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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. 7<sup>th</sup> 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 \$270,000<sup>1</sup> 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

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26 <sup>1</sup>As 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 10. On or about December 21, 2005, Imperial Toy Corporation  
19 "converted out" to form IT.

20  
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  
26  
27  
28

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

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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27

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  
25  
26  
27

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  
14 North Hills, CA 91343

15 Certified Return Receipt No.

16  
17 Date: \_\_\_/\_\_\_/2008

By: \_\_\_\_\_

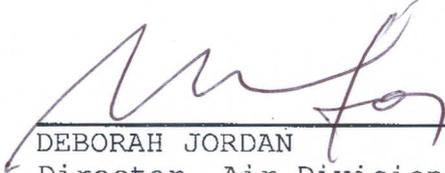
18 DANIELLE CARR  
19 Regional Hearing Clerk  
20 United States Environmental  
21 Protection Agency, Region 9  
22 75 Hawthorne Avenue  
23 San Francisco, California 94105-3143  
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2 **XII. MISCELLANEOUS**

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

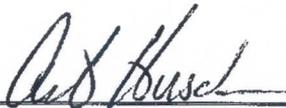
6  
7 FOR THE UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 9:

8  
9 Date: 5/9/2008

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

14 FOR IMPERIAL TOY LLC

15  
16 Date: 06/25/2008

17   
Name: Art Hirsch  
18 Title: President

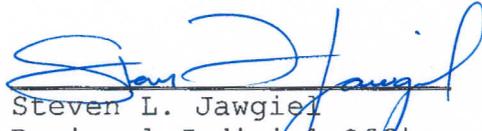
1 In the Matter of: Imperial Toy LLC

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 2008 **0032** 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  
18  
19  
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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