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EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF: )  
)  
Pacific Functional Fluids LLC ) Docket No. EPCRA-10-2011-0014  
)  
Tacoma, Washington ) CONSENT AGREEMENT AND FINAL  
) ORDER  
)  
Respondent. )  
)  
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I. AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer.

1.2. Pursuant to Section 325 of EPCRA, and in accordance with § 22.13(b) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” EPA hereby issues and Pacific Functional Fluids LLC (“Respondent”) hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. § 22.13(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. Respondent owns and operates the Pacific Functional Fluids facility in Tacoma, Washington, located at 2244 Port of Tacoma Road (“the Facility”).

2.3. A concise statement of the factual basis for alleging violations of EPCRA, together with specific references to the provisions of the Act and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

## III. ALLEGATIONS

3.1. Respondent is a limited liability company formed in the State of Washington.

3.2. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

3.3. The Facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

3.4. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility that is required by the Occupational Safety and Health Administration (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical to submit a completed Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II as described in 40 C.F.R. Part 370) to the state emergency response commission (SERC), the local emergency planning committee

(LEPC), and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter. The form must contain the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(e), covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

3.6. Acetic Acid, Ethylene Glycol, and Potassium Hydroxide are listed as toxic and hazardous substances under OSHA regulations at 29 C.F.R. § 1910.1000, Table Z-1.

3.7. OSHA requires Respondent to prepare, or have available, an MSDS for Acetic Acid, Ethylene Glycol, and Potassium Hydroxide.

3.9. Acetic Acid, Ethylene Glycol, and Potassium Hydroxide are each listed as a CERCLA "hazardous substance" under 40 C.F.R. Part 302, Table 302.4, with a threshold planning quantity ("TPQ") of 10,000 pounds, as provided at 40 C.F.R. Part 355, Appendix A.

3.10. During at least one period of time during calendar year 2007, Acetic Acid, Ethylene Glycol, and Potassium Hydroxide were present at the Facility in an amount equal to or greater than the TPQ of 10,000 pounds.

3.11. Respondent did not submit to the SERC, LEPC, and fire department an Emergency and Hazardous Chemical Inventory Form including Acetic Acid, Ethylene Glycol, and Potassium Hydroxide for calendar year 2007 by March 1, 2008.

3.12. Under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), the EPA Administrator may assess a civil penalty for each day of violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

#### IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.10, each party shall bear its own costs in bringing or defending this action.

4.6. Based on Respondent's willingness to settle this matter without litigation, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, and in accordance with the *Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act*, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is twenty one thousand, two hundred thirty five dollars (\$21,235.00).

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty cited in Paragraph 4.6. according to the following schedule: a payment of \$2,124.00 within thirty (30) days of the effective date of the CAFO, then a payment of \$9,747 twelve (12) months from the effective date of the CAFO, and a final payment of \$9,651 twenty four (24) months from the effective date of the CAFO. If the business of Pacific Functional Fluids is sold or ownership interests are transferred during the period of the installment payment schedule, the remaining principal and accrued interest shall be due and payable as of the effective date of the sale or transfer. Respondent may pay any portion of the civil penalty earlier than the payment schedule set forth in this paragraph.

4.8. Payments under this CAFO shall be made by cashier's check or certified check payable to the order of "U.S. Treasury" and mailed to the addresses below:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent shall note on the check the title and docket number of this case.

4.9. Respondent shall submit a photocopy of the check described above to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Suite 900  
1200 Sixth Avenue, Mail Stop ORC-158  
Seattle, Washington 98101

Suzanne Powers  
U.S. Environmental Protection Agency  
Region 10  
Washington Operations Office  
300 Desmond Drive S.E., Suite 102  
Lacey, Washington 98503

4.10. Should Respondent fail to make any payment of the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action under EPCRA Section 325(f), 42 U.S.C. § 11045(f), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.11. Should Respondent fail to make any payment of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.12. Respondent shall purchase and install a new, state-of-the-art secondary containment system for all rail car slots. This system is designed to capture and channel all spills, including catastrophic releases, by an interlocking system of Polyethylene pans with grates and connecting pipes to one of PFF's designated receiving tanks, allowing containment and recovery of a "worst case" release. The ability to contain a release from an entire rail car would prevent significant damage to the environment and property, and provide a high level of safety for emergency response personnel. The estimated project cost is \$31,261. Respondent shall implement and complete the SEP within 90 days of the Effective Date of this CAFO in accordance with all provisions described in this Consent Agreement and Attachment A to this CAFO. The parties agree that this SEP is intended to secure significant environmental benefits by reducing the risk from a release of hazardous chemicals into the environment.

