



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

APR 10 2012

REPLY TO THE ATTENTION OF:

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

Mr. Tony Asselta  
President  
Root-Lowell Manufacturing Company  
1000 Foreman Street  
Lowell, Michigan 49331-1095

Re: Root-Lowell Manufacturing Company, Lowell, Michigan, Consent Agreement and Final Order, Docket No. EPCRA-05-2012-0015

Dear Mr. Asselta:

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 APR 10 2012.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Cynthia King, Associate Regional Counsel, at (312) 886-6831. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. E. Hans", followed by a horizontal line.

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

Enclosure

cc: Captain Thomas Sands, Chairperson (w/ enclosure)  
Susan Parker (w/ enclosure)  
MI SERC

Matthew D. Zimmerman, Attorney (w/enclosure)  
Varnum  
Bridgewater Place  
Post Office Box 352  
Grand Rapids, Michigan 49501-0352 (certified)

RECEIVED

APR 10 2012

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of:	)	Docket No. EPCRA-05-2012-0015
	)	
Root-Lowell Manufacturing	)	Proceeding to Assess a Civil Penalty Under
Company	)	Section 325(c)(1) and (c)(2) of the Emergency
Lowell, Michigan	)	Planning and Community Right-to-Know
	)	Act of 1986
Respondent.	)	

Consent Agreement and Final Order  
Preliminary Statement

1. This is an administrative action commenced and concluded under Sections 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§ 11045(c)(1) and (c)(2), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Root-Lowell Manufacturing Company, an Ohio corporation doing business in the State of Michigan.

4. Under 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

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 the terms of the CAFO.

**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 311 of EPCRA, 42 U.S.C. § 11021, 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 submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC), and the fire department with jurisdiction over the facility an MSDS for each such hazardous chemical present at the facility at any one time in an amount equal to or greater than 10,000 pounds, and for each extremely hazardous chemical present at the facility in an amount equal to or greater than 500 pounds, or the threshold planning quantity (TPQ), whichever is lower, or to submit a list of such chemicals. The owner or operator must submit the required MSDS or list within three months after the owner or operator is first required to have the MSDS available or after the hazardous chemical requiring an MSDS first becomes present at the facility in an amount exceeding the threshold level.

10. 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 OSHA to prepare or have available an MSDS for a hazardous chemical, to submit to the SERC, community coordinator for the LEPC, and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, 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.

11. Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a), assist state and local committees in planning for emergencies and make information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

12. 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, an MSDS.

13. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous chemicals.

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 per day of violation of EPCRA Section 312. 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 these statutory maximum penalties to \$32,500 per day of violation that occurred after March 15, 2004 through January 12, 2009 and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

15. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes U.S. EPA to assess a civil penalty of up to \$10,000 for each EPCRA Section 311 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 \$11,000 per day of violation for EPCRA 311 violations that occurred after March 15, 2004 through January 12, 2009 and to \$16,000 per day of violation for violations that occurred after January 12, 2009.

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

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

17. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 1000 Foreman Street, Lowell, Michigan (facility).

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

19. 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.

20. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

21. Sulfuric acid is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

22. Sulfuric acid (CAS #7664-93-9) 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).

23. Sulfuric acid (CAS #7664-93-9) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

24. Sulfuric acid (CAS #7664-93-9) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

25. Lead is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

26. Lead (CAS #7439-92-1) 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).

27. Lead (CAS #7439-92-1) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

28. As of December 31, 2007, sulfuric acid was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

29. As of December 31, 2007, lead was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

30. During at least one period of time in calendar year 2007, sulfuric acid and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

31. During at least one period of time in calendar year 2008, sulfuric acid and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

32. During at least one period of time in calendar year 2009, sulfuric acid and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

33. During at least one period of time in calendar year 2010, sulfuric acid and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

34. OSHA requires Respondent to prepare, or have available, an MSDS for sulfuric acid and lead.

35. Section 311 of EPCRA, 42 U.S.C. § 11021, required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 31, 2008, an MSDS for sulfuric acid and lead or a list including sulfuric acid and lead.

36. Section 312 of EPCRA, 42 U.S.C. § 11022, required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid and lead on or before March 1, 2008, for calendar year 2007.

37. Section 312 of EPCRA, 42 U.S.C. § 11022, required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid and lead on or before March 1, 2009, for calendar year 2008.

38. Section 312 of EPCRA, 42 U.S.C. § 11022, required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid and lead on or before March 1, 2010, for calendar year 2009.

39. Section 312 of EPCRA, 42 U.S.C. § 11022, required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid and lead on or before March 1, 2011,

for calendar year 2010.

