

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Jeffrey C. Norcross 9/30/11  
Name of Case Attorney Date

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

Case Docket Number EPCRA-01-2011-0060

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:

Dirt Blue Enterprises, LLC  
83 Middle Road  
Amesbury, MA 01913

Total Dollar Amount of Receivable \$ 2,000 Due Date: 10/30/11

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

RECEIVED  
2011 SEP 30 P 3:36

EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK

**BY HAND**

September 30, 2011

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency-Region 1  
5 Post Office Square, Suite 100  
Mail Code ORA18-1  
Boston, MA 02109-3912

Re: *In the Matter of: DirtGlue Enterprises, LLC*, Docket No. EPCRA-01-2011-0060

Dear Ms. Santiago:

Enclosed are the original and one copy of a Consent Agreement and Final Order for filing in the above-referenced matter.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey C. Norcross".

Jeffrey C. Norcross  
Paralegal

Enclosure

cc: Timothy J. Schiavoni, Esq.  
Chris Rider, DirtGlue Enterprises, LLC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

RECEIVED

2011 SEP 30 P 3:37

\_\_\_\_\_  
In the Matter of: )  
)  
DIRTGLUE ENTERPRISES, LLC )  
83 Middle Road )  
Amesbury, Massachusetts 01913 )  
)  
Respondent )  
)  
Proceeding under Section 325(c) of the Emergency )  
Planning and Community Right-to-Know Act, )  
42 U.S.C. § 11045(c) )  
\_\_\_\_\_ )

EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK

Docket Number  
EPCRA-01-2011-0060

**CONSENT AGREEMENT AND FINAL ORDER**

Complainant, the Enforcement Manager of the Office of Environmental Stewardship, the United States Environmental Protection Agency (“EPA”), Region 1 (“Region 1”) alleges that Respondent, DirtGlue Enterprises, LLC, (“DirtGlue”) has violated Section 312(a) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §11022(a), (also known as the Emergency Planning and Community Right-to-Know Act (“EPCRA”)) and the federal regulations promulgated thereunder.

Region 1 and DirtGlue 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) of EPA’s revised “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule,”

(40 C.F.R. Part 22), Region 1 and DirtGlue agree to simultaneously commence and settle this action by the issuance of this CAFO.

Therefore, before any hearing, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of Region 1 and DirtGlue, it is hereby ordered and adjudged as follows:

**I. Statutory and Regulatory Authority**

1. Under Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20 and 370.40, any facility that is required to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act of 1970 (“OSHA”) and regulations promulgated thereunder must prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II form) to the Local Emergency Planning Committee (“LEPC”), the State Emergency Response Commission (“SERC”), and the local fire department. The Tier I or Tier II form must be submitted annually on or before March 1 and is required to contain information reflecting the preceding calendar year.
2. Section 325(c) of EPCRA authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation for violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and regulations promulgated thereunder. Pursuant to the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, and 40 C.F.R. § 19.4, violations that occurred after January 12, 2009 are subject to a penalty of up to \$37,500 per day of violation.

## II. GENERAL ALLEGATIONS

3. Respondent DirtGlue Enterprises, LLC, is a limited liability company organized under the laws of the Commonwealth of Massachusetts with a place of business located at 83 Middle Road, Amesbury, Massachusetts and, therefore, is a “person” within the meaning of: Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and 40 C.F.R. § 370.66.
4. At all times relevant to this Complaint, Respondent was the owner or operator of a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.
5. At all times relevant to this Complaint, approximately 15,000 pounds of Terradry (also-known-as Organo-Silane, a proprietary blend of sodium silicate and potassium silicate in water) was present at the Facility.

## III. VIOLATION

6. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44 and 370.45, require owners or operators of facilities where chemicals are present in amounts greater than specified threshold quantities and who are required to prepare or have available a MSDS for a hazardous chemical under OSHA, to complete and submit a Tier I or Tier II form covering all hazardous chemicals present at the facility at any one time during the preceding calendar year. The form is required to be submitted annually on or before March 1 of the following year to the LEPC, the SERC, and the local fire department. According to Massachusetts SERC Policy #5, dated February 26, 1998, facilities in Massachusetts must submit Tier II forms instead of Tier I forms.

7. At all times relevant to the violations cited in this Complaint, Respondent stored TerraDry, also-known-as Organo-Silane, at the Facility. TerraDry is a “hazardous chemical” as defined by OSHA, 29 U.S.C. §§ 651 et seq., in its regulations at 29 C.F.R. § 1910.1200(c).
8. During calendar year 2009, the average amount of Terradry present at the Facility was 15,000 pounds.
9. Pursuant to 40 C.F.R. § 370.10(a)(2)(i), the minimum threshold level for Tier II reporting for TerraDry (as a “hazardous chemical”) is 10,000 pounds.
10. During calendar year 2009, Respondent’s inventory of TerraDry at any one time exceeded 10,000 pounds.
11. At all times relevant to the violations cited in this Complaint, Respondent was required, pursuant to OSHA and the regulations promulgated thereunder, to prepare or have available a MSDS for the TerraDry present at the Facility.
12. Therefore, Respondent was subject to the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44 and 370.45 for calendar year 2009.
13. Accordingly, on or before March 1 of 2010, Respondent was required to prepare and submit to the SERC, LEPC and the local fire department Tier II forms containing chemical information for calendar year 2009.
14. Based on a review of documents collected during an EPA inspection conducted on November 2, 2010, and other information obtained by EPA, EPA determined that:
  - a. Respondent did not submit Tier II Emergency and Hazardous Chemical

Inventory forms for the calendar year 2009 to the SERC, LEPC and local fire department.

