

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

In the Matter of:

**DuHadaway Tool & Die Shop, Inc.  
801 Dawson Drive  
Newark, DE 19713**

:  
:  
: Docket No. EPCRA-03-2014-0286  
:  
:  
:  
: CONSENT AGREEMENT  
:  
: Proceeding under Sections 313 and  
: 325(c) of EPCRA, 42 U.S.C.  
: § 11023 and 11045(c)

**Respondent**

**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 ("EPA" or "Complainant") and DuHadaway Tool & Die Shop, Inc. ("Respondent" or "DuHadaway"), 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 Section 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 referred to as the "CAFO") simultaneously commence and conclude this proceeding to resolve violations of EPCRA § 313, as alleged herein, by Respondent at its facility located at 801 Dawson Drive, Newark, 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 Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

*DuHadaway Tool & Die Shop, Inc.*

*Consent Agreement EPCRA-03-2014-0286*

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REGIONAL HEARINGS UNIT  
EPA REGION III PHILA

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 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice.
8. Respondent does business in and is incorporated in the State of Delaware.
9. As a corporation, Respondent qualifies as a "person" as that term is defined by 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 manufacturing plant located at 801 Dawson Drive, Newark, DE 19713 (the "Facility"). At the time of the violations alleged herein, Respondent's manufacturing operations at the Facility consisted of precision machining and fabricating parts for the power generation, automotive, military, and aerospace industries. The Respondent's processes use chromium and nickel.
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. § 372.22 require, *inter alia*, that the owner or operator of a facility that:
  - a) has 10 or more employees;
  - b) has a primary Standard Industrial Classification ("SIC") Code of 20 [2000] through 39 [3900] (as in effect on January 1, 1987), or, 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. 2000 through 3900

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

must submit a completed toxic chemical release reporting form ("Form R"), or appropriate alternative threshold report ("Form A") if applicable, 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 Standard Industrial Code of 3599 (industrial and commercial machinery and equipment). This SIC code falls between the primary SIC codes of 20 (2000) and 39 (3900) (as in effect on July 1, 1987).
- 16. For each toxic chemical listed in 40 C.F.R. § 372.65 manufactured, processed, or otherwise used by Respondent at the Facility in excess of the threshold quantity set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during any calendar year, Respondent has been required by EPCRA § 313, at all times relevant to this Consent Agreement, to complete and submit to EPA and the State of Delaware, by July 1, of the following calendar year, a toxic chemical release form (Form R or Form A) pursuant to 40 C.F.R. §§ 372.27 and 372.30.
- 17. 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.

#### COUNT I

- 18. The allegations Paragraphs 1 through 17, above, are incorporated by reference as though fully set forth at length.
- 19. The chemical substance "chromium" is a "toxic chemical" as defined in EPCRA Sections 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
- 20. Pursuant to § 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(B)(iii), and 40 C.F.R. § 372.25, the reporting threshold amount for chromium processed at a facility is 25,000

pounds.

21. During the calendar year 2009, Respondent “processed” more than 25,000 pounds of chromium, as that term is used in EPCRA § 313(b)(1)(A), 42 U.S.C. § 11023(b)(1)(A), and defined in 40 C.F.R. § 372.3. Such amount exceeded the threshold quantity for reporting for chromium set forth in 40 C.F.R. § 372.25(a), which set the threshold quantity for a toxic chemical processed at a facility to 25,000 pounds.
22. In reporting its releases of chromium at the Facility during the year 2009, Respondent was required to submit to EPA and the State of Delaware a completed Form R or Form A, whichever was applicable, by July 1, 2010, pursuant to Section 313 of EPCRA. On June 25, 2013, Respondent submitted the required Form R for chromium for the year 2009.
23. Respondent violated EPCRA § 313, 42 U.S.C. § 11023 by failing to submit to EPA and the State of Delaware, by July 1 of 2010 the completed Form R or Form A to report its processing of chromium at the Facility during the year 2009, for which Respondent is liable for civil a penalty pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

