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ROBERT MOYER  
Acting Regional Counsel

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US EPA REGION IX  
HEARING CLERK

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HEARING CLERK~~

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

In the matter of:	)	
	)	Docket No. EPCRA-9-2014- <u>0001</u>
AMERITYRE CORPORATION,	)	
	)	CONSENT AGREEMENT AND FINAL
	)	ORDER PURSUANT TO 40 C.F.R.
	)	§§ 22.13 AND 22.18
Respondent	)	
_____	)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA Region IX”), and Amerityre Corporation (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously initiates and concludes this matter pursuant to 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This administrative proceeding is for the assessment of a civil administrative penalty pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act, as amended (“EPCRA” or the “Act”), 42 U.S.C. § 11045(c), against Respondent for violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated to implement Section 313 at 40 C.F.R. Part 372.

2. Complainant is the Director of the Enforcement Division in EPA, Region IX (the “Complainant”). Pursuant to EPA Delegation Order Number 22-3-A, dated May 11, 1994, the Administrator of EPA has delegated the authority to file this action under EPCRA to the Regional Administrator of EPA Region IX, and pursuant to EPA Regional Order Number R9-1200 TN100, dated February 11, 2013, the Regional Administrator re-delegated that authority to Complainant.

**B. STATUTORY AND REGULATORY BASIS**

3. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for the submission of information relating to the release of toxic chemicals under EPCRA Section 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.
4. Section 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. §§ 372.22 and 372.30, provide that the owner or operator of a facility that (i) has ten or more full-time employees, (ii) is in Standard Industrial Classification Codes 20 through 39, and (iii) manufactured, processed, or otherwise used one or more toxic chemicals listed under 40 C.F.R. § 372.65 in quantities exceeding the thresholds established under Section 313(f) of EPCRA and 40 C.F.R. §§ 372.25 and 372.28, must submit annually to EPA and the State in which the facility is located a toxic chemical release inventory reporting form published under Section 313(g), 42 U.S.C. § 11023(g), of EPCRA (hereinafter a “Form R”) for each such toxic chemical.

5. Section 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. § 372.30(d), provide that each Form R for activities involving a toxic chemical that occurred during a calendar year must be submitted on or before July 1 of the next year.
6. Pursuant to 40 C.F.R. § 372.45(a), a person who owns or operates a facility or establishment that is in SIC codes 20 through 39 that manufactures or processes a toxic chemical listed in 40 C.F.R. § 372.65 and sells or otherwise distributes a mixture or trade name product containing the toxic chemical to a facility covered under 40 C.F.R. § 372.22 or a person who in turn may sell or otherwise distribute the mixture or trade name product to a covered facility shall notify each person to whom the mixture or trade name product is sold or otherwise distributed in accordance with 40 C.F.R. § 372.45(b).
7. Pursuant to 40 C.F.R. § 372.45(b), the supplier notification shall be in writing and include a statement that the mixture or trade name product contains a toxic chemical subject to EPCRA Section 313 reporting requirements, the name of each toxic chemical and associated Chemical Abstracts Service registry number (if applicable), and the percent by weight of each toxic chemical in the mixture or trade name product.

### C. ALLEGED VIOLATIONS

8. Respondent is a “person” as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
9. At all times relevant to this matter, Respondent was an owner and operator of a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3, which is located at 1501 Industrial Road, Boulder City, Nevada (the “Facility”).
10. At all times relevant to this matter, the Facility had 10 or more “full-time employees,” as that term is defined by 40 C.F.R. § 372.3.

11. At all times relevant to this matter, the Facility was classified in Standard Industrial Classification Codes 20 through 39.
12. During calendar year 2008, approximately 98 pounds of mercury compounds (chemical category N458), a “toxic chemical” listed under 40 C.F.R. § 372.65, were “processed,” as that term is defined in 40 C.F.R. § 372.3, at the Facility. This quantity exceeded the threshold for reporting established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.
13. Respondent was required to submit to the EPA Administrator and the State of Nevada complete Form R on or before July 1, 2009 for mercury compounds processed at the Facility in 2008. 40 C.F.R. § 372.30(d).
14. Respondent’s failure to submit a timely Form R on or before July 1, 2009 for mercury compounds processed at the Facility in 2008 was in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
15. During the calendar year 2008, approximately 226,250 pounds of diisocyanates (chemical category N120), a toxic chemical listed under 40 C.F.R. § 372.65, were “processed,” as that term is defined in 40 C.F.R. § 372.3, at the Facility. This quantity exceeded the threshold for reporting established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.
16. Respondent was required to submit a complete and accurate Form R for diisocyanates to EPA and the State of Nevada for calendar year 2008 on or before July 1, 2009.
17. Respondent failed to submit a complete and accurate Form R for diisocyanates for calendar year 2008 to EPA and the State of Nevada on or before July 1, 2009, and thus violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

