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U.S. EPA. REGION IX  
REGIONAL HEARING CLERK

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

<b>IN THE MATTER OF:</b>	)	<b>Docket No.</b>
	)	EPCRA-09-2012-0082
United Comb & Novelty Corporation	)	<b>CONSENT AGREEMENT</b>
33 Patriots Circle	)	
Leominster, MA 01453	)	<b>AND</b>
	)	<b>FINAL ORDER</b>
	)	<b>PURSUANT TO 40 CFR</b>
Respondent.	)	<b>SECTIONS 22.13 and 22.18</b>
	)	

**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 United Comb & Novelty Corporation, a domestic profit corporation, organized under the laws of the Commonwealth of Massachusetts.
2. This CA/FO, pursuant to 40 CFR §§ 22.13(b) and 22.18(b), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, and the implementing regulations.

03/11/2

1 B. STATUTORY AND REGULATORY FRAMEWORK

2 312 of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 CFR § 370.25, require the owner or  
3 operator of a facility that is required to prepare or have available a material safety data  
4 sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act  
5 of 1970 ("OSHA"), 29 U.S.C. § 651 *et seq.*, and to submit an annual emergency and  
6 hazardous chemical inventory form ("Inventory Form") if hazardous chemicals are  
7 present at the facility during the preceding calendar year in quantities above the threshold  
8 levels established in 40 CFR § 370.20(b). The Inventory Form must be submitted by  
9 March 1 of each year to the State Emergency Response Commission ("SERC"), the Local  
10 Emergency Planning Committee ("LEPC"), and the fire department(s) having jurisdiction  
11 over the facility. In Arizona, the SERC has established an on-line reporting system  
12 which has been established to satisfy all points of compliance, including the LEPC and  
13 the fire department.

14  
15 C. GENERAL ALLEGATIONS

- 16 4. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess civil penalties  
17 for any violation of Section 312 of EPCRA, 42 U.S.C. § 11022.
- 18 5. The Administrator of EPA has delegated enforcement authority under EPCRA to the  
19 Regional Administrators by EPA delegation 22-3-A, dated May 11, 1994. The Regional  
20 Administrator, EPA Region IX, in turn, has delegated the authority to enforce  
21 EPCRA §§ 302, 303, 304, 311, 312, 322, and 323 to the Director of the Superfund  
22 Division with delegation R9 1290.18.

- 1 6. Respondent owns and operates a facility, doing business as (“dba”) United Solutions,  
2 located at 1300 North Fiesta Boulevard, Gilbert, AZ (the “Facility”).
- 3 7. On or before December 30, 2009, Respondent produced, used, or distributed: calcium  
4 carbonate, CAS Number 1317-65-3; polyethylene-hexene copolymer, CAS Number  
5 25213-02-9; polypropylene copolymer, CAS Number 9010-79-1; and petroleum oil,  
6 refined, CAS Number 64742-54-7, hazardous chemicals as defined at the Facilities in  
7 quantities equal to or exceeding the threshold planning quantities (TPQs).
- 8 8. During the calendar year of 2009, a maximum amount of calcium carbonate at 60,000  
9 pounds, petroleum oil (refined) at 40,000 pounds, polyethylene-hexene copolymer at  
10 120,000 and hydraulic oil, polypropylene copolymer at 120,000 pounds were present at  
11 the Facility.
- 12 9. In a letter dated February 18, 2011, Respondent voluntarily disclosed to EPA that it had  
13 not submitted Inventory Forms for the chemicals described for the calendar year 2009, as  
14 required by Section 312 of EPCRA, 42 U.S.C. § 11022.
- 15 10. Respondent submitted on February 17, 2011, an Inventory Form containing information  
16 on chemicals used at the Facility during calendar year 2009 to the EPA and the Arizona  
17 SERC by letter, and to the Arizona SERC utilizing the SERC’s On-Line reporting format  
18 which is the point of compliance in Arizona for reporting to the SERC, Maricopa County  
19 LEPC and the Gilbert Fire Department following consultation with EPA and the Arizona  
20 SERC.

21 D. ALLEGED VIOLATIONS

22 COUNT I

23 (Failure to Timely Submit Annual Chemical Inventory Forms)

- 24 11. Paragraphs 1 through 10 above are incorporated herein by this reference as if they were  
25 set forth here in their entirety.

