



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

MAR - 6 2015

REPLY TO THE ATTENTION OF:

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

Mark E. Shere  
Shere Law  
6831 Mohawk Lane  
Indianapolis, Indiana 46260-4014

Re: Scepter, Inc., Bicknell, Indiana  
Consent Agreement and Final Order

Dear Mr. Shere:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on March 6, 2015.

Please have you client pay the EPCRA civil penalty in the amount of \$51,617 in the manner prescribed in paragraph 44 and reference your payment with the docket number EPCRA-05-2015-0011.

The payment is due on April 6, 2015.

Please feel free to contact Ruth McNamara at [mcnamara.ruth@epa.gov](mailto:mcnamara.ruth@epa.gov) or by telephone at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Peter Felitti, Associate Regional Counsel, at [felitti.peter@epa.gov](mailto:felitti.peter@epa.gov) or by telephone at (312) 886-5114. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief  
Chemical Emergency Preparedness  
and Prevention Section

Enclosure



5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO solely for purposes of settlement and without admission of liability or any factual allegations set forth herein.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

**Statutory and Regulatory Background**

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission, community emergency coordinator for the local emergency planning committee and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A

and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.

12. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1910.1200(c).

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$37,500 per day of violation for violations that occurred after January 12, 2009.

#### **Factual Allegations and Alleged Violations**

15. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 6467 North Scepter Road, Bicknell, Indiana (facility).

17. At all times relevant to this CAFO, Respondent was an employer at the facility.

18. Respondent's facility consists of buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

19. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. Sodium chloride CAS# 7647-14-5 is classified as a health hazard.

21. Sodium chloride CAS# 7647-14-5 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

22. Sodium chloride CAS# 7647-14-5 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

23. Hydraulic oil CAS# 64741-88-4 is classified as a health hazard.

24. Hydraulic oil CAS# 64741-88-4 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

25. Hydraulic oil CAS# 64741-88-4 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

26. As of December 31, 2007, sodium chloride and hydraulic oil were present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

27. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility on or before March 30, 2008, a MSDS for sodium chloride and hydraulic oil or a list including sodium chloride and hydraulic oil.

28. During at least one period of time in calendar year 2010 sodium chloride and hydraulic oil were present at the facility in an amount equal to or greater than the minimum

threshold level.

29. During at least one period of time in calendar year 2011 sodium chloride and hydraulic oil were present at the facility in an amount equal to or greater than the minimum threshold level.

30. During at least one period of time in calendar year 2012 sodium chloride and hydraulic oil were present at the facility in an amount equal to or greater than the minimum threshold level.

31. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility on or before March 1, 2011 a completed emergency and hazardous chemical inventory form including sodium chloride and hydraulic oil for calendar year 2010.

32. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility on or before March 1, 2012 a completed emergency and hazardous chemical inventory form including sodium chloride and hydraulic oil for calendar year 2011.

33. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility on or before March 1, 2013 a completed emergency and hazardous chemical inventory form including sodium chloride and hydraulic oil for calendar year 2012.

34. At all times relevant to this CAFO, the Indiana State Emergency Response Commission was the SERC for Indiana under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

35. At all times relevant to this CAFO, the Knox County Local Emergency Planning Committee was the LEPC for Bicknell, Indiana under Section 301(c) of EPCRA, 42 U.S.C.

§ 11001(c).

36. At all times relevant to this CAFO, the Bicknell Fire Department was the fire department with jurisdiction over the facility.

37. Each day that Respondent failed to submit to the SERC a MSDS for sodium chloride and hydraulic oil after March 30, 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

38. Each day that Respondent failed to submit to the LEPC a MSDS for sodium chloride and hydraulic oil after March 30, 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

39. Each day that Respondent failed to submit to the Bicknell Fire Department a MSDS for sodium chloride and hydraulic oil after March 30, 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

40. Each day Respondent failed to submit to the SERC, LEPC and fire department a completed Emergency and Hazardous Chemical Inventory Form including sodium chloride and hydraulic oil, by March 1, 2011 for calendar year 2010 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

41. Each day Respondent failed to submit to the SERC, LEPC and fire department a completed Emergency and Hazardous Chemical Inventory Form including sodium chloride and hydraulic oil, by March 1, 2012 for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

42. Each day Respondent failed to submit to the SERC, LEPC and fire department a completed Emergency and Hazardous Chemical Inventory Form including sodium chloride and hydraulic oil, by March 1, 2013 for calendar year 2012 constitutes a separate violation of Section

312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Civil Penalty**

43. Complainant has determined that an appropriate civil penalty to settle this action is \$51,617. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also consider U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

44. Within 30 days after the effective date of this CAFO, Respondent must pay a \$51,617 civil penalty for the EPCRA violations by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX / Cashlink ACH Receiver  
ABA" 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state the following: Scepter, Inc., and docket number of this CAFO. A letter, stating Respondent's name, the case title and the case docket number with a copy of the payment, should be sent to:

Regional Hearing Clerk, (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604



Ruth McNamara, (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Peter Felitti, (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

45. This civil penalty is not deductible for federal tax purposes.

46. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

47. Pursuant to 31 C.F.R. §901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

48. This CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO and in the July 28, 2014 Notice of Intent to File Civil Administrative Complaint.

49. This CAFO does not affect the rights of U.S. EPA or the United States to pursue

appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

50. Respondent certifies that it is complying with Section 312 of EPCRA, 42 U.S.C. § 11022.

51. This CAFO does not affect Respondent's responsibility to comply with EPCRA and CERCLA and other applicable federal, state and local laws and regulations.

52. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

53. The terms of this CAFO bind Respondent and its successors and assigns.

54. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

55. Each party agrees to bear its own costs and attorney's fees in this action.

56. This CAFO constitutes the entire agreement between the parties.

**Scepter, Inc., Respondent**

2/12/15  
Date

Garney B. Scott III  
Garney B. Scott, III,  
President  
Scepter, Inc.

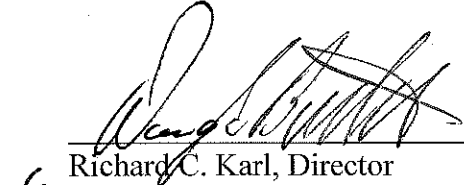
**U.S. Environmental Protection Agency, Complainant**

3/2/2015  
Date



\_\_\_\_\_  
Evette L. Jones, Acting Chief  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5

3/2/2015  
Date



\_\_\_\_\_  
Richard C. Karl, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: Scepter, Inc., Bicknell, Indiana**  
**Docket No. EPCRA-05-2015-0011**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R.§§ 22.18 and 22.31. IT IS SO ORDERED.

3-5-2015

Date



\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: Scepter, Inc., Bicknell, Indiana**  
**Docket No. EPCRA-05-2015-0011**

**Certificate of Service**

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on March 6, 2015 in the following manner to the addresses:

Copy by Certified Mail

Return Receipt Requested: Mark E. Shere  
Shere Law  
6831 Mohawk Lane  
Indianapolis, Indiana 46260-4014


Copy by E-mail to

Attorney for Complainant: Peter Felitti  
E-mail Address

Copy by E-mail to  
Regional Judicial:

Ann Coyle  
coyle.ann@epa.gov

Dated: March 6, 2015

  
LaDawn Whitehead, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604