

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

2008 SEP 30 PM 3:35

REGIONAL HEARING CLERK

In the Matter of:

Resolution Copper Mining, LLC,
a limited liability company
owned by Resolution Copper
Company and BHP Copper, Inc.

Respondent.

Docket No. EPCRA-09-2008- 00 3 3

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

I. CONSENT AGREEMENT

1. The Director of the Communities and Ecosystems Division ("Complainant"), United States Environmental Protection Agency ("EPA") Region 9, and Resolution Copper Mining, LLC, a limited liability company owned by Resolution Copper Company and BHP Copper, Inc. ("Respondent" or "Resolution") agree to settle this matter and consent to the filing of this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
2. This is a civil administrative proceeding initiated 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 ("EPCRA"), for violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated to implement Section 313 at 40 C.F.R. Part 372.
3. Complainant has been duly delegated the authority to file

1 this action and sign a consent agreement settling this
2 action. Respondent is a corporation incorporated in
3 Delaware.

4 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023
5 and 11048, EPA promulgated the Toxic Chemical Release
6 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part
7 372.

8 5. Section 313(a) of EPCRA, as implemented by 40 C.F.R.
9 § 372.30, provides that an owner or operator of a facility
10 that meets the criteria set forth in EPCRA Section 313(b) and
11 40 C.F.R. § 372.22, is required to submit annually to the
12 Administrator of EPA and to the State in which the facility
13 is located, no later than July 1st of each year, a toxic
14 chemical release inventory reporting form (hereinafter "Form
15 R") for each toxic chemical listed under 40 C.F.R. § 372.65
16 that was manufactured, processed or otherwise used at the
17 facility during the preceding calendar year in quantities
18 exceeding the thresholds established under EPCRA Section
19 313(f) and 40 C.F.R. §§ 372.25, 375.27, and 372.28.

20 6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that
21 the requirements of Section 313(a) and 40 C.F.R. § 372.30
22 apply to an owner and operator of a facility that has 10 or
23 more full-time employees; that is in a Standard Industrial
24 Classification major group codes 10 (except 1011, 1081, and
25 1094), 12 (except 1241), 20 through 39; industry codes 4911,
26 4931, or 4939 (limited to facilities that combust coal and/or
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1 oil for the purpose of generating power for distribution in
2 commerce), or 4953 (limited to facilities regulated under the
3 Resource Conservation and Recovery Act, subtitle C, 42 U.S.C.
4 §6921 et seq.), or 5169, 5171, or 7389 (limited to facilities
5 primarily engaged in solvent recovery services on a contract
6 or fee basis); and that manufactures, processes, or otherwise
7 uses one or more toxic chemicals listed under Section 313(c)
8 of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of
9 the applicable thresholds established under EPCRA Section
10 313(f) and 40 C.F.R. §§ 372.25, 372.27, and 372.28.

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

17 8. Respondent is a "person," as that term is defined by Section
18 329(7) of EPCRA.

19 9. At all times relevant to this CAFO, Respondent was the owner
20 and operator of a "facility," as that term is defined by
21 Section 329(4) of EPCRA and 40 C.F.R. § 372.3, located at 102
22 Magma Heights, Superior, Arizona 85273("Facility"); the
23 Facility had 10 or more "full-time employees," as that term
24 is defined at 40 C.F.R. § 372.3; and the Facility was
25 classified in Standard Industrial Classification Code 1021 -
26 copper ores.

1 10. During calendar year 2006, Respondent otherwise used the
2 following amounts (in pounds) of naphthalene and xylene (mixed
3 isomers), chemicals listed under 40 C.F.R. § 372.65:

4 <u>Year</u>	<u>naphthalene</u>	<u>xylene (mixed isomers)</u>
5 2006	15,288	15,288

6 11. The quantities of naphthalene and xylene (mixed isomers) that
7 the Respondent otherwise used at the Facility during calendar
8 year 2006 exceeded the established threshold of 10,000 pounds
9 set forth at 40 C.F.R. § 372.25(b).

10 12. Respondent failed to submit Form Rs for naphthalene and xylene
11 (mixed isomers) otherwise used at the Facility to the EPA
12 Administrator and to the State of Arizona on or before July
13 2, 2007 for calendar year 2006 as required by Section 313(a)
14 of EPCRA and 40 C.F.R. § 372.30.