- 1 12. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C.  
2 § 11049(4).
- 3 13. At all times relevant to this CA/FO, Respondent has been the owner or operator of the  
4 Facility.
- 5 14. At all times relevant to this CA/FO, Respondent has been a "person" as defined by  
6 Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
- 7 15. Respondent is required to prepare or have available an MSDS under 29 CFR  
8 § 1910.1200(g) because it is engaged in a business where chemicals are either used or  
9 distributed, or are produced for use or distribution.
- 10 16. Calcium carbonate, polyethylene-hexene copolymer, polypropylene copolymer and  
11 petroleum oil, refined, are "hazardous chemicals" as defined under Occupational Safety  
12 and Health Act of 1970 ("OSHA"), 29 U.S.C. § 651 *et seq.*
- 13 17. During the calendar year 2009 Respondent used calcium carbonate, polyethylene-  
14 hexene copolymer, polypropylene copolymer and petroleum oil, refined, at the Facility  
15 in quantities above the applicable thresholds established in 40 CFR § 370.20(b).
- 16 18. Respondent's failure to submit Inventory Forms containing information on hazardous  
17 chemicals present at the Facility during the calendar year 2009 to the Arizona SERC on  
18 or before March 1 of 2010 is a violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

19 **E. CIVIL PENALTY**

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

1 per day is authorized. For violations that occur on or after January 12, 2009, a civil  
2 administrative penalty of \$37,500 per day is authorized.

3 20. Under EPA's Final Policy Statement on *Incentives for Self-Policing: Discovery,*  
4 *Disclosures, Correction and Prevention of Violations*, 65 Fed. Reg. 19618, ("Audit  
5 Policy"), effective May 11, 2000, EPA has the discretion to eliminate or substantially  
6 reduce the gravity component of a penalty if it determines that a respondent has satisfied  
7 the nine conditions set forth in the Audit Policy.

8 21. The nine conditions a respondent must satisfy under the Audit Policy are: (1) systematic  
9 discovery of the violation through an environmental audit or a compliance management  
10 system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure  
11 independent of government or third party plaintiff; (5) correction and remediation; (6)  
12 prevention of recurrence; (7) no repeat violations; (8) other violations excluded; and (9)  
13 cooperation.

14 22. Under the "Expanded Options for Discovery of violations" as described in the *Small*  
15 *Business Compliance Policy of May 11, 2000*, a disclosure may include a violation  
16 discovered via "any means."

17 23. Regulated entities deemed by EPA to have satisfied the nine conditions in the Audit  
18 Policy will not face any gravity-based civil penalties. If the regulated entity meets all but  
19 the first condition (Systematic Discovery), EPA will reduce the gravity-based penalties  
20 by 75%. EPA reserves the right to collect any economic benefit realized as a result of the  
21 violation disclosed.

22 24. EPA has concluded that Respondent has, as described herein, satisfied the nine conditions  
23 outlined in the Audit Policy and therefore will not face gravity-based civil penalties.

1 25. Systematic Discovery of the Violation Through an Environmental Audit or a Compliance  
2 Management System or (per the *Small Business Compliance Policy of May 11 2000*)

3 “any means”. Respondent discovered the violations on December 10, 2010, during an  
4 internal environmental audit of the Facility.

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

8 27. Prompt Disclosure. Respondent disclosed violations to EPA within 21 days after it  
9 discovered the violations had, or may have, occurred, advised that the process of  
10 verifying its EPCRA Section 312 reporting thresholds for the prior three years was  
11 ongoing and advised that there may be additional violations discovered. The initial  
12 violations were discovered on February 7, 2011, and were reported to the EPA 11 days  
13 later in a letter dated February 18, 2011.

14 28. Discovery and Disclosure Independent of Government or Third Party Plaintiff.

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

19 29. Correction and Remediation. Respondent provided the chemical hazard information and  
20 submitted the Inventory Forms for the calendar year 2009 to the Arizona SERC and to  
21 EPA by letter on February 18, 2011.

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

1 Respondent has implemented a procedure for reviewing EPCRA § 312 violations  
2 annually whereby the relevant recording thresholds and requirements will be assessed  
3 and fulfilled in advance of the March 1<sup>st</sup>, reporting date. Respondent will also continue  
4 its internal audit procedures and monitor compliance.

5 31. Repeat Violations. Respondent has not had any other occurrence of these specific  
6 violations at the Facility within the past three years or at any other facility owned or  
7 operated by Respondent within the past five years.

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

11 33. Cooperation. Respondent has fully cooperated with EPA in determining the applicability  
12 of the Audit Policy.

13 34. In signing this CA/FO, Respondent certifies under penalty of law that the information  
14 submitted to EPA in the letter dated February 18, 2011, disclosing violations of  
15 EPCRA Section 312, 42 U.S.C. § 11022, and the information in paragraphs 25 – 33 of  
16 this CA/FO are based upon true, accurate, and complete information that the signatory  
17 can verify personally, or regarding which the signatory has inquired of the person or  
18 persons directly responsible for gathering the information.

19 35. EPA has determined that the violations resulted in an insignificant amount of economic  
20 benefit.

