



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

2017 APR 13 PM 5:06

In the Matter of	)	EPA Docket No.
	)	CERC/EPCRA-03-2017-0121
	)	
CLEARON CORPORATION	)	
95 MacCorkle Avenue, SW	)	
South Charleston, WV 25303,	)	
	)	
Respondent.	)	
	)	Proceedings Pursuant to Sections 103 and
	)	109 of the Comprehensive Environmental
	)	Response, Compensation and Liability
CLEARON CORPORATION	)	Act, 42 U.S.C. §§ 9603 and 9609, and
95 MacCorkle Avenue, SW	)	Sections 304 and 325 of the Emergency
South Charleston, WV 25303,	)	Planning and Community Right-to-Know
	)	Act, 42 U.S.C. §§ 11004 and 11045
Facility.	)	

**CONSENT AGREEMENT**

**STATUTORY AUTHORITY**

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045. The President has delegated this authority to the Administrator of the U.S. Environmental Protection Agency ("EPA"), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has re-delegated this authority to the Director of the Hazardous Site Cleanup Division, EPA Region III ("Complainant"). Further, this Consent Agreement is proposed and entered into under the authority provided by 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.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

### JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(7) and (8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Consent Agreement.
4. With the exception of Paragraph 3, above, solely for the purpose of this proceeding, Respondent neither admits nor denies the factual allegations or conclusions of law set forth in this Consent Agreement, but expressly waives its rights to contest said allegations.

### FACTUAL ALLEGATIONS

5. Clearon Corporation ("Respondent") is a Delaware corporation, with its headquarters and principal place of business located in South Charleston, West Virginia.
6. As a corporation, Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21); Section 329(7) of EPCRA, 42 U.S.C. § 11049(7); and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61.
7. At all times relevant to this CA/FO, Respondent has been in charge of the chemical manufacturing facility located at 95 MacCorkle Avenue, SW, South Charleston, West Virginia ("Facility"), within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
8. The Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9); Section 329(4) of EPCRA, 42 U.S.C. § 11049(4); and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61.
9. Respondent is an "owner or operator" of the Facility as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and referenced in Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. §§ 355.2 and 355.30.
10. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

11. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances (“EHSs”) and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under Section 304(a) through (c) of EPCRA, 42 U.S.C. § 11004(a) through (c), (“Reportable Quantity” or “RQ”). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.

12. The State Emergency Response Commission (“SERC”) for the Facility is, and at all times relevant to this CA/FO has been, the West Virginia Division of Homeland Security and Emergency Management (“WVDHSEM”), located at 1900 Kanawha Boulevard East, Building 1, Room EB-80, Charleston, West Virginia 25305.

13. The Local Emergency Planning Committee (“LEPC”) for the Facility is, and at all times relevant to this CA/FO has been, the Kanawha Putnam Emergency Planning Committee, located at 113 Lakeview Drive, Charleston, West Virginia 25313.

14. At all times relevant to this CA/FO, the Facility was a facility at which a hazardous chemical was produced, used or stored.

15. On April 8, 2015, EPA conducted an inspection of the Facility following two reported releases of chlorine to determine Respondent’s compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302-312 of EPCRA, 42 U.S.C. §§ 11002-11022 (“the Inspection”).

16. On May 22, 2015, EPA issued to Respondent an information request letter pursuant to Section 104(e) of CERCLA (“Information Request Letter”), seeking information regarding an ammonia release that occurred at the Facility on February 20, 2015.

17. On November 10, 2016, EPA issued to Respondent a Request to Show Cause and Opportunity to Confer with EPA Regarding Violations of CERCLA Section 103 and EPCRA Section 304 at the Clearon Facility in South Charleston, WV (the “Show Cause Letter”).

18. In response to the Show Cause Letter, Respondent provided further documentation regarding the alleged violations under cover letter dated December 15, 2016. Among this documentation were reports of air monitoring taken by the Respondent at the Facility perimeter via a hand-held monitor that recorded no detectable concentrations of any of the material released during the events subject to this CA/FO. Following a conference call with EPA representatives on December 21, 2016, and a subsequent EPA request via electronic mail for additional information dated December 22, 2016, Respondent provided a response and additional documentation via electronic mail dated January 12, 2017. EPA requested further clarifications via electronic mail dated January 24, 2017, to which Respondent replied via electronic mail dated January 31, 2017 and under cover letter dated February 1, 2017.

