

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

In the Matter of:

**Max Environmental Technologies, Inc.
233 Max Lane
Yukon, Pennsylvania 15698
Respondent**

Docket No. EPCRA-03-2016-0223

CONSENT AGREEMENT

**Proceeding under EPCRA §§ 313 and
325(c), 42 U.S.C. §§ 11023 and 11045(c)**

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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 (“Complainant”), and Max Environmental Technologies, Inc. (“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 EPCRA § 313, 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 .18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively, “CAFO”), simultaneously commence and conclude this proceeding to resolve violations of EPCRA § 313, 42 U.S.C. § 11023 and implementing regulations promulgated thereunder, as alleged herein, by Respondent at its facility located at 233 Max Lane, Yukon, Pennsylvania 15698.

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.

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 in connection with this proceeding.

Findings of Fact and Conclusions of Law

7. In accordance with Sections 22.13(b) and .18(b)(2) of the Consolidated Rules of Practice, Complainant adopts the following findings of fact and conclusions of law.
8. EPCRA Section 313(a), 42 U.S.C. § 11023(a),, requires subject owners or operators of any facility that, in any calendar year, manufactures, processes or otherwise uses a toxic chemical listed under EPCRA Section 313(c), 42 U.S.C. § 11023(c), in quantities exceeding a regulatory threshold under EPCRA Section 313(f), 42 U.S.C. § 11023(f), to complete and submit a toxic chemical release inventory report (*i.e.*, "Form R" or "Form A") for each such listed toxic chemical. Pursuant to EPCRA Section 313(a), 42 U.S.C. § 11023(a),, each required Form R or Form A must include the information required under Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), and must be submitted to EPA and to the designated State agency by July 1 of the year following the year for which such toxic inventory report is required.
9. EPCRA Section 313(b), 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide, in relevant and applicable part, that a facility which meets the following criteria for a calendar year is a "covered facility" for that calendar year and must report under 40 C.F.R. § 372.30: [a] the facility has 10 or more full-time employees; [b] the facility is in a Standard Industrial Classification ("SIC") (as in effect on January 1, 1987) major group or industrial code listed in 40 C.F.R. § 372.23(a), for which the corresponding North American Industrial Classification System ("NAICS") (as in effect on January 1, 2007, for reporting year 2008 and thereafter) subsector and industry codes are listed in 40 C.F.R. § 372.23(b) and (c) by virtue of the fact that the facility is an establishment with a primary SIC major group or industry code listed in 40 C.F.R. § 372.23(b) or 40 C.F.R. § 372.23(c); and [c] the facility manufactured (including imported), processed or otherwise used a toxic chemical in excess of an applicable threshold quantity of that chemical set forth in 40 C.F.R. § 372.25, 372.27, or 372.28.

10. 40 C.F.R. § 372.30(a) provides, in relevant part, that for each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in 40 C.F.R. § 372.25, 372.27, or 372.28 at its covered facility for a calendar year, the owner or operator must submit to EPA and to the State in which the covered facility is located a completed EPA Form R (EPA Form 9350-1) or Form A (EPA Form 9350-2) in accordance with the instructions referred to in 40 C.F.R. Part 372, Subpart E.
11. 40 C.F.R. § 372.30(d) provides, in relevant part, that : “[e]ach report under this section for activities involving a toxic chemical that occurred during a calendar year at a covered facility must be submitted on or before July 1 of the next year.”
12. 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.
13. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines “person” to include any corporation.
14. Respondent is a corporation, incorporated in the State of Pennsylvania, and is a “person” as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
15. Respondent owns and operates, and at the time of the violations alleged herein, owned and operated a RCRA Subtitle D Landfill located at 233 Max Lane, Yukon, Pennsylvania (“Facility”) which specializes in the treatment and disposal of hazardous and non-hazardous waste from multiple sources, including natural gas and oil drilling industries.
16. 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.
17. During each of calendar years 2012, 2013, 2014 and 2015, Respondent employed 10 or more full-time employees at the Facility.
18. During each of calendar years 2012, 2013, 2014 and 2015 the Facility had a SIC code of 4953, corresponding to refuse systems.
19. For purposes of the toxic chemical release reporting requirements, the Facility was a “covered facility,” within the meaning of 40 C.F.R. §§ 372.22 and were required to file a toxic chemical release report under 372.30(a), in each of the calendar years.

