

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

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<b>In the Matter of</b>	:	
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<b>L.D. McCauley, LLC</b>	:	<b><u>CONSENT AGREEMENT</u></b>
	:	<b><u>AND</u></b>
	:	<b><u>FINAL ORDER</u></b>
	:	
<b>Respondent.</b>	:	<b>DOCKET NUMBER</b>
	:	<b>EPCRA-02-2025-4203</b>
	:	
	:	
Proceeding under Section 325(c) of Title III	:	
of the Superfund Amendments and Reauthorization Act :	:	
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**PRELIMINARY STATEMENT**

1. This administrative proceeding for the assessment of a civil penalty is being initiated pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 et seq. [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA")].

2. Section 325(c) of EPCRA, 42 U.S.C. § 11045, authorizes the Administrator of EPA to enforce against persons who violate EPCRA and its implementing regulations. That provision provides, in relevant part, that "[a]ny person who violates any requirement of section 11023 of this title shall be liable to the United States for a civil penalty."

3. The Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 2 (hereinafter "the EPA" or "Complainant") alleges that L.D. McCauley, LLC (hereinafter "Respondent" or "L.D. McCauley") at 3875 California Road, Orchard Park, NY 14127 (hereinafter, "Respondent's facility" or "the facility") violated the requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated pursuant to that section, codified at 40 C.F.R. Part 372.

4. Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, where parties agree to a settlement of one or more causes of action prior to the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

5. The EPA and Respondent agree that settling this matter by entering into this Consent Agreement, pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. § 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made. The following constitutes Complainant's findings of fact and conclusions of law based upon information the EPA obtained as the result of the EPA's Information Request Letter dated February 7, 2023, and other communications with the facility.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

6. Respondent is L.D. McCauley, LLC, a wholly-owned subsidiary of McGard, LLC.

7. Respondent was at all relevant times, and continues to be, a corporation existing under New York law.

8. At all times relevant hereto, Respondent has owned and operated a facility for the manufacture of automotive wheel locks, lug nuts, and other security products. located at 3875 California Road, Orchard Park, NY 14127 (TRI Facility ID: 14127LDMCC3875C) which is the subject of this CAFO.

9. Under Section 313 of EPCRA and 40 C.F.R. § 372.22, owners or operators of a facility subject to the requirements of Section 313(b) are required to submit annually, no later than July 1 of each year, a complete and correct Toxic Chemical Release Inventory Reporting Form R report, EPA Form 9350-1 ("TRI Form R report") for each toxic chemical listed under 40 C.F.R. § 372.65 and/or 40 C.F.R. § 372.28 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. Each required TRI Form R report must be submitted to the EPA and to the State or Territory in which the subject facility is located. As an alternative to the requirements set forth above, pursuant to Section 313(f)(2) of EPCRA, 42 U.S.C. § 11023(f)(2), and 40 C.F.R. § 372.27, owners or operators of a facility subject to the requirements of Section 313(b) with respect to the "manufacture, process or otherwise use" of a toxic chemical may apply an alternate threshold of one million (1,000,000) pounds per year to that chemical if the conditions set forth in 40 C.F.R. § 372.27(a) are met. If the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators, in lieu of filing a TRI Form R report, may submit an "Alternate Threshold Certification Statement" ("TRI Form A report") pursuant to 40 C.F.R. § 372.27(b). Pursuant to 40 C.F.R. § 372.27(e), the EPA has excluded the Persistent Bioaccumulative Toxic Chemicals listed in 40 C.F.R. § 372.28 from eligibility for the Alternate Thresholds described in 40 C.F.R. § 372.27(a). [59 Fed. Reg. 61502, Nov. 30, 1994, as amended at 64 Fed. Reg. 58750, Oct. 29, 1999; as amended at 71 Fed. Reg. 76944, Dec. 22, 2006; as amended at 74 Fed. Reg. 19005, Apr. 27, 2009].

