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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

2007 MAY 25 AM 11:50

REGIONAL HEARING CLERK

In the Matter of:

Docket No. EPCRA-09-2007-0003

BJB Enterprises, Inc.

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

Respondent

I. CONSENT AGREEMENT

1. The Director of the Communities and Ecosystems Division ("Complainant"), United States Environmental Protection Agency ("EPA") Region 9, and BJB Enterprises, Inc. ("Respondent" or "BJB Enterprises") agree to settle this matter and consent to the filing 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 located at 14791 Franklin Avenue in Tustin, California.
4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023

1 and 11048, EPA promulgated the Toxic Chemical Release  
2 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part  
3 372.

4 5. Section 313(a) of EPCRA, as implemented by 40 C.F.R. §  
5 372.30, provides that an owner or operator of a facility that  
6 meets the criteria set forth in EPCRA Section 313(b) and 40  
7 C.F.R. § 372.22, is required to submit annually to the  
8 Administrator of EPA and to the State in which the facility  
9 is located, no later than July 1st of each year, a toxic  
10 chemical release inventory reporting form (hereinafter "Form  
11 R") for each toxic chemical listed under 40 C.F.R. § 372.65  
12 that was manufactured, processed or otherwise used at the  
13 facility during the preceding calendar year in quantities  
14 exceeding the thresholds established under EPCRA Section  
15 313(f) and 40 C.F.R. §§ 372.25 and 372.28.

16 6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that  
17 the requirements of Section 313(a) and 40 C.F.R. § 372.30  
18 apply to an owner and operator of a facility that has 10 or  
19 more full-time employees; that is in a Standard Industrial  
20 Classification major group codes 10 (except 1011, 1081, and  
21 1094), 12 (except 1241), 20 through 39; industry codes 4911,  
22 4931, or 4939 (limited to facilities that combust coal and/or  
23 oil for the purpose of generating power for distribution in  
24 commerce), or 4953 (limited to facilities regulated under the  
25 Resource Conservation and Recovery Act, subtitle C, 42 U.S.C.  
26 §6921 et seq.), or 5169, 5171, or 7389 (limited to facilities  
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1 primarily engaged in solvent recovery services on a contract  
2 or fee basis); and that manufactures, processes, or otherwise  
3 uses one or more toxic chemicals listed under Section 313(c)  
4 of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of  
5 the applicable thresholds established under EPCRA Section  
6 313(f) and 40 C.F.R. § 372.25.

7 7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R.  
8 Part 19 authorize EPA to assess a penalty of up to \$27,500  
9 for each violation of Section 313 of EPCRA that occurred on  
10 or after January 31, 1997 but before March 15, 2004 and up to  
11 \$32,500 for each violation of Section 313 of EPCRA that  
12 occurred on or after March 15, 2004.

13 8. Respondent is a "person," as that term is defined by Section  
14 329(7) of EPCRA.

15 9. At all times relevant to this CAFO, Respondent was the owner  
16 and operator of a "facility," as that term is defined by  
17 Section 329(4) of EPCRA and 40 C.F.R. § 372.3, located at  
18 14791 Franklin Avenue, Tustin, California 92780 ("Facility");  
19 the Facility had 10 or more "full-time employees," as that  
20 term is defined at 40 C.F.R. § 372.3; and the Facility was  
21 classified in Standard Industrial Classification Code 2821 -  
22 plastics materials, synthetic resins, and non-vulcanizable  
23 elastomers.

24 10. During calendar years 2001 through 2003, Respondent processed  
25 approximately the following amounts (in pounds) of mercury  
26 compounds and diisocyanates, a chemicals listed under 40  
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1 C.F.R § 372.65:

| 2 <u>Year</u> | <u>Mercury Compounds</u> | <u>Dissocyanates</u> |
|---------------|--------------------------|----------------------|
| 3 2001        | 800                      | 175,000              |
| 4 2002        | 700                      | 175,000              |
| 5 2003        | 700                      | 175,000              |

6 11. The quantity of mercury compounds that Respondent processed  
7 at the Facility during calendar years 2001 through 2003  
8 exceeds the established threshold of 10 pounds set forth at  
9 40 C.F.R. § 372.28(a). The quantity of diisocyanates that  
10 Respondent processed at the Facility during calendar years  
11 2001 through 2003 exceeds the established threshold of 25,000  
12 pounds set forth at 40 C.F.R. § 372.25(a).

