



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 21 2007

REPLY TO THE ATTENTION OF:  
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0185 8795

Roy Harsch  
Drinker Biddle Gardner Carton  
191 N. Wacker Drive, Suite 3700  
Chicago, Illinois 60606-1698

**CERCLA-05-2007-0018**

Consent Agreement and Final Order, Docket No.

**EPCRA-05-2007-0032**

Dear Mr. Harsch:

**MM-05-2007-0010**

I have enclosed an original signed copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 21, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$18,763 is to be paid in the manner prescribed in paragraph 65 and 66. Please be certain that the number **BD 2750744E029** and the docket number are written on both the transmittal letter and on the check. The payment is due by October 22, 2007 (within 30 days of filing).

Thank you for your cooperation in resolving this matter.

Sincerely,

Terry Bonace  
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
Steve Kaiser, ORC/C-14J (w/Encl.)  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

In the Matter of:	)	
	)	<b>CERCLA-05-2007-0018</b>
HA International, LLC	)	Docket No. <b>EPCRA-05-2007-0032</b>
Oregon, Illinois	)	<b>MM-05-2007-0010</b>
	)	Proceeding to Assess a Civil Penalty
Respondent.	)	Under Section 325(c) of the Emergency
	)	Planning and Community Right-to-Know
	)	Act of 1986, 42 U.S.C. 11045 (c) and
	)	Section 109(b) of the Comprehensive
	)	Environmental Response, Compensation
	)	and Liability Act, 42 U.S.C. 9609(b)

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**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. Section 11045(c), Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9609(b), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant for Counts 1, 2, and 3, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5, has been delegated the authority to settle these same counts.

3. The Complainant for Counts 4 and 5 is the Chief, Emergency Responsive Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5. The

authority to settle Counts 4 and 5 has been delegated to the Director of the Superfund Division, U.S. EPA, Region 5.

4. Respondent is HA International, LLC, a limited liability corporation, licensed to do business in the State of Illinois, referred to hereinafter as "HAI."

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. 22.13 (b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of the CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

8. Respondent admits to the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. Respondent waives its right to request a hearing as provided at 40 C.F.R. 22.15( c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

10. Respondent certifies that it is complying with EPCRA Sections 312 and 313, 42 U.S.C. Sections 11022 and 11023, and CERCLA Section 103.

#### **Common Statutory and Regulatory Background**

11. HAI is a "person," as defined at Section 329(7) of EPCRA, 42 U.S.C. Section 11049(7).

12. At all times relevant to this CAFO, HAI was the owner or operator of the facility located at 1449 Devils Backbone Road, Oregon, Illinois, referred to herein after as the "Facility."

13. The Facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

14. The Facility owned by HAI is a "facility," as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. Section 11049(4).

15. Section 313 of EPCRA and 40 C.F.R. Section 372.22 and 372.30 require the owner or operator of a facility that: has 10 or more full-time employees; is covered by the Standard Industrial Classification (SIC) major group code 10 (except 1011, 1081, and 1094), major group code 12 (except 1241), major group codes 20 through 39, industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce), industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C, 42 U.S.C. Section 6921 et seq.), industry codes 5169 or 5171, or industry code 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis) and that meets one of the criteria set forth in 40 C.F.R. Section 372.22(b)(1)-(3); and manufactured, processed, or otherwise used a toxic chemical in an amount in excess of an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. Section 372.25, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of U.S. EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed,

or otherwise used in quantities exceeding the established threshold during that preceding calendar year.

16. At all times relevant to this CAFO, HAI had “10 or more full-time employees,” as defined at 40 C.F.R. Section 372.3, at the Facility.

17. At all times relevant to this CAFO, the Facility had an SIC code of 2899, a covered SIC code as defined under Section 313 of EPCRA and 40 C.F.R. Section 372.22.

18. As set forth at Section 313(f) of EPCRA and 40 C.F.R. Section 372.25, except as provided in 40 C.F.R. Sections 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years subsequent to and including 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for a calendar year subsequent to and including 1987.

