



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**FEB 26 2008**

William Jibilian, Esq.  
Law Office of William Jibilian  
1780 Mars Hill Road  
Suite 8-305  
Acworth, Georgia 30101

SUBJECT:   Harcros Chemical, Inc.  
          Consent Agreement and Final Order  
          Docket No. EPCRA-04-2008-2015(b)

Dear Mr. Jibilian:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the EPCRA matter (Docket No. EPCRA-04-2008-2015(b)) involving Harcros Chemical, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on date of filing.

Penalty payment of \$655.00 for the CERCLA and EPCRA, respectively, have been received.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. If you have any questions with regards to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Ms. Erika Bolden at (404) 562-9195.

Sincerely,

A handwritten signature in black ink that reads "Caron B. Falconer".

Caron B. Falconer  
Chief, EPCRA Enforcement Section

Enclosures

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
Harcros Chemicals, Inc. )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket Number: EPCRA 04-2008-2015(b)

RECEIVED  
EPA REGION 4  
2008 FEB 25 AM 7:31  
HEARINGS DIVISION

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and by Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045 and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 CFR Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Harcros Chemicals, Inc. (Harcros).

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 and Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA and under EPCRA to the Regional Administrators by EPA Delegation 14-31 and 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004, and the authority under EPCRA by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement

action as the Complainant in this matter.

4. Respondent is a corporation doing business in the State of Georgia.
5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
6. Respondent has a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
7. Respondent's facility is located at 134 Phelps Road, Dalton, Georgia.
8. Respondent is an "owner or operator" of the facility as that term is defined by Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).
9. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of 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 the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended. The list is codified at 40 CFR Part 302.
10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 CFR § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the reportable quantity (RQ).
11. Respondent was in charge of the facility during the relevant period described below.
12. Anhydrous ammonia is a hazardous substance as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 100 pounds, as specified in 40 CFR § 302.4.
13. On August 7, 2007, Respondent had a release of anhydrous ammonia above the RQ at the facility.
14. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of anhydrous ammonia in an amount equal to or greater than its RQ at Respondent's facility and is therefore subject to the assessment of penalties

under Section 109 of CERCLA, 42 U.S.C. § 9609.

15. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 CFR Part 19, EPA may assess a penalty not to exceed \$32,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred on or after March 15, 2004. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by an Administrative Order.

16. Section 304(a) of EPCRA, 42 U.S.C. §11004(a) and 40 CFR § 355.40, require the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) when there has been a release of a CERCLA hazardous substance or extremely hazardous substance in an amount equal to or greater than the reportable quantity.

17. Respondent was the owner or operator of the facility during the relevant period, described below.

18. At all times relevant to this matter, the facility produced, used, or stored "hazardous chemicals" as defined under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e) and under 29 CFR § 1910.1200(c).

19. Anhydrous ammonia is an extremely hazardous substance as that term is defined by EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 CFR Part 355.20.

20. On August 7, 2007, Respondent had a release of anhydrous ammonia above the RQ at the facility.

21. EPA alleges that Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. §11004(a) by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of anhydrous ammonia in an amount equal to or greater than the RQ at Respondent's facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. §11045.

22. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 CFR Part 19, EPA may assess a penalty of not more than \$32,500 for each violation of Section 304(a) that occurred on or after March 15, 2004. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

### III. Consent Agreement

23. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

24. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

25. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

26. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

27. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA and CERCLA.

28. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

29. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA and EPCRA.

#### IV. Final Order

30. Respondent is assessed a civil penalty of SIX HUNDRED FIFTY FIVE DOLLARS (\$655) for the CERCLA violation which shall be paid within thirty (30) days of the effective date of this CAFO.

31. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to the following address:

Mellon Client Service Center  
"EPA Hazardous Substance Superfund"  
Mellon Lockbox 371099M  
Pittsburgh, PA 15262-0001

The check shall reference on its face the name and the Docket Number of the CAFO.

32. Respondent is assessed a civil penalty of SIX HUNDRED FIFTY FIVE DOLLARS (\$655) for the EPCRA violation which shall be paid within thirty (30) days of the effective date of this CAFO.

33. Respondent shall pay the penalty by forwarding a cashier's or certified check payable to "Treasurer, United States of America," to the following address:

U.S. Environmental Protection Agency  
Cincinnati Accounting Operations  
Mellon Lockbox 371099M  
Pittsburgh, PA 15251-7099

The check shall reference on its face the name and the Docket Number of the CAFO.

