

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

September 20, 2023 @ 9:59 am

USEPA – Region II

Regional Hearing Clerk

CONSENT AGREEMENT

AND

FINAL ORDER

DOCKET NUMBER

EPCRA-02-2023-4201

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In the Matter of:

SLACK CHEMICAL COMPANY, INC.,

Respondent,

Proceeding under Section 325(c) of Title III
of the Superfund Amendments and Reauthorization Act.
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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 Slack Chemical Company, Inc. (hereinafter "Respondent" or "Slack") 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.

EPA and Slack 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 provided to EPA by Respondent.

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

1. Respondent is Slack Chemical Company, Inc., a New York corporation headquartered in Carthage, NY.

2. At all times relevant hereto, Respondent has maintained facilities located at 465 South Clinton Street, Carthage, NY 13619, TRI Facility ID 13619SLCKC465SC ("the Carthage facility"), and 21 Grande Boulevard, Saratoga Springs, NY 12866, TRI Facility ID 1286WSLCKC21GRA ("the Saratoga Springs facility") (collectively, "Respondent's facilities") which are the subject of this CAFO.

3. 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 ("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.

4. As an alternative to the requirements set forth in the preceding paragraph, 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 "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).

5. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. § 11049(7)).

6. 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.

7. 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.

8. Respondent's facilities each have ten (10) or more "full time employees" as that term is defined by 40 C.F.R. § 372.3.

9. Respondent's facilities are in North American Industry Classification System "NAICS" code 424690 – Other Chemical and Allied Products Merchant Wholesalers.

10. 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.

11. Ammonia (Chemical Abstract Service No.: 7664-41-7), Methanol (CAS 67-56-1), Nitric Acid (CAS 7697-37-2), and Toluene (CAS 108-88-3) are reportable chemicals listed at 40 C.F.R. § 372.65.

12. Respondent was required to submit to EPA, on or before July 1, 2020, a separate, timely, complete, and correct TRI Form R or Form a (as appropriate), for each of the following chemicals: Ammonia, Methanol, Nitric Acid, and Toluene manufactured, processed, or otherwise used in reportable quantities at its Carthage facility in calendar year 2019.

13. Respondent submitted the required TRI Forms R or Forms A for Ammonia, Methanol, Nitric Acid, and Toluene manufactured, processed, or otherwise used in reportable quantities at its Carthage facility in calendar year 2019 on May 10, 2021 (Ammonia) and May 13, 2021 (Methanol, Nitric Acid, Toluene).

14. Respondent was required to submit to EPA, on or before July 1, 2020, a timely, complete, and correct TRI Form R for Methanol manufactured, processed, or otherwise used in reportable quantities at its Saratoga Springs facility in calendar year 2019.

15. Respondent submitted a TRI Form R for Methanol manufactured, processed, or otherwise used in reportable quantities at its Saratoga Springs facility in calendar year 2019 on May 10, 2021.

16. Respondent was required to submit to EPA, on or before July 1, 2022, a separate, timely, complete, and correct TRI Form R or Form A (as appropriate) for each of the following

chemicals: Ammonia, Methanol, Nitric Acid, and Toluene manufactured, processed, or otherwise used in reportable quantities at its Carthage facility in calendar year 2021.

17. Respondent submitted the required TRI Forms R or Forms A for Ammonia, Methanol, Nitric Acid, and Toluene manufactured, processed, or otherwise used in reportable quantities at its Carthage facility in calendar year 2021 on November 21, 2022.

18. Respondent was required to submit to EPA, on or before July 1, 2022, a timely, complete, and correct TRI Form R for Methanol manufactured, processed, or otherwise used in reportable quantities at its Saratoga Springs facility in calendar year 2021.

19. Respondent submitted a TRI Form R for Methanol manufactured, processed, or otherwise used in reportable quantities at its Saratoga Springs facility for calendar year 2021 on November 21, 2022.

20. Respondent's failures to submit to the EPA timely TRI Forms R or A for Ammonia, Methanol, Nitric Acid, and Toluene manufactured, processed, or otherwise used in reportable quantities at its Carthage and Saratoga Springs facilities in calendar years 2019 and 2021 as described above constitute failures to comply with Section 313 of EPCRA 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

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.

21. Respondent hereby certifies that, as of the date of its signature to this Consent 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.

22. 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 any right it may

have to contest or appeal that Final Order.

23. Respondent shall pay a civil penalty to EPA in the total amount of **TWO HUNDRED THIRTY-ONE THOUSAND THREE HUNDRED DOLLARS (\$231,300)**. 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 such check shall be *received* at the below-listed address on or before the date specified. If Respondent makes payment electronically, then 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, 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 Slack Chemical Company, Inc., EPCRA-02-2023-4201***. 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 979078
Saint 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 such payment in accordance with this paragraph is being made:

- i. Amount of Payment: (\$231,300);
- 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: **Slack Chemical Company, Inc.**, and
- vii. Docket Number: **EPCRA-02-2023-4201**.

c. If Respondent chooses to make on-line payment, Respondent shall go to www.pay.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 and wise.milton@epa.gov with *In the Matter of Slack Chemical Company, Inc, EPCRA-02-2023-4201* as the subject line.

24. The payment of \$231,300 must be received by EPA on or before thirty (30) calendar days from the date on which the Regional Judicial Officer signs the Final Order located at the end of this CAFO (the “due date”). 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. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

25. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims.

a. Interest: Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on any portion of the civil penalty not paid by the relevant Due Date(s) specified above. Forty C.F.R. § 13.11 (a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate) on installment payments.

b. Handling Charges: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar period, or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.

c. Late Penalty Charge: A late penalty charge of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

26. The civil penalty (including any payment of interest or late payment handling charge that comes 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.

27. Full payment of the penalty shall only resolve Respondent’s liability for federal civil penalties for the violations described in Paragraphs 12-20, above. Full payment of this penalty 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 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.

28. 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.

29. 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.

30. 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.

31. This CAFO 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.

32. 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.

33. 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.

34. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this CAFO by an EPA employee other than the Regional Hearing Clerk via electronic mail to the following addressee: slack@slackchem.com. However, in cases where electronic mail is not feasible given document type or size, such correspondence will be mailed to the following address.

Robert R. Sturtz, CEO
Slack Chemical Company, Inc.
PO Box 30
Carthage, NY 13619

Delivery of the fully executed documents to the email addresses in this paragraph shall constitute Respondent's receipt and acceptance of the CAFO.

35. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted to EPA 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

36. 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 this CAFO constitutes the entire agreement between the parties and that all terms of settlement are set forth herein.

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

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

RESPONDENT:

Slack Chemical Company, Inc.

BY: _____

Authorizing Signature

NAME: _____

(PLEASE PRINT)

TITLE: _____

DATE: _____

COMPLAINANT:

Dore LaPosta, Director

Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency, Region 2

290 Broadway

New York, New York 10007

DATE: _____

FINAL ORDER

The 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 Slack Chemical Company, Inc.**, bearing Docket No. EPCRA-02-2023-4201. 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).

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

DATE: _____

CERTIFICATE OF SERVICE

I certify that, in accordance with the Standing Order of RJO Helen Ferrara dated August 3, 2020, I have this day sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, electronically to the respective addressees listed below:

By Electronic Mail:

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
Maples.karen@epa.gov

Robert R. Sturtz, CEO
Slack Chemical Company, Inc.
Slack@Slackchem.com
