

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 2**

2017 SEP 15 AM 6:50

U.S. Environmental Protection Agency  
Region 2  
1000 North 17th Street  
Durham, NC 27701

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In the Matter of :  
Henry RAC Holding Corp. dba :  
Henry Repeating Arms Corp., :  
Respondent. :  
Proceeding under the Emergency :  
Planning and Community Right-to- :  
Know Act :  
-----X

**CONSENT AGREEMENT AND**  
**FINAL ORDER**

**Docket No.**  
**EPCRA-02-2017-4105**

This administrative proceeding for the assessment of a civil penalty is being commenced pursuant to Section 325 of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11045 (“EPCRA” or the “Act”). The United States Environmental Protection Agency (“EPA” or “Agency”), under authority of EPCRA, has promulgated regulations, codified at 40 C.F.R. Part 372, that govern, *inter alia*, the reporting of manufacturing, processing and otherwise using “toxic chemicals” (as defined in 40 C.F.R. § 372.3). Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides, in part, that “[a]ny person...who violates a provision of section...11023 of this title [Section 313 of EPCRA] shall be liable to the United States for a civil penalty....”

Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions of 40 C.F.R. § 22.18(b).

It has been agreed by the parties that settling this matter by entering into this consent agreement pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Henry RAC Holding Corp. doing business as Henry Repeating Arms Corp. without further litigation. To that end, the parties have met and discussed settlement. No adjudicated findings of fact or conclusions of law have been made in either a judicial or administrative forum. The following constitute EPA's Findings of Fact and Conclusions of Law based on information of which EPA, Region 2, was aware as of the date this CA/FO has been executed.

Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance ("Complainant") of EPA, Region 2, and Complainant has been duly delegated the authority to commence this proceeding. Respondent is Henry RAC Holding Corp. doing business as Henry Repeating Arms Corp. ("Henry").

### **FINDINGS OF FACT**

1. Henry RAC Holding Corp. is a corporation that has existed for a period including calendar years 2011 through 2015, doing business as the Henry Repeating Arms Corp, with its headquarters and a production facility located at 59 East 1<sup>st</sup> Street in Bayonne, New Jersey. Respondent owns and operates the Bayonne facility (and has owned and operated that facility for a period including calendar years 2011 through 2015).
2. At its Bayonne facility, Respondent manufactures (and has done so for a period including calendar years 2011 through 2015) rifles used primarily for recreational activities such as hunting. The rifles are sold to gun dealers and sporting goods stores throughout the United States. The Bayonne facility is an establishment with a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. § 372.23(b) (subsector code or industry code 332 ["Fabricated Metal Product Manufacturing"]).
3. In each of calendar years 2011, 2012, 2013, 2014 and 2015, Respondent had more than 50 full-time employees (having, for example, 230 in 2015). In each of these years, Respondent enjoyed gross annual sales of over \$10 million (having, for example, gross annual sales of approximately \$123 million in 2015).
4. As part of its manufacturing process, Respondent test-fires each rifle to determine its operability, and in the course of doing so, Respondent uses (and has for the period including each of calendar years 2011 through 2015) jacketed lead-core bullets that consist of at least 60% lead.
5. The aforementioned test firing occurs at Respondent's Bayonne facility. The spent bullets are collected in a "bullet trap," known as the "Wet Snail System," for subsequent recycling by a scrap metal recycler.
6. On March 24, 2016, representatives of EPA conducted an inspection of Respondent's

Bayonne facility. The purpose of the inspection was to ascertain Respondent's compliance with the requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372, with regard to reporting the release of toxic chemicals as prescribed by 40 C.F.R. § 372.1.

