

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:

Malmark Bellcraftsmen, Inc.
5712 Easton Road
Plumsteadville, PA 18949

Respondent

Malmark Bellcraftsmen, Inc.
5712 Easton Road
Plumsteadville, PA 18949

Facility

Docket No. EPCRA-03-2016-0025

CONSENT AGREEMENT

Proceeding under EPCRA §§ 313 and
325(c), 42 U.S.C. §§ 11023 and 11045(c)

REGIONAL OFFICE
EPA REGION III OFFICE
PLUMSTEADVILLE, PA

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CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and Malmark Bellcraftsmen, Inc. ("Respondent"), pursuant to Sections 313 and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11023 and 11045(c), the regulations implementing EPCRA § 313, as set forth at 40 C.F.R. Part 372, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Pursuant to 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively, "CAFO"), simultaneously commence and conclude this proceeding to resolve violations of EPCRA § 313, 42 U.S.C. § 11023 and implementing regulations promulgated thereunder, as alleged herein, by Respondent at its facility located at 5712 Easton Road, Plumsteadville, PA 18949.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

3. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
4. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

Findings of Fact and Conclusions of Law

7. In accordance with Sections 22.13(b) and .18(b)(2) of the Consolidated Rules of Practice, Complainant adopts the following findings of fact and conclusions of law.
8. EPCRA Section 313(a), 42 U.S.C. § 11023(a), requires subject owners or operators of any facility that, in any calendar year, manufactures, processes or otherwise uses a toxic chemical listed under EPCRA Section 313(c), 42 U.S.C. § 11023(c), in quantities exceeding a regulatory threshold under EPCRA Section 313(f), 42 U.S.C. § 11023(f), to complete and submit a toxic chemical release inventory report (*i.e.*, "Form R" or "Form A") for each such listed toxic chemical. Pursuant to EPCRA Section 313(a), 42 U.S.C. § 11023(a), each required Form R or Form A must include the information required under Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), and must be submitted to EPA and to the designated State agency by July 1 of the year following the year for which such toxic inventor report is required.
9. EPCRA Section 313(b), 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide, in relevant and applicable part, that a facility which meets the following criteria for a calendar year is a "covered facility" for that calendar year and must report under 40 C.F.R. § 372.30: [a] the facility has 10 or more full-time employees; [b] the facility is in a Standard Industrial Classification ("SIC") (as in effect on January 1, 1987) major group or industrial code listed in 40 C.F.R. § 372.23(a), for which the corresponding North American Industrial Classification System ("NAICS") (as in effect on January 1, 2007, for reporting year 2008 and thereafter) subsector and industry codes are listed in 40 C.F.R. § 372.23(b) and (c) by virtue of the fact that the facility is an establishment with a primary SIC major group or industry code listed in 40 C.F.R. § 372.23(b) or 40 C.F.R. § 372.23(c); and [c] the facility manufactured (including imported), processed or otherwise used a toxic chemical in excess of an applicable threshold quantity of that chemical set forth in 40 C.F.R. § 372.25, 372.27, or 372.28.

10. 40 C.F.R. § 372.30(a) provides, in relevant part, that for each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in 40 C.F.R. § 372.25, 372.27, or 372.28 at its covered facility for a calendar year, the owner or operator must submit to EPA and to the State in which the covered facility is located a completed EPA Form R (EPA Form 9350-1) or Form A (EPA Form 9350-2) in accordance with the instructions referred to in 40 C.F.R. Part 372, Subpart E.
11. 40 C.F.R. § 372.30(d) provides, in relevant part, that : “[e]ach report under this section for activities involving a toxic chemical that occurred during a calendar year at a covered facility must be submitted on or before July 1 of the next year.”
12. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define “facility” to mean, in relevant part, all buildings, equipment, structures, and other stationary items that are located on a single site and that are owned or operated by the same person.
13. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines “person” to include any corporation.
14. Respondent is incorporated in the Commonwealth of Pennsylvania and is a “person” as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
15. Respondent owns and operates, and at the time of the violations alleged herein, owned and operated a hand bell manufacturing plant located at 5712 Easton Road, Plumsteadville, Pennsylvania 18949 (“Facility”).
16. Respondent’s Facility is a “facility” as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.
17. During each of the 2011, 2012 and 2013 calendar years, Respondent employed 10 or more full-time employees at the Facility.
18. During each of the 2011, 2012 and 2013 calendar years, the Facility had a SIC code of 3931.
19. For purposes of the toxic chemical release reporting requirements, the Facility was a “covered facility,” within the meaning of 40 C.F.R. §§ 372.22 and 372.30(c), in each of the 2011, 2012 and 2013 calendar years.

