

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. §§ 22.1(a)(7) and 22.1(a)(8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Agreement.
4. For the purpose of this proceeding, and with the exception of Paragraph 3, above, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.

FACTUAL ALLEGATIONS AND EPA'S CONCLUSIONS OF LAW

5. Respondent Moon Nurseries, Inc. ("Respondent") is a Maryland corporation whose primary business is wholesale horticultural agriculture.
6. Respondent's primary place of business is located at 145 Moon Road, Chesapeake City, Maryland, 21915 ("Facility").
7. Beginning on December 1989, and at all times relevant to this CA/FO, Respondent has been in charge of the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6. At all times relevant to this CA/FO, Respondent has also been the owner and operator of the Facility, within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004.
8. The Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and their respective regulations, 40 C.F.R. § 302.3 and 40 C.F.R. § 355.61.
9. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous

substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

10. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances ("EHSs") and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under Section 304(a)-(c) of EPCRA, 42 U.S.C. § 11004(a)-(c), ("Reportable Quantity" or "RQ"). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B (40 C.F.R. Part 355, Appendices A and B).

11. At all times relevant to this CA/FO, the Facility was a facility at which a hazardous chemical was produced, used or stored, as that term is used in Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

12. Beginning on or about August 15, 2009, at or about 1:00 p.m., an estimated 900 pounds of chlorine, Chemical Abstracts Service ("CAS") No. 7782-50-5, were released from the Facility (the "Release").

**FACTUAL ALLEGATIONS RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA**

13. The preceding paragraphs are incorporated by reference.

14. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

15. Chlorine is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 10 pounds, as listed in 40 C.F.R. § 302.4.

16. The Release constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

17. The Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

18. Respondent knew or should have known of the Release of chlorine from the Facility, in a quantity equal to or exceeding its RQ, at or about 1:00 p.m. on August 15, 2009.

19. Respondent did not notify the NRC of the Release until approximately 9:39 am on August 17, 2009.

20. Respondent failed to immediately notify the NRC of the Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding its applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA**

21. Respondent's failure to immediately notify the NRC of the Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

**FACTUAL ALLEGATIONS RELATED TO THE
VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC**

22. The preceding paragraphs are incorporated by reference.

23. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored, to notify the State Emergency Response Commission ("SERC") and the Local Emergency Planning Committee ("LEPC") immediately following a release of a hazardous substance or an EHS in a quantity equal to or exceeding the RQ for the hazardous substance or EHS.

24. Chlorine is an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355.61, with an RQ of 10 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B.

25. The Maryland Department of the Environment, located at 1201 East Cold Spring Lane, Baltimore, Maryland, 31239, is, and has been at all times relevant to this CA/FO, the SERC for the Facility.

26. The Release of chlorine from the Facility constitutes a release of an EHS in a quantity equal to or exceeding its RQ.

27. The Release required immediate notification of the SERC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C.

28. Respondent did not notify the SERC of the Release until approximately 4:47 p.m. on August 15, 2009.

29. Respondent failed to immediately notify the SERC of the Release of chlorine as soon as Respondent knew or should have known that a release of an EHS had occurred at the Facility in an amount equal to or exceeding its RQ, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC**

30. Respondent's failure to notify the SERC immediately of the Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FACTUAL ALLEGATIONS RELATED TO THE
VIOLATION OF SECTION 304(c) OF EPCRA – SERC**

31. The preceding paragraphs are incorporated by reference.

32. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, that when there has been a release of a hazardous substance or an EHS in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, the owner or operator of that facility must provide a written followup emergency notice regarding the release to the SERC and the LEPC, as soon as practicable.

33. The Release constitutes a release of an EHS in a quantity equal to or exceeding its RQ, requiring immediate notification of the SERC and LEPC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C. Consequently, the Release requires submission of written followup emergency notice to the SERC and LEPC pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.

34. Respondent did not provide a written followup emergency notice regarding the Release to the SERC as soon as practicable after Respondent knew or should have known of the Release, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 304(c) OF EPCRA – SERC**

35. Respondent's failure to provide a written followup emergency notice regarding the Release to the SERC, as soon as practicable, is a violation of Section 304(c) of EPCRA, 42

U.S.C. § 11004(c), and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CIVIL PENALTY

36. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violation of Section 103 of CERCLA, 42 U.S.C. § 9603, set forth above, in the amount of **\$15,750** plus **\$25.61** interest (“CERCLA civil penalty”), and for the violations of Sections 304(a) and (b), and 304(c) of EPCRA, 42 U.S.C. §§ 11004(a) and (b), 11004(c), set forth above, in the amount of **\$26,250.00** and **\$55.68** interest (“EPCRA civil penalty”).

