

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	
	:	
Diamond Manufacturing Co.	:	Docket No. EPCRA-03-2017-0016
243 W. Eighth Street	:	
Wyoming, PA 18644	:	
	:	
Respondent,	:	CONSENT AGREEMENT
	:	
	:	
Diamond Manufacturing Co.	:	
243 W. Eighth Street	:	Proceeding under Sections 313 and
Wyoming, PA 18644	:	325(c) of the Emergency Planning
	:	and Community Right-to-Know
Facility.	:	Act, 42 U.S.C. §§ 11023 and
	:	11045(c)
	:	

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and Diamond Manufacturing Co. ("Respondent") pursuant to Sections 313 and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11023 and 11045(c), the regulations implementing Section 313 of EPCRA, as set forth at 40 C.F.R. Part 372, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO") simultaneously commence and conclude this proceeding to resolve violations of Section 313, 42 U.S.C. § 11023, as alleged herein, by Respondent at its facility located at 243 W. Eighth Street, Wyoming, Pennsylvania 18644.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

RECEIVED
2016 NOV 29 PM 3:56
REGIONAL HEAVY METALS
EPA REGION III PHILADELPHIA

3. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
4. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees.

Findings of Fact and Conclusions of Law

7. Complainant has determined that Respondent has violated EPCRA Section 313, 42 U.S.C. § 11023, and adopts the following findings of fact and conclusions of law in accordance with 40 C.F.R. §§ 22.18(b)(2) and 22.14(a)(2) and (3) of the Consolidated Rules of Practice.
8. Respondent is a corporation incorporated in the State of Pennsylvania.
9. As a Pennsylvania corporation, Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
10. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures, and other stationary items that are located on a single site and that are owned or operated by the same person.
11. Respondent owns and operates, and at the time of the violations alleged herein owned and operated, a facility located at 243 W. Eighth Street Wyoming, Pennsylvania 18644, at which Respondent manufactures perforated metal and plastic products in accordance with customers' specifications (the "Facility").
12. Respondent's Facility is a "facility" as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.
13. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30 require, *inter alia*, that the owner or operator of a facility that:
 - 1) has 10 or more employees;
 - 2) has a primary Standard Industrial Classification ("SIC") Code of 20 [2000] through 39 [3900] (as in effect on January 1, 1987), or, has an SIC code in one or more of the following categories:

- i. between 1000 and 1099, except 1011, 1081, and 1094;
- ii. between 1200 and 1299, except 1241;
- iii. 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce);
- iv. 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. §§ 6921-6939e);
- v. 5169 or 5171;
- vi. 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); and

- 3) manufactured, processed or otherwise used a toxic chemical listed in 40 C.F.R. § 372.65, in excess of the threshold quantities 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 a calendar year;

to submit to EPA and the state in which the facility is located, by July 1 of the following calendar year, a completed toxic chemical release reporting form ("Form R") or appropriate alternative threshold report ("Form A") for each such toxic chemical.

14. During each of the 2012 and 2014 calendar years, in which the violations herein are alleged, Respondent employed 10 or more full-time employees at the Facility.
15. During each of the 2012 and 2014 calendar years, in which the violations herein are alleged, the Facility had a primary SIC code of 3469. This SIC code falls between the primary SIC codes of 20 (2000) and 39 (3900) (as in effect on July 1, 1987).
16. For each toxic chemical, listed in 40 C.F.R. § 372.65, manufactured, processed, or otherwise used by Respondent at the Facility in excess of the threshold quantity set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, 372.27, or 372.28, during any calendar year, Respondent was required by Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, at all times relevant to this Consent Agreement, to complete and submit to EPA and the Commonwealth of Pennsylvania, by July 1 of the following calendar year, a Form R or Form A.
17. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA Section 313, 40 C.F.R. § 11023, shall be liable to the United States for a civil penalty.

COUNT 1

18. The allegations of Paragraphs 1 through 17, above, are incorporated by reference as though fully set forth herein.
19. The chemical substance "manganese" is a "toxic chemical" as defined in EPCRA Sections 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.

