

Smith & Wesson Corp.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF )
Smith & Wesson Corp. )
2100 Roosevelt Avenue )
Springfield, MA 01104 )
Proceeding under Section 325(c) of )
the Emergency Planning and Community )
Right-to-Know Act, 42 U.S.C. § 11045(c) )

CONSENT AGREEMENT
AND FINAL ORDER
RECEIVED
APR 27 2018
EPA ORC
Office of Regional Hearing Clerk
Docket No. EPCRA-01-2018-0006

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. Complainant, the United States Environmental Protection Agency, Region 1 ("EPA"), alleges that Respondent Smith & Wesson Corp. ("Smith & Wesson" or "Respondent") violated Section 313 of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11023 (also known as the Emergency Planning and Community Right-to-Know Act or "EPCRA"), and the federal regulations promulgated thereunder.

2. EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order ("CAFO") without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18 of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22, EPA and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

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3. Therefore, before any hearing, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of EPA and Respondent, it is hereby ordered and agreed as follows:

#### **B. STATUTORY AND REGULATORY AUTHORITY**

4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 372.

5. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), requires owners or operators of a facility subject to the requirements of Section 313(b) to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25. If the owner or operator determines that the alternative reporting threshold specified in 40 C.F.R. § 372.27 applies, the owner or operator may submit an alternative threshold certification statement that contains the information required under 40 C.F.R. § 372.95 (the alternative threshold certification statement is also known as "Form A"). Each Form R or Form A is required to be submitted to the Administrator of EPA and to the state in which the subject facility is located. Forms R and Forms A are hereinafter referred to as "TRI Forms."

6. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification ("SIC") code or North American Industry Classification

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System (“NAICS”) code set forth in 40 C.F.R. § 372.23; and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 in a quantity exceeding the established threshold during a calendar year are required to submit a Form R or Form A for each of these substances for that year.

7. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1) (as amended by the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and the Debt Collection Improvement Act, 31 U.S.C. § 3701), and EPA’s Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder at 40 C.F.R. Part 19, authorize the assessment of civil administrative penalties of up to \$37,500 per day for each violation of Section 313 of EPCRA that occurred from January 12, 2009 through November 2, 2015, and civil administrative penalties of up to \$55,907 per day for each violation of Section 313 of EPCRA that occurred after November 2, 2015. Pursuant to Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day a Section 313 violation continues constitutes a separate violation.

### **C. GENERAL ALLEGATIONS**

8. Respondent is a corporation organized under the laws of the State of Delaware with a place of business at 2100 Roosevelt Avenue, Springfield, MA 01104 (“Facility”).

9. At the Facility, in connection with Respondent’s production of small firearms, Respondent processes and otherwise uses nickel, manganese, and chromium, among other things.

10. Respondent owns the Facility.

11. A duly authorized representative of EPA conducted a compliance evaluation inspection of the Facility on May 20, 2015 and a review of documents produced by Respondent

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in response to EPA requests issued via e-mail to Respondent in May and June 2015 (the “EPA inspection”) to determine its compliance with EPCRA reporting requirements.

12. As a result of discussions and exchanges with EPA’s representative during and following the EPA inspection, on September 21, 2015 and October 23, 2015, Respondent amended and restated previously filed EPCRA 313 Form R filings for the Facility for calendar years 2010, 2011, 2012, 2013 and 2014.

13. As a corporation, Respondent is a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

14. Respondent operates a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

15. The Facility has more than 10 “full-time employees,” as the term is defined by 40 C.F.R. § 372.3.

16. The Facility is classified in a SIC code or NAICS code set forth in 40 C.F.R. § 372.23.

17. During the calendar years 2012 and 2013, Respondent processed manganese, a toxic chemical listed under 40 C.F.R. § 372.65, in quantities exceeding the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25.

18. During the calendar year 2012, Respondent processed nickel, a toxic chemical listed under 40 C.F.R. § 372.65, in quantities exceeding the established threshold of 25,000 pounds set forth at 40 C.F.R. §372.25.

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19. During the calendar year 2012, Respondent processed chromium, a toxic chemical listed under 40 C.F.R. §372.65, in quantities exceeding the threshold of 25,000 pounds set forth at 40 C.F.R. §372.25.

20. The requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, therefore apply to the Facility.

Count 1: Failure to Timely File TRI Form for Manganese for Reporting Year 2012

21. The foregoing paragraphs 1 through 20 are incorporated by reference as if fully set forth herein.

22. During the calendar year 2012, Respondent processed manganese, a chemical listed under 40 C.F.R. §372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2013.

23. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2013.

24. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 2: Failure to Timely File TRI Form for Manganese for Reporting Year 2013

25. The foregoing paragraphs 1 through 24 are incorporated by reference as if fully set forth herein.

26. During the calendar year 2013, Respondent processed manganese, a chemical listed under 40 C.F.R. §372.65, in a quantity exceeding the established threshold. Respondent

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was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2014.

27. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2014.

28. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 3: Failure to Timely File TRI Form for Nickel for Reporting Year 2012

29. The foregoing paragraphs 1 through 28 are incorporated by reference as if fully set forth herein.

30. During the calendar year 2012, Respondent processed nickel, a chemical listed under 40 C.F.R. §372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2013.

31. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2013.

32. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 4: Failure to Timely File TRI Form for Chromium for Reporting Year 2012

33. The foregoing paragraphs 1 through 32 are incorporated by reference as if fully set forth herein.

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34. During the calendar year 2012, Respondent processed chromium, a chemical listed under 40 C.F.R. §372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical on or before July 1, 2013.

35. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2013.

36. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

#### **E. TERMS OF SETTLEMENT**

37. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement;
- b. neither admits nor denies the specific factual allegations or alleged violations of law stated above;
- c. consents to the assessment of a civil penalty as stated below;
- d. certifies that it has corrected the violations alleged above and will operate the Facility in compliance with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder, found at 40 C.F.R. Part 372;
- e. consents to the conditions specified in this CAFO;

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- f. waives any right to contest the allegations set forth in this Consent Agreement;  
and
- g. waives its rights to appeal the Final Order accompanying this Consent Agreement.

38. For the purpose of this proceeding, Respondent:
- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
  - b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
  - c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order;
  - d. consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Massachusetts, and
  - e. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.



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39. By signing this CAFO, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

40. By signing this CAFO, Respondent certifies, to the best of its knowledge, that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

41. **Penalty Payment:** Pursuant to the relevant factors for penalties issued pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and taking into account any such matters as justice may require, EPA has determined that it is fair and proper that Respondent pay a total civil penalty of FIFTY-EIGHT THOUSAND ONE HUNDRED THIRTY-SIX DOLLARS AND 00/100 (**\$58,136.00**) to resolve the violations alleged in this matter.

42. Within thirty (30) calendar days of the effective date of this CAFO, Respondent shall make a payment by company, bank, cashier's, or certified check, or by wire transfer, in the amount of \$58,136 and shall include the case name and docket numbers ("*In re Smith & Wesson Corp.*, Docket No. EPCRA-01-2018-0006") on the face of the check or wire transfer confirmation. A check should be made payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center

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P.O. Box 979077  
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal

Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

In addition, within 24 hours of payment, Respondent shall forward notice of payment of the civil penalty as well as copies of the payment check or payment receipt by first class mail or other delivery service to:

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code ORC 04-6)  
Boston, MA 02109-3912

with a copy by electronic mail to:

Chris Rascher, Environmental Engineer  
U.S. Environmental Protection Agency, Region 1  
[rascher.chris@epa.gov](mailto:rascher.chris@epa.gov);

and

David Peterson, Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
[peterson.david@epa.gov](mailto:peterson.david@epa.gov).

43. **Collection of Unpaid EPCRA Penalty:** Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that any portion of the civil penalty amount relating to the alleged EPCRA violations is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees. In addition, a penalty charge of six percent per year, compounded annually, will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due in accordance with 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

44. All penalties, interest, and other charges assessed under this CAFO shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

45. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

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46. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

47. By signing this CAFO, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

48. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

49. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

50. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

51. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA for the violations and facts specifically alleged in this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be

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construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

52. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent is in violation of this CAFO or continues to be in violation of the statutes and regulations upon which the allegations in this CAFO are based, or for Respondent's violation of any other applicable provision of federal, state, or local law.

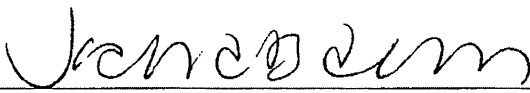
53. Each party shall bear its own costs and fees in this proceeding including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

54. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed with the Regional Hearing Clerk.


*[Remainder of page intentionally left blank; signature page follows.]*

Smith & Wesson Corp.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
Joanna Jerison, Legal Enforcement Manager      Date 4/26/18  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region I

FOR RESPONDENT SMITH & WESSON CORP.:

  
\_\_\_\_\_  
Mark P. Smith      Date 4/16/18  
President, Manufacturing Services Division

Smith & Wesson Corp.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

\_\_\_\_\_  
IN THE MATTER OF )

Smith & Wesson Corp. )

2100 Roosevelt Avenue )  
Springfield, MA 01104 )

Proceeding under Section 325(c) of )  
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**CONSENT AGREEMENT  
AND FINAL ORDER**

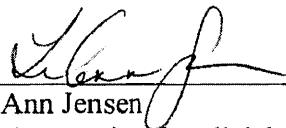
Docket No. EPCRA-01-2018-0006

**FINAL ORDER**

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

The Respondent, Smith & Wesson Corp., is ordered to pay the civil penalty amount specified in the Consent Agreement, in the manner indicated.

The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

  
\_\_\_\_\_  
LeAnn Jensen  
Acting Regional Judicial Officer  
U.S. EPA, Region 1

4/26/18  
\_\_\_\_\_  
Date

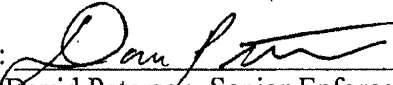
**CERTIFICATE OF SERVICE**

I hereby certify that this Certificate of Service and the foregoing Consent Agreement and Final Order and cover letter to the Regional Hearing Clerk were delivered in the following manner to the addressees listed below:

Originals and One Copy by Hand Delivery to: Wanda I. Santiago  
Regional Hearing Clerk  
Environmental Protection Agency  
5 Post Office Square, Suite 100 (ORA 18-1)  
Boston, MA 02109-3912

One Copy by Certified Mail – Return Receipt Requested to: P. James Debney, President  
Smith & Wesson Corporation  
2100 Roosevelt Avenue  
Springfield, Massachusetts 01104

Date: 4/27/2018

Signed:   
David Peterson, Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Region 1 (Mail Code: OES 04-3)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912  
Phone (617) 918-1891  
[peterson.david@epa.gov](mailto:peterson.david@epa.gov)



EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for David Peterson 4/27/18  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number EPCRA-01-2018-0006

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

P. James Debnay  
Smith & Wesson Corp.  
2100 Roosevelt Avenue  
Springfield, MA 01104

Total Dollar Amount of Receivable \$ 58,136 Due Date: 5/27/18

SEP due? Yes  No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:  
1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office Phone Number