

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103**



In the Matter of: :
 :
 :
LEACHGARNER, INC. : U.S. EPA Docket No. EPCRA-03-2024-0049
d/b/a JOHN C. NORDT :
1420 COULTER DRIVE NW :
ROANOKE, VA 24012 :
Respondent. : Proceeding under Sections 312 and 325 of the
 : Emergency Planning and Community Right-to-
 : Know Act, 42 U.S.C. §§ 11022 and 11045

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 (“Complainant”) and LeachGarner, Inc., d/b/a John C. Nordt (“Respondent”) (collectively the “Parties”), pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA” or the “Act”), 42 U.S.C. § 11045, 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. Section 325 of EPCRA authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under Section 325 of the Act for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(8).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. 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 Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
12. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.
13. In 2016 Respondent acquired all of the issued and outstanding capital stock of John C. Nordt Co., Inc. and merged such corporation into Respondent, creating a new division of LeachGarner, Inc.
14. Respondent owns and operates the new division, which is a precious metals manufacturing facility located at 1420 Coulter Drive NW, Roanoke, VA 24012 ("the Facility"). Respondent is doing business as "John C. Nordt" at the Facility, which makes products such as wedding bands, diamond rings, bracelets, and high-quality tubing.

15. The Facility is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.
16. At all times relevant to this Consent Agreement and Final Order, Respondent has been an “owner or operator” of the Facility within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.2.
17. Respondent is engaged in a business at the Facility where chemicals are either used, distributed, or are produced for use or distribution.
18. Respondent is an “employer” at the Facility as that term is defined at 29 C.F.R. § 1910.1200(c).
19. The State Emergency Response Commission (“SERC”) for the Facility is, and at all times relevant to this Consent Agreement and Final Order has been, the Virginia Department of Environmental Quality located at 1111 East Main St., Suite 1400, Richmond, VA 23219.
20. The Local Emergency Planning Commission (“LEPC”) for the Facility is, and at all times relevant to this Consent Agreement has been, the Roanoke Fire Department located at 713 3rd Street SW, Roanoke, VA 24016.
21. The local fire department with jurisdiction over the Facility (“Local Fire Department”) is, and at all times relevant to this Consent Agreement and Final Order has been, the Roanoke Fire Department.
22. On April 5, 2021, at approximately 2:00 p.m., the National Response Center received notification that a release of an unknown quantity of anhydrous ammonia occurred at the Facility that morning.
23. On September 24, 2021, EPA conducted an inspection of the Facility in response to the reported release of anhydrous ammonia to ascertain Respondent’s compliance with the emergency release notification requirements of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9603, and the Emergency Planning and Community Right-to-Know Act (“EPCRA”) requirements of Sections 302, 303, 304, 311, and 312, 42 U.S.C. §§ 11002, 11003, 11021, 11022 (“the Inspection”). During and after the Inspection, Respondent submitted information to EPA regarding the Facility and its compliance with EPCRA.
24. At the Inspection, Facility representatives stated that anhydrous ammonia used in the manufacturing process at the Facility is stored in a 1000-gallon tank which is filled to a level no greater than 85 percent, or 850 gallons.

25. EPA inspectors calculated that a volume of 850 gallons of anhydrous ammonia equates to 4,835 pounds.
26. Facility representatives were unable to provide EPA inspectors with Tier II Reports for calendar years 2018, 2019, or 2020.
27. Facility representatives provided EPA with a Tier II Report for calendar year 2020 that was submitted to the SERC, LEPC, and Local Fire Department on September 22, 2021, approximately 6 months past the March 1st deadline for submission of the Tier II Report. The 2020 Tier II Report stated that the maximum storage quantity of anhydrous ammonia at the Facility for 2020 was 4,420 pounds.
28. As alleged in more detail below in Counts I through III, Respondent failed to provide information to the SERC, LEPC, and Local Fire Department about a hazardous chemical stored at the Facility, specifically anhydrous ammonia, as required by EPCRA Section 312, 42 U.S.C. §11022.

Count I
Failure to Comply with Section 312 of EPCRA for 2020

29. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
30. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (“MSDS”) or Safety Data Sheet (“SDS”) for a hazardous chemical in accordance with Occupational Safety and Health Administration (“OSHA”) Hazard Communication Standard, 29 U.S.C. §§ 651 et seq., and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an extremely hazardous substance (“EHS”)) is present at any one time during a calendar year in a quantity equal to or greater than its applicable minimum threshold level for reporting (“MTL”) or threshold planning quantity (“TPQ”) established by 40 C.F.R. § 370.10, to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form (“Chemical Inventory Form”) for the previous calendar year identifying the hazardous chemical and providing the information described in Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), to the State Emergency Response Commission (“SERC”), the Local Emergency Planning Committee (“LEPC”), and local fire department with jurisdiction over the facility.

