

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2007 AUG 23 PM 1:40

REGIONAL HEARING
CLERK

-----X
: In the Matter of :
: :
: **McIntosh Laboratory, Inc.** : **CONSENT AGREEMENT**
: : **AND**
: : **FINAL ORDER**
: Respondent. :
: : **DOCKET NUMBER**
: Proceeding under Section 325(c) of : **EPCRA-02-2007-4203**
: Title III of the Superfund :
: Amendments and Reauthorization Act :
: :
: :
-----X

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §11001 *et seq.* [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA")].

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), issued a Complaint and Notice of Opportunity for Hearing to Respondent, McIntosh Laboratory, Inc. ("Respondent"), on March 22, 2007.

The Complaint alleged that McIntosh Laboratory, Inc. located at 2 Chambers Street, Binghamton, New York violated the requirements of Section 313 of EPCRA (42 U.S.C. §11023) and the regulations promulgated pursuant to that Section, codified at 40 C.F.R. Part 372.

Under Section 313 of EPCRA and 40 C.F.R. §372.22, owners or operators of a facility subject to the requirements of Section 313(b) are required to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form R, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. §372.65 and/or 40 C.F.R. §372.28 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. The completed and correct Form R is required to be submitted to the Regional Administrator of the EPA and to the State in which the subject facility is located.

As an alternative to the requirements set forth above, pursuant to Section 313(f)(2) of EPCRA (42 U.S.C. §11023(f)(2)), and 40 C.F.R. §372.27, owners or operators of a facility subject to the requirements of Section 313(b), with respect to the manufacture, process or otherwise use of a toxic chemical, may apply an alternate threshold of one million (1,000,000) pounds per year to that chemical if the conditions set forth in 40 C.F.R. §372.27(a) are met. Pursuant to 40 C.F.R. §372.27(b), if the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators, in lieu of filing a Form R therefore, may submit "EPA Toxic Chemical Release Inventory Form A" (EPA Form 9350-2) (formerly the "Certification Statement"; see 59 Fed. Reg. 61488; November 30, 1994).

EPA and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §22.13(b) and 40 C.F.R. §22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation, and to that end the parties conducted an informal settlement conference over the telephone on May 31, 2007 and subsequently discussed settlement several times thereafter. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated Findings of Fact or Conclusions of Law have been made. The following constitute Complainant's Findings of Fact and Conclusions of Law based upon information EPA had obtained through June 12, 2007.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. Respondent is McIntosh Laboratory, Inc. (TRI Facility ID No.:13903MCNTS2CHAM).
2. At all times relevant hereto, Respondent has maintained a facility located at 2 Chambers Street, Binghamton, New York which is the subject of this Consent Agreement and Final Order (hereinafter, "Respondent's facility").
3. Respondent is a corporation organized pursuant to the laws of the State of New York.
4. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. §11049(7)).
5. Respondent is an owner of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. §11049(4)) and by 40 C.F.R. §372.3.
6. Respondent is an operator of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. §11049(4)) and by 40 C.F.R. §372.3.
7. Respondent's facility has 10 or more "full time employees" as that term is defined by 40 C.F.R. §372.3.
8. Respondent's facility is in Standard Industrial Classification (SIC) Code 3651.
9. Respondent's facility is in the North American Industry Classification System (NAICS) Code 334310, Audio and Video Equipment Manufacturing.
10. Respondent's facility is subject to the requirements Section 313(b) of EPCRA (42 U.S.C. §11023(b)) and 40 C.F.R. §372.22.
11. On or about July 20, 2005, authorized representatives of EPA conducted an inspection of Respondent's facility to determine whether Respondent was in compliance with the Toxic Chemical Release Reporting requirements (hereinafter, "the Inspection").
12. Lead is listed under 40 C.F.R. §372.28.
13. The established threshold amount for reporting lead processed was 100 pounds during each of the 2001, 2002 and 2003 calendar years [40 C.F.R. §372.28].
14. Lead was processed by Respondent in quantities exceeding the established threshold for reporting during each of the calendar years 2001, 2002 and 2003 [40 C.F.R. §372.28].

15. Respondent was required to submit a Form R for lead for calendar year 2001 by July 1, 2002, for calendar year 2002 by July 1, 2003, and for calendar year 2003 by July 1, 2004 to the Administrator of EPA. Respondent submitted Form R reports for lead for the calendar years 2002 and 2003 on June 8, 2007 and for the calendar year 2001 Form R, on June 12, 2007. The Form R reports were greater than a year late.