19. In conformity with the “Final Policy Statement on Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations” (the Self-Disclosure Policy), 65 Fed. Reg. 19618 (April 11, 2000), the violations of Section 313 of EPCRA at HAI’s Facility which are the subject of this CAFO were voluntarily disclosed to U.S. EPA by HAI by letter dated June 29, 2006, and by HAI’s affidavit dated October 20, 2006.

**Alleged Violations of Section 313 of EPCRA**

**Count 1: Calendar Year 2002, Form R, Ammonia**

20. During calendar year 2002, HAI’s Facility processed, as that term is defined at 40 C.F.R. Section 372.3, ammonia, CAS No. 7664-41-7, a chemical listed at 40 C.F.R. Section 372.65, in the amount of 42,383 pounds, which is greater than 25,000 pounds, the threshold for

reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. Section 11023(f) and 40 C.F.R. Section 372.25.

21. HAI was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R or a Form A for ammonia for calendar year 2002 by July 1, 2003.

22. HAI did not submit to the Administrator of U.S. EPA and to the State of Illinois a Form R or a Form A for ammonia for calendar year 2002 by July 1, 2003.

23. HAI submitted to the Administrator of U.S. EPA and to the State of Illinois the required Form R for ammonia on October 20, 2006.

**Count 2: Calendar Year 2003, Form R, Ammonia**

24. During calendar year 2003, HAI's Facility processed, as that term is defined at 40 C.F.R. Section 372.3, ammonia, CAS No. 7664-41-7, a chemical listed at 40 C.F.R. Section 372.65, in the amount of 54,770 pounds, which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. Section 11023(f) and 40 C.F.R. Section 372.25.

25. HAI was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R or a Form A for ammonia for calendar year 2003 by July 1, 2004.

26. HAI did not submit to the Administrator of U.S. EPA and to the State of Illinois a Form R or a Form A for ammonia for calendar year 2003 by July 1, 2004.

27. HAI submitted to the Administrator of U.S. EPA and to the State of Illinois the required Form R for ammonia on October 20, 2006.

**Count 3: Calendar Year 2004, Form R, Ammonia**

28. During calendar year 2003, HAI's Facility processed, as that term is defined at

40 C.F.R. Section 372.3, ammonia, CAS No. 7664-41-7, a chemical listed at 40 C.F.R. Section 372.65, in the amount of 65,235 pounds, which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. Section 11023(f) and 40 C.F.R. Section 372.25.

29. HAI was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R or a Form A for ammonia for calendar year 2004 by July 1, 2005.

30. HAI did not submit to the Administrator of U.S. EPA and to the State of Illinois a Form R or a Form A for ammonia for calendar year 2004 by July 1, 2005.

31. HAI submitted to the Administrator of U.S. EPA and to the State of Illinois the required Form R for ammonia on October 20, 2006.

#### **Alleged Violations of Section 312 of EPCRA**

32. Section 312(a) of EPCRA, 42 U.S.C. Section 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), appropriate local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, a completed Emergency and Hazardous Chemical Inventory Form (Tier 1 or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds

or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

33. At all times relevant to this CAFO, HAI was an employer at the Facility.

34. At all times relevant to this CAFO, the Illinois State Emergency Response Commission was the SERC for Illinois, under Section 301(a) of EPCRA, 42 U.S.C. Section 11001(a).

35. At all times relevant to this CAFO, the Ogle County Sheriff's Department was the LEPC for Will County, Illinois, under Section 301(c) of EPCRA, 42 U.S.C. Section 11001(c).

36. At all times relevant to this CAFO, the City of Oregon Fire Department was the fire department with jurisdiction over the Facility.

37. 29 C.F.R. Section 1910.1200(d)(3) provides that the chemical manufacturer, importer, or employer evaluating chemicals shall treat the following sources as establishing that the chemicals listed in them are hazardous: 29 C.F.R. Section 1910 subpart Z.