Count I – Copper 2011

20. The allegations of Paragraphs 1 through 19, above, are incorporated by reference as though fully set forth herein.

21. "Copper" is a chemical listed in 40 C.F.R. § 372.65(a) and a "toxic chemical" as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3.
22. As set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25, the reporting threshold amount for copper which is processed at a facility is 25,000 pounds.
23. Respondent processed more than 25,000 pounds of copper at the Facility during the 2011 calendar year.
24. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a) and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1 of 2012, a completed Form R or Form A for the copper processed at the Facility during the calendar year 2011.
25. Respondent filed a complete Form R or Form A for the toxic chemical copper processed at the Facility during calendar year 2011 with the Administrator of EPA and the Commonwealth of Pennsylvania on or about May 15, 2015.
26. Respondent's failure to timely file a complete Form R or Form A with EPA or the Commonwealth of Pennsylvania for the toxic chemical copper processed at the Facility during calendar year 2011, by July 1, 2012, constitutes one violation of Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.30.

Count II – Copper 2012

27. The allegations of Paragraphs 1 through 26, above, are incorporated by reference as though fully set forth herein.
28. Respondent processed more than 25,000 pounds of copper at the Facility during the 2012 calendar year.
29. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1 of 2013, a completed Form R or Form A for the copper processed at the Facility during the calendar year 2012.
30. Respondent filed a complete Form R or Form A for the toxic chemical copper processed at the Facility during calendar year 2012 with the Administrator of EPA and the Commonwealth of Pennsylvania on or about May 15, 2015.
31. Respondent's failure to timely file a complete Form R or Form A with EPA or the

Commonwealth of Pennsylvania for the toxic chemical copper processed at the Facility during calendar year 2012, by July 1, 2013, constitutes one violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count III – Copper 2013

32. The allegations of Paragraphs 1 through 31, above, are incorporated by reference as though fully set forth herein.
33. Respondent processed more than 25,000 pounds of copper at the Facility during the 2013 calendar year.
34. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a) and 40 C.F.R. § 372.30, Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1 of 2014, a completed Form R or Form A for the copper processed at the Facility during the calendar year 2013.
35. Respondent filed a complete Form R or Form A for the toxic chemical copper processed at the Facility during calendar year 2013 with the Administrator of EPA and the Commonwealth of Pennsylvania on or about May 15, 2015.
36. Respondent's failure to timely file a complete Form R or Form A with EPA or the Commonwealth of Pennsylvania for the toxic chemical copper processed at the Facility during calendar year 2013, by July 1, 2014, constitutes one violation of Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.30.

Settlement

37. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA § 313, 42 U.S.C. § 11023, shall be liable to the United States for a civil penalty of up to \$25,000 per violation. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, violations of Section 313 of EPCRA, 42 U.S.C. § 11023, which occurred between March 16, 2004 and January 12, 2009, are subject to an increased statutory maximum penalty of \$32,500 per violation and that the maximum inflation-adjusted penalty for violations occurring after January 12, 2009 is \$37,500 per violation.
38. In settlement of EPA's claims for civil monetary penalties for the violations alleged in this Consent Agreement, Respondent agrees to: (1) the assessment of a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), which Respondent agrees to pay in accordance with the terms set forth below, and (2) perform the Supplemental Environmental Project set forth below.
39. The aforesaid settlement amount set forth above in Paragraph 38, above, is based on a

number of factors, including, but not limited to, the facts and circumstances of this case, the statutory factors set forth in EPCRA § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C), and the penalty criteria set forth in EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (April 12, 2001), as amended. Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*. The settlement in this proceeding is consistent with the provisions and objectives of EPCRA § 313, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