13 12. Respondent failed to submit a Form R for mercury compounds  
14 and diisocyanates processed at the Facility to the EPA  
15 Administrator and to the State of California on or before  
16 July 1, 2002 for calendar year 2001; on or before July 1,  
17 2003 for calendar year 2002; and on or before July 1, 2004  
18 for calendar year 2003 as required by Section 313(a) of EPCRA  
19 and 40 C.F.R. § 372.30.

20 13. Respondent's failure to submit Form Rs on or before July 1 of  
21 2002, 2003 and 2004 for mercury compounds and diisocyanates  
22 processed at the Facility during the preceding calendar years  
23 constitutes six (6) violations of Section 313 of EPCRA and 40  
24 C.F.R. § 372.30.

25 14. The EPA Enforcement Response Policy for EPCRA Section 313  
26 dated August 10, 1992 provides for a penalty of seventy-six  
27 thousand seven hundred and seventy dollars (\$76,770) for  
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1 these violations.

2 15. In executing this CAFO, Respondent certifies that (1) it has  
3 now fully completed and submitted to EPA all of the required  
4 Form Rs in compliance with Section 313 of EPCRA and the  
5 regulations promulgated to implement Section 313; and (2) it  
6 has complied with all other EPCRA requirements at all  
7 facilities under its control.

8 16. In accordance with 40 C.F.R. § 22.18(b)(2) and for the  
9 purpose of this proceeding, Respondent (i) admits that EPA  
10 has jurisdiction over the subject matter of this CAFO and  
11 over Respondent; (ii) admits the violations and facts alleged  
12 in this CAFO; (iii) consents to the terms of this CAFO; (iv)  
13 waives any right to contest the allegations in this CAFO; and  
14 (v) waives the right to appeal the proposed final order  
15 contained in this CAFO.

16 17. The terms of this CAFO constitute a full settlement of the  
17 civil administrative matter filed under the docket number  
18 above.

19 18. EPA's Small Business Compliance Policy, 65 Fed. Reg. 19630  
20 (April 11, 2000) ("Small Business Policy"), is intended to  
21 promote environmental compliance among small businesses  
22 (defined as 100 or fewer employees) by providing incentives  
23 for voluntary discovery, prompt disclosure and expeditious  
24 correction of violations. When a small businesses satisfies  
25 the criteria of the Small Business Policy, EPA will exercise  
26 its enforcement discretion to eliminate gravity-based

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1 penalties. The criteria that must be satisfied under the  
2 Small Business Policy are voluntary discovery, prompt  
3 disclosure, independent discovery and disclosure, expeditious  
4 correction and remediation, prevention of recurrence, no  
5 repeat violations, other violations excluded, and  
6 cooperation.

7 19. Complainant has determined that Respondent has satisfied all  
8 of the criteria under the Small Business Policy and thus  
9 qualifies for the elimination of civil penalties in this  
10 matter. Accordingly, the civil penalty assessed in this  
11 matter is zero (\$0) dollars.

12 20. Complainant's finding that BJB Enterprises has satisfied the  
13 criteria of the Small Business Policy is based upon  
14 documentation that BJB Enterprises has provided to establish  
15 that it satisfies these criteria. Complainant and Respondent  
16 agree that, should any material fact upon which Complainant  
17 relied in making its finding subsequently prove to be other  
18 than as represented by BJB Enterprises, this CAFO may be  
19 voided in whole or in part.

20 21. Nothing in this CAFO modifies, affects, exempts or relieves  
21 Respondent's duty to comply with all applicable provisions of  
22 EPCRA and other federal, state or local laws and permits. In  
23 accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves  
24 Respondent's liability for federal civil penalties for the  
25 violations and facts specifically alleged in this CAFO.

