

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

MFG Chemical, Inc.
1200 Brooks Road
Dalton, Georgia
Respondent.

**CWA SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA-04-2008-5192

HEARING CLERK

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CONSENT AGREEMENT

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. MFG Chemical, Inc. ("Respondent") is a corporation organized under the laws of Georgia with a place of business located at 1200 Brooks Road, Dalton, Georgia. Respondent is a person within the meaning of Section 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

2. The Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), located at 117 Callahan Road, Dalton, Georgia ("facility").

3. Stacey Creek and Drowning Bear Creek are water bodies subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 116.3.

4. Section 311(b)(3) of the Act prohibits the discharge of hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that

have been determined may be harmful to the public health or welfare or environment of the United States.

5. For purposes of Sections 311(b)(3) and (b)(4) of the Act, discharges of hazardous substances into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or the environment of the United States are discharges of hazardous substances identified in 40 C.F.R. Part 116 in excess of the corresponding quantities listed in 40 C.F.R. Part 117.

6. On December 21, 2007, the United States Environmental Protection Agency, Region 4 ("Complainant") issued an Administrative Complaint pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), Docket No. CWA-04-2008-5192, alleging that the Respondent was in violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), and proposing a civil penalty of up to the statutory maximum of \$157,500.

7. In its Complaint, Complainant particularly alleged, and Respondent neither admits nor denies that:

a. On or about April 12, 2004, Respondent discharged 3,348 pounds of toxic allyl alcohol, which is designated as a hazardous substance in 40 C.F.R. Part 116, from its facility into or upon Stacey Creek and Downing Bear Creek and/or their adjoining shorelines.

b. Respondent's discharge, as described in the preceding subparagraph, was in excess of the quantity of such substance established in 40 C.F.R. Part 117 and

consequently was in a quantity that has been determined may be harmful under 40 C.F.R. Part 117, and therefore violated Section 311(b)(3) of the Act.

8. Respondent admits the jurisdictional allegations contained in the Complaint.

Waiver of Rights

9. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(ii) of the Act, to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. §1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

10. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

Penalty

11. Respondent consents to the assessment of a civil penalty of \$14,500.

Payment Terms

Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

12. No later than thirty (30) days after the effective date of the Final Order, the Respondent shall pay the amount of \$14,500 by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a cashier's or

certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311."

If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

If the Respondent sends payment by overnight mail, the payment shall be addressed to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson (314) 418-4087

If the Respondent sends payment by wire transfer, the payment shall be addressed to:

Federal Reserve Bank of New York
ABA - 021030004
Account - 68010727
SWIFT address - FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

13. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 4

Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

Frank Ney, Acting Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency
Region 4
SNAFC
61 Forsyth Street, SW
Atlanta, GA 30303

14. Failure by the Respondent to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

15. The provisions of the Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

16. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the Administrative Complaint.

Effective Date

17. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

MFG CHEMICAL, INC.

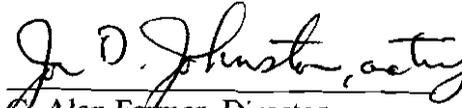
Date: 5-27-08



Charles E. Gavin, IV
President, MFG Chemical, Inc.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5/29/08



G. Alan Farmer, Director
RCRA Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

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**CWA SECTION 311 CLASS II
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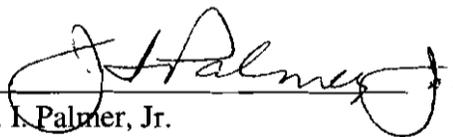
Docket No. CWA-04-2008-5192

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

Date: **MAY 29 2008**



J. I. Palmer, Jr.
Regional Administrator
United States Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

Copy by facsimile and pouch mail

Chief Administrative Law Judge Susan Biro
U.S. EPA
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Facsimile number: 202-565-0044

Copy by certified mail,
return receipt requested:

Lee A. DeHihns, III
Alston & Bird LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424

Copy by hand-delivery

Joan Redleaf Durbin
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Dated this 29 day of May, 2008.



Ms. Patricia Bullock
Regional Hearing Clerk
U.S. EPA Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street SW
Atlanta, GA 30303-8960