Payment Terms

40. The civil penalty amount set forth in Paragraph 38, above, shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by all parties, signed by the Regional Administrator or the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
41. Respondent shall pay the civil penalty amount assessed in Paragraph 38, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 42 through 45, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:
 - a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, EPCRA-03-2016-0025;
 - b. All checks shall be made payable to "**United States Treasury**";
 - c. All payments made by check and sent by regular mail shall be addressed to:

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

Customer service contact: 513-487-2091

- d. All payments made by check and sent by private commercial overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency
Government Lockbox 979077
Cincinnati Finance Center
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1818

- e. All payments 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

- f. All payments 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”

- g. All electronic payments 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: 866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

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

- i. Additional payment guidance is available at:

<http://www.2epa.gov/financial/makepayment>

- j. At the time of payment, Respondent shall simultaneously send a notice of Payment, including a copy of Respondent's check or electronic fund transfer notice, as applicable, to:

Jeffrey S. Nast
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

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

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 as specified herein 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 CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. 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 a debt is overdue. 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 payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
45. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 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. 31 C.F.R. § 901.9(d).
46. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Supplemental Environmental Project

47. The following Supplemental Environmental Project ("SEP") is consistent with applicable EPA policy and guidelines, including EPA's *Supplemental Environmental Projects Policy*, effective March 10, 2015.
48. Respondent agrees to install and operate an improved air handling/dust collection system in the machine shop at the Facility consisting of new duct work and head collection units designed to increase the capture rate and efficiency of airborne dust containing copper.
 - A. Respondent shall timely identify, apply for, and obtain all required federal, state, and local permits necessary for performing the SEP, including without limitation, permits for construction, installation, and operation of any pollution control equipment.
 - B. Respondent shall install and begin operation of the new dust collection system within one year of the effective date of this CAFO and shall itemize the costs of each SEP installation expenditure in its SEP Installation Report, described in Paragraph 54, below. Respondent shall continue to operate such dust collection system for at least one calendar year from the date that installation of the dust collection system was complete.
 - C. Respondent shall confirm that the new dust collection system is at least 50% more efficient in capturing airborne dust particles than the current system and to document its findings in its SEP Completion Report described in Paragraph 55, below.
 - D. This SEP is designed to reduce the risks associated with the inhalation of dust particles, including the significant health hazards posed by dust particles

containing copper.

49. Respondent's total expenditure for installation of this SEP shall not be less than THIRTY ONE THOUSAND SIX HUNDRED AND FORTY-FIVE DOLLARS (\$31,645.00). Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Installation Report described in Paragraph 54, below.
50. Respondent hereby certifies that:
- A. as of the date of its signature to this CA, Respondent is not required to perform or develop this SEP by any federal, state or local law or regulation;
 - B. it is not required to perform or develop this SEP by any other agreement, grant or as injunctive relief in this or any other case;
 - C. it has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP;
 - D. it will not receive reimbursement for any portion of the SEP from another person or entity.
51. 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 this SEP.
52. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this Consent Agreement, from the effective date of the CAFO, shall include the following language: "This project was undertaken in connection with the settlement of an administrative enforcement action initiated by the United States Environmental Protection Agency against Malmark Bellcraftsmen, Inc., to enforce federal laws."
53. Respondent shall notify EPA, in writing, c/o Craig Yussen, US EPA Region III, 1650 Arch Street (Mail Code 3LC61), Philadelphia, PA 19103-2029, when installation of the new dust collection system is complete and operational. EPA may grant Respondent an extension of time to fulfill this SEP obligation if EPA determines, in its sole and unreviewable discretion that, through no fault of Respondent, Respondent is unable to complete the installation of the new dust collection system within the time frame required by Paragraph 48.B, above. Requests for any extension must be made in writing within forty eight (48) hours of any event, such as an unanticipated delay in obtaining governmental approvals, the occurrence of which renders the Respondent unable to complete the installation of the new dust booth collection system within the required time frame ("force majeure event"), and prior to the expiration of the installation deadline. Any such requests should be directed to Craig Yussen at the address noted above.
54. Respondent shall submit a written SEP Installation Report to EPA, c/o Craig Yussen at the address listed in Paragraph 53, above, within sixty (60) days of the date when installation of the new dust collection system is complete and operational. The SEP Installation Report

shall contain the following information:

