



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
2890 WOODBRIDGE AVENUE  
EDISON, NEW JERSEY 08837-3679

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2007 MAY 14 AM 11:40  
REGIONAL HEARING  
CLERK

MAY 10 2007

CERTIFIED MAIL-  
RETURN RECEIPT REQUESTED

Mr. Tom Freeman, Sr. Regional EHS Manager  
Cadbury Schweppes Americas Beverages  
4363 Route 104  
Williamson, New York 14589

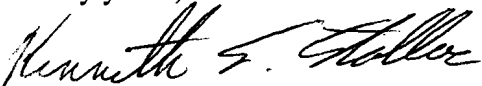
Re: In the Matter of Motts, LLP  
Docket No. EPCRA-02-2007-4201; EPA TRI Facility Id: 14589MTTSX4363R

Dear Mr. Freeman:

Enclosed is a copy of the Consent Agreement and Final Order in the above referenced proceeding, signed by the Regional Administrator of the United States Environmental Protection Agency.

Please note that the forty-five (45) day period for payment of the civil penalty commences as of the date this Final Order is signed by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given in the Consent Agreement (see "Terms of Consent Agreement"). Specifically, please remember to send a copy of your payment check to the Complainant, as detailed in the Consent Agreement.

Sincerely yours,

  
Kenneth S. Stoller, P.E., QEP, DEE  
Chief  
Pesticides and Toxic Substances Branch

Enclosure

cc: Ms. Susanne Wither  
Department of Environmental Remediation  
NY State Department of Environmental Conservation  
625 Broadway - 11th Floor  
Albany, New York 12233-7020

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2007 MAY 14 AM 11:40  
REGIONAL HEARING  
CLERK

-----X  
In the Matter of :  
: **CONSENT AGREEMENT**  
: **AND**  
: **FINAL ORDER**  
: **DOCKET NUMBER**  
Respondent. : **EPCRA-02-2007-4201**  
: Proceeding under Section 325(c) of :  
Title III of the Superfund :  
Amendments and Reauthorization Act :  
-----X

**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 "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc." (40 C.F.R. Part 22 (July 1, 2000)), provide in 40 C.F.R. §22.13(b) that when the parties agree to settle 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 pursuant to 40 C.F.R. §§22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 ("EPA or Complainant"), alleges that Motts, LLP, (hereinafter "Motts") located at 4363 Route 104, Williamson, NY 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.

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 Toxic Chemical Release Inventory Reporting Form R, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. §372.65 and/or 40 C.F.R. §372.28 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. The completed and correct Form R is required to be submitted to the Regional Administrator of the EPA and to the State in which the subject facility is located.

As an alternative to the requirements set forth above, 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 the 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. Pursuant to 40 C.F.R. §372.27(b), if the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators, in lieu of filing a Form R therefore, may submit "EPA Toxic Chemical Release Inventory Form A" (EPA Form 9350-2) (formerly the "Certification Statement"; see 59 Fed. Reg. 61488; November 30, 1994).

EPA and Motts agree that settling this matter by entering into this Consent Agreement and Final Order ("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, and to that end the parties conducted an informal settlement conference over the telephone on January 24, 2007 and subsequently discussed settlement several times thereafter. 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 constitute Complainant's Findings of Fact and Conclusions of Law based upon information EPA had obtained through January 24, 2007.

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

1. Respondent is Motts, LLP (TRI Facility ID: 14589MTTSX4363R).
2. At all times relevant hereto, Respondent has maintained a facility located at located at 4363 Route 104, Williamson, NY which is the subject of this Consent Agreement and Final Order (hereinafter, "Respondent's facility").
3. Respondent is a limited liability partnership organized pursuant to the laws of the State of Delaware.
4. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. §11049(7)).
5. 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.
6. 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.
7. Respondent's facility has 10 or more "full time employees" as that term is defined by 40 C.F.R. §372.3.
8. Respondent's facility is in Standard Industrial Classification Code 2033.
9. Respondent's facility is subject to the requirements Section 313(b) of EPCRA (42 U.S.C. §11023(b)) and 40 C.F.R. §372.22.

**Year 2004**

10. A review of the Toxic Release Inventory Envirofacts Database indicated that Respondent submitted a Form A report to the EPA for nitrate compounds for the 2004 calendar year on May 26, 2006.
11. The established threshold amount for reporting a chemical category "otherwise used" was 10,000 pounds for the 2004 calendar year [40 C.F.R. §372.25(b)].
12. Nitrate compounds are listed under 40 C.F.R. §372.65.