7. As a consequence of the inspection and documents obtained from Respondent as a follow-up to the inspection, EPA determined that Respondent, in the course of its manufacture of rifles at Respondent's facility, "otherwise used" lead in the following quantities for each of the listed calendar years: **(a)** in 2011 -- 15,043 pounds; **(b)** in 2012 -- 11,156 pounds; **(c)** in 2013 -- 8,562 pounds; **(d)** in 2014 -- 9,365 pounds; and **(e)** in 2015 -- 4,844 pounds.
8. For each of the aforementioned calendar years, lead was listed in 40 C.F.R. § 372.28(a)(1).
9. Respondent failed to report to EPA, using the prescribed form (40 C.F.R. § 372.30, "Form R"), that it "otherwise used" lead: **(a)** in calendar year 2011 by July 1, 2012; **(b)** in calendar year 2012 by July 1, 2013; **(c)** in calendar year 2013 by July 1, 2014; and **(d)** in calendar year 2014 by July 1, 2015.
10. Respondent filed with EPA the Form R report for its usage of lead in each of 2011, 2012 and 2013 on or about May 16, 2016; for its usage of lead in 2014, Respondent filed with EPA the Form R report on or about April 27, 2016.

### CONCLUSIONS OF LAW

1. This is an action pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), to assess a civil penalty against Respondent for having violated a requirement of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a) and of 40 C.F.R. § 372.30. This tribunal is vested with jurisdiction over this administrative proceeding pursuant to Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), and 40 C.F.R. § 22.1(a)(8).
2. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), provides, in part, "Any person...who violates any requirement of section...11023 of this title [Section 313 of EPCRA] shall be liable to the United States for a civil penalty...."
3. Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), provides, "Each day a violation described in paragraph (1) [Section 345(c)(1), 42 U.S.C. § 11045(c)(1)]...continues shall, for purposes of this subsection, constitute a separate violation."
4. EPA promulgated the regulations set forth in 40 C.F.R. Part 372 pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, respectively.
5. Pursuant to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.22 and 372.30, owners or operators of a facility subject to the requirements of Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 are required to submit annually,

no later than July 1<sup>st</sup> of each year, reports for each toxic chemical (defined under 40 C.F.R. § 372.3 to include a chemical listed in 40 C.F.R. § 372.65) that was “manufactured,” “processed” or “otherwise used” (each such term defined in 40 C.F.R. § 372.3) during the preceding calendar year in quantities exceeding the established toxic chemical threshold levels as listed in 40 C.F.R. § 372.25, 372.27 or 372.28. The information, to be reported on the prescribed EPA form (40 C.F.R. § 372.30(a); hereinafter “Form R”) must be submitted to the Administrator of EPA and the state in which the toxic chemicals were manufactured, processed or otherwise used.

6. Each of the following is a “requirement” within the meaning of Section 345(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1): **(a)** Section 313(a) of EPCRA, 42 U.S.C. § 11025(a); **(b)** 40 C.F.R. § 372.22 and **(c)** 40 C.F.R. § 372.30.
7. For the period including each of calendar years 2011 through 2014, Respondent was a “person” as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and in 40 C.F.R. § 372.3.
8. For the period including each of calendar years 2011 through 2014, Respondent, as a consequence of its operations occurring at Respondent’s facility, was subject to the reporting requirements set forth in Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30.
9. For the period including each of calendar years 2011 through 2014, the threshold amount for reporting lead was, pursuant to 40 C.F.R. § 372.28, 100 pounds.
10. Pursuant to each of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30, Respondent was required to submit to EPA and to the State of New Jersey a complete and correct Form R for the following:
  - (a) For the lead otherwise used in calendar year 2011, a completed Form R by July 1, 2012;
  - (b) For the lead otherwise used in calendar year 2012, a completed Form R by July 1, 2013;
  - (c) For the lead otherwise used in calendar year 2013, a completed Form R by July 1, 2014; and
  - (d) For the lead otherwise used in calendar year 2014, a completed Form R by July 1, 2015.
11. Each of the Respondent’s aforementioned (paragraph 9 of the “Findings of Fact” section, above) failures constitutes, for purposes Section 345(c) of EPCRA, 42 U.S.C. § 11045(c) a separate and distinct violation of a requirement of: **(a)** Section 313 of EPCRA, 42 U.S.C. § 11023; **(b)** Section 345(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3); **(c)** 40 C.F.R. § 372.22; and **(d)** 40 C.F.R. § 372.30.

