



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

DEC 21 2010

REPLY TO THE ATTENTION OF:

C-14J

VIA OVERNIGHT MAIL

Mr. Ken Gold, Partner
Honigman Miller Schwartz and Cohn, LLP
2290 First National Building
660 Woodward Avenue
Detroit, Michigan 48226-7395

Re: Labtech Corporation, Detroit, Michigan, Consent Agreement and Final Order
Docket No. EPCRA-05-2011-0005

Dear Mr. Gold:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. Please forward this CAFO to Mr. Dennis Bryce of Labtech Corporation. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on December 21, 2010.

Please pay the civil penalty in the amount of \$40,000 plus interest in the manner prescribed in paragraph 135, and reference your checks with the billing document number 2751164E003 and the docket number EPCRA-05-2011-0005.

Your first payment is due on January 20, 2011. The second payment is due on July 19, 2011.

Please feel free to contact Matthew Moore, Associate Regional Counsel, at (312) 886-5932, if you have any questions regarding the enclosed documents. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Moore".

J. Matthew Moore
Associate Regional Counsel

Enclosure

cc: Captain Thomas Sands, Chairperson (w/enclosure)
Susan Parker (w/enclosure)
MI SERC

LaDawn Whitehead, Regional Hearing Clerk
U.S. EPA, Region 5

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. EPCRA-05-2011-0005
)	
Labtech Corporation)	Proceeding to Assess a Civil Penalty Under
Detroit, Michigan)	Section 325(c)(1) and (c)(2) of the Emergency
)	Planning and Community Right-to-Know Act
Respondent.)	of 1986
<hr/>		

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Sections 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§ 11045(c)(1) and (c)(2) and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. The Respondent is Labtech Corporation, a corporation doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

2010 DEC 1 11 2:30
REGIONAL TRAINING CLERK
U.S. EPA
REGION 5

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 311 of EPCRA, 42 U.S.C. § 11021, and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), the community emergency coordinator for the local emergency planning committee (LEPC), and the fire department with jurisdiction over the facility an MSDS for each such hazardous chemical present at the facility at any one time in an amount equal to or greater than 10,000 pounds, and for each extremely hazardous chemical present at the facility in an amount equal to or greater than 500 pounds, or the threshold planning quantity (TPQ), whichever is lower, or to submit a list of such chemicals. The owner or operator must submit the required MSDS or list within three months after the owner or operator is first required to have the MSDS available or after the hazardous chemical requiring an MSDS first becomes present at the facility in an amount exceeding the threshold level.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by OSHA to

prepare or have available an MSDS for a hazardous chemical, to submit to the SERC, the community coordinator for the LEPC, and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier 1 or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

11. Section 311 of EPCRA, 42 U.S.C. § 11021, and Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assist state and local committees in planning for emergencies and make information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

12. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.

13. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous chemicals.

14. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes U.S. EPA to assess a civil penalty of up to \$10,000 for each EPCRA Section 311 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$11,000 per day of violation for

EPCRA 311 violations that occurred on or after January 31, 1997 through January 12, 2009, and to \$16,000 per day of violation for violations that occurred after January 12, 2009.

15. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

16. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

17. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 7707 Lyndon Street, Detroit, Michigan (facility).

18. At all times relevant to this CAFO, Respondent was an employer at the facility.

19. Respondent’s facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

20. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

21. 2-Butoxyethanol (CAS #111-76-2) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

22. 2-Butoxyethanol (CAS #111-76-2) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

23. 2-Butoxyethanol (CAS #111-76-2) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

24. Dipropylene glycol methyl ether (CAS 34590-94-8) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

25. Dipropylene glycol methyl ether (CAS #34590-94-8) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

26. Dipropylene glycol methyl ether (CAS #34590-94-8) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

27. Nitric acid is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

28. Nitric acid (CAS #7694-37-2) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

29. Nitric acid (CAS #7697-37-2) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

30. Nitric acid (CAS #7697-37-2) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

31. Phosphoric acid (CAS #7664-38-2) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

32. Phosphoric acid (CAS #7664-38-2) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

33. Phosphoric acid (CAS #7664-38-2) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

34. Potassium hydroxide (CAS #1310-58-3) is classified as a combustible liquid.

35. Potassium hydroxide (CAS #1310-58-3) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

36. Potassium hydroxide (CAS #1310-58-3) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

37. The octadecanoic acid (CAS # 57-11-4) MSDS contains health and personal protection warnings.

38. Octadecanoic acid (CAS #57-11-4) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

39. Octadecanoic acid (CAS #57-11-4) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

40. Sulfuric acid (CAS # 7664-93-9) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

41. Sulfuric acid (CAS #7664-93-9) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

42. Sulfuric acid (CAS #7664-93-9) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

43. Sulfuric acid (CAS #7664-93-9) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

44. The tergitol (CAS #127087-87-0) MSDS contains health and personal protection warnings.

45. Tergitol (CAS #127087-87-0) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

46. Tergitol (CAS #127087-87-0) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

47. Zinc oxide (CAS # 1314-13-2) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

48. Zinc oxide (CAS #1314-13-2) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

49. Zinc oxide (CAS #1314-13-2) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

50. During at least one period of time in calendar year 2005, 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide were present at the facility in an amount equal to or greater than the minimum threshold level.

