

**EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE FILLED OUT BY ORIGINATING OFFICE:**

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

This form was originated by: JANET SHARKE 6/2/10  
Name of Contact person Date

in the ore Office at 215-814-2689 Phone number

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS  Administrative Order/Consent Agreement FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt  This is a modification

Name of Person and/or Company/Municipality making the payment  
ACEERA LLC

The Total Dollar Amount of Receivable \$2500  
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number OPERA 03-2010-0226

The Site-Specific Superfund Acct. Number \_\_\_\_\_

The Designated Regional/HQ Program Office \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
Name of Contact Date

in the Financial Management Office, phone number: \_\_\_\_\_

**JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- 1. U.S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-002)  
Cincinnati, OH 45268  
Attn: Lori Weidner
- 2. Originating Office (ORC)
- 3. Designated Program Office

**ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- 1. Originating Office
- 2. Designated Program Office
- 3. Regional Hearing Clerk
- 3. Regional Counsel

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

<b>In the Matter of:</b>	:	
	:	
<b>Axcera LLC</b>	:	<b>Docket No. EPCRA-03-2010-0226</b>
<b>103 Freedom Drive</b>	:	
<b>Lawrence, PA 15055</b>	:	
	:	
<b>Respondent</b>	:	<b>CONSENT AGREEMENT</b>
	:	
<b>Axcera LLC</b>	:	
<b>103 Freedom Drive</b>	:	
<b>Lawrence, PA 15055</b>	:	
	:	
	:	<b>Proceeding under EPCRA § 325(c),</b>
	:	<b>42 U.S.C. § 11045(c)</b>
<b>Facility.</b>	:	

**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 Axcera LLC ("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 a violation of EPCRA § 313, as alleged herein, by Respondent at its facility located at 103 Freedom Drive, Lawrence, Pennsylvania, 15055.

**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.

#### **Findings of Fact and Conclusions of Law**

7. In accordance with Section 22.13(b) and 18(b)(2) of the Consolidated Rules, Complainant adopts the following findings of fact and conclusions of law.
8. Section 313 of EPCRA and 40 C.F.R. Part 372 require, *inter alia*, that the owner or operator of a facility that: 1) has 10 or more employees; 2) has a primary Standard Industrial Classification ("SIC") Code of 20 [2000] through 39 [3900] (as in effect on July 1, 1985), or other SIC or industry code as set forth in 40 C.F.R. Section 372.22(b); and 3) manufactured, processed or otherwise used a toxic chemical listed in 40 C.F.R. § 372.65, in excess of the threshold quantities established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form is required, to complete and submit a toxic chemical release form ("Form R") or appropriate alternative threshold report ("Form A") for each such toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year.
9. 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.
10. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines "person" to include any corporation.
11. 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).
12. Respondent owns and operates, and at the time of the violation alleged herein, owned and operated a manufacturing plant located at 103 Freedom Drive, Lawrence, Pennsylvania, 15055 ("Facility").
13. 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.

14. At the time of the violation alleged herein, Respondent employed 10 or more full-time employees at the Facility.
15. At the time of the violation alleged herein, the Facility had a primary SIC code of 3663.
16. Respondent was required to complete and submit a Form R or Form A for each toxic chemical listed in 40 C.F.R. § 372.65 which was manufactured, processed, or otherwise used at the Facility in excess of the threshold quantity set forth in Section 313(f) of EPCRA during any calendar year, to EPA and the Commonwealth of Pennsylvania by July 1 of the following calendar year.

### Count I

17. "Lead" is a "toxic chemical" as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), 40 C.F.R. § 372. 3, and is listed in 40 C.F.R. § 372.65.
18. 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. § 372.27 and .28, the reporting threshold amount for lead which is manufactured, processed or otherwise used at a facility is 100 pounds.
19. Respondent processed more than 100 pounds of lead at the Facility during the 2004 calendar year.
20. Pursuant to EPCRA § 313(g)(2), Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1 of 2005, a completed Form R or Form A for the lead processed at the Facility during calendar year 2004.
21. Respondent filed the required Form R for the toxic chemical lead processed at the Facility during calendar year 2004 with the Administrator of EPA and the Commonwealth of Pennsylvania on or about April 24, 2008.
22. Respondent's failure to timely file its Form R for the toxic chemical lead processed at the Facility during calendar year 2004 constitutes one violation of Section 313 of EPCRA, 42 U.S.C. § 11023.
23. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA § 313 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, as revised (64 Fed. Reg. 7121 (February 13, 2004)), violations of Section 313 of EPCRA occurring after March 15, 2004, are subject to an increased statutory maximum penalty of \$32,500 per violation.

