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1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION 9

2007 SEP 25 PM 3: 31

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

4 In the Matter of:

5 Polyclad Laminates, Inc.
6 40 Industrial Park Drive
7 Franklin, New Hampshire 03235

8 Respondent

Docket No. EPCRA-09-2007-0024

CONSENT AGREEMENT AND FINAL

ORDER PURSUANT TO 40 C.F.R.
§§ 22.13 AND 22.18

9 I. CONSENT AGREEMENT

- 10 1. The Director of the Communities and Ecosystems Division
11 ("Complainant"), United States Environmental Protection
12 Agency ("EPA") Region 9, and Polyclad Laminates, Inc.
13 ("Respondent" or "Polyclad") agree to settle this matter and
14 consent to the filing of this Consent Agreement and Final
15 Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 ("CAFO"),
16 which simultaneously commences and concludes this matter in
17 accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
- 18 2. This is a civil administrative proceeding initiated pursuant
19 to Section 325(c) of Title III of the Superfund Amendments
20 and Reauthorization Act, 42 U.S.C. § 11001 et seq., also
21 known as the Emergency Planning and Community Right-to-Know
22 Act of 1986 ("EPCRA"), for violation of Section 313 of EPCRA,
23 42 U.S.C. § 11023, and the regulations promulgated to
24 implement Section 313 at 40 C.F.R. Part 372.
- 25 3. Complainant has been duly delegated the authority to file
26 this action and sign a consent agreement settling this
27 action. Respondent is a corporation incorporated in
28 Massachusetts.

- 1 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023
2 and 11048, EPA promulgated the Toxic Chemical Release
3 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part
4 372.
- 5 5. Section 313(a) of EPCRA, as implemented by 40 C.F.R.
6 § 372.30, provides that an owner or operator of a facility
7 that meets the criteria set forth in EPCRA Section 313(b) and
8 40 C.F.R. § 372.22, is required to submit annually to the
9 Administrator of EPA and to the State in which the facility
10 is located, no later than July 1st of each year, a toxic
11 chemical release inventory reporting form (hereinafter "Form
12 R") for each toxic chemical listed under 40 C.F.R. § 372.65
13 that was manufactured, processed or otherwise used at the
14 facility during the preceding calendar year in quantities
15 exceeding the thresholds established under EPCRA Section
16 313(f) and 40 C.F.R. §§ 372.25, 375.27, and 372.28.
- 17 6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that
18 the requirements of Section 313(a) and 40 C.F.R. § 372.30
19 apply to an owner and operator of a facility that has 10 or
20 more full-time employees; that is in a Standard Industrial
21 Classification major group codes 10 (except 1011, 1081, and
22 1094), 12 (except 1241), 20 through 39; industry codes 4911,
23 4931, or 4939 (limited to facilities that combust coal and/or
24 oil for the purpose of generating power for distribution in
25 commerce), or 4953 (limited to facilities regulated under the
26 Resource Conservation and Recovery Act, subtitle C, 42 U.S.C.
27

1 §6921 et seq.), or 5169, 5171, or 7389 (limited to facilities
2 primarily engaged in solvent recovery services on a contract
3 or fee basis); and that manufactures, processes, or otherwise
4 uses one or more toxic chemicals listed under Section 313(c)
5 of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of
6 the applicable thresholds established under EPCRA Section
7 313(f) and 40 C.F.R. §§ 372.25, 372.27, and 372.28.

8 7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R.
9 Part 19 authorize EPA to assess a penalty of up to \$27,500
10 for each violation of Section 313 of EPCRA that occurred on
11 or after January 31, 1997 but before March 15, 2004 and up to
12 \$32,500 for each violation of Section 313 of EPCRA that
13 occurred on or after March 15, 2004.

14 8. Respondent is a "person," as that term is defined by Section
15 329(7) of EPCRA.

16 9. At all times relevant to this CAFO, Respondent was the owner
17 and operator of a "facility," as that term is defined by
18 Section 329(4) of EPCRA and 40 C.F.R. § 372.3, located at
19 3233 Dwight Road, Elk Grove, CA ("Facility"); the Facility
20 had 10 or more "full-time employees," as that term is defined
21 at 40 C.F.R. § 372.3; and the Facility was classified in
22 Standard Industrial Classification Code 3083 - laminated
23 plastics plate and sheet.

