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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

BEFORE THE ADMINISTRATOR

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

In the Matter of:

) Docket No. CAA-09-2008- 00 3 2

Imperial Toy LLC
2060 E. 7th Street

) CONSENT AGREEMENT AND FINAL
) ORDER PURSUANT TO 40 C.F.R.

Los Angeles, California 90021

) §§ 22.13 and 22.18

Proceeding under Section 113
of the Clean Air Act,
42 U.S.C. § 7413

)
)
)
)

CONSENT AGREEMENT

I. JURISDICTION AND AUTHORITY

1. Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q ("CAA" or "Act") and 40 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, the Director of the Air Division ("Complainant"), U.S. Environmental Protection Agency ("EPA"), Region 9, is simultaneously commencing and concluding this proceeding against Imperial Toy LLC ("IT" or "Respondent") through the filing of this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 ("CAFO").
2. Complainant has been duly delegated the authority to file this action and sign a consent agreement settling this action.

- 2 3. Section 113(d)(1) of the Act limits EPA's authority to issue
3 administrative complaints to matters where the total penalty
4 sought does not exceed \$270,000¹ for violations occurring
5 after March 15, 2004, and the first alleged date of violation
6 occurred no more than 12 months prior to the initiation of
7 the action, unless EPA and the Attorney General for the U.S.
8 Department of Justice ("DOJ") jointly determine that a matter
9 involving a larger penalty or longer period of violation is
10 appropriate for administrative action. Because this CAFO
11 contains alleged violations that occurred more than 12 months
12 ago, Complainant has obtained the required joint
13 determination from EPA Headquarters and DOJ.
14
15 4. This CAFO notifies Respondent of Complainant's determination
16 that Respondent has violated Section 610 of the CAA and 40
17 C.F.R. § 82.64(d).

18 **II. STATUTORY AND REGULATORY AUTHORITY**

- 19
20 5. Section 610(c) of the CAA makes it unlawful for any person to
21 sell or distribute, or to offer for sale or distribution, in
22 interstate commerce any nonessential product to which
23 regulations promulgated under Section 610 apply.
24 6. EPA promulgated 40 C.F.R. Subpart C, § 82.64(d), which

25
26 ¹As adjusted for inflation under the Debt Collection
27 Improvement Act and implementing regulations at 40 C.F.R. Part
28 19.

2 prohibits the distribution or sale, or offer for sale or
3 distribution, in interstate commerce of any product
4 identified as being nonessential in 40 C.F.R. § 82.70(a).

5 7. Products identified as nonessential in 40 C.F.R. § 82.70(a)
6 include "[a]ny aerosol product or other pressurized dispenser
7 which contains a class II substance (as designated as class
8 II in 40 CFR part 82, appendix B to subpart A)...."

9
10 8. Appendix B to Subpart A of 40 C.F.R. Part 82, lists
11 Monochlorodifluoromethane (HCFC-22) ("R-22") as a Class II
12 Controlled Substance.

13 **III. GENERAL ALLEGATIONS**

14 9. On May 13, 1969, Imperial Toy Corporation was incorporated
15 under the laws of California, and at all times relevant to
16 this CAFO was a "person" within the meaning of 40 C.F.R.
17 § 82.3.

18
19 10. On or about December 21, 2005, Imperial Toy Corporation
20 "converted out" to form IT.

21 11. On December 21, 2005, IT was incorporated under the laws of
22 California, and at all times relevant to this CAFO was a
23 "person" within the meaning of 40 C.F.R. § 82.3.

24 12. On or about December 21, 2005, IT assumed any and all civil
25 liability incurred by Imperial Toy Corporation under federal
26 environmental statutes administered by EPA.

2 13. At all times relevant to this CAFO, Imperial Toy Corporation
3 and IT were manufacturers and wholesalers of children's toys.

4 14. Pursuant to IT's certification to EPA dated May 9, 2008,
5 97,920 units of the confetti-string product, "Spray-A-
6 String," comprising lot 90069 in IT's inventory, have been
7 destroyed.

8
9 **IV. SPECIFIC ALLEGATIONS**

10 15. At all times relevant to this CAFO, the units of the
11 confetti-string product, "Spray-A-String," comprising lot
12 85022 of Imperial Toy Corporation's inventory, and lot 90069
13 of IT's inventory, were aerosol products which contained R-
14 22, a Class II Controlled Substance.

