

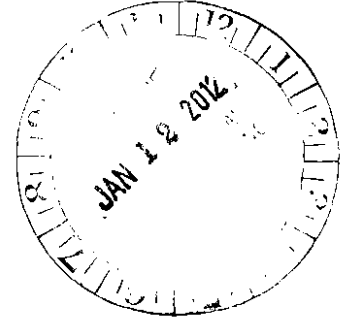


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

January 12, 2012

**VIA FIRST CLASS MAIL, RETURN RECEIPT REQUESTED**

Mr. Larry Stewart  
Senior Project Engineer  
Montgomery Chemicals, LLC  
901 Conshohocken Road  
Conshohocken, PA 19428



**Re: Consent Agreement and Final Order – FILED TODAY  
PAYMENT DUE BY FEBRUARY 13, 2012**

Dear Larry:

I am sending to you the Consent Agreement and Final Order which has now been signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk today. This document initiates and concludes the legal proceeding by the United States Environmental Protection Agency, Region III (“EPA”) against Montgomery Chemicals, LLC under Section 325(c) of EPCRA.

The Regional Judicial Officer approved the proposed settlement amount of \$1,500. The enclosed Consent Agreement and Final Order memorialize this settlement. Payment is due within 30 days of today’s date, or by **February 13, 2012**, to avoid interest. Please see pages 4 - 7 of the Consent Agreement for payment instructions, including the requirement that the Regional Hearing Clerk and I receive a copy of the payment.

I am glad that we were able to bring this matter to a resolution. If you have questions about the requirements of the Consent Agreement and Final Order, please contact me at (215) 814-2615.

Sincerely,

Natalie L. Katz  
Senior Assistant Regional Counsel

Enclosure

cc: Craig Yussen (3LC61)  
Regional Hearing Clerk

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

**In the Matter of  
Montgomery Chemicals, LLC  
901 Conshohocken Road  
Conshohocken, PA 19428**

**Respondent**

**Montgomery Chemicals, LLC  
901 Conshohocken Road  
Conshohocken, PA 19428**

**Facility**

:  
: **Docket No. EPCRA-03-2012-0080**  
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:  
: **CONSENT AGREEMENT**  
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:  
: **Proceeding under EPCRA § 325(c)**  
: **42 U.S.C. § 11045(c)**  
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**CONSENT AGREEMENT**

**Preliminary Statement**

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and Montgomery Chemicals, LLC ("Respondent" or "Montgomery") 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 22.18(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 the violations of EPCRA § 313, as alleged herein, by Respondent at its Facility located at 901 Conshohocken Road, Conshohocken, Pennsylvania.

2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

3. Except as provided in paragraph 2, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

4. Respondent agrees not to contest the jurisdiction of the U.S. Environmental Protection Agency ("EPA") with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

5. 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.

6. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

7. Respondent shall bear its own costs and attorney's fees.

### **Findings of Fact and Conclusions of Law**

8. In accordance with Sections 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice, Complainant adopts the following findings of fact and conclusions of law:

9. Section 313 of EPCRA and 40 C.F.R. Section 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 (as in effect on July 1, 1985) between codes 20 and 39 or other SIC or industry code as set forth in 40 C.F.R. § 372.22(b); and 3) manufactured, processed or otherwise used a toxic chemical listed in 40 C.F.R. Section 372.65, in excess of the threshold quantities set forth in Section 313(f) of EPCRA, 42 U.S.C. Section 11023(f), during the calendar year for which the form is required, to complete and submit a toxic chemical release 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.

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. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) defines "person" to include any corporation.

12. Montgomery is incorporated under the laws of the Commonwealth of Pennsylvania and is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

13. During calendar years 2006, 2007 and 2008, and at the time of the violations alleged herein, Respondent owned and operated a chemical manufacturing plant located at 901 Conshohocken Road, Conshohocken, Pennsylvania (the "Facility").

14. Respondent's Facility is a "facility" as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. § 372.3.

15. During the calendar years 2006 through 2008, Respondent employed 10 or more full-time employees at the Facility.

16. During the 2006, 2007 and 2008 calendar years, the Facility had a primary SIC code of 2816. This SIC code falls between the primary SIC codes of 20 (2000) and 39 (3900) (as in effect on July 1, 1985).

17. 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 that was manufactured, processed, or otherwise-used by Respondent at its Facility in excess of the threshold quantity set forth in Section 313(f) of EPCRA during any calendar year, to EPA and the Commonwealth of Pennsylvania, by July 1 of the following calendar year.

18. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA Section 313 shall be liable to the United States for a civil penalty.

19. Montgomery self-disclosed violations of EPCRA Section 313 in its June 29, 2010 letter to EPA.

20. Respondent disclosed that it submitted inaccurate Forms R to the EPA and the Commonwealth of Pennsylvania for calendar years 2006, 2007, and 2008 regarding methanol otherwise-used at its Facility.

21. EPA evaluated Montgomery's self-disclosure letter and subsequent correspondence. EPA determined that Montgomery did not meet condition one of the Self-Disclosure Policy, "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 Fed. Reg. 19618, dated April 11, 2000, ("Audit Policy"), in that the violations were not discovered by means of an audit or a through a Compliance Management System, as defined by the Audit Policy. Montgomery satisfied the Audit Policy's remaining eight conditions, and therefore is eligible for a reduction in the penalty.