#### *Count 1*

19. The factual allegations contained in Paragraphs 5 through 18 of this CA/FO are

incorporated by reference herein as though fully set forth at length.

20. During the Inspection, Respondent's personnel provided documentation to EPA regarding an event that occurred at the Facility on November 5, 2013, when an estimated 20 pounds of chlorine, Chemical Abstracts Service ("CAS") Registry No. 7782-50-5, was released from the Facility (the "November 2013 Release").

21. Respondent first became aware that the chlorine release was occurring at approximately 6:04 p.m. on November 5, 2013, and Respondent's personnel shut down all chlorination processes, isolating and evacuating all chlorine lines at 6:05 p.m.

22. Respondent determined that the November 2013 Release was caused by a procedural error when dry chlorine gas was added into a titanium vessel to combine with liquid sodium hypochlorite for the production of hypochlorous acid at the Facility. The chlorine was added through the vessel nozzle without the presence of the protective Teflon insert chlorine distributor, which was erroneously installed into the sodium hypochlorite nozzle; hence, the dry chlorine reacted with the titanium and caused a 1.5-inch jagged hole to develop in the nozzle, thus permitting the chlorine release.

23. At an unknown time during the evening hours, Respondent completed calculations as to the amount of chlorine released, which was determined to be 20 pounds.

24. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

25. The chemical chlorine is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 10 pounds, as listed in 40 C.F.R. § 302.4.

26. The November 2013 Release from the Facility constituted a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

27. Respondent notified the NRC of the chlorine release at 10:28 a.m. on November 6, 2013.

28. The November 2013 Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

29. Respondent failed to immediately notify the NRC of the November 2013 Release as soon as Respondent knew that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

*Count 2*

30. The factual allegations contained in Paragraphs 5 through 29 of this CA/FO are incorporated by reference herein as though fully set forth at length.

31. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, that, when there has been a release of a hazardous substance or an EHS in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, the owner or operator of that facility must provide a written follow-up report regarding the release to the SERC and to the LEPC as soon as practicable.

32. The implementing regulations for EPCRA at 40 C.F.R. § 355.31 identify certain types of releases that are exempt from the reporting requirement, including “[a]ny release that results in exposure to persons solely within the boundaries of [the] facility.”

33. Respondent collected monitoring data via a hand-held monitor from 10 locations around the perimeter of the Facility, beginning to the southwest of the Facility, between 6:25 p.m. and 6:43 p.m. that did not detect any chlorine. However, monitoring data collected at stationary monitors located at the Facility to the north and northwest of the release point, provided by Respondent to EPA with the December 15, 2016 submittal, demonstrate that the chlorine release moved away from the source at an approximate speed of between 0.67 and 0.87 miles per hour. Therefore, EPA concludes that the chlorine release crossed the facility boundary to the north within approximately 10 to 20 minutes after the release occurred at 6:04 p.m.

34. The November 2013 Release constituted a release of a hazardous substance and an EHS in a quantity equal to or exceeding its RQ requiring immediate notification of the SERC and the LEPC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C, and, consequently, requiring submission of a written follow-up report to the SERC and LEPC pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.

35. Respondent submitted a follow-up report to the West Virginia Division of Air Quality on November 13, 2013; however, Respondent failed to provide a follow-up report to the WVDHSEM (the SERC).

*Count 3*

36. The factual allegations contained in Paragraphs 5 through 35 of this CA/FO are incorporated by reference herein as though fully set forth at length.

37. Respondent replied to EPA's Information Request Letter by an undated letter, received by EPA on June 16, 2015 ("104(e) Response"), describing an event on February 20, 2015 when anhydrous ammonia, CAS Registry No. 7664-41-7, was released from the Facility (the "February 2015 Release"). Respondent stated that an estimated 277 pounds of anhydrous ammonia was released directly to the atmosphere from the Calciner at the Facility, where Crude Cyanuric Acid is formed. According to the 104(e) Response, extreme cold temperatures and ice buildup caused the ammonia incinerator to trip off and the emergency blower line to become blocked, causing the release of ammonia from the two seals on either end of the Calciner, at 0 to 15 feet above grade, and from the stack opening, at 140 feet above grade.