## COUNT II

24. The allegations Paragraphs 1 through 23, above, are incorporated by reference as though fully set forth at length.
25. The chemical substance “nickel” is a “toxic chemical” as defined in EPCRA Sections 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65 .
26. Pursuant to § 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(B)(iii), and 40 C.F.R. § 372.25, the reporting threshold amount for nickel processed at a facility is 25,000 pounds.
27. During the calendar year 2009, Respondent “processed” more than 25,000 pounds of nickel, as that term is used in EPCRA § 313(b)(1)(A), 42 U.S.C. § 11023(b)(1)(A), and defined in 40 C.F.R. § 372.3. Such amount exceeded the threshold quantity for reporting for nickel set forth in 40 C.F.R. § 372.25(a), which set the threshold quantity for a toxic chemical processed at a facility to 25,000 pounds.
28. In reporting its releases of nickel at the Facility during the year 2009, Respondent was required to submit to EPA and the State of Delaware a completed Form R or Form A, whichever was applicable, by July 1, 2010, pursuant to Section 313 of EPCRA. On June 25, 2013, Respondent submitted the required Form R for nickel for the year 2009.
29. Respondent violated EPCRA § 313, 42 U.S.C. § 11023 by failing to submit to EPA and the State of Delaware, by July 1 of 2010 the completed Form R or Form A to report its processing of nickel at the Facility during the year 2009, for which Respondent is liable for civil a penalty pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

### Civil Penalty

30. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA § 313, 42 U.S.C. § 11023, shall be liable to the United States for a civil penalty of up to \$25,000 per violation. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised (73 Fed. Reg. 75340-46 (December 11, 2008)), violations of Section 313 of EPCRA, 42 U.S.C. § 11023, which occurred between March 16, 2004 and January 12, 2009, are subject to an increased statutory maximum penalty of \$32,500 per violation and that the maximum inflation-adjusted penalty for violations occurring after January 12, 2009 is \$37,500 per violation.
31. 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 Twenty Eight Thousand, Eight Hundred Dollars (**\$28,800.00**). 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, 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.
32. The aforesaid settlement amount is based upon Complainant's consideration of the facts and circumstances of this case, the statutory factors set forth in § 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C), and the penalty criteria set forth in EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (August 10, 1992). Complainant has also considered the applicable Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, the November 16, 2009 Memorandum by EPA Waste and Chemical Enforcement Division Director Rosemarie A. Kelley *Adjusted Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule* ("Kelley Memorandum"). The settlement in this proceeding is consistent with the provisions and objectives of EPCRA § 313, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
33. Payment of the civil penalty amount assessed in paragraph 31, above, and any interest therein, 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-03-2014-0286;
  - 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  
P.O. Box 979077

*DuHadaway Tool & Die Shop, Inc.*

*Consent Agreement EPCRA-03-2014-0286*

St. Louis, MO 63197-9000

Contact: Craig Steffen 513-487-2091

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

United States Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: 314-418-1818

- e. 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"

- f. 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: John Schmid 202-874-7026 OR REX, 1-866-234-5681

- g. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- h. Point Of Contact regarding payment questions (i.e. how to make payment via wire, ACH, check, pay.gov):  
Craig Steffen, 513-487-2091, [steffen.craig@epa.gov](mailto:steffen.craig@epa.gov)

Additional payment guidance is available at:  
<http://www2.epa.gov/financial/makepayment>.

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

Jeffrey S. Nast  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC30)  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC00)  
1650 Arch Street  
Philadelphia, PA 19103-2029

34. 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, failure to make timely payment may result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
35. Interest on the civil penalty assessed in this CAFO begins 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).
36. 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.

37. 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).
38. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

#### **Certifications**

39. The individual who signs this Consent Agreement on behalf of Respondent certifies that the violations alleged in this Consent Agreement have been corrected, and that the Facility is currently in compliance with all applicable requirements of EPCRA Section 313, 42 U.S.C. § 11023.