20. During the 2012 calendar year, Respondent “processed,” as defined in 40 C.F.R. § 372.3, more than 25,000 pounds of manganese at the Facility. Such amount exceeded the threshold quantity for reporting a toxic chemical processed at a facility as set forth in EPCRA Section 313(f)(1)(B)(iii), 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25(a).
21. Pursuant to EPCRA Section 313, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22, the Facility was a “covered facility,” in the 2012 calendar year, for toxic chemical release reporting purposes, and Respondent was required, in accordance with 40 C.F.R. § 372.30 reporting requirements, to submit to EPA and the Commonwealth of Pennsylvania, by July 1, 2013, a completed Form R for manganese processed at the Facility during the 2012 calendar year.
22. On or about July 22, 2013, Respondent submitted to EPA and to the Commonwealth of Pennsylvania a completed Form R for the toxic chemical manganese processed at the Facility during the 2012 calendar year. Respondent’s Form R, covering the 2012 calendar year, was submitted to EPA and the Commonwealth after the July 1, 2013 submission deadline.
23. Respondent's failure to submit to EPA and the Commonwealth, by July 1, 2013, a completed Form R to report the amount of manganese processed at the Facility during the 2012 calendar year constitutes a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30, for which Respondent is liable for a civil penalty pursuant to EPCRA Section 325(c), 42 U.S.C. § 11045.

COUNT II

24. The allegations of Paragraphs 1 through 23, above, are incorporated by reference as though fully set forth herein.
25. The chemical substance “nickel” is a “toxic chemical” as defined in EPCRA Sections 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
26. During the 2012 calendar year, Respondent “processed,” as defined in 40 C.F.R. § 372.3, more than 25,000 pounds of nickel at the Facility. Such amount exceeded the threshold quantity for reporting a toxic chemical processed at a facility as set forth in EPCRA Section 313(f)(1)(B)(iii), 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25(a).
27. Pursuant to EPCRA Section 313, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22, the Facility was a “covered facility,” in the 2012 calendar year, for toxic chemical release reporting purposes, and Respondent was required, in accordance with 40 C.F.R. § 372.30 reporting requirements, to submit to EPA and the Commonwealth of Pennsylvania, by July 1, 2013, a completed Form R for nickel processed at the Facility during the 2012 calendar year.

28. On or about July 22, 2013, Respondent submitted to EPA and to the Commonwealth of Pennsylvania a completed Form R for the toxic chemical nickel processed at the Facility during the 2012 calendar year. Respondent's Form R, covering the 2012 calendar year, was submitted to EPA and the Commonwealth after the July 1, 2013 submission deadline.
29. Respondent's failure to submit to EPA and the Commonwealth, by July 1, 2013, a completed Form R to report the amount of nickel processed at the Facility during the 2012 calendar year constitutes a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30, for which Respondent is liable for a civil penalty pursuant to EPCRA Section 325(c), 42 U.S.C. § 11045.

COUNT III

30. The allegations of Paragraphs 1 through 29, above, are incorporated by reference as though fully set forth herein.
31. The chemical substance "chromium" is a "toxic chemical" as defined in EPCRA Sections 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
32. During the 2012 calendar year, Respondent "processed," as defined in 40 C.F.R. § 372.3, more than 25,000 pounds of chromium at the Facility. Such amount exceeded the threshold quantity for reporting a toxic chemical processed at a facility as set forth in EPCRA Section 313(f)(1)(B)(iii), 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25(a).
33. Pursuant to EPCRA Section 313, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22, the Facility was a "covered facility," in the 2012 calendar year, for toxic chemical release reporting purposes, and Respondent was required, in accordance with 40 C.F.R. § 372.30 reporting requirements, to submit to EPA and the Commonwealth of Pennsylvania, by July 1, 2013, a completed Form R for chromium processed at the Facility during the 2012 calendar year.
34. On or about July 22, 2013, Respondent submitted to EPA and to the Commonwealth of Pennsylvania a completed Form R for the toxic chemical chromium processed at the Facility during the 2012 calendar year. Respondent's Form R, covering the 2012 calendar year, was submitted to EPA and the Commonwealth after the July 1, 2013, submission deadline.
35. Respondent's failure to submit to EPA and the Commonwealth, by July 1, 2013, a completed Form R to report the amount of chromium processed at the Facility during the 2012 calendar year constitutes a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30, for which Respondent is liable for a civil penalty pursuant to EPCRA Section 325(c), 42 U.S.C. § 11045.