38. According to the 104(e) Response, Respondent first became aware that the February 2015 Release was occurring at approximately 6:22 a.m. on February 20, 2015 when an alarm sounded, and plant personnel visually identified the release shortly thereafter.

39. According to the 104(e) Response, plant personnel completed calculations regarding the amount of ammonia released at 1:38 p.m. on February 20, 2015, and determined that the release quantity of 277 pounds exceeded the RQ.

40. Respondent did not notify the NRC of the February 2015 Release until 4:02 p.m. on April 16, 2015.

41. The chemical ammonia is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 100 pounds, as listed in 40 C.F.R. § 302.4.

42. The February 2015 Release from the Facility constituted a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

43. The February 2015 Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

44. Respondent failed to immediately notify the NRC of the February 2015 Release as soon as Respondent knew that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

*Counts 4 & 5*

45. The factual allegations contained in Paragraphs 5 through 44 of this CA/FO are incorporated by reference herein as though fully set forth at length.

46. Respondent collected monitoring data via a hand-held monitor from 16 locations around the perimeter of the Facility, between 6:48 a.m. and 7:29 a.m., from 6 locations between 8:02 a.m. and 8:13 a.m., and from 6 locations between 8:56 a.m. and 9:07 a.m., none of which detected any ammonia. However, the ammonia, which rises because it is lighter than air, was released directly to the atmosphere, and none of it was recovered; therefore, EPA concludes that the ammonia release must have traveled beyond the boundary of the facility over time.

47. The February 2015 Release constitutes a release of a hazardous substance and an EHS in a quantity equal to or exceeding its RQ requiring immediate notification of the SERC and the LEPC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C, and, consequently, requiring submission of written follow-up reports to the SERC and to the LEPC pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.

48. Respondent did not provide a written follow-up report regarding the February 2015 Release to the SERC, as required by Section 304(c) of EPCRA, as implemented by 40 C.F.R. Part 355, Subpart C.

49. Respondent did not provide a written follow-up report regarding the February 2015 Release to the LEPC, as required by Section 304(c) of EPCRA, as implemented by 40 C.F.R. Part 355, Subpart C.

**CONCLUSIONS OF LAW**

*Count 1*

50. Respondent's failure to immediately notify the NRC of the November 2013 Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603. Respondent is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

*Count 2*

51. Respondent's failure to submit a written follow-up report to the SERC for the November 2013 Release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

*Count 3*

52. Respondent's failure to immediately notify the NRC of the February 2015 Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603. Respondent is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

*Count 4*

53. Respondent's failure to submit a written follow-up report to the SERC for the February 2015 Release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

*Count 5*

54. Respondent's failure to submit a written follow-up report to the LEPC for the February 2015 Release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

**SETTLEMENT**

55. In full and final settlement and resolution of all allegations referenced in the foregoing findings of fact and conclusions of law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violations, set forth above, of Section 103 of CERCLA, 42 U.S.C. § 9603, in the amount of **\$12,156** ("CERCLA civil penalty"), and of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), in the amount of **\$10,464** ("EPCRA civil penalty"), for a total penalty of **\$22,620**.

**PAYMENT TERMS**

56. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

57. The CERCLA civil penalty and the EPCRA civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CA/FO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay the CERCLA civil penalty of \$12,156 and the EPCRA civil penalty of \$10,464 no later than thirty (30) days after the date on which a copy of the CA/FO is mailed or hand-delivered to Respondent by either cashier's checks, certified checks, or electronic wire transfer, as set forth in the following paragraphs.

58. Payment of the CERCLA civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, **CERC/EPCRA-03-2017-0121**;
- b. All checks shall be made payable to **EPA-Hazardous Substances Superfund**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000  
Contact: Elizabeth McGuffey (513-487-2885)

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

U.S. EPA  
Government Lockbox 979076  
1005 Convention Plaza  
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:

U.S. EPA  
Cincinnati Finance Center  
26 W. Martin Luther King Drive, MS-002  
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: Randolph Maxwell 202-874-3720  
or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV

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)

59. Payment of the EPCRA civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, **CERC/EPCRA-03-2017-0121**;
- 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. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Heather Russell (513-487-2044)

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

U.S. EPA  
Government Lockbox 979077  
1005 Convention Plaza  
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:

U.S. EPA  
Cincinnati Finance Center  
26 W. Martin Luther King Drive, MS-002  
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: Randolph Maxwell 202-874-3720  
or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV

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)

60. Respondent shall submit copies of the checks, or verification of wire transfers or ACH, to the following persons:

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

and

Elizabeth Lukens (3RC42)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

61. The CERCLA civil penalty and EPCRA civil penalty stated herein are based upon Complainant's consideration of a number of factors, including, but not limited to, the following: the nature, circumstances, extent and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit (if any) resulting from the violation, and such matters as justice may require. The penalty is consistent with 40 C.F.R. Part 19 and the 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 (September 30, 1999).

