



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2016 SEP 23 AM 11:18

1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone: 800-227-8917  
http://www.epa.gov/region08

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: EPCRA-08-2016-0002

IN THE MATTER OF:

Otto and Sons, Inc.  
410 17th Street, Suite 1320  
Denver, Colorado 80202

RESPONDENT

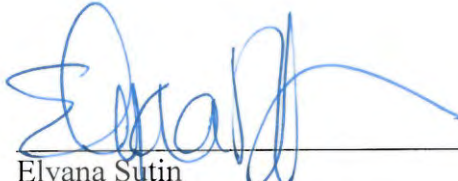
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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(3), of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 23<sup>rd</sup> DAY OF September, 2016.

  
\_\_\_\_\_  
Elyana Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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410 17<sup>th</sup> St, Suite 1320 )  
Denver, CO 80202 )  
)  
Respondent )  
\_\_\_\_\_ )

**EXPEDITED SETTLEMENT AGREEMENT**  
Docket No.: EPCRA-08-2016-0002

**A. AUTHORITY**

1. This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter the Agreement), intended to simultaneously commence and conclude this matter, is being entered into by the United States Environmental Protection Agency, Region 8, by its duly delegated official, the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, and by Otto and Sons, Inc. (Respondent). This matter is authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA and Respondent agree that the EPA has jurisdiction over this matter pursuant to section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045.
3. Respondent agrees that the EPA has jurisdiction and venue over the matters contained in this Agreement, however, Respondent neither admits nor denies the EPA's specific factual allegations contained herein.

**B. RESPONDENT**

4. Respondent is a "person" as defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
5. Respondent is the owner or operator of a "facility", as defined by section 329(4) of EPCRA, 42 U.S.C. § 11049(4), located at 4980 West 9470 South, West Jordan, Utah.

### **C. ALLEGED VIOLATIONS**

6. On February 3, 2015, the EPA inspected Respondent's facility in West Jordan, Utah, with Respondent's consent.
7. At all times relevant to this matter, the facility stored hazardous chemicals as defined by 29 C.F.R. § 1910.1200. Sodium Chloride is a hazardous chemical as defined by 29 C.F.R. § 1910.1200(c).
8. At all times relevant to this matter, the facility was required to prepare or have available a Safety Data Sheet (SDS) for each hazardous chemical used and stored at the facility. This requirement is found under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, and the regulations promulgated under that Act.
9. Respondent is required to file an annual Tier II inventory report for all hazardous chemicals stored in excess of established thresholds. Such thresholds are located at 40 C.F.R. § 370.20(b).
10. Under section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations at 40 C.F.R. section 370, Respondent was required to submit its Tier II forms for calendar year 2011, on or before March 1, 2012; for calendar year 2012, on or before March 1, 2013; and, for calendar year 2013, on or before March 1, 2014.
11. Otto and Sons, Inc. did not file the Tier II form for the hazardous chemical, Sodium Chloride, stored on site in an amount equal to or in excess of the threshold level of 10,000 pounds during calendar years 2011, 2012 and 2013, and therefore violated section 312 of EPCRA, 42 U.S.C. § 11022.

### **D. SETTLEMENT**

12. The EPA and Respondent agree that settlement of this matter is in the public interest, and the EPA and Respondent agree that execution of this Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

13. This Agreement contains all terms of the settlement agreed to by the parties.
14. Pursuant to section 325 of EPCRA, 42 U.S.C. § 11045, and based in part on the nature of the alleged violations and other relevant factors, the EPA agrees that an appropriate civil penalty to settle this matter is FIVE THOUSAND DOLLARS (\$5,000).
15. Respondent consents, for the purpose of settlement, to the issuance of a Final Order and the payment of the civil penalty cited in the foregoing paragraph.
16. Respondent agrees that the penalty specified in this ESA shall not be deductible for purposes of state or federal taxes.
17. Within 30 days of receipt of this Agreement, Respondent must send a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of \$5,000 to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

The following Payment Number for this Agreement must be included on the check:  
ESA-R8-EPCRA-16

18. The signed Agreement and a copy of the check must be sent certified mail to:


Greg Bazley  
EPCRA/RMP Technical Enforcement Program  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street [8ENF-AT]  
Denver, Colorado 80202-1129

19. Respondent waives its right to a hearing on any issue of law or fact set forth in this Agreement and knowingly agrees to waive its right to a hearing on this matter under section 325(b)(1)(B) of EPCRA, 42 U.S.C. § 11045(b)(1)(B), and to appeal this matter under EPCRA § 325(f), 42 U.S.C. § 11045(f).

20. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.
21. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.
22. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
23. Nothing in this Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
24. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Agreement and to execute and legally bind that party to this Agreement.
25. The parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
26. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in this Agreement.
27. This Agreement shall not in any case affect the EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
28. Each party shall bear its own costs and attorney's fees in connection with all issues associated with this Agreement.


For Complainant: The United States Environmental Protection Agency, Region 8

Date: 9/20/16

By:   
Suzanne J. Bohan  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

For Respondent: Otto and Sons, Inc.

Date: Sept. 8, 2016

By:   
Print: Daniel Milovanovic

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT** in the matter of **Otto and Sons, Inc.; DOCKET NO.: EPCRA-08-2016-0002** was filed with the Regional Hearing Clerk on September 22, 2016. The **FINAL ORDER** was filed with the Regional Hearing Clerk on Sept 23, 2016.

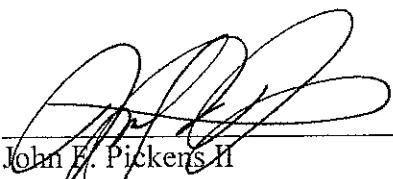
Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on Sept 23, 2016, to:

Respondent

Bryan Dedrickson  
4980 West 9470 South  
West Jordan, Utah 84081

And emailed to:

Jessica Farmer  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

  
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John E. Pickens II  
Acting Regional Hearing Clerk

