

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

In the Matter of:	:	
	:	
Dentsply International, Inc.	:	Docket No. EPCRA-03-2010-0035
221 West Philadelphia Street	:	
York, PA 17401	:	
	:	
Respondent	:	CONSENT AGREEMENT
	:	
Dentsply International, Inc.	:	
L.D. Caulk Division – West Plant	:	
779 E. Masten Circle	:	
Milford, Delaware 19963	:	Proceeding under EPCRA § 325(c),
	:	42 U.S.C. § 11045(c)
Facility	:	

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 Dentsply International, Inc. (“Respondent”), pursuant to Sections 313 and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. §§ 11023 and 11045(c), the regulations implementing EPCRA § 313, as set forth at 40 C.F.R. Part 372, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Pursuant to 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively, “CAFO”) simultaneously commence and conclude this proceeding to resolve a violation of EPCRA § 313, as alleged herein, by Respondent at its facility located at 779 E. Masten Circle in Milford, Delaware.

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
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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. Complainant has determined that Respondent has violated EPCRA Section 313 and adopts the following findings of fact and conclusions of law in accordance with Sections 22.18(b)(2) and .14(a)(2) and (3) of the Consolidated Rules of Practice.
8. Respondent is a corporation incorporated under the laws of the State of Delaware.
9. As a Delaware corporation, Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
10. 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.
11. Respondent owns and operates, and at the time of the violations alleged herein, owned and operated a medical device manufacturing plant located at 779 E. Masten Circle in Milford, Delaware (the "Facility").
12. Respondent's Facility is a "facility" as defined in Section 329(4) of EPCRA and 40 C.F.R. § 372.3.
13. 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, starting January 1, 1998, has an SIC code in one or more of the following categories:
 - i. between 1000 and 1099, except 1011, 1081, and 1094;
 - ii. between 1200 and 1299, except 1241;

- iii. 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce);
- iv. 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. §§ 6921-6939e);
- v. 5169 or 5171;
- vi. 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); 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,

submit a completed toxic chemical release reporting 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.

- 14. At the time of the violations alleged herein, Respondent employed 10 or more full-time employees at the Facility.
- 15. At the time of the violations alleged herein, the Facility had a primary SIC code of 3843.
- 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 State of Delaware by July 1 of the following calendar year.
- 17. Respondent was required to provide data reflecting releases of each toxic chemical required to be reported. EPCRA § 313(a), 42 U.S.C. § 11023(a).
- 18. Methanol is a toxic chemical as defined in EPCRA Sections 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.
- 19. As set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical which is otherwise-used at a facility is 10,000 pounds, except as provided in 40 C.F.R. §§ 372.27 and .28, which are inapplicable to this matter.
- 20. Respondent otherwise-used more than 10,000 pounds of methanol at the Facility during the 2006 calendar year.
- 21. Section 313(g)(2) of EPCRA, 42 U.S.C. § 11023(g)(2), requires the owner or operator of the facility to use readily available data or reasonable estimates of toxic chemical releases as the basis of the information reported on Form R and Form A.

22. Pursuant to EPCRA § 313(g)(2), Respondent was required to submit to EPA and the State of Delaware, by July 1, 2007, a completed Form R or Form A to report methanol releases based on readily available data or reasonable estimates of those releases at the Facility during calendar year 2006.
23. Based on reasonable estimates of methanol releases and data readily available to Respondent, Respondent's Facility transferred approximately 1672 pounds of methanol to a publicly owned treatment works during calendar year 2006.
24. Respondent submitted to EPA and the State of Delaware, on or before July 1, 2007, a completed Form R stating that its Facility released 0.002613 pound of methanol during calendar year 2006.
25. The quantity of methanol releases which Respondent reported on the Form R referred to in paragraph 24, was not based on readily available data or a reasonable estimate of the quantity of methanol released by the Facility during 2006.
26. Respondent's failure to use readily available data and/or a reasonable estimate of the quantity of methanol released at its Facility during calendar year 2006 as the basis of the quantity of releases Respondent reported to EPA on the Form R referred to in paragraph 24, above, is a violation of Section 313 of EPCRA, for which Respondent is liable for a civil penalty pursuant to EPCRA § 325(c).
27. 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.

Civil Penalty

28. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Nine Thousand Dollars (\$9000.00)**, which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by the parties, signed by the Regional Administrator or the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
29. The aforesaid settlement amount is based upon Complainant's consideration of the facts and circumstances of this case 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.

30. Payment of the civil penalty amount assessed in paragraph 28, above, shall be made 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-03-2010-0035;
- 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/

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/payment>

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

31. 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 shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
32. 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).
33. 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.
34. A late payment penalty of six percent (6%) 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). The late payment penalty on any portion of the civil penalty that remains delinquent for more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
35. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Certifications

36. 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

37. 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

38. 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.

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

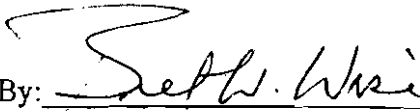
41. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules 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: 11/13/09

By: 
Bret W. Wise
~~President~~ *CEO*
Dentsply International, Inc.

For Complainant:

Date: _____

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: _____

By: _____
Abraham Ferdas, Director
Land and Chemicals Division

For Respondent:

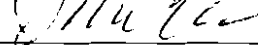
Date: _____

By: _____

Bret W. Wise
President
Dentsply International, Inc.

For Complainant:

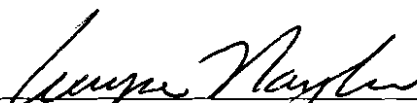
Date: 12/2/09

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: 12/8/09

By: 

Abraham Ferdas, Director
Land and Chemicals Division

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

In the Matter of:	:	
	:	
Dentsply International, Inc.	:	Docket No. EPCRA-03-2010-0035
221 West Philadelphia Street	:	
York, PA 17401	:	
	:	FINAL ORDER
Respondent	:	
	:	
Dentsply International, Inc.	:	
L.D. Caulk Division – West Plant	:	
779 E. Masten Circle	:	
Milford, Delaware 19963	:	Proceeding under EPCRA § 325(c),
	:	42 U.S.C. § 11045(c)
Facility	:	


FINAL ORDER

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

Based on the representations of the parties in the attached Consent Agreement, the 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) 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 Dollars (\$9,000.00)** 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: 12/15/09


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-03-2010-0035).

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 Federal Express to the following addressee:

Bert W. Wise
Chief Executive Officer
Dentsply International, Inc.
221 West Philadelphia Street
York PA 17401

12/17/09
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
215-825-2689 (p)
215-814-2601 (fax)