COUNT IV

36. The allegations of Paragraphs 1 through 35, above, are incorporated by reference as though fully set forth herein.
37. The chemical substance “manganese” is a “toxic chemical” as defined in EPCRA Sections 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
38. During the 2014 calendar year, Respondent “processed,” as defined in 40 C.F.R. § 372.3, more than 25,000 pounds of manganese at the Facility. Such amount exceeded the threshold quantity for reporting a toxic chemical processed at a facility as set forth in EPCRA Section 313(f)(1)(B)(iii), 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25(a).
39. Pursuant to EPCRA Section 313, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22, the Facility was a “covered facility,” in the 2014 calendar year, for toxic chemical release reporting purposes, and Respondent was required, in accordance with 40 C.F.R. § 372.30 reporting requirements, to submit to EPA and the Commonwealth of Pennsylvania, by July 1, 2015, a completed Form R for manganese processed at the Facility during the 2014 calendar year.
40. On or about November 15, 2015, Respondent submitted to EPA and to the Commonwealth of Pennsylvania a completed Form R for the toxic chemical manganese processed at the Facility during the 2014 calendar year. Respondent’s Form R, covering the 2014 calendar year, was submitted to EPA and the Commonwealth after the July 1, 2015 submission deadline.
41. Respondent's failure to submit to EPA and the Commonwealth, by July 1, 2015, a completed Form R to report the amount of manganese processed at the Facility, during the 2014 calendar year, constitutes a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30, for which Respondent is liable for a civil penalty pursuant to EPCRA Section 325(c), 42 U.S.C. § 11045.

COUNT V

42. The allegations of Paragraphs 1 through 41, above, are incorporated by reference as though fully set forth herein.
43. The chemical substance “nickel” is a “toxic chemical” as defined in EPCRA Sections 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
44. During the 2014 calendar year, Respondent “processed,” as defined in 40 C.F.R. § 372.3, more than 25,000 pounds of nickel at the Facility. Such amount exceeded the threshold

quantity for reporting a toxic chemical processed at a facility as set forth in EPCRA Section 313(f)(1)(B)(iii), 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25(a).

45. Pursuant to EPCRA Section 313, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22, the Facility was a “covered facility,” in the 2014 calendar year, for toxic chemical release reporting purposes, and Respondent was required, in accordance with 40 C.F.R. § 372.30 reporting requirements, to submit to EPA and the Commonwealth of Pennsylvania, by July 1, 2015, a completed Form R for nickel processed at the Facility during the 2014 calendar year.
46. On or about November 15, 2015, Respondent submitted to EPA and to the Commonwealth of Pennsylvania a completed Form R for the toxic chemical nickel processed at the Facility during the 2014 calendar year. Respondent’s Form R, covering the 2014 calendar year, was submitted to EPA and the Commonwealth after the July 1, 2015, submission deadline.
47. Respondent's failure to submit to EPA and the Commonwealth, by July 1, 2015, a completed Form R to report the amount of nickel processed at the Facility, during the 2014 calendar year, constitutes a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30, for which Respondent is liable for a civil penalty pursuant to EPCRA Section 325(c), 42 U.S.C. § 11045.

COUNT VI

48. The allegations of Paragraphs 1 through 47, above, are incorporated by reference as though fully set forth herein.
49. The chemical substance “chromium” is a “toxic chemical” as defined in EPCRA Sections 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
50. During the 2014 calendar year, Respondent “processed,” as defined in 40 C.F.R. § 372.3, more than 25,000 pounds of chromium at the Facility. Such amount exceeded the threshold quantity for reporting a toxic chemical processed at a facility as set forth in EPCRA Section 313(f)(1)(B)(iii), 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25(a).
51. Pursuant to EPCRA Section 313, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22, the Facility was a “covered facility,” in the 2014 calendar year, for toxic chemical release reporting purposes, and Respondent was required, in accordance with 40 C.F.R. § 372.30 reporting requirements, to submit to EPA and the Commonwealth of Pennsylvania, by July 1, 2015, a completed Form R for chromium processed at the Facility during the 2014 calendar year.
52. On or about November 15, 2015, Respondent submitted to EPA and to the

Commonwealth of Pennsylvania a completed Form R for the toxic chemical chromium processed at the Facility during the 2014 calendar year. Respondent's Form R, covering the 2014 calendar year, was submitted to EPA and the Commonwealth after the July 1, 2015, submission deadline.

53. Respondent's failure to submit to EPA and the Commonwealth, by July 1, 2015, a completed Form R to report the amount of chromium processed at the Facility, during the 2014 calendar year, constitutes a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30, for which Respondent is liable for a civil penalty pursuant to EPCRA Section 325(c), 42 U.S.C. § 11045.

