

FILED

2007 MAY 15 PM 2:32

REGIONAL HEARING CLERK

1 NANCY J. MARVEL  
Regional Counsel  
2  
3 EDGAR P. CORAL  
Assistant Regional Counsel  
U. S. Environmental Protection Agency  
4 Region IX  
75 Hawthorne Street  
5 San Francisco, CA 94105  
(415) 972-3898  
6

7 UNITED STATES  
8 ENVIRONMENTAL PROTECTION AGENCY  
9 REGION IX

10 In the matter of:

) Docket No. EPCRA-9-2007 0002

11  
12 Silpak, Inc.,

)  
)  
) CONSENT AGREEMENT  
) AND FINAL ORDER  
) pursuant to 40 C.F.R. §§ 22.13(b),  
) 22.18(b)(2), and 22.18(b)(3)  
)

13 Respondent.  
14

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX ("EPA"), and Silpak,  
17 Inc. (the "Respondent") agree to settle this matter and consent to the entry of this Consent  
18 Agreement and Final Order ("CAFO").

19 A. AUTHORITY AND PARTIES

20 1. This is a civil administrative action brought under Section 325(c) of the Emergency  
21 Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for  
22 assessment of a civil administrative penalty against Respondent for its failure to submit a timely,  
23 complete and correct Toxic Chemical Release Inventory Form for calendar years 2003 and 2004  
24 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing regulations set  
25 forth at 40 C.F.R. Part 372.

26 2. Complainant is the Director of the Communities and Ecosystems Division in EPA,  
27 Region IX (the "Complainant"). Pursuant to EPA Delegation Order Number 22-3-A, dated May  
28 11, 1994, the Administrator of EPA has delegated the authority to file this action under EPCRA

1 to the Regional Administrator of EPA, Region IX, and pursuant to EPA Regional Order Number  
2 R1260.14B, dated May 19, 2005, the Regional Administrator re-delegated that authority to  
3 Complainant.

4 **B. STATUTORY AND REGULATORY BASIS**

5 3. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA  
6 promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for  
7 the submission of information relating to the release of toxic chemicals under EPCRA Section  
8 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.

9 4. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R.  
10 §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and  
11 the State in which the facility is located a chemical release form published under Section 313(g)  
12 of EPCRA for each toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R.  
13 § 372.65 that it manufactured, processed or otherwise used if: (i) the facility has ten or more full-  
14 time employees; (ii) the facility is in Standard Industrial Classification Code 2821; and (iii) the  
15 facility manufactured, processed or otherwise used during the calendar year the listed toxic  
16 chemical in excess of the threshold quantity established under Section 313(f) of EPCRA and 40  
17 C.F.R. § 372.25.

18 5. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a  
19 uniform Toxic Chemical Release Inventory Form (hereinafter referred to as a "Form R") for  
20 facilities that are subject to the reporting requirements of Section 313. Sections 313(a) and (b) of  
21 EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. § 372.30(d), provide that each Form R for  
22 activities involving a toxic chemical that occurred during a calendar year must be submitted on or  
23 before July 1 of the next year.

24 **C. ALLEGED VIOLATIONS**

25 6. Respondent is a corporation and therefore fits within the definition of a "person," as  
26 provided in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

27 7. At all times relevant to this matter, Respondent owned and operated a facility (the  
28 "Facility") in the business of plastic and resin manufacturing for industrial arts, located at 470

1 East Bonita Avenue in Pomona, California, that fits within the definition of a "facility," as  
2 provided in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

3 8. At all times relevant to this matter, the Facility had 10 or more "full-time employees,"  
4 as that term is defined at 40 C.F.R. § 372.3.

5 9. At all times relevant to this matter, the Facility was in Standard Industrial  
6 Classification Code 2821.

7 10. During the calendar year 2003, Respondent "processed," as that term is defined in 40  
8 C.F.R. § 372.3, approximately 57,125 pounds of diisocyanates, a toxic chemical listed under 40  
9 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for reporting "processing"  
10 of that chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40  
11 C.F.R. § 372.25.

12 11. During the calendar year 2004, Respondent "processed," as that term is defined in 40  
13 C.F.R. § 372.3, approximately 47,678 pounds of diisocyanates, a toxic chemical listed under 40  
14 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for reporting "processing"  
15 of that chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40  
16 C.F.R. § 372.25.