### Civil Penalty

24. Respondent consents to the assessment of a civil penalty in the amount of NINE THOUSAND NINE HUNDRED DOLLARS (\$9,900.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty shall become due and payable on the date on which a true and correct copy of this CAFO, fully executed by all parties, is mailed or hand-delivered to Respondent, subject to Paragraph 26 below.
25. Complainant has determined the appropriate penalty for the violation alleged in this Consent Agreement by considering of a number of factors, including 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)* (August 10, 1992), as amended. Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19. The settlement in this proceeding is consistent with the provisions and objectives of EPCRA § 313 and 40 C.F.R. Part 372.
26. The civil penalty of nine thousand nine hundred dollars (\$9,900.00) set forth in paragraph 24, above, may be paid in two installments with interest at a rate of 3 percent per annum on the outstanding principal balance in accordance with the following schedule:
- a. 1<sup>st</sup> Payment: The first payment in the amount of \$4,958.14, consisting of a principal payment of \$4,950 and an interest payment of \$8.14, shall be paid within sixty (60) calendar days of the date on which a true and correct copy of this CAFO is mailed or hand-delivered to Respondent;
  - b. 2<sup>nd</sup> Payment: The second payment in the amount of \$4,958.14, consisting of a principal payment of \$4,950 and an interest payment of \$8.14, shall be paid within one hundred twenty (120) calendar days of the date on which a true and correct copy of this CAFO is mailed or hand-delivered to Respondent.

Pursuant to the above schedule, Respondent will remit total principal payments for the civil penalty in the amount of nine thousand nine hundred dollars (\$9,900.00) and total interest payments in the amount of sixteen dollars and twenty-eight cents (\$16.28).

27. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 26 above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in paragraphs 30, 31, 32, and 33, below, in the event of any such failure or default.

28. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth in paragraph 26 above, Respondent may pay the entire civil penalty of nine thousand nine hundred dollars (\$9,900.00) within thirty (30) calendar days after the date on which a true and correct copy of this CAFO is mailed or hand-delivered to Respondent, and thereby avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a) as described in paragraph 31, below. In addition, at any time after commencement of payments under the installment schedule, Respondent may elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

29. Respondent shall remit each installment payment for the civil penalty and interest, pursuant to paragraph 26, above, and/or the full penalty, pursuant to paragraphs 27 or 28, above, and/or any administrative fees and late payment penalties, in accordance with paragraphs 30, 31, 32, and 33, 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-03-2010-0226;
- 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

Contact: Eric Volck 513-487-2105

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

U.S. Bank  
Government Lockbox  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: 314-418-1028

- 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: Jesse White 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

[WWW.PAY.GOV/paygov/](http://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.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

- j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Janet E. Sharke  
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

30. 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.
31. 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).
32. 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.
33. 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).



34. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

#### **Certification**

35. 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.

#### **Other Applicable Laws**

36. 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**

37. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil penalties for the specific violation of EPCRA § 313 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.
38. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in the Findings of Fact or Conclusions of Law are false, or in any material respect, inaccurate.

#### **Scope of Settlement**

39. The settlement set forth in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violation 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**

40. 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**


41. 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**

42. 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 violation 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: 5/26/2010

By:   
NAME Ronald Sanders  
Axcera LLC  
TITLE VP + Controller

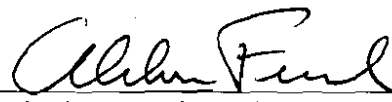
**For Complainant:**

Date: 6/3/2010

By:   
Janet E. Sharke  
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: 6/9/10

By:   
Abraham Ferdas, Director  
Land and Chemicals Division

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

Axcera LLC	:	Docket No. EPCRA-03-2010-0226
103 Freedom Drive	:	
Lawrence, PA 15055	:	
	:	
<b>Respondent</b>	:	<b>FINAL ORDER</b>
	:	
Axcera LLC	:	
103 Freedom Drive	:	
Lawrence, PA 15055	:	
	:	
	:	<b>Proceeding under EPCRA § 325(c), 42 U.S.C. § 11045(c)</b>
<b>Facility.</b>	:	


**FINAL ORDER**

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Axcera LLC, 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 civil 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)* (August 10, 1992), 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. **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 **Nine Thousand Nine Hundred Dollars (\$9,900.00)** 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: 6/14/10

  
Renee Sarajian  
Regional Judicial Officer  
U.S. EPA, Region III

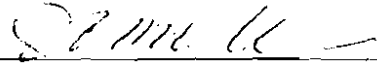
**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I hand-delivered to the Regional Hearing Clerk of the U.S. Environmental Protection Agency, Region III, the original and one copy of the foregoing Consent Agreement and Final Order (Docket No. EPCRA-03-2010-0226).

I further certify that on the date set forth below, I caused a true and correct copy of the Consent Agreement and Final Order to be transmitted via facsimile and registered mail, return receipt requested, to the following address:

Richard C. Gaffney, MBA, Esq.  
Director of Bar Services  
Adjunct Professor of Law  
Duquesne University School of Law  
Edward J. Hanley Hall  
600 Forbes Avenue  
Pittsburgh, PA 15282

6/24/2010  
Date

  
\_\_\_\_\_  
Janet E. Sharke  
Senior Assistant Regional Counsel  
Office of Regional Counsel (3RC30)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029