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

1  
2 F. ADMISSIONS AND WAIVERS

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

12 38. Respondent admits any allegations of fact or law set forth in Section C and D of this  
13 CA/FO. Respondent hereby waives any rights it may have to contest the allegations set  
14 forth in this CA/FO and waives any rights it may have to a hearing on any issue relating  
15 to the factual allegations or legal conclusions set forth in this CA/FO, including without  
16 limitation a hearing pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. Respondent  
17 hereby consents to the issuance of this CA/FO without adjudication and waives any rights  
18 it may have to appeal the Final Order attached to this Consent Agreement and made part  
19 of this CA/FO.  
20

1 G. PARTIES BOUND

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

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

7 41. The undersigned representative of Respondent hereby certifies that he or she is fully  
8 authorized by Respondent to enter into this CA/FO, to execute it, and to legally bind  
9 Respondent to it.

10  
11 H. PAYMENT OF CIVIL PENALTY

12 42. Because EPA has concluded that Respondent has, as described herein, satisfied the nine  
13 conditions set forth in the Audit Policy, Complainant has not sought gravity-based  
14 penalties for the violations alleged.

15 43. Based on Complainant's determination that any economic benefit derived from the  
16 violations was insignificant, Complainant has not sought to collect any economic benefit  
17 penalty for the violations alleged.

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

1 45. The effect of the settlement described above is conditional upon the accuracy of  
2 Respondent's representations to EPA as memorialized in paragraphs 25-33 of this CA/FO  
3 and Respondent's self-disclosure dated February 18, 2011.  
4

5 I. RESERVATION OF RIGHTS

6 46. EPA expressly reserves all rights and defenses that it may have.

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

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

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

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

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

5  
6 J. OTHER CLAIMS

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

13  
14 K. MISCELLANEOUS

15 53. This CA/FO may be amended or modified only by written agreement executed by both  
16 EPA and Respondent.

17 54. The headings in this CA/FO are for convenience of reference only and shall not affect  
18 interpretation of this CA/FO.

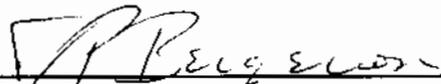
19 55. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this  
20 proceeding.

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

1 **IT IS SO AGREED,**

2 April 9, 2012

Date

  
\_\_\_\_\_  
John Bergeron  
General Manager,  
United Comb & Novelty Corporation

3  
4 13 June 2012

Date

  
\_\_\_\_\_  
for Jane Diamond  
Director  
Superfund Division  
United States Environmental Protection Agency,  
Region IX

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**FINAL ORDER**

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**IT IS HEREBY ORDERED** that this Consent Agreement and Final Order ( EPA Docket No. EPCRA-09-2012-0022) be entered and that Respondent pay a civil penalty in the amount of **ZERO DOLLARS (\$0)**.

07/10/12

Date



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

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of UNITED SOLUTIONS (Docket #: EPCRA-09-2012-0002) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

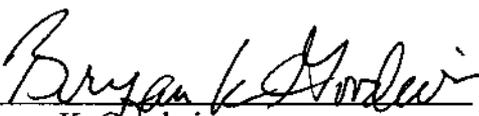
A copy was mailed via CERTIFIED MAIL to:

John P. Bergeron  
United Comb and Novelty Solutions  
P.O. Box 358  
Leominster, MA 01453

**CERTIFIED MAIL NUMBER:** 7000 1670 0009 3120 5580

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Thanne Cox, Esq.  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
Bryan K. Goodwin  
Regional Hearing Clerk  
U.S. EPA, Region IX

7/11/12  
Date



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION IX**  
75 Hawthorne Street  
San Francisco, CA 94105

**CERTIFIED MAIL NO.: 7000 1670 0009 3120 5580**  
**IN REPLY REFERENCE: United Solutions, Gilbert, AZ**

JUN 11 2012

John P. Bergeron  
United Comb and Novelty Solutions  
P.O. Box 358  
Leominster, MA 01453

Re: Consent Agreement and Final Order, Settlement of Audit Policy Disclosures

Dear Mr. Bergeron:

Please find enclosed the fully executed Consent Agreement and Final Order (CA/FO) negotiated between the United States Environmental Protection Agency, Region IX (EPA), and United Comb and Novelty Solutions, concerning their facility, United Solutions, located in Gilbert, AZ.

This CA/FO simultaneously commences and concludes the above-referenced proceeding concerning the outstanding Emergency Planning and Community Right-to-Know Act (EPCRA) compliance matters between United Comb and Novelty Solutions and EPA as alleged in the CA/FO.

If you have any questions regarding the EPCRA requirements governing operations at United Comb and Novelty Solutions, or which concern the proceedings terminated by the enclosed documents, please contact Elizabeth Cox at (415) 972-3908.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Diamond".

For Jane Diamond  
Director  
Superfund Division

Enclosures