

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

In the Matter of  
  
Corning Incorporated,  
  
Canton, New York,  
  
Respondent.

Docket No. CERCLA-02-2018-2004

CONSENT AGREEMENT AND  
FINAL ORDER

**PRELIMINARY STATEMENT**

1. This Consent Agreement and Final Order (“CAFO”) is issued pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended, 42 U.S.C. § 9609. The Complainant in this action is the Director of the Emergency and Remedial Response Division of the United States Environmental Protection Agency, Region 2 (“EPA”), who has been delegated the authority to institute this action. Respondent is Corning Incorporated (“Respondent”).

2. Pursuant to Section 22.13(b) of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations (“C.F.R.”) § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

3. It has been agreed by the parties that settling this matter by entering into this Consent Agreement pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Respondent without litigation.

**STATUTORY BACKGROUND**

4. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility, as defined under CERCLA, to immediately notify the National Response Center (“NRC”), as soon as he or she has knowledge of any release (other than a federally permitted release) of a hazardous substance from the facility in a quantity equal to or greater than the reportable quantity.

5. Section 103(a) of CERCLA provides a mechanism to alert federal agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel, and the local community. A delay or failure to notify could seriously hamper the government’s response to an emergency and pose serious threats to human health and the environment.

6. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), provides for the assessment of penalties for violations of Section 103 of CERCLA.

### **FINDINGS OF FACT**

7. At all times relevant to this Consent Agreement, Respondent was the owner and/or operator of a facility, located at 334 County Route 16, Canton, New York (the "Facility").

8. The Facility is a glass manufacturing facility. Chlorine is used in the glass manufacturing process.

9. At approximately 7:40 a.m. on April 28, 2016, a release of chlorine began at the Facility (the "Release"). Elevated temperatures in a chlorine cylinder at the Facility resulted in the release of the contents of the cylinder through the cylinder's safety relief valve. The total quantity released was 85 pounds.

10. Respondent reported the Release to the National Response Center on April 28, 2016 at 4:50 p.m.

11. By letter dated July 21, 2016, EPA issued an information request letter to Respondent regarding the Release. By letter dated August 8, 2016, Respondent submitted a response to EPA.

### **EPA CONCLUSIONS OF LAW**

12. Respondent is, and at all times relevant to this Consent Agreement was, a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

13. At all times relevant to this Consent Agreement, Respondent was the owner and operator of the Facility, which is a "facility," as defined in Section 101(9) of CERCLA.

14. Chlorine (CAS# 7782-50-5) is a "hazardous substance," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and as listed in 40 C.F.R. Part 302, Table 302.4. The reportable quantity for chlorine is 10 pounds, as set forth in 40 C.F.R. Part 302, Table 302.4.

15. The Release was a "release" as defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). The Release was not a federally permitted release, as defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

16. Respondent failed to immediately notify the NRC of the Release. Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

### **CONSENT AGREEMENT**

17. Based upon the foregoing, and pursuant to Section 109 of CERCLA and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and

the Revocation/Termination or Suspension of Permits” (40 C.F.R. Part 22), Complainant and Respondent hereby agree on the following provisions.

18. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent (a) admits the jurisdictional basis for this matter, (b) admits the Findings of Fact set forth above, (c) consents to the assessment of the civil penalty set forth below, (d) consents to the issuance of the attached Final Order, and (e) waives its right to contest the allegations and its right to appeal the attached Final Order.

19. Respondent neither admits nor denies the EPA Conclusions of Law set forth above.

20. Respondent hereby certifies that it is now in compliance with all applicable requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

21. Respondent agrees to pay a civil penalty in the amount of twenty-six thousand five hundred dollars (\$26,500.00). Payment of the penalty must be received by EPA on or before thirty (30) calendar days after the date of signature of the Final Order at the end of this document (hereinafter referred to as the “due date”). Respondent agrees to make such payment on or before the due date. Payment shall be made by Electronic Fund Transfer (“EFT”). Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment: \$26,500.00
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment:  
68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”
- f. Name of Respondent: Corning Incorporated
- g. Case Number: CERCLA-02-2018-2004
- h. Reason: Payment of CERCLA penalties to the Superfund

Respondent shall promptly furnish reasonable proof that such payment has been made to:

Jean Regna  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 17th Floor  
New York, New York 10007

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007.

22. The penalties specified in Paragraph 21, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or federal taxes.

23. If Respondent fails to make full and complete payment of the civil penalty that it is required to pay by this Consent Agreement, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection.

- a. Interest. If Respondent fails to make payment, or makes partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment due date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment due date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed CERCLA penalty on time, in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and Respondent also agrees to pay a 6% per annum penalty which will also be applied on any principal amount not paid within ninety (90) days of the due date.

#### **General Provisions**

24. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full settlement of Respondent's alleged violations of CERCLA set forth above in the Findings of Fact and EPA Conclusions of Law.

25. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, State, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State, or local permit. Except for the alleged violations resolved herein, compliance with this Consent Agreement 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.

26. Respondent's full compliance with this Consent Agreement shall resolve Respondent's liability for federal civil penalties for the violation and facts described above in the Findings of Fact and EPA Conclusions of Law. This Consent Agreement shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

27. This Consent Agreement and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding except in an action, suit, or proceeding to enforce this Consent Agreement or any of its terms and conditions.

28. Respondent explicitly waives any right to request a hearing as to the matters addressed herein and/or contest any allegations in this Consent Agreement and explicitly waives any right to appeal the attached Final Order.

29. Each party hereto shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement.

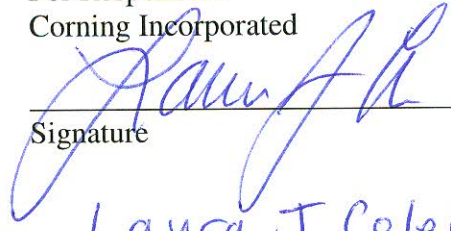
30. This Consent Agreement shall be binding on Respondent and its successors and assignees.

31. Each of the undersigned representatives to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of the Consent Agreement and to bind that party to it.

32. Respondent consents to service upon Respondent of a copy of this Consent Agreement by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

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For Respondent  
Corning Incorporated

  
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Signature

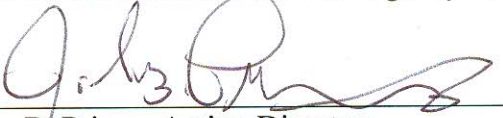
Date: 2/12/18

Laura J. Coleman  
Name (Printed or Typed)

Vice President - Legal  
Title (Printed or Typed)

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For Complainant  
U.S. Environmental Protection Agency, Region 2



John B. Prince, Acting Director  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region 2

Date: 3/6/2018

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**FINAL ORDER**

As Regional Judicial Officer of the EPA, Region 2, I ratify the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent to this matter, is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.

*Helen Ferrara*

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Helen Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency – Region 2  
290 Broadway  
New York, New York 10007-1866

Date: March 12, 2018



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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**CERTIFICATE OF SERVICE**

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order, in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Office of Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

Copy by Certified Mail -  
Return Receipt Requested

Scott M. Turner, Esq.  
Nixon Peabody LLP  
1300 Clinton Square  
Rochester, NY 14604-1792

Dated:  
New York, New York

*Santha Grant* 3/14/18