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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

FILED

2007 JUL 19 AM 10:05

In the Matter of:

Formica Corporation

Respondent

Docket No. EPCRA-9-2007-0011

U.S. EPA REGION IX
REGIONAL HEARING CLERK
CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO 40 C.F.R.
§§ 22.13 AND 22.18

I. CONSENT AGREEMENT

1. The Director of the Communities and Ecosystems Division ("Complainant"), United States Environmental Protection Agency ("EPA") Region 9, and Formica Corporation ("Respondent" or "Formica") 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 Pennsylvania corporation with a facility at 3500 Cincinnati Avenue in Rocklin, 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
6 that meets the criteria set forth in EPCRA Section 313(b) and
7 40 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, 372.27 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
27

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 3500 Cincinnati Avenue, Rocklin, CA, 95765 ("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 3083 -
22 laminated plastics plate, sheet, and profile shapes.

23 10. During calendar years 2001 and 2002, Respondent processed
24 approximately the following amounts (in pounds) of
25 formaldehyde and phenol, chemicals listed under 40 C.F.R.
26 § 372.65:

<u>Year</u>	<u>Formaldehyde</u>	<u>Phenol</u>
2001	48,000	362,000
2002	50,000	374,000

11. The quantities of formaldehyde and phenol that Respondent processed at the Facility during calendar years 2001 and 2002 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 formaldehyde and phenol processed at the Facility to the EPA Administrator and to the State of California on or before July 1, 2002 for calendar year 2001 and on or before July 1, 2003 for calendar year 2002.

13. Respondent's failure to submit Form Rs on or before July 1 of 2002 and 2003 for formaldehyde and phenol processed at the Facility during the preceding calendar year constitutes four (4) 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 ninety-two thousand four hundred dollars (\$92,400) for these violations.

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

16. In accordance with 40 C.F.R. § 22.18(b)(2) and for the

1 purpose of this proceeding, Respondent (i) admits that EPA
2 has jurisdiction over the subject matter of this CAFO and
3 over Respondent; (ii) admits the violations and facts alleged
4 in this CAFO; (iii) consents to the terms of this CAFO; (iv)
5 waives any right to contest the allegations in this CAFO; and
6 (v) waives the right to appeal the proposed final order
7 contained in this CAFO.

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

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

2 19. Complainant has determined that Respondent has satisfied all
3 of the criteria under the Audit Policy and thus qualifies for
4 the elimination of civil penalties in this matter.
5 Accordingly, the civil penalty assessed in this matter is
6 zero (\$0) dollars.

7 20. Complainant's finding that Formica has satisfied the criteria
8 of the Audit Policy is based upon documentation that Formica
9 has provided to establish that it satisfies these criteria.
10 Complainant and Respondent agree that, should any material
11 fact upon which Complainant relied in making its finding
12 subsequently prove to be other than as represented by
13 Formica, this CAFO may be voided in whole or in part.

14 21. Nothing in this CAFO modifies, affects, exempts or relieves
15 Respondent's duty to comply with all applicable provisions of
16 EPCRA and other federal, state or local laws and permits. In
17 accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves
18 Respondent's liability for federal civil penalties for the
19 violations and facts specifically alleged in this CAFO.
20 Nothing in this CAFO is intended to or shall be construed to
21 resolve (i) any civil liability for violations of any
22 provision of any federal, state, or local law, statute,
23 regulation, rule, ordinance, or permit not specifically
24 alleged in this CAFO; or (ii) any criminal liability. EPA
25 specifically reserves any and all authorities, rights, and
26 remedies available to it (including, but not limited to,

1 injunctive or other equitable relief or criminal sanctions)
2 to address any violation of this CAFO or any violation not
3 specifically alleged in this CAFO.

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

9 23. The provisions of this CAFO shall be binding upon Respondent,
10 its agents, successors or assigns. Respondent's obligations
11 under this Consent Agreement, if any, shall end when
12 Respondent has performed all of the terms of the Consent
13 Agreement in accordance with the Final Order. Complainant
14 and Respondent consent to the entry of the CAFO without
15 further notice. Each party shall bear its own costs and
16 attorney fees in connection with the above-captioned action
17 resolved by this CAFO.
18

19 FOR RESPONDENT:

20 6/4/07

21 Date

John Foged
~~Kerry Miller, Plant Manager~~
Formica Corporation, Rocklin, CA
John Foged Global Director EHS

23 FOR COMPLAINANT:

24 7/17/07

25 Date

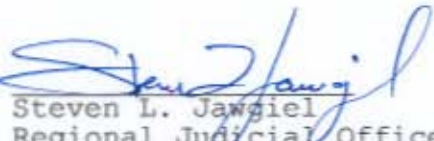
Enrique Manzanilla
Enrique Manzanilla, Director
Communities and Ecosystems Division
EPA Region 9

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2 **II. FINAL ORDER**

3 Complainant EPA Region 9 and Respondent Formica Corporation,
4 having entered into the foregoing Consent 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 9-2007-0011) be entered.

8
9 07/18/07
10 Date

11 
12 Steven L. Jaworski
13 Regional Judicial Officer
14 U.S. Environmental Protection
15 Agency, Region 9
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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-9-2007-0011, 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:

~~Larry Miller, Plant Manager~~
John Faged Global Director EHS
Formica Corporation
3500 Cincinnati Avenue
Rocklin, CA 95765

Certified Return Receipt No.

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