62. 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 in accordance with this CA/FO or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

63. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this fully executed CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties 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).

64. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 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 penalty becomes due and payable and an additional \$15.00 for each subsequent thirty (30) day period the penalties remain unpaid.

65. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalties which remain delinquent more than ninety (90) calendar days in accordance with 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, in accordance with 31 C.F.R. § 901.9(d).

66. Failure by the Respondent to pay the CERCLA civil penalty and the EPCRA civil penalty assessed by the Final Order in full in accordance with this CA/FO may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

**GENERAL PROVISIONS**

67. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

68. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the 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 the Consent Agreement and accompanying Final Order.

69. This CA/FO resolves only those civil claims which are alleged herein and is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

70. Each party to this action shall bear its own costs and attorney's fees.

FOR CLEARON CORPORATION

  
\_\_\_\_\_

4/5/17  
DATE

John McKittrick  
[Print name]

Plant Manager  
[Print title]

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Karen Melvin, Director  
Hazardous Site Cleanup Division

APR 11 2017

DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

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<b>South Charleston, WV 25303,</b>	)	
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	)	<b>109 of the Comprehensive Environmental</b>
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<b>CLEARON CORPORATION</b>	)	<b>Act, 42 U.S.C. §§ 9603 and 9609, and</b>
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<b>South Charleston, WV 25303,</b>	)	<b>Planning and Community Right-to-Know</b>
	)	<b>Act, 42 U.S.C. §§ 11004 and 11045</b>
<b>Facility.</b>	)	

**FINAL ORDER**

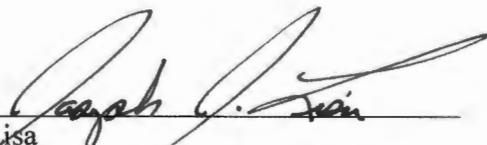
Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Clearon Corporation, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice 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 Sections 304, 311 and 312 of the Emergency Planning and Community Right-to Know Act and Section 103 of the Comprehensive Emergency Response, Compensation and Liability Act*, and the statutory factors set forth in Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045.

**NOW, THEREFORE, PURSUANT TO** Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TWENTY-TWO THOUSAND SIX HUNDRED AND TWENTY DOLLARS (\$22,620.00)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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

April 13, 2017  
Date

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

In the Matter of

) EPA Docket No.

) CERC/EPCRA-03-2017-0121

) CLEARON CORPORATION

) 95 MacCorkle Avenue, SW

) South Charleston, WV 25303,

) Respondent.

) Proceedings Pursuant to Sections 103 and  
) 109 of the Comprehensive Environmental  
) Response, Compensation and Liability

) CLEARON CORPORATION

) 95 MacCorkle Avenue, SW

) South Charleston, WV 25303,

) Facility.

) Act, 42 U.S.C. §§ 9603 and 9609, and  
) Sections 304 and 325 of the Emergency  
) Planning and Community Right-to-Know  
) Act, 42 U.S.C. §§ 11004 and 11045

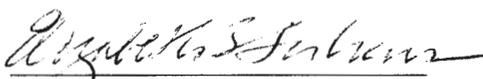
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CA/FO") in the above-captioned matter have been filed with the EPA Region III Regional Hearing Clerk and that a copy of the CA/FO was sent by UPS overnight mail to:

David M. Flannery, Esquire  
Steptoe & Johnson, PLLC  
Chase Tower, Eighth Floor  
P.O. Box 1588  
Charleston, WV 25326-1588

I further certify that I have sent a pdf copy of the CA/FO by electronic mail to Respondent's counsel, David M. Flannery, on this day.

4.13.17  
Date



Elizabeth B. Lukens  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III