

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 JUN 19 PM 1:19  
REGIONAL HEARING  
CLERK

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: **CONSENT AGREEMENT**  
: **AND**  
: **FINAL ORDER**  
: **DOCKET NUMBER**  
: **EPCRA-02-2008-4301**  
: **In the Matter of**  
: **MOVA PHARMACEUTICAL CORPORATION**  
: **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")].

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), issued a Complaint and Notice of Opportunity for Hearing to Mova Pharmaceutical Corporation ("Respondent") on December 21, 2007.

The Complaint alleged two violations of Section 313 of EPCRA, 42 U.S.C. §11023 and regulations pursuant to that Section, 40 C.F.R. Part 372.

EPA and Mova Pharmaceutical Corporation (Mova PC) have engaged in settlement discussions with respect to the alleged violations contained in the aforementioned Complaint. Both EPA and Mova PC have decided that settlement of this matter on the terms set forth in this Consent Agreement and Final Order (CAFO) is an appropriate means of resolving the claims against Mova PC without further litigation. Mova PC representatives have subsequently informed EPA that Mova PC as of, April 30, 2008, has transitioned to a new entity called Pantheon Puerto Rico, Inc. The parties have agreed that although the caption will remain the same, Pantheon Puerto Rico, Inc. will assume responsibility for compliance with the terms set forth in this CAFO.

**FINDINGS OF FACT**  
**AND CONCLUSIONS OF LAW**

1. Respondent is Mova Pharmaceutical Corporation (TRIS Facility ID No.: 00701RCHPRSTATE)
2. At all times relevant hereto, Respondent has owned and operated a facility located at State RD 670 KM 2.7, Manati, Puerto Rico 00674 (hereinafter, "Respondent's facility").
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's facility is subject to the requirements of EPCRA, Section 313(b), 42 U.S.C. §11023(b), and 40 C.F.R. §372.22.
6. On or about July 2, 2007 Mova Pharmaceutical Corporation voluntarily disclosed the failure to submit a Toxic Release Inventory Form R report to the EPA for dichloromethane for calendar year 2005 under Section 313 of EPCRA and for underestimating releases and transfers for methanol for calendar year 2005.
7. EPA representatives determined after Respondent's voluntary disclosure that Respondent failed to submit, in a timely manner, to the Administrator and to the Commonwealth of Puerto Rico a complete and correct Form R report for dichloromethane for calendar year 2005. The due date for 2005 was July 3, 2006. The Form R report was submitted on October 11, 2007. The Form R report was greater than one year late.

8. Respondent's failure to submit, in a timely manner, a complete and correct Form R report for dichloromethane for calendar year 2005 constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. §11023, and with 40 C.F.R. Part 372.

9. Respondent disclosed that it had failed to estimate reasonably the annual quantity of methanol transferred or released to an environmental medium on its Form R as required by Section 313 of EPCRA, 42 U.S.C. 11023, and the Federal regulations that set out in greater detail the Section 313 reporting requirements, 40 C.F.R. Part 372.

10. Respondent under reported the quantity of methanol transferred to an off-site location in Section 6.1.2 of the Form R for calendar year 2005 by approximately 45.8%. Respondent reported 38,725 pounds of methanol as transferred off-site on its Form R report for calendar year 2005. This estimate was revised to 71,404 pounds on October 11, 2007.

11. Respondent under reported the quantity of methanol as an on-site disposal or other releases in Section 8.1b of the Form R for calendar year 2005 by approximately 29.8%. Respondent reported 774 pounds of methanol as an on-site disposal or release on its Form R report for calendar year 2005. This estimate was revised to 1,102 pounds on October 11, 2007.

12. Respondent under reported the quantity of methanol treated off-site in Section 8.7 of the Form R for calendar year 2005 by approximately 45.8%. Respondent reported 38,725 pounds of methanol treated off-site on its Form R report for calendar year 2005. This estimate was revised to 71,404 pounds on October 11, 2007.

13. Respondent was required to report a reasonable estimate of its annual releases and transfers of methanol in Sections 6 and 8 on its Form R for the 2005 calendar year.

14. Respondent's failure to report reasonable estimates of its annual releases and transfers of the above-mentioned toxic chemical on its Form R for the 2005 calendar year constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. §§ 372.30 and 372.85.