24 10. During calendar years 2002, 2003 and 2004, Respondent
25 processed the following amounts (in pounds) of methyl ethyl
26 ketone ("MEK"), methanol and copper, chemicals listed under
27

1 40 C.F.R. § 372.65:

2 <u>Year</u>	<u>MEK</u>	<u>Methanol</u>	<u>Copper</u>
3 2002	57,777		
4 2003		34,959	
5 2004		31,969	1,107,856

- 6 11. The quantities of MEK, methanol and copper that the
7 Respondent processed at the Facility during calendar years
8 2002, 2003 and 2004 exceeded the established threshold of
9 25,000 pounds set forth at 40 C.F.R. § 372.25(a).
- 10 12. Respondent failed to submit a Form R for MEK processed at the
11 Facility to the EPA Administrator and to the State of
12 California on or before July 1, 2003 for calendar year 2002;
13 Respondent failed to submit a Form R for methanol processed
14 at the Facility to the EPA Administrator and to the State of
15 California on or before July 1, 2004 for calendar year 2003,
16 and failed to submit Form Rs for methanol and copper on or
17 before July 1, 2005 for calendar year 2004; as required by
18 Section 313(a) of EPCRA and 40 C.F.R. § 372.30.
- 19 13. Respondent's failure to submit a Form R for MEK processed at
20 the Facility for calendar year 2002, a Form R for methanol
21 processed at the Facility for calendar year 2003, and Form Rs
22 for methanol and copper for calendar years 2003 and 2004,
23 constitutes four violations of Section 313 of EPCRA and 40
24 C.F.R. § 372.30.
- 25 14. The EPA Enforcement Response Policy for EPCRA Section 313
26 dated August 10, 1992 provides for a penalty of eighty-eight
27 thousand six hundred dollars (\$88,600) for these violations.
- 28 15. In executing this CAFO, Respondent certifies that (1) it has

1 now fully completed and submitted to EPA all of the required
2 Form Rs in compliance with Section 313 of EPCRA and the
3 regulations promulgated to implement Section 313; and (2) it
4 has complied with all other EPCRA requirements at all
5 facilities under its control.

6 16. In accordance with 40 C.F.R. § 22.18(b)(2) and for the
7 purpose of this proceeding, Respondent (i) admits that EPA
8 has jurisdiction over the subject matter of this CAFO and
9 over Respondent; (ii) admits the violations and facts alleged
10 in this CAFO; (iii) consents to the terms of this CAFO; (iv)
11 waives any right to contest the allegations in this CAFO; and
12 (v) waives the right to appeal the proposed final order
13 contained in this CAFO.

14 17. The terms of this CAFO constitute a full settlement of the
15 civil administrative matter filed under the docket number
16 above.

17 18. EPA's final policy statement on Incentives for Self-Policing:
18 Discovery, Disclosure, Correction and Prevention of
19 Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit
20 Policy") has several important goals, including encouraging
21 greater compliance with the laws and regulations which
22 protect human health and the environment and reducing
23 transaction costs associated with violations of the laws EPA
24 is charged with administering. If certain specified criteria
25 are met, reductions in gravity-based penalties of up to 100%
26 are available under the Audit Policy. These criteria are (1)
27
28

1 discovery of the violation(s) through an environmental audit
2 or due diligence; (2) voluntary disclosure; (3) prompt
3 disclosure; (4) discovery and disclosure independent of
4 government or third party plaintiff; (5) correction and
5 remediation; (6) prevent recurrence; (7) no repeat
6 violations; (8) other violations excluded; and (9)
7 cooperation.

8 19. Complainant has determined that Respondent has satisfied all
9 of the criteria under the Audit Policy and thus qualifies for
10 the elimination of civil penalties in this matter.
11 Accordingly, the civil penalty assessed in this matter is
12 zero (\$0) dollars.

