

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

In the Matter of:	:	
	:	
Bacharach, Inc.	:	Docket No. EPCRA-03-2010-0344
621 Hunt Valley Circle	:	
New Kensington, PA 15068	:	
	:	
Respondent	:	CONSENT AGREEMENT
	:	
Bacharach, Inc.	:	
621 Hunt Valley Circle	:	
New Kensington, PA 15068	:	
	:	
	:	Proceeding under EPCRA § 325(c),
	:	42 U.S.C. § 11045(c)
Facility.	:	

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 ("Complainant"), and Bacharach, Inc. ("Respondent"), 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 § 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, "CAFO",) simultaneously commence and conclude this proceeding to resolve violations of EPCRA § 313, as alleged herein, by Respondent at its facility located at 621 Hunt Valley Circle, New Kensington, Pennsylvania, 15068.

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.

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. In accordance with Section 22.13(b) and 18(b)(2) of the Consolidated Rules, Complaint adopts the following findings of fact and conclusions of law.
8. Section 313 of EPCRA and 40 C.F.R. Part 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 of 20 [2000] through 39 [3900] (as in effect on July 1, 1985), or other SIC or industry code as set forth in 40 C.F.R. Section 372.22(b); and 3) 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, 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.
9. 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.
10. Section 329(7) of EPCRA, 42 § 329(7), defines "person" to include any corporation.
11. Respondent is incorporated in the Commonwealth of Pennsylvania and is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
12. Respondent owns and operates, and at the time of the violations alleged herein, owned and operated a manufacturing plant located at 621 Hunt Valley Circle, New Kensington, Pennsylvania, 15068 ("Facility").
13. 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.
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 SIC code of 3799.

16. 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 which was manufactured, processed, or otherwise used at the 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.

Count I

17. "Lead" is a "toxic chemical" as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
18. As set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.27 and .28, the reporting threshold amount for lead which is manufactured, processed or otherwise used at a facility is 100 pounds.
19. Respondent processed more than 100 pounds of lead at the Facility during the 2007 calendar year.
20. Pursuant to EPCRA § 313(g)(2), Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1, 2008, a completed Form R or Form A for the lead processed at the Facility during calendar year 2007.
21. Respondent filed the required Form R for the toxic chemical lead processed at the Facility during calendar year 2007 with the Administrator of EPA and the Commonwealth of Pennsylvania on or about March 5, 2009.
22. Respondent's failure to timely file its Form R for the toxic chemical lead processed at the Facility during calendar year 2007 constitutes one violation of Section 313 of EPCRA. 42 U.S.C. § 11023.
23. 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 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 (64 Fed. Reg. 7121 (February 13, 2004)), violations of Section 313 of EPCRA occurring after March 15, 2004, are subject to an increased statutory maximum penalty of \$32,500 per violation.

Settlement

24. In settlement of the above-captioned action, the parties have agreed that this matter be settled for a civil penalty of ZERO Dollars (\$0.00) in full satisfaction of all civil claims for penalties which Complainant may have for the violation alleged in Count I of this Consent Agreement.

25. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the facts and circumstances of this case, 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), as amended. Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19. Respondent has provided EPA with copies of Bacharach Holding Corporation's U.S. Corporation Income Tax Returns for 2007 and 2008 (Form 1120); Consolidated Financial Statements for 2007, 2008 and 2009; and an interim financial statement for the period January 1 through May 31, 2010.
26. Based on such submissions and representations made to EPA by Respondent, and subject to Paragraphs 29 and 31, herein, Complainant has determined that Respondent is unable to pay a civil penalty.
27. The settlement in this proceeding is consistent with the provisions and objectives of EPCRA § 313 and 40 C.F.R. Part 372.

Certification

28. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Facility referred to in this Consent Agreement is currently in compliance with all applicable requirements of EPCRA Section 313.
29. The settlement embodied in this Consent Agreement is based in part on an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon the information contained in copies of Bacharach Holding Corporation's U.S. Corporation Income Tax Returns (Form 1120) for 2007 and 2008, Consolidated Financial Statements for 2007, 2008 and 2009, and an interim financial statement for January 1, 2010, through May 31, 2010. Respondent and its undersigned representative, by such representative's signature to this Consent Agreement, certify that the information submitted to Complainant regarding Respondent's ability to pay is accurate and not misleading.

Other Applicable Laws

30. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.
31. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil penalties 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.

32. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in the Findings of Fact or Conclusions of Law are false, or in any material respect, inaccurate.

Scope of Settlement

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

34. 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

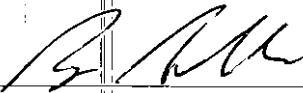
35. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules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

Entire Agreement

36. 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:

Date: 7/15/10

By: 
Brian Robbins
Chief Financial Officer
Bacharach, Inc.

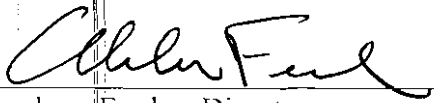
For Complainant:

Date: 7/29/2010

By: 
Janet E. Sharke
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: 8/13/10

By: 
Abraham Ferdas, Director
Land and Chemicals Division

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ENVIRONMENTAL PROTECTION AGENCY
REGION III**

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Bacharach, Inc. : **Docket No. EPCRA-03-2010-0344**
621 Hunt Valley Circle :
New Kensington, PA 15068 :
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Respondent : **FINAL ORDER**
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Bacharach, Inc. :
621 Hunt Valley Circle :
New Kensington, PA 15068 :
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: **Proceeding under EPCRA § 325(c),**
: **42 U.S.C. § 11045(c)**
Facility. :


FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Bacharach, 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 provisions and objectives of EPCRA § 313. **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 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: 8/18/10


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

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I hand-delivered to the Regional Hearing Clerk of the U.S. Environmental Protection Agency, Region III, the original and one copy of the foregoing Consent Agreement and Final Order (Docket No. EPCRA-03-2010-0344).

I further certify that on the date set forth below, I caused a true and correct copy of the Consent Agreement and Final Order to be transmitted via facsimile and registered mail, return receipt requested, to the following addressees:

Brian Robbins
Chief Financial Officer
Bacharach, Inc.
621 Hunt Valley Circle
New Kensington, PA 15068

Scott R. Thistle, Esq.
Cohen & Grigsby
625 Liberty Avenue
Pittsburgh, PA 15222-3152

8/19/2010
Date

Janet E. Sharke
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029