26 Nothing in this CAFO is intended to or shall be construed to  
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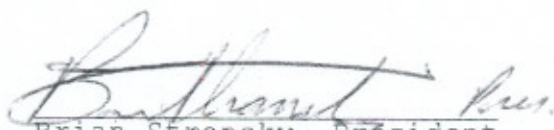
1 resolve (i) any civil liability for violations of any  
2 provision of any federal, state, or local law, statute,  
3 regulation, rule, ordinance, or permit not specifically  
4 alleged in this CAFO; or (ii) any criminal liability. EPA  
5 specifically reserves any and all authorities, rights, and  
6 remedies available to it (including, but not limited to,  
7 injunctive or other equitable relief or criminal sanctions)  
8 to address any violation of this CAFO or any violation not  
9 specifically alleged in this CAFO.

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

15 23. The provisions of this CAFO shall be binding upon Respondent,  
16 its agents, successors or assigns. Respondent's obligations  
17 under this Consent Agreement, if any, shall end when  
18 Respondent has performed all of the terms of the Consent  
19 Agreement in accordance with the Final Order. Complainant  
20 and Respondent consent to the entry of the CAFO without  
21 further notice.

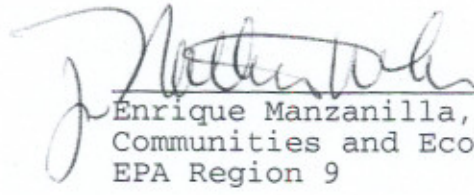
22  
23 FOR RESPONDENT:

24  
25 April 23, 2007  
Date

  
26 Brian Stransky, President  
BJB Enterprises, Inc.

1 FOR COMPLAINANT:  
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3 5/18/2007  
4 Date

  
Enrique Manzanilla, Director  
Communities and Ecosystems Division  
EPA Region 9

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24 In the matter of: BJB Enterprises, Inc.  
25 EPCRA-09-2007-  
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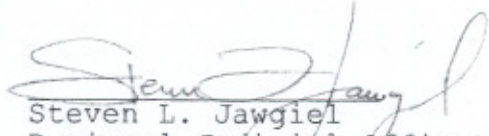
1 **II. FINAL ORDER**

2 Complainant EPA Region IX and Respondent BJB Enterprises  
3 Company, Inc., having entered into the foregoing Consent  
4 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 09-2007-0003) be entered.

8

9 05/25/07  
Date

  
Steven L. Jawgiel  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency, Region 9

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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-09-2007-0003, was hand delivered to the Regional  
5 Hearing Clerk, United States Environmental Protection Agency,  
6 Region 9, 75 Hawthorne Street, San Francisco, California 94105,  
7 and that a true and correct copy thereof was placed in the United  
8 States Mail, certified mail, return receipt requested, addressed  
9 to the following address:

10  
11 Mr. Brian Stransky, President  
12 BJB Enterprises, Inc.  
13 14791 Franklin Avenue  
Tustin, CA 92780

14 Certified Return Receipt No. 7000 1670 0009 3120 8086  
15

16  
17 Date: 5/25/2007

By:

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

Certified Mail No. 7000 1670 0009 3120 8086  
Return Receipt Requested

Re: EPCRA-09-2007-000 5

Date: MAY 25 2007

Brian Stransky, President  
BJB Enterprises, Inc.  
14791 Franklin Avenue  
Tustin, CA 92780

Dear Mr. Stransky:

Enclosed please find your copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R. Sections 22.13 and 22.18 which contains the terms of the settlement reached as a result of your voluntary disclosure under EPA's Small Business Compliance Policy ("Small Business Policy"), 65 Fed. Reg. 19630 (April 11, 2000). Your completion of all actions enumerated in the Consent Agreement and Final Order will close this case. If you have any questions, please contact Patricia Maravilla at (415) 947-4177.

Sincerely,

A handwritten signature in black ink, appearing to read "Enrique Manzanilla".

Enrique Manzanilla, Director  
Communities and Ecosystems Division

Enclosure