15 13. Respondent's failure to submit Form Rs for naphthalene and
16 xylene (mixed isomers) processed at the Facility for calendar
17 year 2006, constitutes two violations of Section 313 of EPCRA
18 and 40 C.F.R. § 372.30.

19 14. The EPA Enforcement Response Policy for EPCRA Section 313
20 dated August 10, 1992 provides for a penalty of twenty-one
21 thousand dollars (\$21,000) for these violations.

22 15. In executing this CAFO, Respondent certifies that (1) it has
23 now fully completed and submitted to EPA all of the required
24 Form Rs in compliance with Section 313 of EPCRA and the
25 regulations promulgated to implement Section 313; and (2) it
26 has complied with all other EPCRA requirements at all

1 facilities under its control.

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

10 17. The terms of this CAFO constitute a full settlement of the
11 civil administrative matter filed under the docket number
12 above.

13 18. EPA's final policy statement on Incentives for Self-Policing:
14 Discovery, Disclosure, Correction and Prevention of
15 Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit
16 Policy") has several important goals, including encouraging
17 greater compliance with the laws and regulations which
18 protect human health and the environment and reducing
19 transaction costs associated with violations of the laws EPA
20 is charged with administering. If certain specified criteria
21 are met, reductions in gravity-based penalties of up to 100%
22 are available under the Audit Policy. These criteria are (1)
23 discovery of the violation(s) through an environmental audit
24 or due diligence; (2) voluntary disclosure; (3) prompt
25 disclosure; (4) discovery and disclosure independent of
26 government or third party plaintiff; (5) correction and
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1 remediation; (6) prevent recurrence; (7) no repeat
2 violations; (8) other violations excluded; and (9)
3 cooperation.

4 19. Complainant has determined that Respondent has satisfied all
5 of the criteria under the Audit Policy and thus qualifies for
6 the elimination of civil penalties in this matter.

7 Accordingly, the civil penalty assessed in this matter is
8 zero (\$0) dollars.

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

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

22 Nothing in this CAFO is intended to or shall be construed to
23 resolve (i) any civil liability for violations of any
24 provision of any federal, state, or local law, statute,
25 regulation, rule, ordinance, or permit not specifically
26 alleged in this CAFO; or (ii) any criminal liability. EPA
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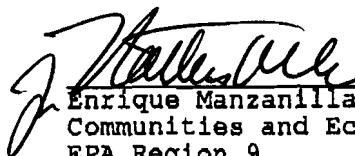
1 specifically reserves any and all authorities, rights, and
 2 remedies available to it (including, but not limited to,
 3 injunctive or other equitable relief or criminal sanctions)
 4 to address any violation of this CAFO or any violation not
 5 specifically alleged in this CAFO.

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

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


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19 FOR COMPLAINANT:

20 SEPT. 30, 2008
 21 Date


 Enrique Manzanilla, Director
 Communities and Ecosystems Division
 EPA Region 9

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23 FOR RESPONDENT:

24
25 09/25/08
 26 Date

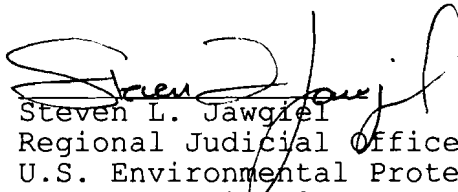

 David Salisbury, President and CEO
 Resolution Copper Mining, LLC

1 **FINAL ORDER**

2 Complainant EPA Region 9 and Respondent Resolution Copper
3 Mining, LLC, having entered into the foregoing Consent Agreement,

4 IT IS HEREBY ORDERED that this Consent Agreement and Final
5 Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-
6 09-2008- **0033**) be entered.

7
8 09/30/08
9 Date


10 Steven L. Jawgiel
Regional Judicial Officer
U.S. Environmental Protection
Agency, Region 9

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CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. EPCRA-09-2008- **0033** , was placed in the United States Mail, certified mail, return receipt requested, addressed to the following address:

David Salisbury
President and CEO
Resolution Copper Mining, LLC
102 Magma Heights
P.O. Box 1944
Superior, Arizona 85273

Certified Return Receipt No.: 7005 3110 0002 8247 1094

Date: 10/2/2008 By: Danielle E Carr

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