34. At the time of payment, Respondent shall send a separate copy of each check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

Erika L. Bolden  
U.S. EPA, Region 4  
Air, Pesticides & Toxics Management Division  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

Saundi Wilson  
U.S. EPA, Region 4  
Office of Environmental Accountability  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

35. Respondent shall undertake and complete, in accordance with the approved SEP in this matter, the following emergency response equipment donation project within sixty (60) days of the effective date of this CAFO. Harcros Chemicals, Inc., shall expend a minimum total of FIVE THOUSAND DOLLARS (\$5,000) for the purchase and donation of the following equipment to the Whitfield County Local Emergency Planning Committee:

Equipment Trailer (Model # TS7X16DT2)

The expenditure and donation of the equipment shall be completed within sixty (60) calendar days of the effective date of the CAFO. Cash donations shall not be used to satisfy the terms and conditions of this CAFO.

36. Respondent agrees that EPA may inspect the facility at any time in order to

confirm that the SEP is being undertaken in conformity with the representations made herein.

37. No later than thirty (30) calendar days after the completion of the project, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Erika L. Bolden, at the address provided above. The Report shall include the following:

- (a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and
- (b) copies of appropriate documentation, including invoices and receipts, showing a total amount of FIVE THOUSAND DOLLARS (\$5,000), or greater, was spent on the purchase of the equipment described in paragraph 35.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

38. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

39. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

"This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act."

40. If Respondent fails to timely and fully complete any part of the SEP, including failing to spend the minimum amount of FIVE THOUSAND DOLLARS (\$5,000) for the SEP, Respondent shall pay to the United States a stipulated penalty of the difference between \$5,000 and the amount spent except as follows:

(a) if the SEP was fully and timely completed, and Respondent expended at least 90 percent of the minimum amount required, Respondent shall not pay a stipulated penalty;

or

(b) if the SEP was not fully and timely completed, but Respondent expended at least 90 percent of the minimum amount required, Respondent shall not pay a stipulated penalty if the Respondent has made a good faith effort to fully and timely complete the SEP.

For purposes of this paragraph, whether Respondent has fully and timely completed the SEP and whether Respondent made a good faith effort to do so shall be in the sole discretion of EPA.

41. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

42. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP."

43. Respondent shall pay any stipulated penalties that accrue under this CAFO within fifteen (15) calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

44. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO or for the cost of the SEP and agrees not to claim any tax deduction for the cost of the SEP. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

45. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of the CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

46. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

47. This CAFO shall be binding upon the Respondent, its successors, and assigns.

48. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:



Caron Falconer  
U.S. EPA, Region 4  
Air, Pesticides & Toxics Management Division  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-8451

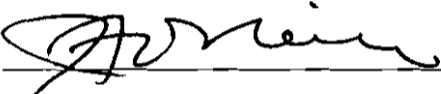
49. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

V. Effective Date


50. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

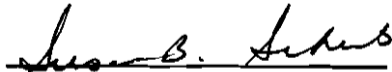
Harcros Chemicals, Inc.

By:  Date: 2/11/08  
J.F. O'Neill  
Senior Vice President and Asst. Secretary

U.S. Environmental Protection Agency

By:  Date: 2/11/08  
Beverly H. Banister, Director  
Air, Pesticides & Toxics  
Management Division  
Region 4

APPROVED AND SO ORDERED this 20<sup>th</sup> day of February, 2008.

  
Susan B. Schub  
Regional Judicial Officer

CERTIFICATE OF SERVICE

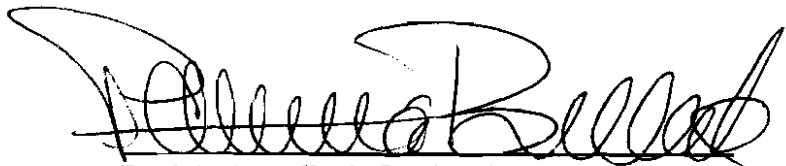
I hereby certify that I have this day served a true and correct copy of the foregoing  
Consent Agreement and Final Order, In the Matter of Harcros, Chemical Inc., Docket  
No. EPCRA 04-2008-2015(b), on the parties listed below in the manner indicated:

Caron B. Falconer (Via EPA's internal mail)  
U.S. EPA, Region 4  
Air, Pesticides & Toxics Management Division  
61 Forsyth Street  
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)  
U.S. EPA, Region 4  
Office of Environmental Accountability  
61 Forsyth Street  
Atlanta, GA 30303

Mr. William Jibilian, Esq. (Certified Mail - Return Receipt Requested)  
Law Office of William Jibilian  
1780 Mars Hill Road  
Suite 8-305  
Acworth, Georgia 30101

Date: 2-26-08



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi J Wilson on 2/19/08  
(Name) (Date)

in the OEH at (404) 562-9524  
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Hareros Chemical Inc  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ EPCRA - \$655 CERCLA \$655  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: EPCRA 04 2008 2015 (6)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

**TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date \_\_\_\_\_

If you have any questions, please call: \_\_\_\_\_ of the Financial Management Section at: \_\_\_\_\_

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- |  |                              |
|--|------------------------------|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)  |
|  | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |                           |                              |
|---------------------------|------------------------------|
| 1. Originating Office     | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD)    |