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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

RANACO CORPORATION
4345 E. Irvington Road
Tucson, AZ 85714

Respondent.

Docket No. 0003
EPCRA-09-2008

CONSENT AGREEMENT
AND
FINAL ORDER
PURSUANT TO 40 CFR
SECTIONS 22.13 and 22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Ranaco Corporation, a corporation organized under the laws of the state of Arizona.

1 2. This CA/FO, pursuant to 40 CFR §§ 22.13(b) and 22.18(b), simultaneously commences
2 and concludes this proceeding, wherein EPA alleges that Respondent violated
3 Section 312 of EPCRA, 42 U.S.C. § 11022, and its implementing regulations.
4

5 B. STATUTORY AND REGULATORY FRAMEWORK

6 3. Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 CFR § 370.25, require the owner or
7 operator of a facility that is required to prepare or have available a material safety data
8 sheet ("MSDS") for a hazardous chemical under Occupational Safety and Health Act of
9 1970 ("OSHA"), 29 U.S.C. § 651 *et seq.*, to submit an annual emergency and hazardous
10 chemical inventory form ("Inventory Form") if hazardous chemicals are present at the
11 facility during the preceding calendar year in quantities above the threshold levels
12 established in 40 CFR § 370.20(b). The Inventory Form must be submitted by March 1
13 of each year to the State Emergency Response Commission ("SERC"), the Local
14 Emergency Planning Committee ("LEPC"), and the fire department(s) having jurisdiction
15 over the facility.
16

17 C. GENERAL ALLEGATIONS

18 4. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess civil penalties
19 for any violation of Section 312 of EPCRA, 42 U.S.C. § 11022.
20 5. The Administrator of EPA has delegated enforcement authority under EPCRA to the
21 Regional Administrators by EPA delegation 22-3-A, dated May 11, 1994. The Regional
22 Administrator, EPA Region IX, in turn, has delegated the authority to enforce

1 EPCRA §§ 302, 303, 304, 311, 312, 322, and 323 to the Director of the Superfund
2 Division with delegation R9 1290.18.

3 6. Respondent owns and operates Ranaco Corporation located at 4345 East Irvington Road,
4 in Pima County, Tucson, Arizona 85714 (the "Facility").

5 7. On or before December 31, 2002, Respondent produced, used, or distributed:
6 formaldehyde, Chemical Abstract Service Registry ("CAS") Number 50-00-0, phenol,
7 CAS Number 108-95-2, propylene glycol, CAS Number 57-55-6, and Delta Sol
8 Preservative (a mixture containing 9% propylene glycol), CAS Number 57-55-6, at the
9 Facility.

10 8. In 2002 a maximum amount of 559 pounds ("lbs") of formaldehyde, 4,989 lbs of phenol,
11 439,700 lbs of Delta Sol Preservative, and 15,241 lbs of propylene glycol was present at
12 the Facility.

13 9. In 2003 a maximum amount of 932 lbs of formaldehyde, 3,175 lbs of phenol, 265,061 lbs
14 of Delta Sol Preservative, and 12,384 lbs of propylene glycol was present at the Facility.

15 10. In 2004 a maximum amount of 5,780 lbs of formaldehyde, 4,989 lbs of phenol, 118,984
16 lbs of Delta Sol Preservative, and 14,765 lbs of propylene glycol was present at the
17 Facility.

18 11. In 2005 a maximum amount of 2,051 lbs of formaldehyde, 9,071 lbs of phenol, 367,395
19 lbs of Delta Sol Preservative, and 23,339 lbs of propylene glycol was present at the
20 Facility.

21 12. In 2006 a maximum amount of 2,051 lbs of formaldehyde, 13,607 lbs of phenol, 314,624
22 lbs of Delta Sol Preservative, and 38,580 lbs of propylene glycol was present at the
23 Facility.

1 13. In a letter dated November 16, 2007, Respondent voluntarily disclosed to EPA that it had
2 not submitted Inventory Forms for the calendar years 2002, 2003, 2004, 2005 and 2006
3 as required by Section 312 of EPCRA, 42 U.S.C. § 11022.

4 14. The Arizona SERC is comprised of members from state agencies with roles in hazardous
5 material emergency management, Arizona's 15 LEPCs, as well as representatives from
6 local government and industry.