### **COUNT I - COUNT III**

22. The allegations of paragraphs 1 through 21 of this Consent Agreement are incorporated herein by reference.

23. Methanol is a "toxic chemical" as defined in EPCRA §§ 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.

24. As set forth in Section 313(f)(1)(A), 42 U.S.C. § 11023(f)(1)(A) and 40 C.F.R. § 372.25(b), the reporting threshold for methanol that is otherwise-used at a facility is 10,000 pounds.

25. Respondent otherwise-used more than 10,000 pounds of methanol during the 2006, 2007 and 2008 calendar years.

26. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), Respondent was required to submit to the Regional Administrator of EPA and the Commonwealth of Pennsylvania, accurate Forms R for methanol otherwise-used at the Facility during the years 2006, 2007, and 2008 calendar years.

27. Respondent filed accurate TRI Forms R for methanol otherwise-used at its Facility during the 2006, 2007 and 2008 calendar years in or about June 2011.

28. Respondent's failure to submit to EPA and the Commonwealth of Pennsylvania accurate Forms R for methanol otherwise-used during the calendar years 2006, 2007 and 2008 constitutes three violations of Section 313 of EPCRA, 42 U.S.C. § 11023.

### Civil Penalty

29. 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 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 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 violations.

30. In settlement of EPA's claims for civil monetary penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)**, 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 all parties, signed by Regional Administrator or 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 the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

31. The aforesaid civil penalty set forth in Paragraph 30 above, is based upon a number of factors, including, but not limited to, the facts and circumstances of this case, the statutory factors set forth in EPCRA § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C), and the penalty criteria set forth in and 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 June 6, 2006 memorandum by Acting EPA Toxics and Pesticides Enforcement Division Director Stephanie P. Brown entitled *Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Inflation Adjustment Rules* ("Brown Memorandum") and the November 16, 2009 memorandum from EPA Waste and Chemical Division Director Rosemarie A. Kelley entitled *Adjusted Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation*

*Adjustment Rule* (“Kelley Memorandum”) and the Self-Disclosure Policy. The settlement in this proceeding is consistent with the provisions and objectives of EPCRA § 313 and 40 C.F.R. Part 372.

32. Respondent shall pay the civil penalty amount in paragraph 30, above, plus any interest, administrative fees and late payment penalties owed, in accordance with Paragraphs 33, 34, 35 and 36, by electronic funds transfer (“EFT”), as described below, or by sending a cashier’s check or certified check in the following manner:

- a. All payments by Respondent shall reference Respondent’s name and address, and the Docket Number of this action: EPCRA-03-2012-0080.
- b. All checks shall be made payable to “**United States Treasury;**”
- c. All payments 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  
Customer Service Contact: 513-487-2105

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

U.S. Bank  
Government Lockbox 979077  
Environmental Protection Agency, Fines and 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. Any EFT shall be transmitted to:

Federal Reserve Bank of New York  
ABA= 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

(Field tag 4200 of the Fedwire transfer 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 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - checking

Physical location of U.S. Treasury Facility  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: 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/fineservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/fineservices/make_a_payment.htm)

- 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:

Natalie Katz, Esq.  
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

33. 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 a timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

34. 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).

35. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the 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.

36. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 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. 31 C.F.R. § 901.9(d).

37. Respondent agrees not to deduct for federal taxation purposes the civil penalty paid pursuant to this CAFO.

#### **Certifications**

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



### **Other Applicable Laws**

39. 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**

40. This CAFO resolves only the EPA's claims for civil penalties for the specific EPCRA 313, 42 U.S.C. § 11023, violations 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**

41. 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 this 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**

42. This CAFO 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 CAFO.

### **Effective Date**


43. The effective date of this CAFO 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**

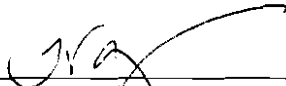
44. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there

are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

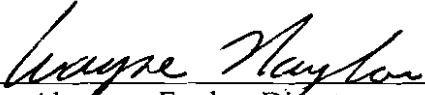
**For Respondent:**

Date: December 27, 2011 By:   
Name: Larry Stewart  
Title: U.P. Engineering  
Montgomery Chemicals, LLC

**For Complainant:**

Date: 1/3/12 By:   
Natalie L. Katz  
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: 1/6/12 By:   
for Abraham Ferdas, Director  
Land and Chemicals Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

In the Matter of  
Montgomery Chemicals, LLC  
901 Conshohocken Road  
Conshohocken, PA 19428

Respondent

901 Conshohocken Road  
Conshohocken, PA 19428

Facility

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: Proceeding under EPCRA § 325(c)  
: 42 U.S.C. § 11045(c)  
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FINAL ORDER


Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Montgomery Chemicals, LLC, ("Respondent") 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 herein 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), the statutory factors set forth in EPCRA § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C) and the provisions and objectives of EPCRA § 313. NOW, THEREFORE, PURSUANT TO the *Consolidated Rules of Practice* and Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(c), IT IS HEREBY ORDERED that Respondent pay a civil penalty of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)**, 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:

1/12/12

  
Renée Sarajian  
Regional Judicial Officer  
U.S. EPA - Region III