10. Respondent is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

11. Respondent is an owner of a “facility” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and by 40 C.F.R. § 372.3.

12. Respondent is an operator of a “facility” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and by 40 C.F.R. § 372.3.

13. Respondent’s facility has ten (10) or more “full time employees” as that term is defined by 40 C.F.R. § 372.3.

14. Respondent’s facility is in North American Industry Classification System (“NAICS”) 332722 – Bolt, Nut, Screw, Rivet, and Washer Manufacturing; or NAICS 332999 - All Other Miscellaneous Fabricated Metal Product Manufacturing.

15. Respondent is subject to the requirements of Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22.

16. Nitrate Compounds is a listed chemical category (N511) under 40 C.F.R. § 372.65.

17. Respondent’s facility manufactured, processed or otherwise used Nitrate Compounds, in amounts exceeding the reporting threshold, at various points throughout Calendar Years 2020 and 2021 as laid out in the chart immediately below.

**Late/Non-Reporting Violations:**

Chemical	Year	Activity Pounds	Due Date	Days Late
Nitrate Compounds	2020	< 10X threshold	07-01-2021	> 1 year
Nitrate Compounds	2021	< 10X threshold	07-01-2022	258 days

18. Respondent was required to submit a timely, complete, and correct TRI Form A or Form R report for each of the above listed chemicals for the corresponding Calendar Years on or before July 1 of the years listed above to the Administrator of the EPA and to the State of New York and failed to do so in a timely manner.

19. Each of Respondent's failures to timely submit a correct TRI Form A or Form R report for the above listed chemicals to the EPA as required constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. Part 372, for which a penalty may be assessed.

20. Respondent voluntarily developed a Compliance Plan to address the areas of compliance at issue in this matter at the facility. Implementation of this Compliance Plan is

intended as an adjunct to the requirements of Section 313(b) of EPCRA and an aid to future compliance therewith.<sup>1</sup>

**CONSENT AGREEMENT**

21. Based on the foregoing, and pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045, and 40 C.F.R. § 22.18, Respondent, for the purposes of this Consent Agreement and in the interest of settling this matter, knowingly and voluntarily agrees that by signing this Consent Agreement, it:

- a. Admits that EPA Region 2 has jurisdiction under EPCRA to enforce the provisions of the Act and the regulations promulgated thereunder;
- b. Neither admits nor denies the specific factual allegations and assertions set forth in the “Findings of Fact and Conclusions of Law” section;
- c. Consents to the assessment of the civil penalty as set forth below and agrees to pay the penalty in accordance with the terms of this Consent Agreement;
- d. Agrees to comply with all applicable provisions of EPCRA and its promulgated regulations;
- e. Consents to the issuance of the Final Order incorporating all provisions of this Consent Agreement;
- f. Waives any right it might possess to obtain judicial or administrative review of the Final Order accompanying this Consent Agreement; and
- g. Waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying this Consent Agreement.

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<sup>1</sup> Adherence to the provisions of the Compliance Plan and compliance with the provisions of this Consent Agreement with regard to the implementation of the Compliance Plan is not a substitute for compliance with the provisions of Section 313(b) of EPCRA, nor a defense to the failure to do so.

*Certifications and Acknowledgements*

22. Respondent certifies that it is in full compliance with the provisions and statutory requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations set forth at 40 C.F.R. Part 372 and understands that it is obligated to maintain compliance with applicable requirements of that Part.

*Penalty*

23. Respondent agrees to pay a civil penalty in the amount of **FORTY-FIVE THOUSAND FOUR HUNDRED DOLLARS (\$45,400)** ("Assessed Penalty"). Payment shall be due thirty (30) days from the date on which the Regional Judicial Officer of EPA Region 2 signs the Final Order accompanying this Consent Agreement ("the due date").

24. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

25. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, EPCRA-02-2025-4203 and
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s).