7 15. The Pima County LEPC is the LEPC with jurisdiction over the Facility.

8 16. The Tucson Rural Metro Fire Department is the fire department having jurisdiction over
9 the Facility.

10 17. On November 16, 2007, Respondent submitted Inventory Forms containing information
11 on chemicals used at the Facility during calendar years 2002, 2003, 2004, 2005 and 2006
12 to the Arizona SERC, the Pima County LEPC, and the Tucson Rural Metro Fire
13 Department.

14 D. ALLEGED VIOLATIONS

15 COUNT I

16 (Failure to Timely Submit Annual Chemical Inventory Forms)

17 18. Paragraphs 1 through 17 above are incorporated herein by this reference as if they were
18 set forth here in their entirety.

19 19. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C.
20 § 11049(4).

21 20. At all times relevant to this CA/FO, Respondent has been the owner or operator of the
22 Facility.

21. At all times relevant to this CA/FO, Respondent has been a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
22. Respondent is required to prepare or have available an MSDS under 29 CFR § 1910.1200(g) because it is engaged in a business where chemicals are either used or distributed, or are produced for use or distribution.
23. Formaldehyde, phenol and propylene glycol are "hazardous chemicals" as defined in Section 312(c) of EPCRA, 42 U.S.C. § 11022(c).
24. Between 2002 and 2006 Respondent used formaldehyde, phenol and propylene glycol at the Facility in quantities above the applicable thresholds established in 40 CFR § 370.20(b).
25. Respondent's failure to submit Inventory Forms containing information on hazardous chemicals present at the Facility during calendar years 2002, 2003, 2004, 2005 and 2006 to the SERC, the LEPC, and the appropriate fire department on or before March 1 of 2003, 2004, 2005, 2006 and 2007 is a violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

E. CIVIL PENALTY

26. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as adjusted by the Debt Collection Improvement Act of 1996, *see* 40 CFR Part 19, authorizes a civil penalty of up to \$27,500 per day for each day a violation of EPCRA occurs after January 30, 1997. For violations that occur on or after March 15, 2004, a civil administrative penalty of \$32,500 per day is authorized.

- 1 27. Under EPA's Final Policy Statement on *Incentives for Self-Policing: Discovery,*
2 *Disclosures, Correction and Prevention of Violations*, 65 Fed. Reg. 19618, ("Audit
3 Policy"), effective May 11, 2000, EPA has the discretion to eliminate or substantially
4 reduce the gravity component of a penalty if it determines that a respondent has satisfied
5 the nine conditions set forth in the Audit Policy.
- 6 28. The nine conditions a respondent must satisfy under the Audit Policy are: (1) systematic
7 discovery of the violation through an environmental audit or a compliance management
8 system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure
9 independent of government or third party plaintiff; (5) correction and remediation; (6)
10 prevention of recurrence; (7) no repeat violations; (8) other violations excluded; and (9)
11 cooperation.
- 12 29. Regulated entities deemed by EPA to have satisfied the nine conditions in the Audit
13 Policy will not face any gravity-based civil penalties. If the regulated entity meets all but
14 the first condition (Systematic Discovery), EPA will reduce the gravity-based penalties
15 by 75%. EPA reserves the right to collect any economic benefit realized as a result of the
16 violation disclosed.
- 17 30. EPA has concluded that Respondent has, as described herein, satisfied the nine conditions
18 outlined in the Audit Policy and therefore will not face gravity-based civil penalties.
- 19 31. Systematic Discovery of the Violation Through an Environmental Audit or a Compliance
20 Management System. Respondent discovered the violations as the result of an
21 environmental audit. In 2007, Ranaco Corporation established a formal, documented,
22 routine audit program that includes internal reviews of the Facility's environmental
23 compliance. The violations were discovered on October 30, 2007, during an

environmental audit of the Facility conducted by Bart Adams, President of Summit Environmental Inventory Services, an environmental consulting firm hired by Ranaco Corporation.

32. Voluntary Discovery. Respondent's discovery of the violations was voluntary and did not result from any legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement.

33. Prompt Disclosure. Respondent fully disclosed the violations to EPA within 21 days after it discovered the violations had, or may have, occurred. The violations were discovered on October 30, 2007, and were reported to the EPA in a letter dated November 16, 2007, and in a response to additional information requested letter dated January 23, 2008.