13 20. Complainant's finding that Polyclad has satisfied the
14 criteria of the Audit Policy is based upon documentation that
15 Polyclad has provided to establish that it satisfies these
16 criteria. Complainant and Respondent agree that, should any
17 material fact upon which Complainant relied in making its
18 finding subsequently prove to be other than as represented by
19 Polyclad, this CAFO may be voided in whole or in part.

20 21. Nothing in this CAFO modifies, affects, exempts or relieves
21 Respondent's duty to comply with all applicable provisions of
22 EPCRA and other federal, state or local laws and permits. In
23 accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves
24 Respondent's liability for federal civil penalties for the
25 violations and facts specifically alleged in this CAFO.

26 Nothing in this CAFO is intended to or shall be construed to
27
28

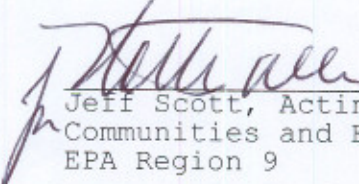
1 resolve (i) any civil liability for violations of any
2 provision of any federal, state, or local law, statute,
3 regulation, rule, ordinance, or permit not specifically
4 alleged in this CAFO; or (ii) any criminal liability. EPA
5 specifically reserves any and all authorities, rights, and
6 remedies available to it (including, but not limited to,
7 injunctive or other equitable relief or criminal sanctions)
8 to address any violation of this CAFO or any violation not
9 specifically alleged in this CAFO.

10 22. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b),
11 this CAFO shall be effective on the date that the final order
12 contained in this CAFO, having been approved and issued by
13 either the Regional Judicial Officer or Regional
14 Administrator, is filed.

15 23. The provisions of this CAFO shall be binding upon Respondent,
16 its agents, successors or assigns. Respondent's obligations
17 under this Consent Agreement, if any, shall end when
18 Respondent has performed all of the terms of the Consent
19 Agreement in accordance with the Final Order. Complainant
20 and Respondent consent to the entry of the CAFO without
21 further notice.

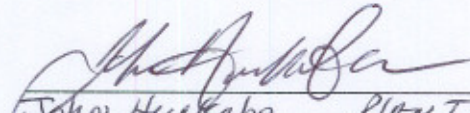
22 FOR COMPLAINANT:

23
24 9-20-2007
Date


Jeff Scott, Acting Director
Communities and Ecosystems Division
EPA Region 9

25
26
27 FOR RESPONDENT:

1 9/17/07
2 Date

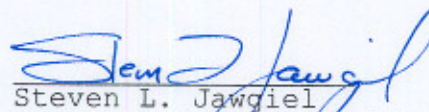

3 John Hurekabo Plant Manager
4 Name Title

5 **II. FINAL ORDER**

6 Complainant EPA Region 9 and Respondent Polyclad Laminates,
7 Inc., having entered into the foregoing Consent Agreement,

8 IT IS HEREBY ORDERED that this Consent Agreement and Final
9 Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-
10 09-2007-0024) be entered.

11 09/25/07
12 Date


13 Steven L. Jawciel
14 Regional Judicial Officer
15 U.S. Environmental Protection
16 Agency, Region 9

1 CERTIFICATE OF SERVICE

2 I certify that the original of the foregoing Consent Agreement
3 and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket
4 No. EPCRA-09-2007- 0024 , was placed in the United States
5 Mail, certified mail, return receipt requested, addressed to the
6 following address:

7
8
9
10 Certified Return Receipt No.:

11
12
13 Date: 9/26/2007

By:

Danielle E Carr
Danielle Carr
Regional Hearing Clerk
United States Environmental
Protection Agency, Region 9
75 Hawthorne Avenue
San Francisco, California 94105-3143

CERTIFICATE OF SERVICE

I certify that the original fully executed Consent Agreement and Final Order ("CAFO"), Docket Number EPCRA-09-2007-0024, was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the CAFO was sent to Respondent at the following address:

John Huckaba
Polyclad Laminates
3233 Dwight Road
Elk Grove, CA 95758

Certified Mail No: 7005 3110 0002 8247 6907

Danielle E. Carr

Danielle Carr
Regional Hearing Clerk
Region IX, EPA
Office of Regional Counsel

Oct. 2, 2007

Date