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1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION 9

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U.S. EPA. REGION IX
REGIONAL HEARING CLERK

4 In the Matter of:

5 Net Shapes, Inc.

6 Respondent

Docket No. EPCRA-09-2007- 0012

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

7
8 I. CONSENT AGREEMENT

- 9 1. The Director of the Communities and Ecosystems Division
10 ("Complainant"), United States Environmental Protection
11 Agency ("EPA") Region 9, and Net Shapes, Inc. ("Respondent"
12 or "Net Shapes") agree to settle this matter and consent to
13 the filing of this Consent Agreement and Final Order Pursuant
14 to 40 C.F.R. §§ 22.13 and 22.18 ("CAFO"), which
15 simultaneously commences and concludes this matter in
16 accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
- 17 2. This is a civil administrative proceeding initiated pursuant
18 to Section 325(c) of Title III of the Superfund Amendments
19 and Reauthorization Act, 42 U.S.C. § 11001 et seq., also
20 known as the Emergency Planning and Community Right-to-Know
21 Act of 1986 ("EPCRA"), for violation of Section 313 of EPCRA,
22 42 U.S.C. § 11023, and the regulations promulgated to
23 implement Section 313 at 40 C.F.R. Part 372.
- 24 3. Complainant has been duly delegated the authority to file
25 this action and sign a consent agreement settling this
26 action. Respondent is an California corporation located at
27 1336 East Francis Street in Ontario, California.
- 28 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, 375.27, 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, 372.27, and 372.28.

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 1336 E. Francis Street, Ontario, CA ("Facility"); the
19 Facility had 10 or more "full-time employees," as that term
20 is defined at 40 C.F.R. § 372.3; and the Facility was
21 classified in Standard Industrial Classification Code 3324 -
22 steel investment foundries.

23 10. During calendar years 2001 through 2004, Respondent processed
24 approximately the following amounts (in pounds) of nickel,
25 chromium, and cobalt, chemicals listed under 40 C.F.R.
26 § 372.65:

<u>Year</u>	<u>Nickel</u>	<u>Chromium</u>	<u>Cobalt</u>
2001	66,673	75,379	34,896
2002	43,324	53,659	31,757
2003	53,235	55,103	N/A
2004	46,397	53,245	29,257

11. The quantities of nickel, chromium, and cobalt that Respondent processed at the Facility during calendar years 2001, 2002, and 2004 and nickel and chromium that Respondent processed at the Facility during calendar year 2003 exceed the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25(a).
12. Respondent failed to submit Form Rs for nickel, chromium, and cobalt processed at the Facility to the EPA Administrator and to the State of California on or before July 1, 2002 for calendar year 2001, on or before July 1, 2003 for calendar year 2002, on or before July 1, 2005 for calendar year 2004, and nickel and chromium on or before July 1, 2004 for calendar year 2003 as required by Section 313(a) of EPCRA and 40 C.F.R. § 372.30.
13. Respondent's failure to submit Form Rs on or before July 1 of 2002, 2003, and 2005 for nickel, chromium, and cobalt and on or before July 1 of 2004 for nickel and chromium processed at the Facility during the preceding calendar year constitutes eleven (11) violations of Section 313 of EPCRA and 40 C.F.R. § 372.30.
14. The EPA Enforcement Response Policy for EPCRA Section 313 dated August 10, 1992 provides for a penalty of one hundred ninety-six thousand and thirteen dollars (\$196,013) for these

- 1 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 final policy statement on Incentives for Self-Policing:
20 Discovery, Disclosure, Correction and Prevention of
21 Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit
22 Policy") has several important goals, including encouraging
23 greater compliance with the laws and regulations which
24 protect human health and the environment and reducing
25 transaction costs associated with violations of the laws EPA
26 is charged with administering. If certain specified criteria
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1 are met, reductions in gravity-based penalties of up to 100%
2 are available under the Audit Policy. These criteria are (1)
3 discovery of the violation(s) through an environmental audit
4 or due diligence; (2) voluntary disclosure; (3) prompt
5 disclosure; (4) discovery and disclosure independent of
6 government or third party plaintiff; (5) correction and
7 remediation; (6) prevent recurrence; (7) no repeat
8 violations; (8) other violations excluded; and (9)
9 cooperation.

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

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

22 21. Nothing in this CAFO modifies, affects, exempts or relieves
23 Respondent's duty to comply with all applicable provisions of
24 EPCRA and other federal, state or local laws and permits. In
25 accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves
26 Respondent's liability for federal civil penalties for the
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1 violations and facts specifically alleged in this CAFO.
2 Nothing in this CAFO is intended to or shall be construed to
3 resolve (i) any civil liability for violations of any
4 provision of any federal, state, or local law, statute,
5 regulation, rule, ordinance, or permit not specifically
6 alleged in this CAFO; or (ii) any criminal liability. EPA
7 specifically reserves any and all authorities, rights, and
8 remedies available to it (including, but not limited to,
9 injunctive or other equitable relief or criminal sanctions)
10 to address any violation of this CAFO or any violation not
11 specifically alleged in this CAFO.

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

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

1 FOR RESPONDENT:

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Date

5/1/2007

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6 FOR COMPLAINANT:

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Date

7/17/2007

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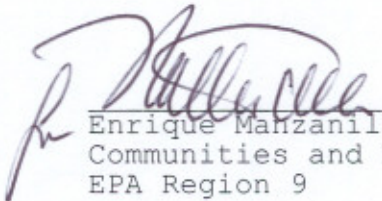
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Patricia Schwent, Controller
Net Shapes, Inc.


Enrique Manzanilla, Director
Communities and Ecosystems Division
EPA Region 9

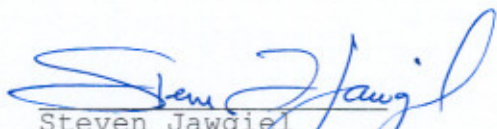
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II. FINAL ORDER

Complainant EPA Region 9 and Respondent Net Shapes, Inc.,
having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this Consent Agreement and Final
Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-
09-2007-0012) be entered.

07/18/07
Date


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

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. EPCRA-09-2007-**0012**, was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail, return receipt requested, addressed to the following address:

Patricia Schwent, Controller
Net Shapes, Inc.
1336 E. Francis Street
Ontario, CA 91761-5714

Certified Return Receipt No. 7005 3110 0002 8247 1858

Date: 7/19/2007

By: _____

Danielle E. Carr
DANIELLE CARR
Regional Hearing Clerk
United States Environmental
Protection Agency, Region 9
75 Hawthorne Avenue
San Francisco, California 94105-3143