18. During calendar year 2009, approximately 182 pounds of mercury compounds, a “toxic chemical” listed under 40 C.F.R. § 372.65, were “processed,” as that term is defined in 40 C.F.R. § 372.3, at the Facility. This quantity exceeded the threshold for reporting established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.
19. Respondent was required to submit to the EPA Administrator and the State of Nevada complete Form R on or before July 1, 2010 for mercury compounds processed at the Facility in 2009. 40 C.F.R. § 372.30(d).
20. Respondent’s failure to submit a timely Form R on or before July 1, 2010 for mercury compounds processed at the Facility in 2009 was in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
21. During calendar year 2009, approximately 178,750 pounds of diisocyanates, a “toxic chemical” listed under 40 C.F.R. § 372.65, were “processed,” as that term is defined in 40 C.F.R. § 372.3, at the Facility. This quantity exceeded the threshold for reporting established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.
22. Respondent was required to submit to the EPA Administrator and the State of Nevada complete Form R on or before July 1, 2010 for diisocyanates processed at the Facility in 2009. 40 C.F.R. § 372.30(d).
23. Respondent’s failure to submit a timely Form R on or before July 1, 2010 for diisocyanates processed at the Facility in 2009 was in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

24. During calendar year 2009, the Facility sold or otherwise distributed a mixture or trade name product containing diisocyanates, a toxic chemical listed under 40 C.F.R. § 372.65, to facilities subject to EPCRA Section 313 reporting requirements.
25. Under 40 C.F.R. § 372.45, Respondent was required to provide each facility subject to EPCRA Section 313 reporting requirements a written statement that the mixture or trade name product contained diisocyanates covered by EPCRA Section 313 reporting requirements and the percent by weight of diisocyanates in the mixture or trade name product (the "Supplier Notification Statement").
26. Respondent failed to provide the Supplier Notification Statements with diisocyanates sold or distributed to facilities subject to EPCRA Section 313 reporting requirements in or about 2009 and thus violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
27. During calendar year 2010, approximately 228 pounds of mercury compounds, a "toxic chemical" listed under 40 C.F.R. § 372.65, were "processed," as that term is defined in 40 C.F.R. § 372.3, at the Facility. This quantity exceeded the threshold for reporting established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.
28. Respondent was required to submit to the EPA Administrator and the State of Nevada complete Form R on or before July 1, 2011 for mercury compounds processed at the Facility in 2010. 40 C.F.R. § 372.30(d).
29. Respondent's failure to submit a timely Form R on or before July 1, 2011 for mercury compounds processed at the Facility in 2010 was in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

30. During calendar year 2010, approximately 197,294 pounds of diisocyanates, a “toxic chemical” listed under 40 C.F.R. § 372.65, were “processed,” as that term is defined in 40 C.F.R. § 372.3, at the Facility. This quantity exceeded the threshold for reporting established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.
31. Respondent was required to submit to the EPA Administrator and the State of Nevada complete Form R on or before July 1, 2011 for diisocyanates processed at the Facility in 2009. 40 C.F.R. § 372.30(d).
32. Respondent’s failure to submit a timely Form R on or before July 1, 2011 for diisocyanates processed at the Facility in 2010 was in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
33. During calendar year 2010, the Facility sold or otherwise distributed a mixture or trade name product containing diisocyanates, a toxic chemical listed under 40 C.F.R. § 372.65, to facilities subject to EPCRA Section 313 reporting requirements.
34. Under 40 C.F.R. § 372.45, Respondent was required to provide each facility subject to EPCRA Section 313 reporting requirements a Supplier Notification Statement that informed the facility that the mixture or trade name product contained diisocyanates covered by EPCRA Section 313 reporting requirements and the percent by weight of diisocyanates in the mixture or trade name product.
35. Respondent failed to provide the Supplier Notification Statements with diisocyanates sold or distributed to facilities subject to EPCRA Section 313 reporting requirements in or about 2010 and thus violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