Counts 1 - 4 Barium (2012 – 2015)

20. The preceding paragraphs are incorporated by reference.

21. “Barium” is listed as a chemical in 40 C.F.R. § 372.65 and is a “toxic chemical” as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3.
22. As set forth in Section 313(f)(1)(A) of EPCRA, 42 U.S.C. § 11023(f)(1)(A), and 40 C.F.R. § 372.25(b), the reporting threshold amount for barium otherwise used at a facility is 10,000 pounds.
23. Respondent otherwise used more than 10,000 pounds of barium at the Facility during each of the 2012, 2013, 2014 and 2015 calendar years.
24. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2013, a completed Form R or Form A for the barium otherwise used at the Facility during the calendar year 2012.
25. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical barium otherwise used at the Facility during calendar year 2012. However, on or about July 2, 2013, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical barium otherwise used at the Facility during calendar year 2012.
26. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2014, a completed Form R or Form A for the barium otherwise used at the Facility during the calendar year 2013.
27. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical barium otherwise used at the Facility during calendar year 2013. However, on or about July 2, 2014, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical barium otherwise used at the Facility during calendar year 2013.
28. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2015, a completed Form R or Form A for the barium otherwise used at the Facility during the calendar year 2014.
29. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical barium otherwise used at the Facility during calendar year 2014. However, on or about May 3, 2016, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical barium otherwise used at the Facility during calendar year 2014.

30. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2016, a completed Form R or Form A for the barium otherwise used at the Facility during the calendar year 2015.
31. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical barium otherwise used at the Facility during calendar year 2015. However, on or about August 25, 2016, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical barium otherwise used at the Facility during calendar year 2015.
32. Respondent's failure to timely file a complete Form R or Form A with EPA or the State of Pennsylvania for the toxic chemical barium otherwise used at the Facility during each of the calendar years 2012, 2013, 2014 and 2015 constitutes four separate violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Counts 5 - 8 Chromium (2012 – 2015)

33. The preceding paragraphs are incorporated by reference.
34. "Chromium" is listed as a chemical in 40 C.F.R. § 372.65 and is a "toxic chemical" as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3.
35. As set forth in Section 313(f)(1)(A) of EPCRA, 42 U.S.C. § 11023(f)(1)(A), and 40 C.F.R. § 372.25(b), the reporting threshold amount for chromium otherwise used at a facility is 10,000 pounds.
36. Respondent otherwise used more than 10,000 pounds of chromium at the Facility during each of the 2012, 2013, 2014 and 2015 calendar years.
37. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2013, a completed Form R or Form A for the chromium otherwise used at the Facility during the calendar year 2012.
38. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical chromium otherwise used at the Facility during calendar year 2012. However, on or about July 2, 2013, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical chromium otherwise used at the Facility during calendar year 2012.

39. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2014, a completed Form R or Form A for the chromium otherwise used at the Facility during the calendar year 2013.
40. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical chromium otherwise used at the Facility during calendar year 2013. However, on or about July 2, 2014, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical chromium otherwise used at the Facility during calendar year 2013.
41. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2015, a completed Form R or Form A for the chromium otherwise used at the Facility during the calendar year 2014.
42. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical chromium otherwise used at the Facility during calendar year 2014. However, on or about May 3, 2016, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical chromium otherwise used at the Facility during calendar year 2014.
43. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2016, a completed Form R or Form A for the chromium otherwise used at the Facility during the calendar year 2015.
44. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical chromium otherwise used at the Facility during calendar year 2015. However, on or about August 25, 2016, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical chromium otherwise used at the Facility during calendar year 2015.
45. Respondent's failure to timely file a complete Form R or Form A with EPA or the State of Pennsylvania for the toxic chemical chromium otherwise used at the Facility during each of the calendar years 2012, 2013, 2014 and 2015 constitutes four separate violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Counts 9 – 12 Lead (2012 – 2015)

46. The preceding paragraphs are incorporated by reference.
47. "Lead" is listed as a chemical in 40 C.F.R. § 372.65 and is a "toxic chemical" as defined in

EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3.