17 12. Respondent was required to submit a Form R for diisocyanates to EPA and the State  
18 of California for calendar year 2003 on or before July 1, 2004.

19 13. Respondent was required to submit a Form R for diisocyanates to EPA and the State  
20 of California for calendar year 2004 on or before July 1, 2005.

21 14. Respondent failed to timely submit the Form Rs required of it to EPA and the State  
22 of California for calendar years 2003 and 2004, and thus violated Section 313 of EPCRA, 42  
23 U.S.C. § 11023, and 40 C.F.R. Part 372.

24 15. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty  
25 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any  
26 requirement of Section 313 shall be liable to the United States for a civil penalty in an amount  
27 not to exceed \$32,500 for each such violation occurring on or after March 15, 2004. Under the  
28 Enforcement Response Policy for Section 313 of EPCRA, dated August 10, 1992, and the Civil

1 Monetary Penalty Inflation Adjustment Rule, the violations cited above would merit a total  
2 gravity-based civil penalty of TWELVE THOUSAND AND NINE HUNDRED DOLLARS  
3 (\$12,900), given the nature, circumstances, and extent of the violations alleged.

4 D. RESPONDENT'S ADMISSIONS

5 16. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
6 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over  
7 Respondent; (ii) admits the specific factual allegations contained in Section I.C of this CAFO;  
8 (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil  
9 administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the  
10 allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order  
11 contained in this CAFO.

12 E. CIVIL ADMINISTRATIVE PENALTY

13 17. In settlement of the violations specifically alleged in Section I.C of this CAFO,  
14 Respondent shall pay a civil administrative penalty of NINE THOUSAND AND THIRTY  
15 DOLLARS (\$9,030). Respondent shall pay this civil penalty within thirty (30) days of the  
16 effective date of this CAFO, shall make this payment by cashier's or certified check payable to  
17 the "Treasurer, United States of America," and shall send the check by certified mail, return  
18 receipt requested, to the following address:

19 U.S. Environmental Protection Agency, Region IX  
20 P.O. Box 371099M  
21 Pittsburgh, PA 15251

22 Respondent shall accompany its payment with a transmittal letter identifying the case name, the  
23 case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty,

24 Respondent shall send a copy of the check and transmittal letter to the following addresses:

25 Regional Hearing Clerk  
26 Office of Regional Counsel (ORC-1)  
27 U.S. Environmental Protection Agency, Region IX  
28 75 Hawthorne Street  
San Francisco, CA 94105

Russell Frazer  
Communities and Ecosystems Division (CED-4)

1 U.S. Environmental Protection Agency, Region IX  
2 75 Hawthorne Street  
3 San Francisco, CA 94105

4 Edgar Coral  
5 Office of Regional Counsel (ORC-2)  
6 U.S. Environmental Protection Agency, Region IX  
7 75 Hawthorne Street  
8 San Francisco, CA 94105

9 18. Respondent shall not use payment of any penalty under this CAFO as a tax deduction  
10 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to  
11 use such payment as a tax deduction.

12 19. If Respondent fails to pay the assessed civil administrative penalty of NINE  
13 THOUSAND AND THIRTY DOLLARS (\$9,030), as identified in Paragraph 17, by the deadline  
14 specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA. The  
15 amount of the stipulated penalty will be THREE THOUSAND, EIGHT HUNDRED, AND  
16 SEVENTY DOLLARS (\$3,870), and will be immediately due and payable on the day following  
17 the deadline specified in Paragraph 17, together with the initially assessed civil administrative  
18 penalty of NINE THOUSAND AND THIRTY DOLLARS (\$9,030), resulting in a total penalty  
19 due of TWELVE THOUSAND AND NINE HUNDRED DOLLARS (\$12,900). Failure to pay  
20 the civil administrative penalty specified in Paragraph 17 by the deadline specified in that  
21 Paragraph may also lead to any or all of the following actions:

22 (1) EPA may refer the debt to a credit reporting agency, a collection  
23 agency, or to the Department of Justice for filing of a collection action in the appropriate United  
24 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and  
25 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such  
26 collection proceeding.