51. During at least one period of time in calendar year 2006, 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide were present at the facility in an amount equal to or greater than the minimum threshold level.

52. During at least one period of time in calendar year 2007, 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic

acid, sulfuric acid, tergitol, and zinc oxide were present at the facility in an amount equal to or greater than the minimum threshold level.

53. During at least one period of time in calendar year 2008, 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide were present at the facility in an amount equal to or greater than the minimum threshold level.

54. OSHA requires Respondent to prepare, or have available, an MSDS for 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide.

55. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 31, 2006, an MSDS for 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide or a list including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide.

56. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide on or before March 1, 2006, for calendar year 2005.

57. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid,

phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide on or before March 1, 2007, for calendar year 2006.

58. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide on or before March 1, 2008, for calendar year 2007.

59. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide on or before March 1, 2009, for calendar year 2008.

60. At all times relevant to this CAFO, the Michigan State Emergency Response Commission was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

61. At all times relevant to this CAFO, the City of Detroit, Michigan Fire Department was the LEPC for Detroit, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

Count 1

62. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

63. On October 7, 2008, Respondent submitted to the SERC a list showing 2-butoxyethanol.

64. Each day Respondent failed to submit to the SERC an MSDS or a list for 2-butoxyethanol by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 2

65. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

66. On October 7, 2008, Respondent submitted to the LEPC a list showing 2-butoxyethanol.

67. Each day Respondent failed to submit to the LEPC an MSDS or a list for 2-butoxyethanol by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 3

68. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

69. On October 7, 2008, Respondent submitted to the SERC a list showing dipropylene glycol methyl ether.

70. Each day Respondent failed to submit to the SERC an MSDS or a list for dipropylene glycol methyl ether by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 4

71. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

72. On October 7, 2008, Respondent submitted to the LEPC a list showing dipropylene glycol methyl ether.

73. Each day Respondent failed to submit to the LEPC an MSDS or a list for dipropylene glycol methyl ether by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 5

74. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

75. On October 7, 2008, Respondent submitted to the SERC a list showing nitric acid.

76. Each day Respondent failed to submit to the SERC an MSDS or a list for nitric acid by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 6

77. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

78. On October 7, 2008, Respondent submitted to the LEPC a list showing nitric acid.

79. Each day Respondent failed to submit to the LEPC an MSDS or a list for nitric acid by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 7

80. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

81. On October 7, 2008, Respondent submitted to the SERC a list showing phosphoric acid.

82. Each day Respondent failed to submit to the SERC an MSDS or a list for phosphoric acid by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 8

83. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

84. On October 7, 2008, Respondent submitted to the LEPC a list showing phosphoric acid.

85. Each day Respondent failed to submit to the LEPC an MSDS or a list for phosphoric acid by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 9

86. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

87. On October 7, 2008, Respondent submitted to the SERC a list showing potassium hydroxide.

88. Each day Respondent failed to submit to the SERC an MSDS or a list for potassium hydroxide by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 10

89. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

90. On October 7, 2008, Respondent submitted to the LEPC a list showing potassium hydroxide.

91. Each day Respondent failed to submit to the LEPC an MSDS or a list for potassium hydroxide by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 11

92. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

93. On October 7, 2008, Respondent submitted to the SERC a list showing octadecanoic acid.

94. Each day Respondent failed to submit to the SERC an MSDS or a list for octadecanoic acid by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 12

95. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

96. On October 7, 2008, Respondent submitted to the LEPC a list showing octadecanoic acid.

97. Each day Respondent failed to submit to the LEPC an MSDS or a list for octadecanoic acid by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 13

98. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

99. On October 7, 2008, Respondent submitted to the SERC a list showing sulfuric acid.

100. Each day Respondent failed to submit to the SERC an MSDS or a list for sulfuric acid by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 14

101. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

102. On October 7, 2008, Respondent submitted to the LEPC a list showing sulfuric acid.

103. Each day Respondent failed to submit to the LEPC an MSDS or a list for sulfuric acid by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 15

104. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

105. On October 7, 2008, Respondent submitted to the SERC a list showing tergitol.

106. Each day Respondent failed to submit to the SERC an MSDS or a list for tergitol by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 16

107. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

108. On October 7, 2008, Respondent submitted to the LEPC a list showing tergitol.

109. Each day Respondent failed to submit to the LEPC an MSDS or a list for tergitol by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 17

110. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

111. On October 7, 2008, Respondent submitted to the SERC a list showing zinc oxide.

112. Each day Respondent failed to submit to the SERC an MSDS or a list for zinc oxide by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 18

113. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

114. On October 7, 2008, Respondent submitted to the LEPC a list showing zinc oxide.

115. Each day Respondent failed to submit to the LEPC an MSDS or a list for zinc oxide by March 31, 2006, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 19

116. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

117. On October 7, 2008, Respondent submitted to the SERC or the LEPC a completed Emergency and Hazardous Chemical Inventory Form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide for calendar year 2005.

118. Each day Respondent failed to submit to the SERC and the LEPC a completed Emergency and Hazardous Chemical Inventory Form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide by March 1, 2006, for calendar year 2005 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 20

119. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

120. On October 7, 2008, Respondent submitted to the SERC or the LEPC a completed Emergency and Hazardous Chemical Inventory Form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide for calendar year 2006.

121. Each day Respondent failed to submit to the SERC and the LEPC a completed Emergency and Hazardous Chemical Inventory Form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide by March 1, 2007, for calendar year 2006 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 21

122. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

123. On October 7, 2008, Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide for calendar year 2007.

124. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 22

125. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

126. On October 7, 2008, Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide for calendar year 2007.

127. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol,

and zinc oxide by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 23

128. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

129. On June 3, 2009, Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide for calendar year 2008.

130. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 24

131. Complainant incorporates paragraphs 1 through 61 of this CAFO as if set forth in this paragraph.

132. On June 3, 2009, Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including 2-butoxyethanol, dipropylene glycol methyl ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide for calendar year 2008.

133. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including 2-butoxyethanol, dipropylene glycol methyl

ether, nitric acid, phosphoric acid, potassium hydroxide, octadecanoic acid, sulfuric acid, tergitol, and zinc oxide by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

134. In consideration of Respondent's ability to pay claim, cooperation, return to compliance, willingness to quickly resolve this matter, and other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$40,000.

135. Respondent must pay a \$40,000 civil penalty for the EPCRA violations. Respondent may pay the entire penalty within 30 days after the effective date of this CAFO, or may pay \$20,000 of the penalty within 30 days after the effective date of this CAFO and an additional \$20,098.63 (\$20,000 plus \$98.63 in interest) within 210 days after the effective date of this CAFO. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

for checks sent by regular U.S. postal service

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

for checks sent by express mail

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Labtech Corporation, the docket number of this CAFO and the billing document number 275116E003.

136. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany each payment. Respondent must send a copy of the checks and transmittal letters to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

James Entzminger, (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

J. Matthew Moore, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

137. This civil penalty is not deductible for federal tax purposes.

138. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

139. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

140. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

141. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Respondent certifies that it is complying with Section 311 of EPCRA, 42 U.S.C. § 11021, and Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

142. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state and local laws, and regulations.

143. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Sections 311 and 312 of EPCRA.

144. The terms of this CAFO bind Respondent and its successors, and assigns.

145. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

146. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

147. This CAFO constitutes the entire agreement between the parties.

In the Matter of:
Labtech Corporation, Detroit, Michigan
Docket No. EPCRA-05-2011-0005

Labtech Corporation, Respondent

11-30-10
Date

Dennis A. Bryce
Dennis Bryce
President
Labtech Corporation

U.S. Environmental Protection Agency, Complainant

Date

Thomas Hershcher for
Jason H. El-Zein, Chief
Emergency Response Branch 1
Superfund Division

12-13-10
Date

Richard C. Karl
Richard C. Karl
Director
Superfund Division

In the Matter of:

Labtech Corporation, Detroit, Michigan

Docket No. EPCRA-05-2011-0005

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

12-15-10

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5


In the Matter of:
Labtech Corporation, Detroit, Michigan
Docket No. EPCRA-05-2011-0005

Certificate of Service

I, J. Matthew Moore, certify that I hand delivered the original Consent Agreement and Final Order to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy to the Regional Judicial Officer, and mailed a correct copy, by overnight mail, via United Parcel Service (UPS) to Kenneth Gold, Counsel of Labtech Corporation, addressed as follows:

Ken Gold
Partner
Honigman Miller Schwartz and Cohn, LLP
2290 First National Building
Detroit, Michigan 48226-7395

On the 21st day of December, 2010.



J. Matthew Moore
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5

RECEIVED
REGIONAL HEARING CLERK
U.S. EPA REGION 5
2010 DEC 21 PM 2:21