15 16. At all times relevant to this CAFO, the units of the
16 confetti-string product, "Spray-A-String," comprising lot
17 85022 of Imperial Toy Corporation's inventory, and lot 90069
18 in IT's inventory, were nonessential within the meaning of
19 40 C.F.R. § 82.70.

20
21 17. In January 2005, Imperial Toy Corporation offered for sale
22 and sold in interstate commerce 51,118 units of "Spray-A-
23 String," the confetti-string product, comprising lot 85022
24 in Imperial Toy Corporation's inventory.

25 18. Imperial Toy Corporation violated Section 610 of the CAA and
26 40 C.F.R. § 84.64(d) by offering for sale and selling in
27

2 interstate commerce 51,118 units of "Spray-A-String," the
3 confetti-string product, comprising lot 85022 in Imperial Toy
4 Corporation's inventory, in January 2005.

5 19. In April 2006 and May 2006, IT offered for sale in
6 interstate commerce 97,920 units of "Spray-A-String," the
7 confetti-string product, comprising lot 90069 in IT's
8 inventory.

9
10 20. IT violated Section 610 of the CAA and 40 C.F.R. § 84.64(d)
11 by offering for sale in interstate commerce 97,920 units of
12 "Spray-A-String," the confetti-string product, comprising
13 lot 90069 in IT's inventory, in April 2006 and May 2006.

14 **V. RESPONDENT'S ADMISSIONS**

15 21. Without trial or litigation of the issues or any
16 adjudication of the facts set forth in this CAFO, Respondent
17 (i) admits that EPA has jurisdiction over the subject matter
18 of this CAFO and over Respondent; (ii) admits the general
19 allegations contained in Section III of this CAFO; (iii)
20 neither admits nor denies the specific allegations contained
21 in Section IV of this CAFO; (iv) consents to the terms of
22 this CAFO, including the assessment of the civil
23 administrative penalty under Section VI of this CAFO; (v)
24 waives any right to contest the allegations in this CAFO;
25 and (vi) waives the right to appeal the proposed final order
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2 contained in this CAFO.

3 **VI. PENALTY ASSESSMENT**

4 22. In settlement of the violations and facts alleged in Section
5 IV of this CAFO, and in consideration of the statutory
6 penalty factors set forth in Section 113(e)(1) of the CAA,
7 embodied in EPA's Clean Air Act Stationary Source Civil
8 Penalty Policy ("Penalty Policy"), dated October 25, 1991,
9 and Appendix VIII thereto, Respondent shall pay a civil
10 administrative penalty of sixty-six thousand one hundred
11 eighty dollars (\$66,180) within 30 calendar days after the
12 effective date of this CAFO. Payment shall be made by
13 electronic fund transfer ("EFT") or cashier's or certified
14 check payable to the "Treasury, United States of America."
15 Payment by EFT shall be transferred to the following
16 address:
17

18 Federal Reserve Bank of New York
19 ABA = 021030004
20 Account = 68010727
21 SWIFT address = FRNYUS33
22 33 Liberty Street
23 New York NY 10045
24 Field Tag 4200 of the Fedwire message should read,
25 "D 68010727 Environmental Protection Agency"

26 Payment by cashier's or certified check shall be sent by
27 certified mail, return receipt requested, to the following
28 address:

US Environmental Protection Agency

1 In the Matter of: Imperial Toy LLC

2 Fines and Penalties
3 Cincinnati Finance Center
4 PO Box 979077
St. Louis, MO 63197-9000

5 23. The check shall note the case title and docket number.
6 Concurrent with the delivery of payment, Respondent shall
7 send a copy of the transfer or check to the following
8 addresses:

9 Brian P. Riedel
10 Assistant Regional Counsel (ORC-2)
11 U.S. Environmental Protection Agency
12 Region 9
75 Hawthorne Street
San Francisco, CA 94105

13 Marie Broadwell
14 Enforcement Officer
15 Enforcement Office, Air Division (AIR-5)
16 U.S. Environmental Protection Agency
17 Region 9
75 Hawthorne Street
San Francisco, CA 94105

18 Regional Hearing Clerk (ORC-1)
19 U.S. Environmental Protection Agency
20 Region 9
75 Hawthorne Street
San Francisco, CA 94105

21 24. Payment of the above civil administrative penalty shall not
22 be used by Respondent or any other person as a tax deduction
23 from Respondent's federal, state, or local taxes.