13. Respondent was required to submit by July 1, 2005 a complete and correct Form A for nitrate compounds for the calendar year 2004 to the Administrator of EPA and to the State of New York.

14. The postmark date of Respondent's Form A for nitrate compounds for the calendar year 2004 was May 26, 2006. The Form A was 329 days late.

15. Respondent failed to submit, in a timely manner, a complete and correct Form R or Form A for nitrate compounds for the calendar year 2003 to the Administrator and to the State of New York .

16. Respondent's failure to submit, in a timely manner, a Form R or Form A for nitrate compounds for the reporting year 2003 constitutes a failure to comply with Section 313 of EPCRA (42 U.S.C. §11023) and with 40 C.F.R. Part 372.

#### **Year 2003**

17. A review of the Toxic Release Inventory Envirofacts Database indicated that Respondent submitted a Form A report to the EPA for nitrate compounds for the 2003 calendar year on May 26, 2006.

18. The established threshold amount for reporting a chemical category "otherwise used" was 10,000 pounds for the 2003 calendar year [40 C.F.R. §372.25(b)].

19. Nitrate compounds are listed under 40 C.F.R. §372.65.

20. Respondent was required to submit by July 1, 2004 a complete and correct Form A for nitrate compounds for the calendar year 2003 to the Administrator of EPA and to the State of New York.

21. The postmark date of Respondent's Form A for nitrate compounds for the calendar year 2003 was May 26, 2006. The Form A was greater than a year late.

22. Respondent failed to submit, in a timely manner, a complete and correct Form R or Form A for nitrate compounds for the calendar year 2003 to the Administrator and to the State of New York .

23. Respondent's failure to submit, in a timely manner, a Form R or Form A for nitrate compounds for the reporting year 2003 constitutes a failure to comply with Section 313 of EPCRA (42 U.S.C. §11023) and with 40 C.F.R. Part 372.

**Year 2002**

24. A review of the Toxic Release Inventory Envirofacts Database indicated that Respondent submitted a Form A report to the EPA for ammonia, (Chemical Abstracts Service Number 7664-41-7) for the 2002 calendar year on May 2, 2006.

25. The established threshold amount for reporting a chemical "otherwise used" was 10,000 pounds for the 2002 calendar year [40 C.F.R. §372.25(b)].

26. Ammonia is listed under 40 C.F.R. §372.65.

27. Respondent was required to submit by July 1, 2003 a complete and correct Form A for ammonia for the calendar year 2001 to the Administrator of EPA and to the State of New York.

28. The postmark date of Respondent's Form A for ammonia for the calendar year 2002 was May 2, 2006. The Form A was greater than a year late.

29. Respondent failed to submit, in a timely manner, a complete and correct Form R or Form A for ammonia for the calendar year 2002 to the Administrator and to the State of New York.

30. Respondent's failure to submit, in a timely manner, a Form R or Form A for ammonia for the reporting year 2002 constitutes a failure to comply with Section 313 of EPCRA (42 U.S.C. §11023) and with 40 C.F.R. Part 372.

**Year 2001**

31. A review of the Toxic Release Inventory Envirofacts Database indicated that Respondent submitted a Form A report to the EPA for ammonia, (Chemical Abstracts Service Number 7664-41-7) for the 2001 calendar year on May 2, 2006.

32. The established threshold amount for reporting a chemical "otherwise used" was 10,000 pounds for the 2001 calendar year [40 C.F.R. §372.25(b)].

33. Ammonia is listed under 40 C.F.R. §372.65.

34. Respondent was required to submit by July 1, 2002 a complete and correct Form A for ammonia for the calendar year 2001 to the Administrator of EPA and to the State of New York.

35. The postmark date of Respondent's Form A for ammonia for the calendar year 2001 was May 2, 2006. The Form A was greater than a year late.

36. Respondent failed to submit, in a timely manner, a complete and correct Form R or Form A for ammonia for the calendar year 2001 to the Administrator and to the State of New York .

37. Respondent's failure to submit, in a timely manner, a Form R or Form A for ammonia for the reporting year 2001 constitutes a failure to comply with Section 313 of EPCRA (42 U.S.C. §11023) and with 40 C.F.R. Part 372.