#### **Other Applicable Laws**

40. 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**

41. This Consent Agreement and the accompanying Final Order resolve only EPA's civil claims 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**

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

43. 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**

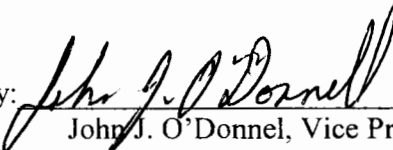
44. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules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

**Entire Agreement**

45. 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.

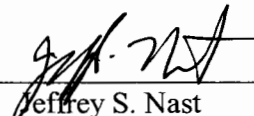
**For Respondent: DuHadaway Inc.**

Date: 9/23/14

By:   
John J. O'Donnell, Vice President and  
General Manager  
DuHadaway Tool & Die Shop, Inc.

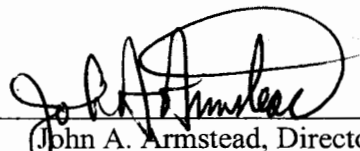
**For Complainant:**

Date: 9/26/14

By:   
Jeffrey S. Nast  
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: 9.29.14

By:   
John A. Armstead, Director  
Land and Chemicals Division

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

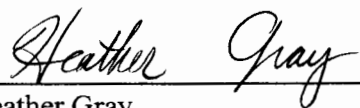
<b>In the Matter of:</b>	:	
	:	
<b>DuHadaway Tool &amp; Die Shop, Inc.</b>	:	<b>Docket No. EPCRA-03-2014-0286</b>
<b>801 Dawson Drive</b>	:	
<b>Newark, DE 19713</b>	:	
	:	
	:	<b>FINAL ORDER</b>
	:	
<b>Respondent</b>	:	<b>Proceeding under</b>
	:	<b>Section 325(c) of EPCRA</b>
	:	<b>42 U.S.C. § 11045(c)</b>
	:	
	:	<b>FINAL ORDER</b>

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, DuHadaway Tool & Die Shop, 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 statutory factors set forth in Section 325(b)(1)(C) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(b)(1)(C), and the provision of Section 313 of EPCRA, 42 U.S.C. § 11023. **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 Twenty Eight Thousand, Eight Hundred Dollars **\$28,800.00**, 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: 9-29-14

  
\_\_\_\_\_  
Heather Gray  
Regional Judicial Officer  
U.S. EPA, Region III

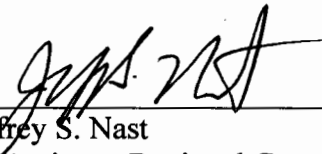
**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, PA 19103-2029**

<b>In Re:</b>	:	
	:	
	:	
	:	
<b>DuHadaway Tool &amp; Die Shop, Inc.</b>	:	<b>Docket No. EPCRA-03-2014-0286</b>
<b>801 Dawson Drive</b>	:	
<b>Newark, DE 19713</b>	:	
	:	
	:	
<b>RESPONDENT</b>	:	<b>CERTIFICATE OF SERVICE</b>
	:	
<b>801 Dawson Drive</b>	:	
<b>Newark, DE 19713</b>	:	
	:	
	:	
<b>FACILITY</b>	:	

I certify that on the date noted below, I sent by Overnight Delivery Service, a copy of the Consent Agreement and Final Order, In Re: DuHadaway Tool & Die Shop, Inc., Docket No. EPCRA-03-2014-0863, to the person(s) and address(es) listed below. The original Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III.

**Michael Scura  
DuHadaway Tool & Die Shop, Inc.  
801 Dawson Drive  
Newark, DE 19713**

Dated: 9/30/14

  
 \_\_\_\_\_  
 Jeffrey S. Nast  
 Sr. Assistant Regional Counsel  
 Office of Regional Counsel  
 EPA, Region III  
 1650 Arch Street  
 Philadelphia, PA 19103-2029