- b. Respondent's failure to prepare and submit Tier II forms on or before the reporting deadline of March 1, 2010 for calendar year 2009 constitutes a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44 and 370.45.

#### IV. TERMS OF SETTLEMENT

15. DirtGlue certifies that it has corrected the alleged violations cited in this CAFO and will operate the Facility in compliance with Section 312(a) of EPCRA and the federal regulations promulgated thereunder.
16. The provisions of this CAFO shall apply to and be binding on DirtGlue.
17. DirtGlue agrees that EPA has jurisdiction over the subject matter alleged in this CAFO, and hereby waives any defenses it might have as to jurisdiction and venue.
18. DirtGlue acknowledges that it has been informed of its right to request a hearing in this proceeding, and hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in this CAFO.
19. Without admitting or denying the facts and violations alleged in this CAFO, DirtGlue consents to the terms and issuance of this CAFO and agrees to the payment of a civil penalty for the purpose of settlement of this action.
20. 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, Complainant has determined that it is fair and proper that

DirtGlue pay a civil penalty in the amount of \$2,000 to settle the alleged EPCRA violation.

21. DirtGlue shall pay the civil penalty set forth in this CAFO no later than thirty (30) calendar days after the effective date of this CAFO.
22. The effective date of this CAFO shall be the date on which it is filed with the Regional Hearing Clerk.
23. Respondent shall make payment by cashier's or certified check, payable to "Treasurer, United States of America," and referencing the title and docket number of the action ("In the Matter of DirtGlue Enterprises, Inc., EPCRA-01-2011-0060").
24. Payments shall be mailed via regular U.S. Postal Service mail, to:

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

25. Respondent shall simultaneously submit a copy of the check referenced in paragraph 23 above to the following:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code: ORA18-1)  
Boston, Massachusetts 02109-3912  
and

Jeffrey C. Norcross  
Paralegal  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code: OES04-2)  
Boston, Massachusetts 02109-3912

26. 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 partial payment of the civil penalty, plus interest thereon, is not paid when due without demand, the penalty plus accrued interest shall be payable with additional interest from the original due date to the date of payment, at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. §901.9(b)(2). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. §901.9(d).

27. The penalty provided for herein is a penalty within the meaning of 26 U.S.C. § 162(f) and is not tax deductible for purposes of federal, state, or local law.
28. The provisions of this CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.
29. Respondent shall bear its own costs and attorneys fees in this proceeding.
30. This CAFO shall not limit the authority of the United States to enforce the underlying substantive legal requirements of this administrative penalty assessment, whether administratively or judicially.
31. This CAFO does not constitute a waiver, suspension or modification of the requirements of EPCRA, 42 U.S.C. §§ 11001 et seq., or any regulations promulgated thereunder.
32. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA for the violations 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 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.

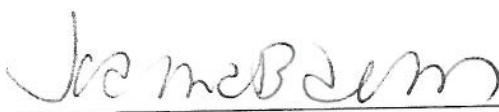
33. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this CAFO and legally bind Respondent.

**For DirtGlue Enterprises, LLC**

  
\_\_\_\_\_

Date: \_\_\_\_\_

**For U.S. EPA, Region 1**

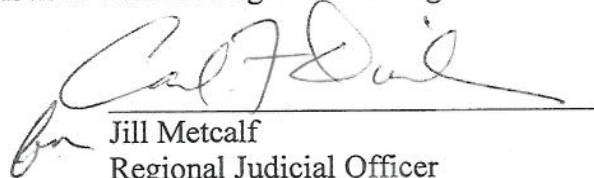
  
\_\_\_\_\_  
Joanna Jerison, Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1

Date: 9/30/11

**VII. FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

Date: 9/30/11

  
\_\_\_\_\_  
Jill Metcalf  
Regional Judicial Officer  
U.S. EPA, Region 1

**In the Matter of DirtGlue Enterprises, LLC,  
Docket Number: EPCRA-01-2011-0060**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

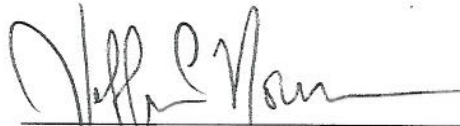
Original and One Copy,  
By Hand:

Wanda Santiago, Regional Hearing Clerk  
U.S. Environment Protection Agency, Region I  
5 Post Office Square, Suite 100 (ORA18-1)  
Boston, MA 02109-3912

One Copy, by Certified Mail,  
Return Receipt Requested:

Mr. Chris Rider  
DirtGlue Enterprises LLC  
83 Middle Road  
Amesbury, Massachusetts 01913

Date: 9/30/2011



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Jeffrey C. Norcross  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (OES04-4)  
Boston, Massachusetts 02109-3912  
Telephone: (617) 918-1839  
Fax: (617) 918-0839