4.13. Respondent's deadline to perform the SEP shall be excused or extended if such performance is prevented or delayed solely by events that constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the reasonable control of Respondent, including its employees, agents, consultants, and contractors, that could not be overcome by due diligence and that delays or prevents the performance of the SEP within the

specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits.

4.14. The cost to Respondent of implementing the SEP in accordance with the specifications set forth in Paragraph 4.12. and as further detailed in Attachment A of this CAFO shall be not less than \$31,261.00 Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

4.15. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, under a grant, or as injunctive relief in any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. For Federal income tax purposes, Respondent agrees that it will neither capitalize in inventory or basis nor deduct any cost or expenditures incurred in performing this SEP.

4.16. Respondent shall submit a SEP Completion Report to EPA within 120 days of the effective date of the CAFO. The SEP Completion Report shall contain the following information:

- a. A description of the SEP as implemented;
- b. Itemized costs, documented by copies of purchase orders and receipts or cancelled checks;
- c. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
- d. A description of the environmental and public health benefits resulting from implementation of the SEP.

4.17. Respondent agrees that failure to submit the SEP Completion Report required by Paragraph 4.16, shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to this CAFO.

4.18. Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports required by this CAFO by first class mail, overnight mail, or hand delivery to:

Suzanne Powers  
U.S. Environmental Protection Agency  
Region 10  
Washington Operations Office  
300 Desmond Drive SE, Suite 102  
Lacey, WA 98503

4.19. Respondent agrees that EPA may inspect Respondent's records related to the SEP at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

4.20. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this CAFO until the SEP Completion Report is accepted pursuant to Paragraph 4.21., and Respondent shall provide the documentation of any such underlying data to EPA within 15 days of a written request for such information. In all documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this CAFO, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such a document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

4.21. Following receipt of the SEP Completion Report described in Paragraph 4.16, EPA will do one of the following: (i) accept the Report; or (ii) reject the Report, notify Respondent, in writing, of deficiencies in the Report and provide Respondent an additional 30 days in which to correct any deficiencies. If Respondent fails to cure the deficiencies within the 30 days, EPA may reject the Report and seek stipulated penalties in accordance with Paragraph 4.23.

4.22. In the event the SEP is not completed as contemplated by this CAFO and this failure was not caused solely by events which constitute a Force Majeure as defined by Paragraph 4.13., then stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 4.23. Schedules herein may be extended based upon mutual written agreement of the parties.

4.23. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. For a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty in the amount of \$31,261 less the amount actually expended on the SEP.

b. For failure to submit the SEP Completion Report as required by Paragraph 4.16., Respondent shall pay a stipulated penalty in the amount \$100.00 for each day after the report is due until the report is received by EPA, up to a maximum of \$5,000.

4.24. Stipulated penalties under Paragraph 4.23. shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of satisfactory completion of the activity, subject to the maximum set forth in Paragraph 4.23.b.

4.25. Respondent shall pay stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraph 4.8. Interest and late charges shall be paid as stated in Paragraph 4.11.

4.26. Except as provided in Paragraph 4.30., nothing in the CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

4.27. Any public statement, oral or written, in print, film, or other media made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the "Emergency Planning and Community Right-to-Know Act."

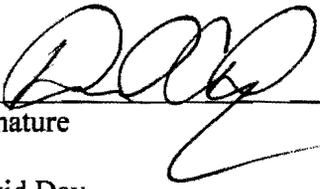
4.28. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

4.29. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.

4.30. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III.

STIPULATED AND AGREED:

FOR PACIFIC FUNCTIONAL FLUIDS LLC

  
\_\_\_\_\_  
Signature

David Day  
Manager

Dated: 10-26-2010

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

  
\_\_\_\_\_  
Edward J. Kowalski, Director  
Office of Compliance and Enforcement

Dated: 11-5-2010

V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to EPCRA for the particular violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations and permits issued thereunder.

This Final Order shall become effective upon filing.

SO ORDERED this 8<sup>th</sup> day of November, 2010



Thomas M. Jahnke  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Pacific Functional Fluids, LLC., DOCKET NO.:** EPCRA-10-2011-0014 was filed with the Regional Hearing Clerk on November 8, 2010.

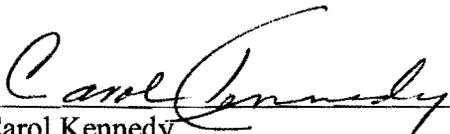
On November 9, 2010 the undersigned certifies that a true and correct copy of the document was delivered to:

Bob Hartman, Esquire  
US Environmental Protection Agency  
Suite 900  
1200 Sixth Avenue, ORC-158  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on November 9, 2010, to:

Pacific Functional Fluids, LLC  
2244 Port of Tacoma Road  
Tacoma, WA 98421-3607

DATED this 9<sup>th</sup> day of November 2010.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10