- A. A description of any installation or operation problems encountered and the solution thereto;
 - B. Itemized costs of each SEP installation expenditure, along with the a sum total of all costs incurred by the Respondent that are eligible for SEP credit; and
 - i. In addition to itemizing each SEP installation expenditure identified in its SEP Installation Report, Respondent shall clearly identify and provide full, complete and acceptable financial documentation for all eligible SEP costs;
 - ii. Where the SEP Installation Report includes costs not eligible for SEP credit, those costs must be clearly identified as such;
 - iii. For purposes of this Paragraph, “acceptable financial documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment was made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment was made.
55. Respondent shall submit a written SEP Completion Report to EPA for the SEP, c/o Craig Yussen at the address listed in Paragraph 53, above, within thirty (30) days of operating the new dust collection system for a full calendar year. The SEP Completion Report shall contain the following information:
- A. Respondent’s certification as to the length of time that the new dust booth collection system has been operating properly;
 - B. A description of any installation or operation problems encountered, and the solution(s) thereto during the period that the new dust booth collection system has been in operation;

An analysis and explanation of the achieved airborne dust particle capture efficiency of the new air handling/dust collection system (consisting of new duct work and head collection units) in the machine shop at the Facility during its initial year of operation, including Respondent’s certification as to any percentage increase in the capture rate efficiency of airborne dust particles achieved, as compared to the prior air handling/dust collection system previously operated at this area of the Facility.
 - C. Respondent shall, by its representative officers, sign each of the reports required by Paragraphs 54 and 55 (i.e. the SEP Installation Report and the SEP Completion Report) and certify under penalty of law, that the information

contained therein is true, accurate, and not misleading by including and signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

D. Respondent agrees that failure to submit either the written SEP Installation Report required by Paragraph 54, above, and/or the written SEP Completion Report required by Paragraph 55, above, shall be deemed a violation of this CAFO and, in such event, Respondent will be liable for stipulated penalties pursuant to Paragraphs 59 through 61, below.

56. Respondent agrees that EPA may inspect the Facility at which this SEP is being implemented at reasonable times in order to confirm that this SEP is being undertaken in conformity with the requirements of this CAFO.

57. Upon receipt of the written SEP Installation Report and/or SEP Completion Report, identified in Paragraphs 54 and 55, above, EPA will provide written notification to the Respondent of one of the following:

- A. If the Report is deficient, notify the Respondent in writing that the Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional fourteen (14) calendar days to correct those deficiencies;
- B. If the SEP Completion Report demonstrates that the SEP has been completed in accordance with the CAFO, notify the Respondent in writing that EPA has concluded that the SEP has been completed in accordance with this CAFO; or
- C. If the SEP Completion Report demonstrates that the SEP has not been completed in accordance with this CAFO, notify the Respondent in writing that EPA has concluded that the SEP has not been completed in accordance with this CAFO and EPA shall seek stipulated penalties in accordance with Paragraphs 58 through 60, below.

If EPA provides notification in accordance with Paragraph 57.A, above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) calendar days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) calendar days from the receipt by EPA of the notification of objection to reach an agreement on changes necessary to properly install the SEP, operate the SEP and/or complete the SEP, and to revise and re-submit the relevant Report. If agreement cannot be reached within this thirty (30) calendar day period, a person who holds a management position at EPA shall provide to the Respondent a written statement of EPA's

decision on the adequacy of the installation and/or operation of the SEP (including the new air handling system's dust particle collection capture efficiency as compared to the prior such system operated at the Facility), and the adequacy of any Report Respondent is required to submit pursuant to this CAFO, which shall be a final Agency action binding upon Respondent. In the event this SEP is not completed as required by this CAFO, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraphs 58 through 60, below.

