Hearing Clerk on August 13, 2009.

On August 13, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Meg Silver, Esquire
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 August 13, 2009, to:

Delta Marine Industries
John Jones, Vice President
c/o Doug Greason, Project Manager
1608 South 96th Street
Seattle, WA 98108

DATED this 13th day of August 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10