Karen Maples  
Regional Hearing Clerk, Region 2  
[maples.karen@epa.gov](mailto:maples.karen@epa.gov)

James Crossmon  
EPCRA 313 Enforcement Officer, Region 2  
[crossmon.james@epa.gov](mailto:crossmon.james@epa.gov)

and

U.S. Environmental Protection Agency  
Cincinnati Finance Division  
[CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov)

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that

payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

26. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the date the Regional Judicial Officer of EPA Region 2 signs the Final Order accompanying this Consent Agreement. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a); any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period following the date the Regional Judicial Officer of EPA Region 2 signs the Final Order accompanying this Consent Agreement. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the date the Regional Judicial Officer of EPA Region 2 signs the Final Order accompanying this Consent Agreement.

27. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

- b. Collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

28. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

29. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

30. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that requires a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (*i.e.*, a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Division at [wise.milton@epa.gov](mailto:wise.milton@epa.gov) within 30 days of the date the Regional Judicial

Officer of EPA Region 2 signs the Final Order accompanying this Consent Agreement, and EPA recommends encrypting IRS Form W-9 email correspondence; and

- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days of the date the Regional Judicial Officer of EPA Region 2 signs the Final Order accompanying this Consent Agreement, and EPA recommends encrypting IRS Form W-9 email correspondence, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
  - i. notify EPA's Cincinnati Finance Division of this fact, via email, within 30 days of the date the Regional Judicial Officer of EPA Region 2 signs the Final Order accompanying this Consent Agreement, and EPA recommends encrypting IRS Form W-9 email correspondence; and
  - ii. provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five (5) days of Respondent's receipt of the TIN.

31. Full payment of the assessed penalty shall only resolve Respondent's liability for federal civil penalties for the alleged violations described above. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions or violations of law.

#### *General Provisions*

32. Nothing in this document is intended or construed to waive, prejudice, or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent has made any material misrepresentations or has provided materially false information in any document submitted during this proceeding.

33. This CAFO is not intended, and shall not be construed, to waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local laws or regulations, nor shall it be construed to be a ruling on or determination of any issue related to any federal, state, or local permit. The CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

34. Each party hereto agrees to bear its own costs and attorney's fees in this matter.

35. Respondent has read this Consent Agreement, understands its terms, and agrees that the provisions herein shall be binding upon Respondent and its successors and assigns. The signatory for Respondent certifies that: (a) they are duly and fully authorized to enter into and ratify this Consent Agreement and to accept the accompanying Final Order and all the terms,



provisions, and requirements set forth in this CAFO, and (b) they are duly and fully authorized to bind the party on behalf of which they are entering this CAFO to comply with and abide by all the terms, provisions, and requirements of this CAFO.

36. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk via email to designated representative:

Wayne Hemmerling, President  
McGard, LLC  
3875 California Road  
Orchard Park, NY 14127  
[whemmerling@mcgard.com](mailto:whemmerling@mcgard.com).

Receipt of the fully executed CAFO by the designated representative shall constitute Respondent's receipt and acceptance of the CAFO. Except as the parties may otherwise agree in writing, EPA shall send any future written communications related to this matter (including any correspondence related to payment of the penalty) by email to this designated representative.

For Respondent, L.D. McCauley, LLC:

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Signature

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Date

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Print Name

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Title

For Complainant, the U. S. Environmental Protection Agency:

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Kathleen Anderson  
Director  
Enforcement and Compliance Assurance Division

**FINAL ORDER**

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of **In the Matter of L.D. McCauley, LLC, Docket Number EPCRA-02-2025-4203**. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order. The effective date of this Order shall be the date of filing 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).

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Helen Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 17th Floor  
New York, New York 10007-1866

**In the Matter of L.D. McCauley, LLC  
Docket Number EPCRA-02-2025-4203**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below.

**By E-mail:**

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 2  
[Maples.Karen@epa.gov](mailto:Maples.Karen@epa.gov)

**By E-mail:**

Wayne Hemmerling, President  
McGard, LLC  
3875 California Road  
Orchard Park, NY 14127  
[whemmerling@mcgard.com](mailto:whemmerling@mcgard.com)

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Signed