Stipulated Penalties

58. In the event that Respondent fails to comply with any of the terms or conditions of this Consent Agreement relating to the performance of the SEP, described in Paragraph 48, above, submission of the written SEP Installation Report or SEP Completion Report, described in Paragraphs 54 and 55, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the costs set forth in Paragraph 49, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- A. Except as provided in Subparagraph B below, of this Paragraph 58, if the SEP has not been installed and operated satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to EPA in the amount of SIX THOUSAND SEVEN HUNDRED DOLLARS (\$6,700.00);
 - B. If the SEP is not completed in accordance with Paragraph 48, above, but the Complainant determines that: (i) Respondent made good faith and timely efforts to install and operate the SEP; and (ii) Respondent certifies, with supporting documentation, that at least ninety percent (90%) of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;
 - C. If the SEP is installed and operated in accordance with Paragraph 48, above, and the SEP Installation Report is submitted in accordance with Paragraph 54, above, but the Respondent spent less than ninety percent (90%) of the amount of money required to be spent on the SEP, Respondent shall pay a stipulated penalty to EPA in the amount of SIX THOUSAND SEVEN HUNDRED DOLLARS (\$6,700.00);
 - D. If the SEP is completed in accordance with Paragraph 48, above, the SEP Installation Report and the SEP Completion Report are both submitted in accordance with Paragraphs 54 and 55, above, and the Respondent spent at least ninety percent (90%) of the amount of money required to be spent on the SEP, Respondent shall not be liable for any stipulated penalty; and
 - E. If Respondent fails to timely submit the SEP Installation Report required by Paragraph 54, above, or the SEP Completion Report required by Paragraph 55, above, Respondent shall pay a stipulated penalty in the amount of \$500.00 per day for each calendar day after the report was originally due until the Report is submitted.

59. The determination of whether the SEP has been satisfactorily installed and operated and whether the Respondent has made a good faith, timely effort to install and operate the SEP shall be in the sole discretion of EPA.
60. Respondent shall pay stipulated penalties, in accordance with Paragraph 58, above, and in the manner described in Paragraph 41, above, not more than fourteen (14) calendar days after receipt of written demand from EPA for such penalties. Interest and late charges shall be paid as set forth in Paragraphs 42 through 45, above, as applicable.

Certification

61. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Facility referred to in this Consent Agreement is currently in compliance with all applicable requirements of EPCRA Section 313, 42 U.S.C. § 11023.

Other Applicable Laws

62. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

63. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil penalties for the specific violations of EPCRA Section 313, 42 U.S.C. § 11023, alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Scope of Settlement

64. The settlement set forth in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations alleged herein. Compliance with the CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

65. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents, and assigns of Respondent. By his or her signature below, the person

who signs this Consent Agreement on behalf of 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 this Consent Agreement and the accompanying Final Order.

Effective Date

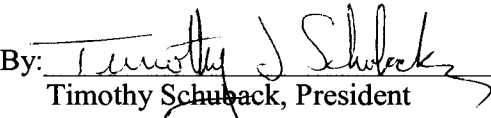
66. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

67. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent:

Date: 1-12-16

By: 
Timothy Schuback, President
Malmark Bellcraftsmen, Inc.


For Complainant:

Date: 2/23/16

By: 
Jeffrey S. Nast
Senior Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 3.3.16

By: 
John A. Armstead, Director
Land and Chemicals Division

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:

Malmark Bellcraftsmen, Inc.
5712 Easton Road
Plumsteadville, PA 18949

Respondent

Malmark Bellcraftsmen, Inc.
5712 Easton Road
Plumsteadville, PA 18949

Facility

Docket No. EPCRA-03-2016-0025

CONSENT AGREEMENT

Proceeding under EPCRA § 325(c),
42 U.S.C. § 11045(c)

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FINAL ORDER

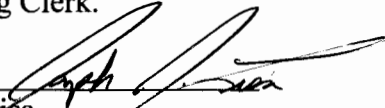
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Malmark Bellcraftsmen, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (April 12, 2001), the statutory factors set forth in EPCRA § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C), and the provisions and objectives of EPCRA § 313, 42 U.S.C. § 11023.

NOW, THEREFORE, PURSUANT TO Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **FIVE-THOUSAND DOLLARS (\$5,000.00)**, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: March 7, 2016


Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III