38. Urea is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. Section 11021(e), and 29 C.F.R. Section 1910.1200(c).

39. Urea has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

#### **Count 4: Calendar Year 2005**

40. During at least one period of time in calendar year 2005, urea was present at the Facility in an amount equal to or greater than 10,000 pounds, the minimum threshold level.

41. Under 29 C.F.R. Section 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed



including, but not limited to, MSDS.

42. Because during at least one period of time in calendar year 2005 urea was present at the Facility in an amount equal to or greater than 10,000 pounds, OSHA required HAI to prepare, or have available, an MSDS for urea.

43. HAI failed to submit to the SERC by March 1, 2006, for calendar year 2005 a completed Emergency and Hazardous Chemical Inventory Form including urea in violation of Section 312(a) of EPCRA, 42 U.S.C. Section 11022(a).

44. HAI failed to submit to the LEPC by March 1, 2006, for calendar year 2005 a completed Emergency and Hazardous Chemical Inventory Form including urea in violation of Section 312(a) of EPCRA, 42 U.S.C. Section 11022(a).

45. HAI failed to submit to the City of Oregon Fire Department by March 1, 2006, for calendar year 2005, a completed Emergency and Hazardous Chemical Inventory Form including urea in violation of Section 312(a) of EPCRA, 42 U.S.C. Section 11022(a).

46. HAI submitted to the SERC, LEPC, and Oregon Fire Department for calendar year 2005 a completed Emergency and Hazardous Chemical Inventory Form including urea.

**Alleged Violations of CERCLA Section 103**

**Count 5 failure to Immediately Notify the National Response Center**

47. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

48. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

49. At all times relevant to this CAFO, Respondent was in charge of the Facility.

50. Respondent's Facility consists of buildings, structures, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

51. Respondent's Facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

52. Phenol (CAS# 108-95-2) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

53. Phenol (CAS# 108-95-2) has a reportable quantity 1,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

54. On June 9, 2006, Respondent discovered that Respondent's Facility continuously released approximately 3,300 pounds of phenol per day (the Release).

55. In a 24 hour time period, the Release of phenol exceeded 1,000 pounds.

56. During each day of the Release, approximately 3,300 pounds spilled, leaked, pumped, poured, emitted, emptied, or discharged, into the ambient air.

57. The release is a "release" as that term is defined under Section 101(22) of CERCLA 42 U.S.C. § 9601(22).

58. Respondent notified the NRC of the release on June 29, 2006, at 9:15 a.m.

59. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

60. Each day Respondent failed to notify immediately the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

#### **Civil Penalty**

61. Pursuant to Section 325 of EPCRA, 42 U.S.C. Section 11045, Complainant determined that an appropriate civil penalty to settle this action is \$18,763.00. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, prior history of violations, economic benefit or savings resulting from the violations, and other matters as justice may have required.

Complainant also considered the *Enforcement Response Policy for Section 313 Of The Emergency Planning And Community Right-to-Know Act (1986) And Section 6607 Of The Pollution Prevention Act (1990)* issued August 10, 1992.

62. U.S. EPA calculated an initial gravity-based proposed penalty of \$62,544 for the alleged violations described above in Counts 1, 2 and 3 of this CAFO. In mitigation, U.S. EPA has considered the facts set forth in HAI's letter dated July 5, 2005, HAI's subsequently submitted Affidavit, and HAI's letter from counsel dated March 23, 2007. U.S. EPA has elected to reduce the initially proposed penalty of \$62,544 by 70 percent (50 percent for the self-disclosure and 20 percent for other factors as justice may require) and impose a gravity-based, civil penalty in the amount of \$18,763. U.S. EPA has determined that there was no economic benefit associated with the alleged violations and, therefore, imposes no additional penalty.

63. In consideration of HAI's self-disclosure, U.S. EPA has determined that an appropriate civil penalty to resolve the violations of Section 312 of EPCRA without resort to litigation is \$00.00.