31. Respondent is the owner of a facility that is required to prepare or have available MSDSs or SDSs for any hazardous chemicals present at the Facility under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.
32. Anhydrous ammonia, chemical abstract service number 7664-41-7, is a “hazardous chemical” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66, and an EHS as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 370.66.
33. Pursuant to 40 C.F.R. § 370.10(a)(1), the TPQ for ammonia is 500 pounds.
34. Respondent had present at the Facility during calendar year 2020 anhydrous ammonia in amounts exceeding the chemical’s TPQ.
35. Respondent failed to submit to the SERC, LEPC and Local Fire Department a Chemical Inventory Form for calendar year 2020 by March 1, 2021, identifying anhydrous ammonia as present at the Facility in a quantity equal to or greater than its MTL or TPQ and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).
36. Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, by failing to submit to the SERC, LEPC and Local Fire Department a Chemical Inventory Form for the Facility for calendar year 2020 by March 1, 2021.
37. In failing to comply with Section 312 of EPCRA, Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

Count II

Failure to Comply with Section 312 of EPCRA for 2019

38. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
39. Respondent had present at the Facility during calendar year 2019 anhydrous ammonia in amounts exceeding the chemical’s TPQ.
40. Respondent failed to submit to the SERC, LEPC and Local Fire Department a Chemical Inventory Form for the Facility for calendar year 2019 by March 1, 2020, identifying anhydrous ammonia as present at the Facility in a quantity equal to or greater than its MTL or TPQ, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

41. Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, by failing to submit to the SERC, LEPC and Local Fire Department a Chemical Inventory form for the Facility for calendar year 2019.
42. In failing to comply with Section 312 of EPCRA, Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

Count III
Failure to Comply with Section 312 of EPCRA for 2018

43. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
44. Respondent had present at the Facility during calendar year 2018 anhydrous ammonia in amounts exceeding the chemical's TPQ.
45. Respondent failed to submit to the SERC, LEPC and Local Fire Department a Chemical Inventory Form for the Facility for calendar year 2018 by March 1, 2019, identifying anhydrous ammonia as present at the Facility in a quantity equal to or greater than its MTL or TPQ, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).
46. Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, by failing to submit to the SERC, LEPC and Local Fire Department a Chemical Inventory form for the Facility for calendar year 2018.
47. In failing to comply with Section 312 of EPCRA, Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CIVIL PENALTY

48. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of TWENTY-FIVE THOUSAND SIX HUNDRED AND TWELVE DOLLARS (\$25,612) which Respondent shall be liable to pay in accordance with the terms set forth below.
49. The civil penalty is based upon EPA's consideration of a number of factors, including the particular facts and circumstances of this case as applied to the nature, extent, gravity, circumstances and adjustment factors of EPA's *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability*

Act (September 30, 1999); the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

50. Respondent agrees that, within 30 days of the effective date of this Consent Agreement and Final Order, Respondent shall make a payment of **\$25,612** to **"United States Treasury"** with the case name, address and docket number of this Consent Agreement and Final Order (EPCRA-03-2024-0049), for the amount specified above. Respondent shall pay the assessed penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
51. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Janna Bowman
Assistant Regional Counsel
bowman.janna@epa.gov

and

U.S. EPA Region 3 Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov
52. 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 of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
53. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
54. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date

Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. 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).

55. ADMINISTRATIVE COSTS: The costs of the EPA'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). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also 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.
56. LATE PAYMENT PENALTY: A late payment penalty of six percent 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). 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).
57. Failure by the Respondent to pay the EPCRA civil penalty assessed by the Final Order in accordance with the terms of this Consent Agreement and Final Order may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to 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.
58. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
59. The parties consent to service of the Final Order by e-mail at the following valid email addresses: bowman.janna@epa.gov (for Complainant), and joseph.farside@lockelord.com (for Respondent).

GENERAL SETTLEMENT CONDITIONS

60. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

61. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about Respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

62. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

63. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of EPCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

64. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. 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. 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, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

65. This Consent Agreement and 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 Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

66. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region 3, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

67. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties 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 Consent Agreement and Final Order.

For Respondent: LeachGarner, Inc.

Date: 12/28/2023

By: 
Thomas Kimble, President
LeachGarner, Inc.

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____

[Digital Signature and Date]

Karen Melvin, Director

Enforcement & Compliance Assurance Division

U.S. EPA – Region 3

Complainant

Attorney for Complainant:

By: _____

[Digital Signature and Date]

Janna Bowman

Assistant Regional Counsel

U.S. EPA – Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
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FINAL ORDER

Complainant, the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondent, LeachGarner, 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 upon 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 Environmental Response, Compensation and Liability Act (September 30, 1999)*.

NOW, THEREFORE, PURSUANT TO Section 325 of the Emergency Planning and Community Right-to-know Act, 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-FIVE THOUSAND SIX HUNDRED AND TWELVE DOLLARS (\$25,612)** in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c) and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not

waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

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.

Date: _____

By: _____

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region 3

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: Know Act, 42 U.S.C. §§ 11022 and 11045

CERTIFICATE OF SERVICE

I certify that the foregoing ***Consent Agreement and Final Order*** was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the ***Consent Agreement and Final Order***. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Joseph Farside, Partner
Locke Lord LLP
2800 Financial Plaza
Providence, RI 02903
Joseph.farside@lockelord.com

Thomas Kimble
LeachGarner, Inc.
49 Pearl Street
Attleboro, MA 02703
Tkimble@leachgarner.com

Copies served via email to:

Janna Bowman
Assistant Regional Counsel
U.S. EPA, Region 3
bowman.janna@epa.gov

Theresa Gallagher
Environmental Engineer
U.S. EPA, Region 3
gallagher.theresa@epa.gov

[Digital Signature and Date]
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 3