34. Discovery and Disclosure Independent of Government or Third Party Plaintiff.

Respondent discovered and disclosed the violations to EPA prior to any federal, state, or local agency inspection or investigation, notice of citizen suit, the filing of a third-party complaint, the reporting of the violations by a "whistle-blower," or imminent discovery by a regulatory agency.

35. Correction and Remediation. Respondent submitted the Inventory Forms for calendar years 2002, 2003, 2004, 2005 and 2006 to the SERC, the LEPC, and the Tucson Rural Metro Fire Department on November 16, 2007. The disclosed violations did not cause any environmental or human harm.

36. Prevent Recurrence. Respondent has told EPA that it plans to take the following steps to prevent a recurrence of any violation of Section 312 of EPCRA, 42 U.S.C. § 11022:

Respondent has implemented a procedure for conducting formal, documented, routine

audits of its environmental compliance, and developed a compliance calendar identifying required compliance events.

37. No Repeat Violations. Respondent has not had any other occurrence of these specific violations at the Facility within the past three years or at any other facility owned or operated by Respondent within the past five years.

38. Other Violations Excluded. The violations did not result in serious actual harm, present an imminent and substantial endangerment to public health or the environment, or violate the specific terms of any judicial or administrative order or consent agreement.

39. Cooperation. Respondent has fully cooperated with EPA in determining the applicability of the Audit Policy.

40. In signing this CA/FO, Respondent certifies under penalty of law that the information submitted to EPA in the letters dated November 16, 2007, and January 23, 2008, disclosing violations of EPCRA Section 312, 42 U.S.C. § 11022, and the information in paragraphs 31-39 of this CA/FO are based upon true, accurate, and complete information that the signatory can verify personally, or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

41. EPA has determined that the violations resulted in an insignificant amount of economic benefit.

42. For the reasons set forth above, all penalties based on the gravity of the violations and the savings of economic costs related to the failure to timely submit the Inventory Forms are waived.

1 F. ADMISSIONS AND WAIVERS

2 43. For purposes of this proceeding, Respondent admits the jurisdictional allegations above,
3 and agrees that the EPA Administrator and Region IX Administrator have jurisdiction
4 and authority over the subject matter of the action commenced in this CA/FO and over
5 Respondent pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 CFR §§ 22.4
6 and 22.34. Respondent consents to and agrees not to contest EPA's jurisdiction and
7 authority to enter into and issue this CA/FO and to enforce its terms. Further,
8 Respondent will not contest EPA's jurisdiction and authority to compel compliance with
9 this CA/FO in any enforcement proceedings, either administrative or judicial, or to
10 impose sanctions for violations of this CA/FO.

11 44. Respondent admits any allegations of fact or law set forth in Section C and D of this
12 CA/FO. Respondent hereby waives any rights it may have to contest the allegations set
13 forth in this CA/FO and waives any rights it may have to a hearing on any issue relating
14 to the factual allegations or legal conclusions set forth in this CA/FO, including without
15 limitation a hearing pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. Respondent
16 hereby consents to the issuance of this CA/FO without adjudication and waives any rights
17 it may have to appeal the Final Order attached to this Consent Agreement and made part
18 of this CA/FO.

19
20 G. PARTIES BOUND

21 45. This CA/FO shall apply to and be binding upon Respondent and its agents, successors,
22 and assigns and upon all persons acting under or for Respondent. This CA/FO shall
23 constitute full settlement of the violations alleged herein.

1 46. No change in ownership or corporate, partnership, or legal status relating to the Facility
2 will in any way alter Respondent's obligations and responsibilities under this CA/FO.

3 47. The undersigned representative of Respondent hereby certifies that he or she is fully
4 authorized by Respondent to enter into this CA/FO, to execute it, and to legally bind
5 Respondent to it.
6

7 H. PAYMENT OF CIVIL PENALTY

8 48. Because EPA has concluded that Respondent has, as described herein, satisfied the nine
9 conditions set forth in the Audit Policy, Complainant has not sought gravity-based
10 penalties for the violations alleged.

11 49. Based on Complainant's determination that any economic benefit derived from the
12 violations was insignificant, Complainant has not sought to collect any economic benefit
13 penalty for the violations alleged.