15. In January 2008, the parties began informal settlement discussions over the telephone.

**TERMS OF CONSENT AGREEMENT**

Based on the foregoing, and pursuant to Section 325(c) of EPCRA, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc., 40 C.F.R. §22.18 (hereinafter, "Consolidated Rules"), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

1. Respondent certifies herein that any and all EPA Toxic Chemical Release Inventory Forms submitted for the above-described violations comply with the 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: (a) admits the jurisdictional allegations of this Consent Agreement as applied to the facility; and (b) neither admits nor denies the specific factual allegations contained in the Consent Agreement and the Findings of Fact and Conclusions of Law section above.
3. Respondent shall pay by cashier's or certified check, a civil penalty totaling **EIGHT THOUSAND SEVEN HUNDRED DOLLARS (\$8,700)** payable in two equal installments of **\$4,350**. Each payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

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

Each check shall be identified with a notation thereon listing the following: **IN THE MATTER OF MOVA PHARMACEUTICAL CORPORATION** and shall bear thereon the **Docket Number EPCRA-02-2008-4301**. The first payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date"). The second payment must be received at the above address on or before one year after the above due date.

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: **Mova Pharmaceutical Corporation**
- 7) Case Number: **EPCRA-02-2008-4301.**

Such EFT must be received on or before 45 calendar days after the Effective Date of this CAFO. Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Ms. Karen Maples, Regional Hearing Clerk  
Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency -Region 2  
290 Broadway, 16th Floor (1631)  
New York, New York 10007-1866

And

Kenneth S. Stoller, P.E., QEP, DEE, Chief  
Pesticides and Toxic Substances Branch  
U.S. Environmental Protection Agency - Region 2  
2890 Woodbridge Avenue, Bldg. 10, MS-105  
Edison, New Jersey 08837

- a. 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 for collection.
- b. 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 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 \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations contained in the Complaint. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the 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 has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and to abide by its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

7. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

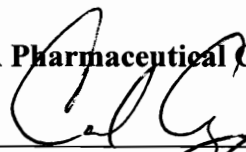
8. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

- 10. Each party hereto agrees to bear its own costs and fees in this matter.
- 11. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

**RESPONDENT:**

**MOVA Pharmaceutical Corporation**

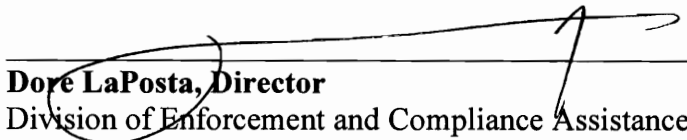
BY:   
 Authorizing Signature

NAME: Carlos Arroyo  
 (PLEASE PRINT)

TITLE: Executive Director and General Manager

DATE: 05/07/08

**COMPLAINANT:**

  
**Dore LaPosta, Director**  
 Division of Enforcement and Compliance Assistance  
 U.S. Environmental Protection Agency - Region 2  
 290 Broadway  
 New York, New York 10007

DATE: MAY 15, 2008

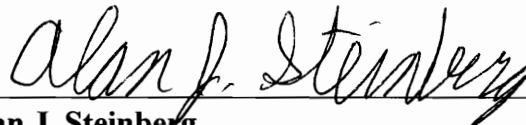
**In the Matter of Mova Pharmaceutical Corporation**  
**Docket Number EPCRA-02-2008-4301**

**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties in full settlement of EPA's Complaint bearing **Docket No. EPCRA-02-2008-4301, issued In the Matter of Mova Pharmaceutical Corporation** is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

DATE: \_\_\_\_\_

6-11-08



**Alan J. Steinberg**

Regional Administrator

U.S. Environmental Protection Agency - Region 2

290 Broadway

New York, New York 10007



**In the Matter of Mova Pharmaceutical Corporation**

Docket No. EPCRA-02-2008-4301

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the Foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

Original and One Copy  
by Interoffice Mail:

Ms. Karen Maples, Regional Hearing Clerk  
Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency -Region 2  
290 Broadway, 16th Floor (1631)  
New York, New York 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Ms. Ileana Quinoñes, Vice President  
Patheon Puerto Rico, Inc. /  
former Mova Pharmaceutical Corporation  
P.O. Box 3119  
Manati, Puerto Rico 00674

Mr. Carlos Arroyo, Executive Director & General Manager  
Patheon Puerto Rico, Inc.  
P.O. Box 3119  
Manati, Puerto Rico 00674

Mr. Carlos W. Lopez Freytes, Chairman  
Puerto Rico State Emergency Response Commission  
P.O. Box 11488  
Santurce, Puerto Rico 00910-1488

Copy by Mail:

Mr. Juan Rivera, Senior Environmental Health & Safety Manager  
Patheon Puerto Rico, Inc. /  
former Mova Pharmaceutical Corporation  
P.O. 3119  
Manati, Puerto Rico 00674

Dated: 6/18/08



Mary Ann Kowalski, MS, MPH  
Pesticides and Toxic Substances Branch  
U.S. Environmental Protection Agency - Region 2  
2890 Woodbridge Avenue (MS-105)  
Edison, New Jersey 08837-3679