16. Respondent failed to submit in a timely manner a Toxic Chemical Release Inventory Form R reports for lead for each of the calendar years 2001, 2002 and 2003. The failures to submit Form R or Form A reports, in a timely manner, constitute violations of Section 313 of the Emergency Planning and Community Right-to-Know-Act (EPCRA), 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act (42 U.S.C. §11001 et seq.) and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, etc. (40 C.F.R. §22.18 (July 1, 2000)), it is hereby agreed by and between the parties hereto, and knowingly accepted by McIntosh Laboratory, Inc., McIntosh Laboratory, Inc., for purposes of this Consent Agreement: a) admits that EPA has jurisdiction pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act (42 U.S.C. §11001 et seq.) to commence a civil administrative proceeding for the violations alleged in the "Conclusions of Law" section, above; b) neither admits nor denies the specific factual allegations contained in the Findings of Fact and Conclusions of Law section above; c) consents to the assessment of the civil penalty as set forth below; and d) consents to the issuance of the Final Order accompanying this Consent Agreement.

It is further hereby agreed by and between the parties hereto, and knowingly accepted by Respondent, that it accepts and shall comply with the following terms and conditions:

1. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Twenty Four Thousand, Three Hundred Sixty Dollars (\$24,360)**, in two equal installments, payable to the "Treasurer of the United States of America". The checks shall be

identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such checks shall be mailed to:

Region 2 - Regional Hearing Clerk
United States Environmental Protection Agency
P.O. Box 360188M
Pittsburgh, PA 15251

Respondent shall also send copies of these payments and the fully executed Consent Agreement and Final Order ("CAFO") to each of the following:

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007

and

Kenneth S. Stoller, P.E., QEP, DEE, Chief
Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency - Region 2
2890 Woodbridge Avenue, Bldg. 10, MS-105
Edison, New Jersey 08837

2. The first payment of **\$12,180** must be received at the above address on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date"). The second payment of **\$12,180** must be received at the above address on or before **April 15, 2008**. If Respondent fails to pay any of the above payments by its due date, Respondent shall pay an additional stipulated penalty of One Thousand Dollars (\$1,000.00) for each such failure unless prior to the due date, Respondent has demonstrated good cause for a modification of the schedule and Complainant has agreed in writing to a modified schedule.

- a. Failure to pay the amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of The Treasury for collection.
- b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate

established by the Secretary of The Treasury pursuant to 31 U.S.C. §3717, on the overdue amount from the date said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period, following the date the payment was to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

3. This Consent Agreement is being entered into by the parties in full and final settlement of all civil liabilities under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11001 et seq.) and the regulations promulgated thereunder, 40 C.F.R. Part 372, that attach as a result of the allegations and assertions contained in the “Findings of Fact and Conclusions of Law” section, above.

4. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) on the “Findings of Fact” or the “Conclusions of Law” or the provisions of the Consent Agreement and Final Order in this matter.

5. Respondent has read the Consent Agreement, understands its terms, and consents to its issuance and to abide by its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

6. Respondent waives any right or any remedy it has or might have pursuant to 40 C.F.R. §22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

7. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect respondent’s obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

8. Each party shall bear its own costs and fees.


9. Each undersigned signatory to this Consent Agreement certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.

10. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

McIntosh Laboratory, Inc.

DATE: 7/12/07

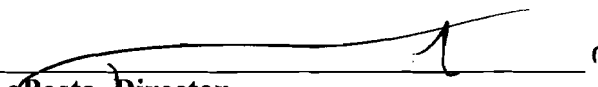
BY: 
Authorizing Signature

NAME: CHARLES M. RANDALL
(PLEASE PRINT)

TITLE: PRESIDENT

COMPLAINANT:

DATE: AUGUST 3, 2007

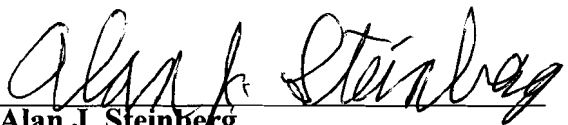

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

PATRICK DORRANCE FOR DL

In the Matter of McIntosh Laboratory, Inc.
Docket Number EPCRA-02-2007-4203

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties in full settlement In the Matter of McIntosh Laboratory, Inc. bearing Docket Number EPCRA-02-2007-4203, is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.


Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

DATED: 8-17-07

In the Matter of McIntosh Laboratory, Inc.

Docket No. EPCRA-02-2007-4203

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the Foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

Original and One Copy
by Interoffice Mail:

Ms. Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency -Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866


Copy by Certified Mail,
Return Receipt Requested:

Mr. Charles Randall, President
McIntosh Laboratory, Inc.
2 Chambers St.
Binghamton, NY 13903

Copy by Mail:

Ms. Susanne Wither
Department of Environmental Remediation
NY State Department of Environmental Conservation
625 Broadway - 11th Floor
Albany, New York 12233-7020

Dated: 8/22/07



Esther Nelson
Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency - Region 2
2890 Woodbridge Avenue (MS-105)
Edison, New Jersey 08837