Civil Penalty

54. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates Section 313 of EPCRA, 42 U.S.C. § 11023, shall be liable to the United States for a civil penalty of up to \$25,000 per violation. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, the maximum inflation-adjusted statutory penalty for violations of Section 313 of EPCRA, 42 U.S.C. § 11023, occurring after January 12, 2009, has been increased to \$37,500 per violation.
55. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Fifty-Eight Thousand, Two Hundred Sixty Dollars (\$58,260.00)**, which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by the parties, signed by the Regional Administrator or the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
56. The aforesaid settlement amount is based upon Complainant's consideration of the facts and circumstances of this case, the statutory factors set forth in Section 325(b)(1)(C) of EPCRA, 42 USC § 11045(b)(1)(C), and the penalty criteria set forth in EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (April 12, 2001). Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, and the memorandum by EPA Assistant Administrator Cynthia Giles entitled, *Amendments to U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation* (Effective December 6, 2013) ("Giles Memorandum"). The settlement in this proceeding is consistent with the provisions and objectives of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
57. Payment of the civil penalty amount assessed in paragraph 55, above, shall be made by

either cashier's check, certified check, or electronic wire transfer, in the following manner:

- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action (*EPCRA-03-2017-0016*);
- B. All checks shall be made payable to "United States Treasury";
- C. All payments made by check and sent by regular mail shall be addressed to:

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

Customer Service Contact: 513-487-2091

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

United States Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact:314-418-1818

- E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- F. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account No.310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD20737

Contact:202-874-7026 OR REX, 1-866-234-5681

G. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter **sfo 1.1** in the search field. Open and complete the form.

H. Additional payment guidance is available at:
<http://www2.epa.gov/financial/makepayment>.

I. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Jeffrey S. Nast
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029.

58. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

59. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO, fully executed by the parties, signed by the Regional Administrator or the Regional Judicial Officer, and filed with the Regional Hearing Clerk, is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
60. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
61. A late payment penalty 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 for more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
62. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Certifications

63. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Facility referred to in this Consent Agreement is currently in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023.

Other Applicable Laws

64. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

65. This Consent Agreement and the accompanying Final Order resolve only EPA's civil claims for the specific violations of Section 313 of EPCRA, 42 U.S.C. § 11023, alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available

to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Scope of Settlement

66. The settlement set forth in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations alleged herein. Compliance with the CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

67. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, successors, agents, and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

Effective Date


68. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA - Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

Entire Agreement

69. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent:

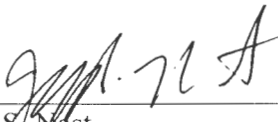
Date: 10/7/16

By: 

Keith Zinn, Exec. VP & CFO
Diamond Manufacturing Co.

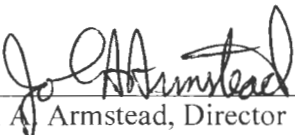
For Complainant:

Date: 11/16/18

By: 
Jeffrey S. Mast
Senior Assistant Regional Counsel

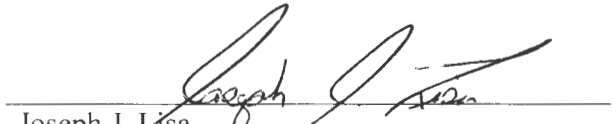
Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 11.28.16

By: 
John A. Armstead, Director
Land and Chemicals Division

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Nov 29, 2016
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Diamond Manufacturing Co.
243 W. Eighth Street
Wyoming, Pennsylvania,**

Respondent.

EPA Docket No. EPCRA-03-2017-0016

FINAL ORDER

**Proceeding under Sections 313 and 325
of the Emergency Planning and
Community Right-to-Know Act, 42
U.S.C. §§ 11043 and 11045**

FINAL ORDER

Complainant, the Director of the Land and Chemical Division, U.S. Environmental Protection Agency, Region III, and Respondent, Diamond Manufacturing Company have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning Community Right-To-Know Act (1986)* (April 12, 2001), and the statutory factors set forth in Section 325(b)(1)(C) of the Emergency Planning and Community Right-to-Know Act ("EPCRA").

NOW, THEREFORE, PURSUANT TO Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***FIFTY-EIGHT THOUSAND TWO HUNDRED SIXTY DOLLARS (\$58,260)***, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

CERTIFICATE OF SERVICE

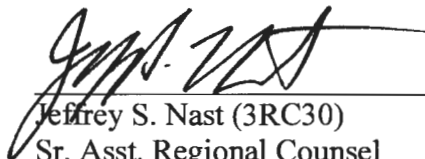
I hereby certify that the original and one copy of the Consent Agreement/Final Order, Docket No. EPCRA-03-2017-0016, and associated enclosures, have been hand delivered and filed with the EPA Region III Regional Hearing Clerk on the date below, and that copies of the same were sent via UPS expedited delivery to:

Scott H. Reisch, Esq.
Hogan Lovells US LLP
1601 Wewatta Street, Ste. 900
Denver, CO 80202

and

Keith Zinn, EVP & CFO
Diamond Manufacturing, Co.
243 W. Eighth Street
Wyoming, PA 18644

11/29/16
Date



Jeffrey S. Nast (3RC30)
Sr. Asst. Regional Counsel
U.S. EPA , Region III
(215) 814-2652