24 25. In the event that the full assessed penalty in this case is
25 not transferred or postmarked on or before its due date,
26 Respondent shall immediately pay the full assessed penalty,
27
28

2 along with stipulated penalties in the amount of fifty
3 thousand dollars (\$50,000) immediately, plus interest and
4 costs as allowed by law.

5 26. Additionally, Respondent's failure to pay any of the penalty
6 installments by its due date may lead to any or all of the
7 following actions:

8 a. The debt being referred to a credit reporting agency, a
9 collection agency, or the Department of Justice for filing
10 of a collection action in the appropriate United States
11 District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. In
12 any such collection action, the validity, amount, and
13 appropriateness of the assessed penalty and of this CAFO
14 shall not be subject to review.

15 b. The debt being collected by administrative offset (i.e.,
16 the withholding of money payable to the United States to, or
17 held by the United States for, a person to satisfy the debt
18 the person owes the Government), which includes, but is not
19 limited to, referral to the Internal Revenue Service for
20 offset against income tax refunds. 40 C.F.R. Part 13,
21 Subparts C and H.

22 c. EPA may (i) suspend or revoke Respondent's licenses or
23 other privileges; (ii) suspend or disqualify Respondent from
24 doing business with EPA or engaging in programs EPA sponsors
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2 or funds; (iii) convert the method of payment under a grant
3 or contract from an advanced payment to a reimbursement
4 method; or (iv) revoke a grantee's or contractor's letter-
5 of-credit. 40 C.F.R. §§ 13.14 and 13.17.

- 6 27. In accordance with the Debt Collection Act of 1982, 31
7 U.S.C. § 3717, and 40 C.F.R. Part 13, interest, penalties
8 charges, and administrative costs will be assessed against
9 the outstanding amount that Respondent owes to EPA for
10 Respondent's failure to pay in full the civil penalty by its
11 due date. Interest will be assessed at an annual rate that
12 is equal to the rate of current value of funds to the United
13 States Treasury (*i.e.*, the Treasury tax and loan account
14 rate) as prescribed and published by the secretary of the
15 Treasury in the Federal Register and the Treasury Fiscal
16 Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).
17 Penalty charges will be assessed monthly at a rate of 6% per
18 annum. 40 C.F.R. § 13.11(c). Administrative costs for
19 handling and collecting Respondent's overdue debt will be
20 based on either actual or average cost incurred, and will
21 include both direct and indirect costs. 40 C.F.R.
22 § 13.11(b). In addition, if this matter is referred to
23 another department or agency (*e.g.*, the Department of
24 Justice, the Internal Revenue Service), that department or
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2 agency may assess its own administrative costs, in addition
3 to EPA's administrative costs, for handling and collecting
4 Respondent's overdue debt.

5 **VII. RETENTION OF RIGHTS**

6 28. In accordance with 40 C.F.R. § 22.18(c), this CAFO only
7 resolves Respondent's liability for federal civil penalties
8 for the violations specifically alleged in this CAFO.
9 Nothing in this CAFO is intended to or shall be construed to
10 resolve (i) any civil liability for violations of any
11 provision of any federal, state, or local law, statute,
12 regulation, rule, ordinance, or permit not alleged in
13 Section IV of this CAFO; or (ii) any criminal liability. In
14 addition to any other authority, right, or remedy available
15 to EPA, EPA reserves any and all authorities, rights, and
16 remedies available to it (including, but not limited to,
17 injunctive or other equitable relief or criminal sanctions)
18 to address any violation of this CAFO or any violation not
19 alleged in this CAFO.
20

21
22 29. This CAFO does not exempt, relieve, modify, or affect in any
23 way Respondent's duty to comply with all applicable federal,
24 state, and local laws, regulations, rules, ordinance, and
25 permits.

