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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

FILED

2008 SEP 26 PM 1:30

U.S. EPA REGION IX
REGIONAL HEARING OFFICE

In the Matter of:

Orthodyne Electronics
Corporation

Respondent

Docket No. EPCRA-09-2008-0019

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") EPA Region 9, and Orthodyne Electronics Corporation ("Respondent" or "Orthodyne"), the Parties herein, agree to settle this matter and consent to the entry 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 this action and sign a consent agreement settling this action. Respondent is a California corporation headquartered at 16700 Red Hill Avenue, Irvine, California 92606.

- 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, 372.27 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 (SIC) (as in effect on January 1, 1987) major
22 group or industry code listed in § 372.23(a), for which the
23 corresponding North American Industry Classification System
24 (NAICS) (as in effect on January 1, 2007, for reporting year
25 2008 and thereafter) subsector and industry codes are listed
26 in 40 C.F.R. §§ 372.23(b) and (c); and that manufactures,
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1 processes, or otherwise uses one or more toxic chemicals
2 listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65
3 in quantities in excess of the applicable thresholds
4 established under EPCRA Section 313(f) and 40 C.F.R. §§
5 372.25, 372.27 and 372.28.

6 7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R.
7 Part 19 authorize EPA to assess a penalty of up to \$27,500
8 for each violation of Section 313 of EPCRA that occurred on
9 or after January 30, 1997, but before March 15, 2004, and up
10 to \$32,500 for each violation of Section 313 of EPCRA that
11 occurred on or after March 15, 2004.

12 8. Respondent is a "person," as that term is defined by Section
13 329(7) of EPCRA.

14 9. At all times relevant to this CAFO, Respondent was the owner
15 and operator of a facility located at 16700 Red Hill Avenue,
16 Irvine, California 92606 (the "Facility"), which falls within
17 the definition of a "facility" found in Section 329(4) of
18 EPCRA and 40 C.F.R. § 372.3.

19 10. The Facility employed 10 or more "full-time employees," as
20 that term is defined at 40 C.F.R. § 372.3 and was classified
21 in NAICS Code 333295 - Semiconductor Machinery Manufacturing.

22 11. During calendar year 2003, Respondent processed approximately
23 226 pounds of lead, a chemical listed under 40 C.F.R.
24 § 372.65, at the Facility.

25 12. The quantity of lead Respondent processed at the Facility
26 during calendar year 2003 exceeds the established threshold
27

1 of 100 pounds set forth at 40 C.F.R. § 372.28.

2 13. Respondent failed to submit a Form R for lead processed at
3 the Facility to the EPA Administrator and to the State of
4 California on or before July 1, 2004, for calendar year 2003.

5 14. Respondent's failure to submit a Form R before July 1 of 2004
6 for lead processed at the Facility during the preceding
7 calendar year constitutes a violation of Section 313 of EPCRA
8 and 40 C.F.R. § 372.30.

9 15. During calendar year 2004, Respondent processed approximately
10 444 pounds of lead, a chemical listed under 40 C.F.R.
11 § 372.65, at the Facility.

12 16. The quantity of lead Respondent processed at the Facility
13 during calendar year 2004 exceeds the established threshold
14 of 100 pounds set forth at 40 C.F.R. § 372.28.

15 17. Respondent failed to submit a Form R for lead processed at
16 the Facility to the EPA Administrator and to the State of
17 California on or before July 1, 2005, for calendar year 2004.

18 18. Respondent's failure to submit a Form R before July 1 of 2005
19 for lead processed at the Facility during the preceding
20 calendar year constitutes a violation of Section 313 of EPCRA
21 and 40 C.F.R. § 372.30.

22 19. During calendar year 2005, Respondent processed approximately
23 287 pounds of lead, a chemical listed under 40 C.F.R.
24 § 372.65, at the Facility.

25 20. The quantity of lead Respondent processed at the Facility
26 during calendar year 2005 exceeds the established threshold
27

1 of 100 pounds set forth at 40 C.F.R. § 372.28.

2 21. Respondent failed to submit a Form R for lead processed at
3 the Facility to the EPA Administrator and to the State of
4 California on or before July 1, 2006, for calendar year 2005.

5 22. Respondent's failure to submit a Form R before July 1 of 2006
6 for lead processed at the Facility during the preceding
7 calendar year constitutes a violation of Section 313 of EPCRA
8 and 40 C.F.R. § 372.30.

9 23. During calendar year 2006, Respondent processed approximately
10 518 pounds of lead, a chemical listed under 40 C.F.R.
11 § 372.65, at the Facility.

12 24. The quantity of lead Respondent processed at the Facility
13 during calendar year 2006 exceeds the established threshold
14 of 100 pounds set forth at 40 C.F.R. § 372.28.

15 25. Respondent failed to submit a Form R for lead processed at
16 the Facility to the EPA Administrator and to the State of
17 California on or before July 1, 2007, for calendar year 2006.