64. In consideration of HAI's self-disclosure, U.S. EPA has determined that an appropriate civil penalty to resolve the violations of Section 103 of CERCLA without resort to litigation is \$00.00

65. Within 30 days after the effective date of this CAFO, HAI must pay an \$18,763 civil penalty for the alleged violations of EPCRA Section 313. HAI must send either a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA, Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251-7531

The check must note the following: the case title, the docket number of this CAFO, and the billing document number.

66. A transmittal letter stating the Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Terrance Bonace (DT-8J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

James Entzminger (SC-6J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Steven P. Kaiser (C-14J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

67. This civil penalty is not deductible for federal tax purposes.

68. If Respondent does not pay the civil penalty timely, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

69. Pursuant to 31 C.F.R. Section 901.9, HAI shall pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. Section 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a six percent per annum penalty on any principal amount 90 days past due.

#### **General Provisions**

70. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

71. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

72. This CAFO does not affect Respondent's responsibility to comply with EPCRA, CERCLA, and other applicable federal, state and local laws and regulations.

73. This CAFO is a “final order” for purposes of U.S. EPA’s Enforcement Response Policies for Sections 312 and 313 of EPCRA, and Section 103 of CERCLA.

74. The terms of this CAFO bind Respondent and its successors and assigns.

75. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents, and to bind that party to its terms.

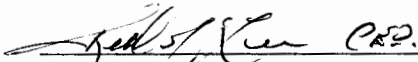
76. Each party agrees to bear its own costs and attorney’s fees in this action.

77. This CAFO constitutes the entire agreement between the parties.

**RESPONDENT:**

HA International LLC

8-22-07  
Date

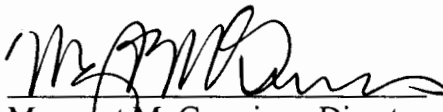
  
Signature and Title

KEITH MCLEAN CEO  
Printed Name and Title

**COMPLAINANT FOR VIOLATIONS OF EPCRA SECTION 313**

United States Environmental Protection Agency, Region 5

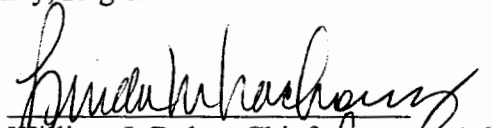
9/13/07  
Date

  
Margaret M. Guerriero, Director  
Land and Chemicals Division


**COMPLAINANT FOR VIOLATIONS OF EPCRA SECTION 312 AND CERCLA SECTION 103**

United States Environmental Protection Agency, Region 5

9/20/07  
Date

  
William J. Bolen, Chief  
Emergency Response Branch 1  
Superfund Division *for SHE*

7/29/07  
Date

  
*for* Richard C. Karl, Director  
Superfund Division


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In the Matter of:  
HA International LLC CERCLA-05-2007-0018  
Docket No. EPCRA-05-2007-0032  
MM-05-2007-0010

**Final Order**

This Consent Agreement and Final Order, agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. 22.81 and 22.31. IT IS SO ORDERED.

9-14-07  
Date

  
\_\_\_\_\_  
Mary A. Gade  
Regional Administrator  
United States Environmental Protection Agency

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**CERTIFICATE OF SERVICE**

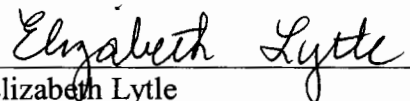
I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving HA International, LLC, was filed on September 21, 2007,

with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0185 8795, a copy of the original to the Respondent:

Roy Harsch  
Drinken Biddle Gardner Carton  
191 N. Wacker Drive, Suite 3700  
Chicago, Illinois 60606-1698

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Steve Kaiser, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)



Elizabeth Lytle  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**CERCLA-05-2007-0018**

Docket No. **EPCRA-05-2007-0032**

**MM-05-2007-0010**

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