40. At all times relevant to this CAFO, the Citizen-Community Emergency Response Coordinating Council was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

41. At all times relevant to this CAFO, the Kent County, Michigan LEPC was the LEPC for Kent County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

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

43. Respondent submitted to the SERC an MSDS for sulfuric acid or a list showing sulfuric acid on April 7, 2011.

44. Each day Respondent failed to submit to the SERC an MSDS or a list for sulfuric acid by March 31, 2008, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

45. Respondent submitted to the LEPC an MSDS for sulfuric acid or a list showing sulfuric acid on April 7, 2011.

46. Each day Respondent failed to submit to the LEPC an MSDS or a list for sulfuric acid by March 31, 2008, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

47. Respondent submitted to the Lowell Fire Department an MSDS for sulfuric acid or a list showing sulfuric acid on April 7, 2011.

48. Each day Respondent failed to submit to the Lowell Fire Department an MSDS or a list for sulfuric acid by March 31, 2008, constitutes a separate violation of Section 311 of



EPCRA, 42 U.S.C. § 11021.

49. Respondent submitted to the SERC an MSDS for lead or a list showing lead on April 7, 2011.

50. Each day Respondent failed to submit to the SERC an MSDS or a list for lead by March 31, 2008, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

51. Respondent submitted to the LEPC an MSDS for lead or a list showing lead on April 7, 2011.

52. Each day Respondent failed to submit to the LEPC an MSDS or a list for lead by March 31, 2008, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

53. Respondent submitted to the Lowell Fire Department an MSDS for lead or a list showing lead on April 7, 2011.

54. Each day Respondent failed to submit to the Lowell Fire Department an MSDS or a list for lead by March 31, 2008, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

55. As of January 25, 2011, Respondent had not submitted to the SERC, the LEPC, and the Lowell Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead for calendar year 2007.

56. Each day Respondent failed to submit to the SERC, the LEPC, and the Lowell Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

57. As of January 25, 2011, Respondent had not submitted to the SERC, the LEPC, and the Lowell Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead for calendar year 2008.

58. Each day Respondent failed to submit to the SERC, the LEPC, and the Lowell fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

59. As of January 25, 2011, Respondent had not submitted to the SERC, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead for calendar year 2009.

60. Each day Respondent failed to submit to the SERC, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

61. As of January 25, 2011, Respondent had not submitted to the LEPC, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead for calendar year 2009.

62. Each day Respondent failed to submit to the LEPC, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

63. As of January 25, 2011, Respondent had not submitted to the Lowell Fire

Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead for calendar year 2009.

64. Each day Respondent failed to submit to the Lowell Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

65. Respondent submitted to the SERC, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead on April 7, 2011, for calendar year 2010.

66. Each day Respondent failed to submit to the SERC, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2011, for calendar year 2010 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

67. Respondent submitted to the LEPC, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead on April 7, 2011, for calendar year 2010.

68. Each day Respondent failed to submit to the LEPC, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2011, for calendar year 2010 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

69. Respondent submitted to the Lowell Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead on April 7, 2011, for

calendar year 2010.

70. Each day Respondent failed to submit to the Lowell Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2011, for calendar year 2010 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

#### **Civil Penalty**

71. Complainant has determined that an appropriate civil penalty to settle this action is \$0 for the EPCRA violations. 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 based on information submitted by the Respondent, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered 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).

#### **General Provisions**

72. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

73. 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.

74. Respondent certifies that it is complying with Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021, 11022(a).

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

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

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

78. 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.

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

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

**Root-Lowell Manufacturing Company, Lowell, Michigan, Respondent**

3/14/12  
Date

Tony Asselta  
Tony Asselta  
President  
Root-Lowell Manufacturing Company

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APR 10 2012

In the Matter of: Root-Lowell Manufacturing Company, Lowell, Michigan  
Docket No. EPCRA-05-2012-0015

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

U.S. Environmental Protection Agency, Complainant

4-3-12

Date

Richard C. Karl

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

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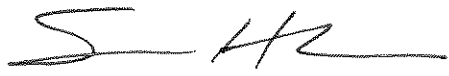
APR 10 2012

In the Matter of: **Root-Lowell Manufacturing Company, Lowell, Michigan** REGIONAL HEARING CLERK  
Docket No. EPCRA-05-2012-0015 U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**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.

4-9-12  
Date

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

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APR 10 2012

In the Matter of: **Root-Lowell Manufacturing Company, Lowell, Michigan**  
Docket No. **EPCRA-05-2012-0015**

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

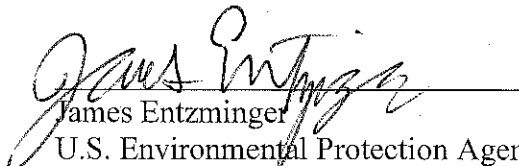
**Certificate of Service**

I, James Entzminger, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed a copy CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Tony Asselta, President  
Root-Lowell Manufacturing Company  
1000 Foreman Street  
Lowell, Michigan 49331-1095

Matthew D. Zimmerman, Attorney  
Varnum  
Bridgewater Place  
Post Office Box 352  
Grand Rapids, Michigan 49501-0352

on the 10 day of April, 2012

  
James Entzminger  
U.S. Environmental Protection Agency  
Region 5