12. For each of Respondent's aforementioned (paragraph 11 of this section, above) violations, Respondent is liable to the United States pursuant to Section 345(c)(1) of EPCRA and Section 345(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(1) and 42 U.S.C. 11045(c)(3), respectively.

### AGREEMENT ON CONSENT

Based upon the foregoing, and pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. § 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22," it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, Respondent: (a) admits EPA has jurisdiction under EPCRA to prosecute this proceeding; (b) neither admits nor denies the "Findings of Fact" or "Conclusions of Law" as set forth in this document; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order accompanying this Consent Agreement; and (e) waives any right it might possess to seek or obtain judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed CA/FO shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the "effective date").

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall pay a civil penalty to EPA in the amount of **NINETY-FOUR THOUSAND SEVEN HUNDRED SEVENTY DOLLARS (\$94,770.00)** for the violations EPA has alleged in the "Findings of Fact" and "Conclusions of Law" sections, above. Said amount must be received by EPA (at the address or account of EPA specified in paragraph 2, below) within thirty (30) days<sup>1</sup> of the date the Regional Administrator of EPA, Region 2, signs the Final Order accompanying this Consent Agreement (said date hereinafter referred to as the "due date").
2. Payment in accordance with the terms and schedule of this Consent Agreement shall be made by cashier's check, certified check or by electronic fund transfer (EFT). If payment is made by cashier's check or by certified check, each such check shall be made payable to the "**Treasurer, United States of America,**" and shall be identified with a notation thereon listing the following: *In re Henry RAC Holding Corp. dba Henry Repeating Arms Corp., Docket Number EPCRA-02-2017-4105*. If payment is made by either form of check, such payment shall be mailed to the following address:

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<sup>1</sup> For purposes of this CA/FO, days shall mean calendar days.

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

3. Alternatively, if Respondent chooses to make payment by EFT, Respondent shall then provide the following information to its remitter bank when each such payment is made in accordance with the information below.
  - a. Amount of Payment
  - b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**
  - c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
  - d. Federal Reserve Bank of New York ABA routing number: **021030004**
  - e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**
  - f. Name of Respondent: **Henry RAC Holding Corp. dba Henry Repeating Arms Corp.**
  - g. Case docket number: **EPCRA-02-2017-4150**
4. The following provide additional payment instructions for Respondent:
  - a. Payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes payment by cashier's check or certified check, then such check shall be *received* at the above-listed address on or before the date specified. If Respondent makes payment by the EFT method, then the EFT shall be *received* on or before the date specified.
  - b. Failure to pay the specified 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 of the amount due (including late payments) and stipulated penalties.
  - c. Furthermore, if the required payment is not received on or before the date when it is made due under the terms of this document, interest therefor 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 payment was to have been made through the date payment has been received. In addition, a late

payment handling charge of \$15.00 will be assessed for each thirty (30) day period or any portion thereof, following the date payment was to have been received, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) days of the date for which payment was required hereto to have been made.