26 **VIII. COMPLIANCE CERTIFICATION**

2 30. By executing this Consent Agreement, IT certifies that it is
3 in compliance with the requirements of 40 C.F.R. Part 82,
4 Subpart C.

5 **IX. ATTORNEYS' FEES AND COSTS**

6 31. Each party shall bear its own attorney's fees, costs, and
7 disbursements incurred in this proceeding, except as
8 provided for elsewhere in this Consent Agreement.
9

10 **X. EFFECTIVE DATE**

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

16 **XI. BINDING EFFECT**

17 33. The undersigned representative of Complainant and the
18 undersigned representative of Respondent each certifies that
19 he or she is fully authorized to enter into the terms and
20 conditions of this CAFO and to bind the party he or she
21 represents to this CAFO.
22

23 34. The provisions of this CAFO shall apply to and be binding
24 upon Respondent and its officers, directors, employees,
25 agents, trustees, servants, authorized representatives,
26 successors, and assigns.
27

1 In the Matter of: Imperial Toy LLC

2
3 CERTIFICATE OF SERVICE

4 I certify that the original of the foregoing Consent Agreement
5 and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket
6 No. CAA-9-2008- , was placed in the United States Mail,
7 certified mail, return receipt requested, addressed to the
8 following person authorized to receive service of process in this
9 matter:

10 Ms. Ellen Burns
11 Director of Legal Affairs
12 Imperial Toy LLC
13 16641 Roscoe Place
North Hills, CA 91343

14 Certified Return Receipt No.
15
16

17 Date: ___/___/2008

By: _____

18 DANIELLE CARR
19 Regional Hearing Clerk
20 United States Environmental
21 Protection Agency, Region 9
22 75 Hawthorne Avenue
23 San Francisco, California 94105-3143
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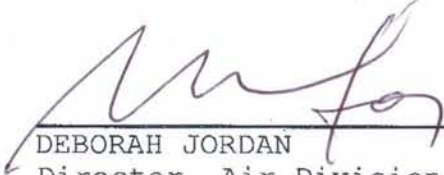
1 In the Matter of: Imperial Toy LLC

2 **XII. MISCELLANEOUS**

3 35. This CAFO constitutes a "prior violation," as that term is
4 used in the Penalty Policy.
5

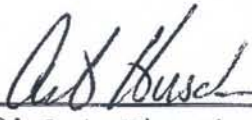
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7 FOR THE UNITED STATES ENVIRONMENTAL
8 PROTECTION AGENCY, REGION 9:

9 Date: 8/4/2008

10 
11 DEBORAH JORDAN
12 Director, Air Division
13 U.S. Environmental Protection Agency,
14 Region 9
15 75 Hawthorne Street
16 San Francisco, California 94105

17 FOR IMPERIAL TOY LLC

18 Date: 06/25/2008

19 
20 Name: Art Hirsch
21 Title: President
22
23
24
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26
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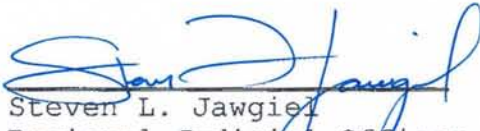
1 In the Matter of: Imperial Toy LLC

2 FINAL ORDER

3 EPA Region 9 and Imperial Toy LLC, having entered into the
4 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. CAA#9-
7 00 32 be entered, and Respondent shall pay a civil
8 administrative penalty in accordance with the terms set forth in
9 the Consent Agreement.
10

11 Date: 08 / 07 / 2008


12 Steven L. Jawgiel
13 Regional Judicial Officer
14 United States Environmental
15 Protection Agency, Region 9
16 75 Hawthorne Avenue
17 San Francisco, California 94105-3143
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CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Consent Agreement and Final Order was hand-delivered to:

The Regional Hearing Clerk
United States Environmental Protection Agency, Region IX
75 Hawthorne St
San Francisco, California 94105-3901

And that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed to the following party:

Ms. Ellen Burns
Director of Legal Affairs
Imperial Toy LLC
16641 Roscoe Place
North Hills, CA 91343
Certified Return Receipt No.

Dated:

Aug. 12, 2008

By:

Danielle Carr

Danielle Carr
Regional Hearing Clerk
United States Environmental
Protection Agency
Region IX
San Francisco, CA 94105