



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

October 28, 2020  
2:00 PM

Received by  
EPA Region VIII  
Hearing Clerk

DOCKET NO.: EPCRA-08-2021-0001

IN THE MATTER OF: )  
 )  
BAKER BOY BAKE SHOP, INC. ) FINAL ORDER  
 )  
 )  
 )  
 )  
RESPONDENT )

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Expedited Settlement Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Expedited Settlement Agreement, effective immediately upon filing this Expedited Settlement Agreement and Final Order.

**SO ORDERED THIS 28TH DAY OF OCTOBER, 2020.**

KATHERIN HALL  
Digitally signed by  
KATHERIN HALL  
Date: 2020.10.28  
13:58:20 -06'00'

Katherin E. Hall  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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|--------------------------------------|---|
| IN THE MATTER OF:                    | ) |
|                                      | ) |
| <b>Baker Boy Bake Shop, Inc.</b>     | ) |
| <b>170 GTA Drive</b>                 | ) |
| <b>West Industrial Park</b>          | ) |
| <b>Dickinson, North Dakota 58601</b> | ) |
|                                      | ) |
| Respondent.                          | ) |
|                                      | ) |
|                                      | ) |
|                                      | ) |
|                                      | ) |

**Docket No.:** EPCRA-08-2021-0001

**EXPEDITED SETTLEMENT AGREEMENT  
(CONSENT AGREEMENT and FINAL  
ORDER)**

AUTHORITY

1. This Expedited Settlement Agreement (also known as a Consent Agreement and Final Order, hereafter ESA), which is intended to simultaneously commence and conclude this matter, is being entered into by the United States Environmental Protection Agency (EPA), Region 8, by its duly delegated official, the division director of the Enforcement and Compliance Assurance Division, and the Baker Boy Bake Shop, Inc. (Respondent). This matter is authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. The EPA and Respondent agree that the EPA has jurisdiction over this matter pursuant to section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045.
3. Respondent agrees that the EPA has jurisdiction and venue over the matters contained in this agreement, however, Respondent neither admits nor denies the EPA's specific factual allegations contained herein.

RESPONDENT

4. The Respondent is a "person" under section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
5. The Respondent is a North Dakota incorporated company authorized to do business in the state of North Dakota.
6. Respondent is the owner or operator of the Baker Boy Bake Shop, a food manufacturing facility, as defined by section 329(4) of EPCRA, 42 U.S.C. § 11049(4), located at 170 GTA Drive, West Industrial Park, Dickinson, North Dakota 58601 (facility).

ALLEGED VIOLATIONS

7. On July 31, 2019, an authorized representative of the EPA conducted a compliance inspection of Respondent's facility to determine compliance with the EPCRA regulations promulgated at 40 C.F.R. part 370.

8. At all times relevant to this matter, the facility stored hazardous chemicals as defined by 29 C.F.R. § 1910.1200(c).
9. Respondent is required to file an annual Tier II inventory report for hazardous chemicals stored in excess of established thresholds. These thresholds are codified at 40 C.F.R. § 370.10 and the reporting requirements are codified at 40 C.F.R. § 370.20.
10. During the July 31, 2019, inspection, the facility was storing lead in excess of the threshold of 10,000 pounds and sulfuric acid in excess of the threshold of 500 pounds.
11. Respondent was required to submit its Tier II form for reporting year 2017 on or before March 1, 2018, under section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations at 40 C.F.R. part 370.
12. For reporting year 2017, Respondent was storing lead at Respondent's facility in an amount equal to or in excess of the threshold quantity. Respondent failed to include lead in its Tier II form for reporting year 2017 as required by section 312 of EPCRA, 42 U.S.C. § 11022. and the regulations at 40 C.F.R. part 370
13. Respondent was required to submit its Tier II form for reporting year 2018 on or before March 1, 2019, under section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations at 40 C.F.R. part 370.
14. For reporting year 2018, Respondent stored sulfuric acid at Respondent's facility in an amount equal to or in excess of the threshold quantity. Respondent failed to include sulfuric acid in its Tier II form for reporting year 2018 as required by section 312 of EPCRA, 42 U.S.C. § 11022. and the regulations at 40 C.F.R. part 370.
15. By failing to include the lead and sulfuric acid in its Tier II form for the reporting years 2017 and 2018, Respondent violated section 312 of EPCRA, 42 U.S.C. § 11022. and the regulations at 40 C.F.R. part 370

#### SETTLEMENT

16. The EPA and Respondent agree settlement of this matter is in the public interest, and the EPA and Respondent agree that execution of this agreement and issuance of a final order without further litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter.
17. This agreement contains all terms of the settlement agreed to by the parties.
18. Pursuant to section 325 of EPCRA, 42 U.S.C. § 11045, and based in part on the nature of the alleged violations and other relevant factors, the EPA agrees that an appropriate civil penalty to settle this matter is \$5,000.
19. This settlement is subject to the following terms and conditions with respect to the violations referenced above:
  - a. Respondent, by signing below, waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained in this ESA, and consents to the assessment of the penalty as stated above.