5. The civil penalty provided for in this section (including any payment for interest and late payment handling charge that have become due) constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and does not constitute a deductible expenditure for purposes of federal or state law.
6. By entering into this Consent Agreement, Respondent hereby certifies to the best of the knowledge and information of the person signing this Consent Agreement on behalf of Respondent that, with regard to the aforementioned "Wet Snail System" (paragraph 5 of the "Findings of Fact" section, above): **(a)** Respondent voluntarily installed said system; **(b)** Respondent was not under any legal requirement, mandate, order or directive (federal, state or local), to install and employ said system; **(c)** Respondent installed said system in late 2013/early 2014 and it became fully operation in January 2015; **(d)** prior to the "Wet Snail System" becoming operational, Respondent relied upon a "dry system" utilizing a HEPA filtered ventilation unit; **(e)** Respondent could have legally continued to use the "dry system"; **(f)** the "Wet Snail System" employs a mixture of biodegradable lubricant and water to encapsulate lead particles before they become airborne, thereby protecting the workers at Respondent's facility against inhaling lead; and **(g)** Respondent spent between \$500,000 and \$550,000 to purchase, install and commence operating the "Wet Snail System" and associated infrastructure.
7. By entering into this Consent Agreement, Respondent hereby certifies to the best of the knowledge and information of the person signing this Consent Agreement on behalf of Respondent that Respondent, with regard to the operations at its Bayonne, New Jersey facility, is presently in full compliance with the applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and of 40 C.F.R. Part 372.
8. Complainant shall mail to Respondent (to the representative designated below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2:

Lemana Saran  
Henry Repeating Arms Corp.  
59 East 1<sup>st</sup> Street  
Bayonne, New Jersey 07002

Receipt of the fully executed CA/FO by said designated representative shall constitute Respondent's receipt and acceptance of said CA/FO.

9. Any responses, documentation, and other communications submitted in connection with this Consent Agreement shall be sent to:

James Crossmon  
U.S. Environmental Protection Agency – Region 2  
Pesticides & Toxic Substances Branch  
Building 205  
2890 Woodbridge Avenue  
Edison, NJ 08837

and

Lee A. Spielmann  
Office of Regional Counsel  
US Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007-1866

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following address:

Lemana Saran  
Henry Repeating Arms Corp.  
59 East 1<sup>st</sup> Street  
Bayonne, New Jersey 07002

10. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement and consents to making full and timely payment of the civil penalty (*i.e.* \$94,770.00).
11. This CA/FO is not intended, and shall not be construed, to supersede, pre-empt, negate, invalidate or otherwise affect Respondent's obligation to comply with all applicable federal, state and local law and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit. Payment of the civil penalty in full as provided herein, together with any late payment for interest, shall not nullify, abrogate or otherwise render nugatory Respondent's obligation to comply with applicable EPCRA statutory and regulatory requirement for its manufacture and importation of chemical substances, including new chemical substances, and to maintain such compliance.
12. This Consent Agreement is being voluntarily and knowingly entered into by the parties in order to resolve the allegations set forth in the "Findings of Fact," above, and the "Conclusions of Law." Respondent making full payment of the penalty amount set forth above (*i.e.* \$ 94,770.00) in accordance with the terms herein as well as any interest or late



payment handling charges that accrue, and subject to 40 C.F.R. § 22.31(a), shall only resolve Respondent's liability for federal civil penalties for the facts and violations described in the "Findings of Fact" and "Conclusions of Law" sections, above.

Notwithstanding the above, nothing herein shall affect the authority of EPA or the United States on behalf of EPA to pursue appropriate injunctive or otherwise seek equitable relief or criminal sanctions for any violation(s) of law resulting from or pertaining to Respondent's toxic chemical release reporting.

13. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent, in entering this Consent Agreement, waives any right it might possess to seek or obtain judicial review under EPCRA, the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*, or other law that might be applicable. Respondent, in entering into this Consent Agreement, waives any right it might have under Section 325 of EPCRA, 42 U.S.C. § 11045, or other applicable law otherwise to seek or obtain an administrative or judicial hearing on the claims set forth in or arising from the "Findings of Fact" and/or the "Conclusions of Law" sections of this document, and on the terms and conditions set forth in the "Agreement on Consent" section of this Consent Agreement.
14. This Consent Agreement, and any provision herein, shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce any of the requirements or provisions of this Consent Agreement and accompanying Final Order.
15. EPA's entering into this Consent Agreement is premised upon Respondent not having misrepresented or concealed any material fact in any of its written or oral representations to the Agency. If any material fact has been misrepresented or concealed, EPA may, at its discretion, declare this Consent Agreement and accompanying Final Order null and void *ab initio*.
16. Compliance with the requirements and provisions of this Consent Agreement shall not constitute a defense to any subsequent (*i.e.* following the filing of this document) action, suit or proceeding EPA (or the United States on behalf of EPA) may commence pursuant to any applicable federal statutory or regulatory provision for any violation(s) occurring after the date of the execution of the Final Order accompanying this Consent Agreement, or for any violation(s) of EPCRA statutory or regulatory requirements or prohibitions not alleged herein but that may have occurred prior to the date of the execution of the Final Order accompanying this Consent Agreement.
17. Nothing in this Consent Agreement is intended or is to be construed to operate to resolve or serve as a defense to any criminal liability of Respondent for any EPCRA violations, whether such violations occurred prior or subsequent to the filing of the Final Order accompanying this Consent Agreement.
18. If any requirement or provision of this Consent Agreement is held invalid or stayed by a court of competent jurisdiction, that shall not affect the validity and Respondent's

*In re Henry RAC Holding Corp. dba Henry Repeating Arms Corp.*  
Docket Number EPCRA-02-2017-4105

RESPONDENT,  
Henry RAC Holding Corp.  
dba Henry Repeating Arms Corp.

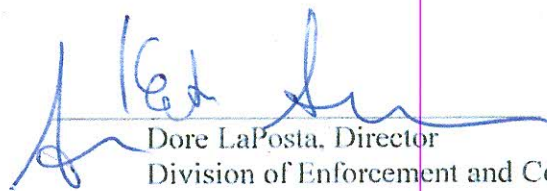
BY: Lemana Saran

NAME: LEMANA SARAN  
[PRINT]

TITLE: CONTROLLER

DATE: 09/01/2017

COMPLAINANT:

  
Dore LaPosta, Director  
Division of Enforcement and Compliance  
Assistance  
U.S. Environmental Protection Agency -  
Region 2

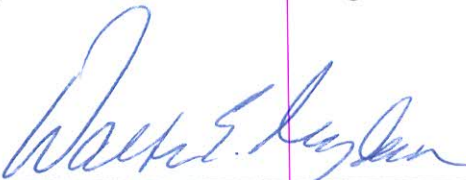
SEP 13 2017

DATE: \_\_\_\_\_

***In re Henry RAC Holding Corp. dba Henry Repeating Arms Corp.***  
**Docket Number EPCRA-02-2017-4150**

**FINAL ORDER**

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of HENRY RAC Holding Corp. dba Henry Repeating Arms Corp.*, bearing Docket Number EPCRA-02-2017-4150. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3).

*for* 

**Catherine R. McCabe**  
Acting Regional Administrator  
U.S Environmental Protection Agency – Region 2

Date: September 13, 2017

***In re Henry RAC Holding Corp. dba Henry Repeating Arms Corp.***  
**Docket No. EPCRA-02-2017-4105**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing "CONSENT AGREEMENT AND FINAL ORDER," said Final Order having been duly executed on behalf of the Acting Regional Administrator of the United States Environmental Protection Agency (EPA), Region 2, on September 13, 2017, in the above-referenced administrative enforcement proceeding in the following manner to the addressee listed below:

Original and One Copy  
By Inter-Office Mail:

Office of Regional Hearing Clerk  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

I further attest that subsequent to the filing of said Consent Agreement/Final Order by the Regional Hearing Clerk of EPA, Region 2, and receipt of said document by the undersigned, a copy of the fully executed document will be sent to Respondent at the following address:

**Lemana Saran, Controller**  
**Henry Repeating Arms. Corp.**  
**59 East 1<sup>st</sup> Street**  
**Bayonne, New Jersey 07002**

Dated: September 14, 2017  
New York, New York

  
\_\_\_\_\_  
Lee A. Spielmann