#### **TERMS OF CONSENT AGREEMENT**

Based on the foregoing, and pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act (42 U.S.C. §11001 et seq.) and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc. (40 C.F.R. §22.18 (July 1, 2000)), it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Motts, that Motts, for purposes of this Consent Agreement: **a)** admits that EPA has jurisdiction pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act (42 U.S.C. §11001 et seq.) to commence a civil administrative proceeding for the violations alleged in the "Conclusions of Law" section, above; **b)** neither admits nor denies the specific factual allegations contained in the Findings of Fact and Conclusions of Law section above; **c)** consents to the assessment of the civil penalty as set forth below; and **d)** consents to the issuance of the Final Order accompanying this Consent Agreement.

It is further hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that it accepts and shall comply with the following terms and conditions:

1. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Forty Eight Thousand Six Hundred Thirty Six Dollars (\$48,636)**, payable to the "Treasurer, United States of America" and mailed to:

Region 2 - Regional Hearing Clerk  
United States Environmental Protection Agency  
P.O. Box 360188M  
Pittsburgh, Pennsylvania 15251

The instrument of payment shall be identified with a notation thereon listing the following: In the Matter of Motts, LLP. Docket No. EPCRA-02-2007-4201.

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").

a. Failure to pay the amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of The Treasury for collection.

b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall 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 date said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period, following the date the payment was to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

2. Complainant agrees to mail to Respondent a copy of the fully executed Consent Agreement and Final Order ("CAFO"), and Motts. consents to service of the CAFO upon it by an employee of EPA other than the Regional Hearing Clerk. A copy of Respondent's instrument of payment shall be forwarded to each of:

Karen Maples, Regional Hearing Clerk  
United States Environmental Protection Agency - Region 2  
290 Broadway, 16<sup>th</sup> Floor (1631)  
New York, New York 10007-1866



and

Kenneth S. Stoller, P.E., QEP, DEE, Chief  
Pesticides and Toxic Substances Branch (MS-105)  
United States Environmental Protection Agency - Region 2  
2890 Woodbridge Avenue  
Edison, New Jersey 08837-3679

3. This Consent Agreement is being voluntarily entered into by the parties in full and final settlement of all civil liabilities under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11001 et seq.) and the regulations promulgated thereunder, 40 C.F.R. Part 372, that attach as a result of the allegations and assertions contained in the “Findings of Fact and Conclusions of Law” section, above.

4. Motts hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) on the “Findings of Fact” or the “Conclusions of Law” or the provisions of the Consent Agreement and Final Order in this matter.

5.. Motts 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.

6. Motts voluntarily waives any right or any remedy it has or might have pursuant to 40 C.F.R. §22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.


7. 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.

8. Each party shall bear its own costs and fees.

9. Each undersigned signatory to this Consent Agreement certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions 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 he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.

10. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

**RESPONDENT:**

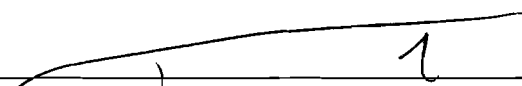
BY:  \_\_\_\_\_  
Motts, LLP

NAME: Nick Bolton  
(PLEASE PRINT)

TITLE: Sr. VP Manufacturing

DATE: April 20, 2007

**COMPLAINANT:**

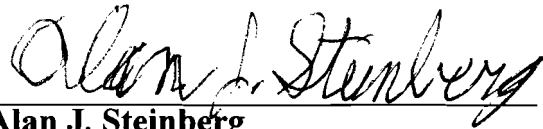
 \_\_\_\_\_  
**Dore LaPosta, Director**  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007

DATE: APRIL 27, 2007

**In the Matter of Mott, LLP**  
**Docket Number EPCRA-02-2007-4201**

**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 In the Matter of Motts, LLP bearing Docket Number EPCRA-02-2007-4201, 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 .



**Alan J. Steinberg**  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, New York 10007

DATED: 5-3-07

**In the Matter of MOTTS, LLP**

Docket No. EPCRA-02-2007-4201

**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, 16<sup>th</sup> Floor (1631)  
New York, New York 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Mr. Tom Freeman, Sr. Regional EHS Manager  
Cadbury Schweppes Americas Beverages  
4363 Route 104  
Williamson, New York 14589

Copy by Mail:

Ms. Susanne Wither  
Department of Environmental Remediation  
NY State Department of Environmental Conservation  
625 Broadway - 11<sup>th</sup> Floor  
Albany, New York 12233-7020

Dated: 5/10/07



Esther Nelson  
Pesticides and Toxic Substances Branch  
U.S. Environmental Protection Agency - Region 2  
2890 Woodbridge Avenue (MS-105)  
Edison, New Jersey 08837