14 50. Complainant and Respondent hereby consent to the assessment of a civil penalty in the
15 amount of ZERO DOLLARS (\$0) in settlement of the violations set forth in Section D
16 above. This CA/FO constitutes a settlement of the civil and administrative penalty claims
17 of the United States for the violations of Section 312 of EPCRA specifically alleged in
18 Section D above.

19 51. The effect of the settlement described above is conditional upon the accuracy of
20 Respondent's representations to EPA as memorialized in paragraphs 31-39 of this CA/FO
21 and Respondent's self-disclosure dated November 16, 2007.
22

1 I. RESERVATION OF RIGHTS

2 52. EPA expressly reserves all rights and defenses that it may have.

3 53. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and
4 remedies, both legal and equitable, including without limitation, the right to require
5 Respondent to perform tasks in addition to those required by this CA/FO and the right to
6 assess penalties under Section 325 of EPCRA, 42 U.S.C. § 11045, or take other
7 appropriate action, in the event that Respondent fails to comply with any of the
8 requirements of this CA/FO.

9 54. This CA/FO shall not be construed as a covenant not to sue, a release, waiver, or
10 limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has
11 under EPCRA or any other statutory, regulatory, or common law enforcement authority
12 of the United States, except as otherwise set forth herein.

13 55. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise
14 preclude EPA from taking additional enforcement actions should EPA determine that
15 such actions are warranted, except as they relate to Respondent's liability for federal civil
16 penalties for the specific alleged violations set forth in Section D of this CA/FO.

17 56. This CA/FO is not intended to be, nor shall it be construed as, a permit. This CA/FO
18 does not relieve Respondent of any obligation to obtain and comply with any local, state,
19 or federal permits.

20 57. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released
21 from liability, if any, for the costs of any response actions taken by EPA. EPA reserves
22 its right to seek reimbursement from Respondent for any response costs incurred by the
23 United States that may result or arise from the alleged counts set forth in Section D.

1
2 J. OTHER CLAIMS

3 58. Nothing in this CA/FO shall constitute or be construed as a release from any other claim,
4 cause of action, or demand in law or equity by or against any person, firm, partnership,
5 entity, or corporation for any liability it may have arising out of or relating in any way to
6 the generation, storage, treatment, handling, transportation, release, or disposal of any
7 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or
8 contaminants found at, taken to, or taken from the Facility.
9

10 K. MISCELLANEOUS

11 59. This CA/FO may be amended or modified only by written agreement executed by both
12 EPA and Respondent.

13 60. The headings in this CA/FO are for convenience of reference only and shall not affect
14 interpretation of this CA/FO.

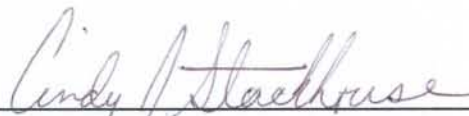
15 61. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
16 proceeding.

17 62. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on
18 the date that the Final Order contained in this CA/FO, having been approved and issued
19 by either the Regional Judicial Officer or Regional Administrator, is filed.
20
21

1 IT IS SO AGREED,
2
3
4

3/6/08

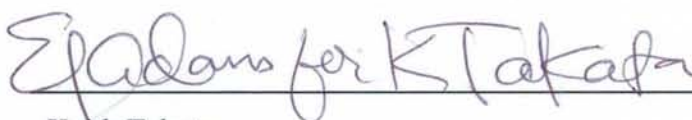
Date



Cindy Stackhouse
President
Ranaco Corporation

4/1/08

Date



Keith Takata
Director
Superfund Division
United States Environmental Protection Agency,
Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. EPCRA-09-2008- 0003) be entered and that Respondent pay a civil penalty in the amount of ZERO DOLLARS (\$0).

04 / 07 / 08
Date

Steven Jawgiel
Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

Docket No. EPCRA-09-2008-

I hereby certify that the original copy of the foregoing Consent Agreement and Final Order is being filed with the Regional Hearing Clerk, Region IX, and that a copy will be sent by Certified Mail, Return Receipt Requested, to:

Cindy Stackhouse
President
Ranaco Corporation
4345 E. Irvington Road
Tucson, AZ 85714

April 8, 2008
Date

Danielle E. Carr
Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105