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1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION 9

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U.S. EPA. REGION IX
REGIONAL HEARING CLERK

4 In the Matter of:

5 M. Argueso & Co., Inc.
6 4650 SW Macadam Ave. Suite 312
7 Portland, Oregon 97239

Respondent

Docket No. EPCRA-09-2007-00 14

CONSENT AGREEMENT AND FINAL

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

8 I. CONSENT AGREEMENT

- 9
- 10 1. The Director of the Communities and Ecosystems Division
11 ("Complainant"), United States Environmental Protection
12 Agency ("EPA") Region 9, and M. Argueso & Co., Inc.
13 ("Respondent" or "Argueso") 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 Delaware.

- 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.

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 2628 River Avenue, Rosemead, 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 2899 - chemicals and
23 chemical preparations, not elsewhere classified.

24 10. During calendar years 2004 and 2005, Respondent otherwise
25 used approximately the following amounts (in pounds) of 4,4'-
26 Isopropylidenediphenol, a chemical listed under 40 C.F.R.
27

1 § 372.65:

2 Year	<u>4,4'-Isopropylidenediphenol</u>
2004	13,272
2005	56,380

- 3
- 4 11. The quantities of 4,4'-Isopropylidenediphenol that the
5 Respondent otherwise used at the Facility during calendar
6 years 2004 and 2005 exceeded the established threshold of
7 10,000 pounds set forth at 40 C.F.R. § 372.25(b).
- 8 12. Respondent failed to submit Form Rs for 4,4'-
9 Isopropylidenediphenol otherwise used at the Facility to the
10 EPA Administrator and to the State of California on or before
11 July 1, 2005 for calendar year 2004, and on or before July 1,
12 2006 for calendar year 2005, as required by Section 313(a) of
13 EPCRA and 40 C.F.R. § 372.30.
- 14 13. Respondent's failure to submit Form Rs on or before July 1 of
15 2005 and 2006 for 4,4'-Isopropylidenediphenol otherwise used
16 at the Facility during the preceding calendar year,
17 constitutes two violations of Section 313 of EPCRA and 40
18 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 eight
21 thousand seven hundred dollars (\$8,700) 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
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- 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
27

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 Argueso has satisfied the criteria
10 of the Audit Policy is based upon documentation that Argueso
11 has provided to establish that it satisfies these criteria.

12 Complainant and Respondent agree that, should any material
13 fact upon which Complainant relied in making its finding
14 subsequently prove to be other than as represented by
15 Argueso, 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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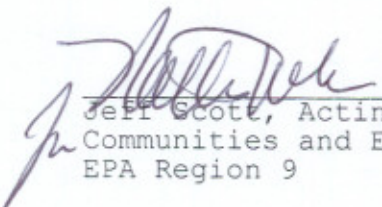
1 specifically reserves any and all authorities, rights, and
2 remedies available to it (including, but not limited to,
3 injunctive or other equitable relief or criminal sanctions)
4 to address any violation of this CAFO or any violation not
5 specifically alleged in this CAFO.

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.

18 FOR COMPLAINANT:

19
20 8/7/07
Date


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

22 FOR RESPONDENT:

23
24 6/29/07
Date


James Mallory, General Manager
M. Argueso & Co., Inc.


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II. FINAL ORDER

Complainant EPA Region 9 and Respondent M. Argueso & Co.,
Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this Consent Agreement and Final
Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-
09-2007-0014) be entered.

08/09/07
Date


Steven L. Jawgier
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-09-2007-**0014**, was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail, return receipt requested, addressed to the following address:

James Mallory, General Manager
M. Argueso & Co., Inc.
2628 River Avenue
Rosemead, CA 91770-3395

Certified Return Receipt No.: 7003 3110 0006 1997 8212

Date: 8/10/2007 By: Danielle E. Carr

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