18 26. Respondent's failure to submit a Form R before July 1 of 2007
19 for lead processed at the Facility during the preceding
20 calendar year constitutes a violation of Section 313 of EPCRA
21 and 40 C.F.R. § 372.30.

22 27. The EPA Enforcement Response Policy for EPCRA Section 313
23 dated August 10, 1992, as amended by 40 C.F.R. Part 19,
24 provides for a penalty of seventy-six thousand, seven hundred
25 dollars (\$76,700) for these violations.

26 28. In executing this CAFO, Respondent certifies that (1) it has
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1 now fully completed and submitted to EPA all required Form
2 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 29. 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 30. The terms of this CAFO constitute a full settlement of the
15 civil administrative matter filed under the docket number
16 above.

17 31. 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)
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1 discovery of the violation(s) through an environmental audit
2 or a compliance management system; (2) voluntary disclosure;
3 (3) prompt disclosure; (4) discovery and disclosure
4 independent of government or third party plaintiff; (5)
5 correction and remediation; (6) prevention of recurrence; (7)
6 no repeat violations; (8) exclusion of the policy's
7 applicability to certain types of violations, including those
8 resulting in serious actual harm to the environment and those
9 that may have presented an imminent and substantial
10 endangerment to the public health or the environment; and (9)
11 cooperation.

12 32. Complainant has determined that Respondent has satisfied all
13 of the criteria under the Audit Policy and thus qualifies for
14 the elimination of civil penalties in this matter.
15 Accordingly, the civil penalty assessed in this matter is
16 zero (\$0) dollars.

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

24 34. Nothing in this CAFO modifies, affects, exempts or relieves
25 Respondent's duty to comply with all applicable provisions of
26 EPCRA and other federal, state or local laws and permits. In
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1 accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves
2 Respondent's liability for federal civil penalties for the
3 violations and facts specifically alleged in this CAFO.
4 Nothing in this CAFO is intended to or shall be construed to
5 resolve (i) any civil liability for violations of any
6 provision of any federal, state, or local law, statute,
7 regulation, rule, ordinance, or permit not specifically
8 alleged in this CAFO; or (ii) any criminal liability. EPA
9 specifically reserves any and all authorities, rights, and
10 remedies available to it (including, but not limited to,
11 injunctive or other equitable relief or criminal sanctions)
12 to address any violation of this CAFO or any violation not
13 specifically alleged in this CAFO.

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

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1 36. The provisions of this CAFO shall be binding upon Respondent,
2 its agents, successors or assigns. Respondent's obligations
3 under this Consent Agreement, if any, shall end when
4 Respondent has performed all of the terms of the Consent
5 Agreement in accordance with the Final Order. Complainant
6 and Respondent consent to the entry of the CAFO without
7 further notice.
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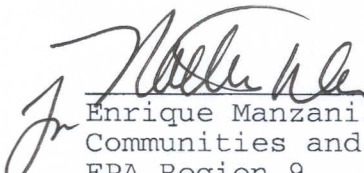
9 FOR RESPONDENT:

10
11 15 Sept 2008
12 Date

11 
12 _____
13 Gregg Kelly
14 President/CEO
15 Orthodyne Electronics Corporation

14 FOR COMPLAINANT:

15
16 SEPT. 25, 2008
17 Date

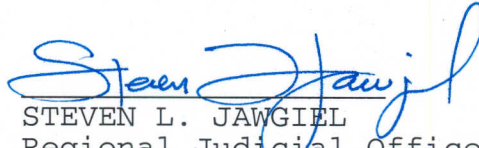
16 
17 _____
18 Enrique Manzanilla, Director
19 Communities and Ecosystems Division
20 EPA Region 9
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1 **II. FINAL ORDER**

2 Complainant EPA Region IX and Respondent Orthodyne
3 Electronics Corporation, having entered into the foregoing
4 Consent Agreement,

5 IT IS HEREBY ORDERED that this Consent Agreement and Final
6 Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-
7 09-2008- 00 19) be entered.

8
9 09/26/08
Date


STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection
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-09-2008-⁰⁰¹⁹, was filed this day the Regional Hearing
5 Clerk, United States Environmental Protection Agency, Region IX,
6 75 Hawthorne Street, San Francisco, California 94105, and that a
7 true and correct copy thereof was placed in the United States
8 Mail, certified mail, return receipt requested, addressed to the
9 following address:

10
11 Mr. Gregg Kelly
12 President/Chief Executive Officer
13 Orthodyne Electronics Corporation
14 16700 Red Hill Avenue
15 Irvine, CA 92606

16 Certified Mail No. 7007 3020 0000 9806 7906

17
18 Date: SEP 26 2008 / ___ / ___ / 2008

19 By: *Danielle E. Carr*
20 DANIELLE CARR
21 Regional Hearing Clerk
22 United States Environmental
23 Protection Agency, Region IX
24 75 Hawthorne Avenue
25 San Francisco, California 94105-3143
26
27
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