PAYMENT TERMS

37. Payment of the civil penalty assessed herein, and any accrued interest, shall be made in the manner and over the time period specified below:

Schedule	Principal Amount	Interest .78% CERCLA 1% EPCRA	Total Payment Amount Due
Within 30 days of the Effective Date of the Final Order	\$2,625.00 CERCLA + \$4,384.28 EPCRA	0 0	\$2,625.00 CERCLA + \$4,384.28 EPCRA
Within 60 days of the Effective Date of the Final Order	\$2,621.59 CERCLA + \$4,365.45 EPCRA	\$8.53 (CERCLA) \$18.83 (EPCRA)	\$2,630.12 CERCLA + \$4,384.28 EPCRA
Within 90 days of the Effective Date of the Final Order	\$2,623.29 CERCLA + \$4,369.70 EPCRA	\$6.83 (CERCLA) \$14.58 (EPCRA)	\$2,630.12 CERCLA + \$4,384.28 EPCRA
Within 120 days of the Effective Date of the Final Order	\$2,625.00 CERCLA + \$4,372.97 EPCRA	\$5.12 (CERCLA) \$11.31 (EPCRA)	\$2,630.12 CERCLA + \$4,384.28 EPCRA
Within 150 days of the Effective Date of the Final Order	\$2,626.71 CERCLA + \$4,376.74 EPCRA	\$3.42 (CERCLA) \$7.54 (EPCRA)	\$2,630.13 CERCLA + \$4,384.28 EPCRA
Within 180 days of the Effective Date of the Final Order	\$2,628.41 CERCLA + \$4,380.86 EPCRA	\$1.71 (CERCLA) \$3.42 (EPCRA)	\$2,630.12 CERCLA + \$4,384.28 EPCRA

38. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent may pay the CERCLA civil penalty of \$15,750 and the EPCRA civil penalty of \$26,250, within thirty (30)

days after the effective date of the Final Order by either cashier's check, certified check, or electronic wire transfer.

39. All payments of the CERCLA civil penalty and EPCRA civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Numbers of this action;
- b. All checks for the **CERCLA** civil penalty shall be made payable to **EPA-Hazardous Substances Superfund**; all checks for the EPCRA civil penalty shall be made payable to **United States Treasury**;
- c. Payment for the **CERCLA** civil penalty made by check and sent by regular mail shall be addressed to:

U.S. EPA
ATTN: Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

- d. Payment for the **EPCRA** civil penalty made by check and sent by regular mail shall be addressed to:

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

- e. Payment for the **CERCLA** civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
ATTENTION: Superfund Payments
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

- f. Payment for the **EPCRA** civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

- g. Payment 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

- h. Payment 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

- i. Electronic payment 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: Jesse White 301-887-6548 or REX, 1-866-234-5681

- j. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

k. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

40. The Respondent shall submit proof of the penalty payment, noting the title and docket numbers of this case, to the following persons:

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

and

Joyce A. Howell (3RC30)
Sr. Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

41. The CERCLA civil penalty and EPCRA civil penalty stated herein are based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and are consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, (September 30, 1999)*.

42. 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 in accordance with the Payment Terms or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

43. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will waive interest on any amount of the civil penalty that is paid within the first 30 days. 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).

44. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 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 due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

45. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 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, in accordance with 31 C.F.R. § 901.9(d).

46. Failure by the Respondent to pay the CERCLA civil penalty and the EPCRA civil penalty assessed by the Final Order in full in accordance with the Payment Terms set forth above may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

47. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

48. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the 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 the Consent Agreement and accompanying Final Order.

49. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

50. Each party to this action shall bear its own costs and attorney's fees.

In re: Moon Industries

CERCLA-03-2013-0008
EPCRA-03-2013-0008

FOR MOON NURSERIES



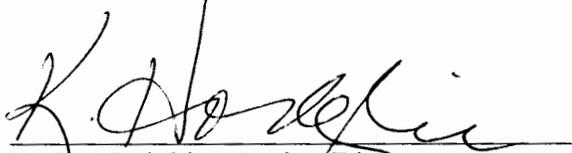
John Pursell
President
Moon Nurseries, Inc.

1-18-2013
DATE

In re: Moon Industries

CERCLA-03-2013-0008
EPCRA-03-2013-0008

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY


Kathy Hodgkiss, Acting Director
Hazardous Site Cleanup Division

2/12/2013
DATE

**BEFORE THE
 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

**Moon Nurseries, Inc.
 145 Moon Road
 Chesapeake City, Maryland
 21915,**

Respondent.

**Moon Nurseries, Inc.
 145 Moon Road
 Chesapeake City, Maryland
 21915,**

Facility.

)
) EPA Docket Nos.:
) CERCLA/EPCRA-03-2013- 0008
)
) Proceedings Pursuant to Sections 109 and 309
) of the Comprehensive Environmental Response,
) Compensation, and Liability Act, 42 U.S.C.
) §§ 9603, 9609, and Sections 304 and 325 of the
) Emergency Planning and Community Right-to-Know
) Act, 42 U.S.C. §§ 11004, 11005

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FINAL ORDER

Pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9609 and Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), as amended, 42 U.S.C. § 11045, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

Date: 2/13/13


 Renée Sarajian
 Regional Judicial Officer
 EPA, Region III