48. As set forth in Section 313(f)(2) of EPCRA, 42 U.S.C. § 11023(f)(2), and 40 C.F.R. § 372.28(a)(1), the reporting threshold amount for lead otherwise used at a facility is 100 pounds.
49. Respondent otherwise used more than 100 pounds of lead at the Facility during each of the 2012, 2013, 2014 and 2015 calendar years.
50. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2013, a completed Form R or Form A for the lead otherwise used at the Facility during the calendar year 2012.
51. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical lead otherwise used at the Facility during calendar year 2012. However, on or about July 2, 2013, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical lead otherwise used at the Facility during calendar year 2012.
52. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2014, a completed Form R or Form A for the lead otherwise used at the Facility during the calendar year 2013.
53. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical lead otherwise used at the Facility during calendar year 2013. However, on or about July 2, 2014, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical lead otherwise used at the Facility during calendar year 2013.
54. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2015, a completed Form R or Form A for the lead otherwise used at the Facility during the calendar year 2014.
55. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical lead otherwise used at the Facility during calendar year 2014. However, on or about May 3, 2016, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical lead otherwise used at the Facility during calendar year 2014.

56. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2016, a completed Form R or Form A for the lead otherwise used at the Facility during the calendar year 2015.
57. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical lead otherwise used at the Facility during calendar year 2015. However, on or about August 25, 2016, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical lead otherwise used at the Facility during calendar year 2015.
58. Respondent's failure to timely file a complete Form R or Form A with EPA or the State of Pennsylvania for the toxic chemical lead otherwise used at the Facility during each of the calendar years 2012, 2013, 2014 and 2015 constitutes four separate violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Counts 13 - 15 Nickel (2012 – 2014)

59. The preceding paragraphs are incorporated by reference.
60. "Nickel" is listed as a chemical in 40 C.F.R. § 372.65 and is a "toxic chemical" as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3.
61. As set forth in Section 313(f)(1)(A) of EPCRA, 42 U.S.C. § 11023(f)(1)(A), and 40 C.F.R. § 372.25(b), the reporting threshold amount for nickel otherwise used at a facility is 10,000 pounds.
62. Respondent otherwise used more than 10,000 pounds of nickel at the Facility during each of the 2012, 2013, and 2014 calendar years.
63. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2013, a completed Form R or Form A for the nickel otherwise used at the Facility during the calendar year 2012.
64. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical nickel otherwise used at the Facility during calendar year 2012. However, on or about July 2, 2013, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical nickel otherwise used at the Facility during calendar year 2012.
65. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent

was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2014, a completed Form R or Form A for the nickel otherwise used at the Facility during the calendar year 2013.

66. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical nickel otherwise used at the Facility during calendar year 2013. However, on or about July 2, 2014, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical nickel otherwise used at the Facility during calendar year 2013.
67. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2015, a completed Form R or Form A for the nickel otherwise used at the Facility during the calendar year 2014.
68. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical nickel otherwise used at the Facility during calendar year 2014. However, on or about May 3, 2016, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical nickel otherwise used at the Facility during calendar year 2014.
69. Respondent's failure to timely file a complete Form R or Form A with EPA or the State of Pennsylvania for the toxic chemical nickel otherwise used at the Facility during each of the calendar years 2012, 2013, and 2014 constitutes three separate violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Counts 16 - 17 Mercury (2012 and 2014)

70. The preceding paragraphs are incorporated by reference.
71. "Mercury" is listed as a chemical in 40 C.F.R. § 372.65 and is a "toxic chemical" as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3.
72. As set forth in Section 313(f)(2) of EPCRA, 42 U.S.C. § 11023(f)(2), and 40 C.F.R. § 372.28(a)(1), the reporting threshold amount for mercury otherwise used at a facility is 10 pounds.
73. Respondent otherwise used more than 10 pounds of mercury at the Facility during each of the 2012, and 2014 calendar years.
74. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1

of 2013, a completed Form R or Form A for the mercury otherwise used at the Facility during the calendar year 2012.

75. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical mercury otherwise used at the Facility during calendar year 2012. However, on or about July 2, 2013, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical mercury otherwise used at the Facility during calendar year 2012.
76. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2015, a completed Form R or Form A for the mercury otherwise used at the Facility during the calendar year 2014.
77. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical mercury otherwise used at the Facility during calendar year 2014. However, on or about May 3, 2016, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical mercury otherwise used at the Facility during calendar year 2014.
78. Respondent's failure to timely file a complete Form R or Form A with EPA or the State of Pennsylvania for the toxic chemical mercury otherwise used at the Facility during each of the calendar years 2012 and 2014 constitutes two separate violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Counts 18 - 20 Arsenic (2013 - 2015)

79. The preceding paragraphs are incorporated by reference.
80. "Arsenic" is listed as a chemical in 40 C.F.R. § 372.65 and is a "toxic chemical" as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3.
81. As set forth in Section 313(f)(1)(A) of EPCRA, 42 U.S.C. § 11023(f)(1)(A), and 40 C.F.R. § 372.25(b), the reporting threshold amount for arsenic otherwise used at a facility is 10,000 pounds.
82. Respondent otherwise used more than 10,000 pounds of arsenic at the Facility during each of the 2013, 2014 and 2015 calendar years.
83. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2014, a completed Form R or Form A for the arsenic otherwise used at the Facility during

the calendar year 2013.

84. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical arsenic otherwise used at the Facility during calendar year 2013. However, on or about July 2, 2014, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical arsenic otherwise used at the Facility during calendar year 2013.
85. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2015, a completed Form R or Form A for the arsenic otherwise used at the Facility during the calendar year 2014.
86. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical arsenic otherwise used at the Facility during calendar year 2014. However, on or about May 3, 2016, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical arsenic otherwise used at the Facility during calendar year 2014.
87. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2016, a completed Form R or Form A for the arsenic otherwise used at the Facility during the calendar year 2015.
88. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical arsenic otherwise used at the Facility during calendar year 2015. However, on or about August 25, 2016, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical arsenic otherwise used at the Facility during calendar year 2015.
89. Respondent's failure to timely file a complete Form R or Form A with EPA or the State of Pennsylvania for the toxic chemical arsenic otherwise used at the Facility during each of the calendar years 2013, 2014 and 2015 constitutes three separate violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Counts 21 - 23 Copper (2013 - 2015)

90. The preceding paragraphs are incorporated by reference.
91. "Copper" is listed as a chemical in 40 C.F.R. § 372.65 and is a "toxic chemical" as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3.

92. As set forth in Section 313(f)(1)(A) of EPCRA, 42 U.S.C. § 11023(f)(1)(A), and 40 C.F.R. § 372.25(b), the reporting threshold amount for copper otherwise used at a facility is 10,000 pounds.
93. Respondent otherwise used more than 10,000 pounds of copper at the Facility during each of the 2013, 2014 and 2015 calendar years.
94. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2014, a completed Form R or Form A for the copper otherwise used at the Facility during the calendar year 2013.
95. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical copper otherwise used at the Facility during calendar year 2013. However, on or about July 2, 2014, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical copper otherwise used at the Facility during calendar year 2013.
96. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2015, a completed Form R or Form A for the copper otherwise used at the Facility during the calendar year 2014.
97. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical copper otherwise used at the Facility during calendar year 2014. However, on or about May 3, 2016, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical copper otherwise used at the Facility during calendar year 2014.
98. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the State of Pennsylvania by July 1 of 2016, a completed Form R or Form A for the copper otherwise used at the Facility during the calendar year 2015.
99. Respondent never filed a Form A with the Administrator of EPA or the State of Pennsylvania for the toxic chemical copper otherwise used at the Facility during calendar year 2015. However, on or about August 25, 2016, Respondent did file a complete Form R with the Administrator of EPA and the State of Pennsylvania for the toxic chemical copper otherwise used at the Facility during calendar year 2015.
100. Respondent's failure to timely file a complete Form R or Form A with EPA or the State of Pennsylvania for the toxic chemical copper otherwise used at the Facility during each of the calendar years 2013, 2014 and 2015 constitutes three separate violations of Section 313 of

EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Settlement

101. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), provides that any person who violates EPCRA § 313, 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 2013 Civil Monetary Penalty Inflation Adjustment Rule, 78 Fed. Reg. 66643 (Nov. 6, 2013), effective on December 6, 2013, and 40 C.F.R. Part 19, violations of Section 313 of EPCRA, 42 U.S.C. § 11023, occurring after January 12, 2009 are subject to a civil penalty of up to \$37,500 per violation. Pursuant to the 2016 Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43091 (July 1, 2016), effective August 1, 2016, violations of Section 313 of EPCRA, 42 U.S.C. § 11023, occurring after November 2, 2015 are now subject to a civil penalty of up to \$53,907 per violation.
102. In full and final settlement and satisfaction of EPA's claims for civil monetary penalties for the violations alleged in this Consent Agreement, Respondent agrees to the assessment of a civil penalty in the amount of SIXTY THOUSAND DOLLARS (\$60,000), which Respondent agrees to pay in accordance with the terms set forth below.
103. The civil penalty settlement amount set forth in Paragraph 102, immediately above, is based upon Complainant's consideration a number of factors including, but not limited to, the statutory penalty factors set forth in EPCRA § 325(b)(1)(C), 42 U.S.C. 11045(b)(1)(C), which include the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay and prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case, with specific reference to EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (April 12, 2001). Complainant also has considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19 and the December 6, 2013 and July 27, 2016 memoranda by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013 and August 1, 2016, respectively)*. The settlement in this proceeding is consistent with the provisions and objectives of EPCRA § 313, 42 U.S.C. § 11023, and 40 C.F.R. Part 372. The Parties further acknowledge and represent that the aforesaid settlement is based, in part, upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information submitted to Complainant by Respondent. Pursuant to 40 C.F.R. 2.203, Respondent asserted that all of the information listed below and submitted to EPA by Respondent, in support of its inability to claim, be treated as confidential business information and not be disclosed to third parties:
 - a. Completed financial statement for corporations;
 - b. Tax returns for 2011 – 2014;

- c. The draft tax return for 2015;
- d. Consolidated year-end financial statement 2015;
- e. Detail balance sheet as of June 30, 2016;
- f. Accounts payable as of June 30, 2016;
- g. Accounts receivable as of June 30, 2016;
- h. MAX ET Book Depreciation;
- i. MAX Management book Depreciation; and
- j. a prior ability to pay analysis performed by EPA.

104. Complainant has relied upon the financial information provided by Respondent and identified in Paragraph 103, immediately above. Based upon an analysis of the same, and in consideration and application of a number of factors to the particular facts and circumstances of this case, including: the statutory penalty criteria and factors, associated EPA policies and implementation guidance, and inflation-related regulations and memoranda previously cited in Paragraph 103, above, it is Complainant's conclusion that the Respondent has established that it is unable to pay a civil penalty in excess of the amount set forth in Paragraph 102, above, in settlement of the above-captioned action.
105. By his signature below, Respondent's representative certifies that the information submitted to EPA regarding Respondent's ability to pay and regarding any other matter at issue in this proceeding, is accurate and not misleading. Respondent and its officers, directors and principals are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding Respondent's claim of inability to pay, or regarding any of other matter herein at issue, are false or, in any material respect, inaccurate.

Payment Terms

106. The civil penalty amount set forth in Paragraph 102, above, shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by all 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, 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.
107. Alternatively, the civil penalty of SIXTY THOUSAND DOLLARS (\$60,000.00) set forth in Paragraph 102, above, may be paid in twelve (12) installments with interest at the rate of one per cent (1%) per annum on the outstanding principal balance in accordance with the following schedule:

Payment	Number of Days	Principal	Interest	Payment Amount
1	30	\$4,975.83	\$51.67	\$5,027.50
2	60	\$4,981.65	\$45.85	\$5,027.50
3	90	\$4,984.41	\$43.09	\$5,027.50
4	120	\$4,988.70	\$38.80	\$5,027.50
5	150	\$4,996.33	\$31.17	\$5,027.50
6	180	\$4,997.30	\$30.20	\$5,027.50
7	210	\$5,002.44	\$25.06	\$5,027.50
8	240	\$5,005.91	\$21.59	\$5,027.50
9	270	\$5,010.78	\$16.72	\$5,027.50
10	300	\$5,014.53	\$12.97	\$5,027.50
11	330	\$5,018.85	\$8.65	\$5,027.50
12	360	\$5,023.27	\$4.23	\$5,027.50
Total:		\$60,000.00	\$330.00	\$60,330.00

108. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 107, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraphs 111 - 114 below, in the event of any such failure or default.

109. Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

110. Respondent shall pay the civil penalty amount assessed in Paragraph 102, above, plus any interest, administrative fees, and/or late payment penalties owed in accordance with Paragraphs 111 - 114 below, 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, *i.e.*, EPCRA-03-2016-0223;
 - 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 private commercial overnight delivery service shall be addressed for delivery to:

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

Contact: 314-418-1818

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. 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”

- g. 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, MD 20737

Contact: 866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

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

i. Additional payment guidance is available at:

<http://www.2epa.gov/financial/makepayment>

j. At the time of payment, Respondent shall simultaneously send a notice of Payment, including a copy of Respondent's check or electronic fund transfer notice, as applicable, to:

Donzetta W. Thomas
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

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

111. 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 as specified herein shall result in

the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

112. 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 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).
113. 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.
114. A late payment penalty of six percent 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). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
115. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Certification

116. 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 EPCRA Section 313, 42 U.S.C. § 11023.

Other Applicable Laws

117. 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

118. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil penalties for the specific violations of EPCRA Section 313, 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

119. 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

120. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and Respondent's officers, directors (in their official capacity), and Respondent's successors, agents, and assigns. 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

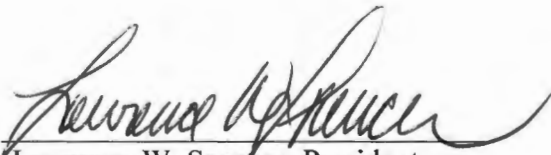
121. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules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

Entire Agreement

122. 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.

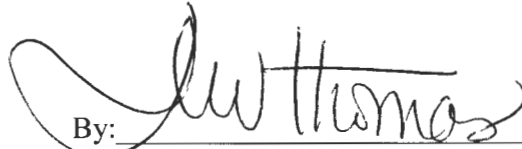
For Respondent:

Date: 9-16-16

By: 
Lawrence W. Spencer, President
Max Environmental Technologies, Inc.

For Complainant:

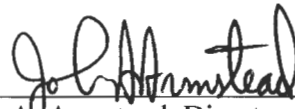
Date: 9/19/16

By: 

Donzetta W. Thomas
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: 9.22.16

By: 

John A. Armstead, Director
Land and Chemicals Division

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

In the Matter of:

**Max Environmental Technologies, Inc.
233 Max Lane
Yukon, Pennsylvania 15698
Respondent**

Docket No. EPCRA-03-2016-0223

**Proceeding under EPCRA §§
313 and 325(c), 42 U.S.C. §§
11023 and 11045(c)**

FINAL ORDER

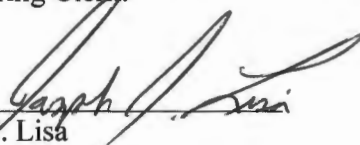
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Max Environmental Technologies, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated 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 on 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 and Community Right-to-Know Act (1986)* and Section 6607 of the Pollution Prevention Act (1990), April 12, 2001, the statutory factors set forth in EPCRA § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C), and the provisions and objectives of EPCRA § 313, 42 U.S.C. § 11023.

NOW, THEREFORE, PURSUANT TO Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of SIXTY THOUSAND DOLLARS (\$60,000.00), as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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

Date: Sept. 28, 2016



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

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

Original and One Copy by Hand-Delivery:

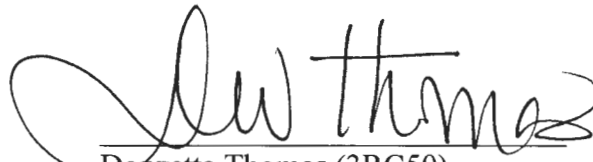
Lydia Guy,
Regional Hearing Clerk

Copy by UPS Overnight Delivery:

Alan S. Miller, Esq.
Picadio Sneath Miller & Norton, P.C.*
Four Gateway Center
444 Liberty Avenue, Suite 1105
Pittsburgh, PA 15222
(412) 288-4004 (phone)

9/28/16

Date



Donzetta Thomas (3RC50)
Senior Assistant Regional Counsel
U.S. EPA, Region III