- b. Respondent waives its rights to a hearing afforded by section 325(b)(1)(B) of EPCRA, 42 U.S.C. § 11045(b)(1)(B), and to appeal this and to appeal this matter under EPCRA § 325(f), 42 U.S.C. § 11045(f).
  - c. Each party to this action shall bear its own costs and attorney fees, if any.
  - d. Respondent waives any and all available rights to judicial or administrative review or other remedies that the Respondent may have with respect to any issue of fact or law or any terms and conditions set forth in this ESA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
20. Within 20 days of receipt of this ESA, Respondent must send a cashier's check or certified check (payable to "Treasurer, United States of America") in the amount of \$5,000.00 in payment of the full penalty amount to the following address:

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

**The following Payment Tracking Number for this ESA must be included on the check:  
ESA-R8-EPCRA-2021-001**

**The signed ESA and a copy of the check must be sent by certified mail to**

Dan Webster, 8ENF-AT-P  
US EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

21. Respondent agrees that the penalty specified in this ESA shall not be deductible for purposes of state or federal taxes.
22. Once the Respondent receives a copy of the final order and pays in full the penalty assessment described above, the EPA agrees not to take any further civil administrative penalty action against Respondent for the violations alleged in this ESA.
23. This ESA does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this ESA is without prejudice to, all rights against Respondent with respect to all other matters, including the following:
- a. Claims based on a failure by Respondent to meet a requirement of this ESA including any claims for costs that are caused by the Respondent's failure to comply with this Agreement
  - b. Claims based on criminal liability
  - c. Claims based on any other violations of the Act or federal or state law

24. If the signed original ESA with an attached copy of the check is not returned to the EPA Region 8 office at the above address in correct form by Respondent within 20 days of the date of Respondent's receipt of this ESA, the proposed ESA is withdrawn without prejudice to EPA's ability to file an enforcement action for the violations identified in this ESA.
25. This ESA, upon incorporation into the final order, applies to and is binding upon the EPA and Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this ESA. This ESA contains all terms of the settlement agreed to by parties.
26. Nothing in this ESA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
27. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this ESA and to bind Respondent to the terms and conditions of this ESA.
28. The parties consent to service of this ESA and final order by email at the following valid email addresses: weiner.marc@epa.gov (for Complainant), and chuckr@bakerboy.com (for Respondent).
29. The parties agree to submit this ESA to the regional judicial officer with a request that it be incorporated into a final order.

For Respondent, Baker Boy Bake Shop, Inc.:

  
 Name (Print) Guy M. Moos Date: 10-23-2020  
 Title (Print) President

For Complainant, United States Environmental Protection Agency, Region 8:

**SUZANNE BOHAN** Digitally signed by SUZANNE BOHAN  
 Date: 2020.10.26 13:31:31 -06'00' Date: \_\_\_\_\_  
 Suzanne J. Bohan, Director  
 Enforcement and Compliance Assurance Division

## CERTIFICATE OF SERVICE

The undersigned certifies that the attached **EXPEDITED SETTLEMENT AGREEMENT** and the **FINAL ORDER** in the matter of **BAKER BOY BAKE SHOP, INC.; DOCKET NO.: EPCRA-08-2021-0001** was filed with the Regional Hearing Clerk on October 28, 2020.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney, and sent via certified receipt email on October 28, 2020, to:

Respondent

Chuck Robideau, ES & Maintenance Manager  
Baker Boy Bake Shop, Inc.  
chuckr@bakerboy.com

EPA Financial Center

Jessica Chalifoux  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
Chalifoux.Jessica@epa.gov

October 28, 2020

MELISSA  
HANIEWICZ

Digitally signed by  
MELISSA HANIEWICZ  
Date: 2020.10.28  
14:54:35 -06'00'

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Melissa Haniewicz  
Regional Hearing Clerk