27 (2) The U.S. Government may collect the debt by administrative offset  
28 (i.e., the withholding of money payable by the United States to, or held by the United States for, a  
person to satisfy the debt the person owes the U.S. Government), which includes, but is not  
limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40  
C.F.R. §§ 13(C) and 13(H).

1 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke  
2 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing  
3 business with EPA or engaging in programs EPA sponsors or funds.

4 (4) Pursuant to 31 U.S.C. § 3701 et seq. and 40 C.F.R. Part 13, the U.S.  
5 Government may assess interest, administrative handling charges, and nonpayment penalties  
6 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
7 civil administrative penalty specified in Paragraph 17 by the deadline specified in that Paragraph.

8 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.  
9 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established  
10 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
11 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
12 (30) days of the effective date of this CAFO.

13 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.  
14 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,  
15 based on either actual or average cost incurred (including both direct and indirect costs), for  
16 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

17 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)  
18 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,  
19 may be assessed on all debts more than ninety (90) days delinquent.

#### 20 F. CERTIFICATION OF COMPLIANCE

21 20. In executing this CAFO, Respondent certifies that (1) it has now fully completed and  
22 submitted to EPA all of the required Toxic Chemical Release Inventory Forms in compliance  
23 with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder;  
24 and (2) it has complied with all other EPCRA requirements at all facilities under its control.

#### 25 G. RETENTION OF RIGHTS

26 21. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's  
27 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C  
28 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil

1 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,  
2 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal  
3 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it  
4 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address  
5 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

6 22. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's  
7 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,  
8 and permits.

9 **H. ATTORNEYS' FEES AND COSTS**

10 23. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in  
11 this proceeding.

12 **I. EFFECTIVE DATE**

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


16 **J. BINDING EFFECT**

17 25. The undersigned representative of Complainant and the undersigned representative of  
18 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions  
19 of this CAFO and to bind the party he or she represents to this CAFO.

20 26. The provisions of this CAFO shall apply to and be binding upon Respondent and its  
21 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,  
22 and assigns.

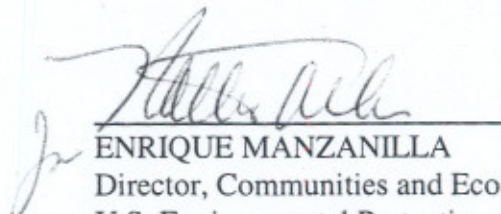
1 FOR RESPONDENT SILPAK, INC.:

2  
3 3-28-7  
4 DATE

  
PHIL GALARNEAU  
President  
Silpak, Inc.  
470 E. Bonita Ave.  
Pomona, CA 91767

5  
6  
7  
8  
9 FOR COMPLAINANT EPA:

10  
11 5-14-2007  
12 DATE

  
ENRIQUE MANZANILLA  
Director, Communities and Ecosystems Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105



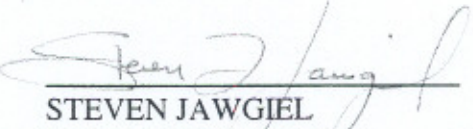
1 II. FINAL ORDER

2 EPA and Silpak, Inc. having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-9-2007-<sup>0002</sup> ) be

4 entered, and Respondent shall pay a civil administrative penalty in the amount of NINE  
5 THOUSAND AND THIRTY DOLLARS (\$9,030), and comply with the terms and conditions set  
6 forth in the Consent Agreement.  
7

8  
9  
10  
11 05/15/07  
12 DATE

13   
14 STEVEN JAWGIEL  
15 Regional Judicial Officer  
16 U.S. Environmental Protection Agency, Region IX  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I certify that the original fully executed Consent Agreement and Final Order ("CAFO"),  
Docket Number EPCRA-09-2007-0002, was filed this day with the Regional Hearing Clerk, U.S.  
EPA, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, and that a true and  
correct copy of the CAFO was sent to Respondent at the following address:

Mr. Phil Galarneau  
President  
Silpak, Inc.  
470 East Bonita Avenue  
Pomona, CA 91767

Certified Mail No:7005 3110 0002 8247 1773

Danielle E. Carr

Danielle Carr  
Regional Hearing Clerk  
Region IX, EPA  
Office of Regional Counsel

5-16-07

Date