36. During calendar year 2011, the Facility sold or otherwise distributed a mixture or trade name product containing diisocyanates, a toxic chemical listed under 40 C.F.R. § 372.65, to facilities subject to EPCRA Section 313 reporting requirements.
37. Under 40 C.F.R. § 372.45, Respondent was required to provide each facility subject to EPCRA Section 313 reporting requirements a Supplier Notification Statement that informed the facility that the mixture or trade name product contained diisocyanates covered by EPCRA Section 313 reporting requirements and the percent by weight of diisocyanates in the mixture or trade name product.
38. Respondent failed to provide the Supplier Notification Statements with diisocyanates sold or distributed to facilities subject to EPCRA Section 313 reporting requirements in or about 2011 and thus violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
39. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and the Civil Monetary Penalty Inflation Adjustment Rule (61 Fed. Reg. 69359 (Dec. 31, 1996); 62 Fed. Reg. 13513 (March 20, 1997); 69 Fed. Reg. 7121 (Feb. 13, 2004)) provide that any person who violates any requirement of Section 313 shall be liable to the United States for a civil penalty in an amount not to exceed \$32,500 per day for each such violation that occurs after March 15, 2004 and on or before January 12, 2009, and \$37,500 per day for each such violation that occurs after January 12, 2009.

#### D. RESPONDENT'S ADMISSIONS

40. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained

in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

41. In settlement of the violations specifically alleged in the CAFO, Respondent shall pay a civil administrative penalty of TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$2,500) no later than thirty (30) days from the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

a. Regular or Certified Mail:

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

b. Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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."

c. Overnight Mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101

d. ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
ABA = 051036706  
Transaction Code 22 — checking  
Environmental Protection Agency  
Account 31006  
CTX Format

e. On Line Payment:

This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)  
Enter "sfo1.1" in the search field  
Open form and complete required fields

If any clarification regarding a particular method of payment remittance is needed, Please contact the EPA Cincinnati Finance Center at 513-487-2091. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, and transmittal letter to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX

75 Hawthorne Street  
San Francisco, CA 94105

Lily Lee  
Enforcement Division (ENF-2-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

42. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
43. If Respondent fails to pay the assessed civil administrative penalty as specified in Paragraph 41, then Respondent shall pay to EPA the stipulated penalty of FIVE THOUSAND DOLLARS (\$5,000) upon EPA's written request. In addition, failure to pay the civil administrative penalty as specified in Paragraph 41 may lead to any or all of the following actions:
  - a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
  - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in paragraph 41. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

#### F. RETENTION OF RIGHTS

- 44. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any

civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

45. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

#### G. ATTORNEYS' FEES AND COSTS

46. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

#### H. EFFECTIVE DATE

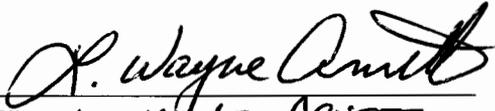
47. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

#### I. BINDING EFFECT

48. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
49. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT AMERITYRE CORPORATION:

2/28/14  
DATE

  
By: L. WAYNE ARNETT  
Title: EVP - CFO  
Address: 1501 INDUSTRIAL ROAD  
BOULDER CITY, NV 89005

FOR COMPLAINANT EPA REGION IX:

3/11/14  
DATE

  
KATHLEEN JOHNSON

Director  
Enforcement Division  
United States Environmental  
Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

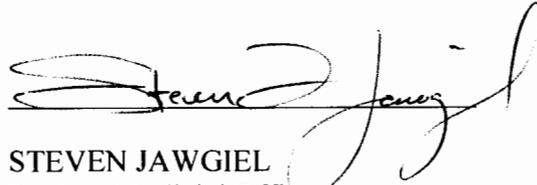
II. FINAL ORDER

Complainant EPA Region IX and Respondent Amerityre Corporation, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this Consent Agreement (Docket No. EPCRA-9-2014-0001) be entered, and Respondent shall pay a civil administrative penalty in the amount of \$2,500 in accordance with the terms set forth in the Consent Agreement.

03/26/14

DATE



STEVEN JAWGIEL  
Regional Judicial Officer  
United States Environmental  
Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original fully executed Consent Agreement and Final Order ("CAFO"),  
Docket Number EPCRA-09-2014-<sup>0001</sup>, was filed this day with the Regional Hearing Clerk, U.S.  
EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and  
correct copy of the CAFO was sent to Respondent at the following address:

Timothy L. Ryan  
Chief Executive Officer  
Amerityre Corporation  
1501 Industrial Road  
Boulder City, Nevada 89005

Certified Mail No:7003 3110 0006 1998 2653



FOR:

Steve Armsey  
Regional Hearing Clerk  
Region IX, EPA  
Office of Regional Counsel

3/27/14

Date