

1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION 9

FILED

2007 MAY 25 AM 11:50

REGIONAL IL-PA-0003

4 In the Matter of:

5 BJB Enterprises, Inc.

6 Respondent

Docket No. EPCRA-09-2007-0003

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

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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 BJB Enterprises, Inc.
12 ("Respondent" or "BJB Enterprises") agree to settle this
13 matter and consent to the filing of this Consent Agreement
14 and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18
15 ("CAFO"), which simultaneously commences and concludes this
16 matter in 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 a California corporation located at
27 14791 Franklin Avenue in Tustin, 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 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.

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 14791 Franklin Avenue, Tustin, California 92780 ("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 2821 -
22 plastics materials, synthetic resins, and non-vulcanizable
23 elastomers.

24 10. During calendar years 2001 through 2003, Respondent processed
25 approximately the following amounts (in pounds) of mercury
26 compounds and diisocyanates, a chemicals listed under 40
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1 C.F.R. § 372.65:

2 <u>Year</u>	<u>Mercury Compounds</u>	<u>Dissocyanates</u>
2001	800	175,000
2002	700	175,000
2003	700	175,000

5 11. The quantity of mercury compounds that Respondent processed
6 at the Facility during calendar years 2001 through 2003
7 exceeds the established threshold of 10 pounds set forth at
8 40 C.F.R. § 372.28(a). The quantity of diisocyanates that
9 Respondent processed at the Facility during calendar years
10 2001 through 2003 exceeds the established threshold of 25,000
11 pounds set forth at 40 C.F.R. § 372.25(a).

12 12. Respondent failed to submit a Form R for mercury compounds
13 and diisocyanates processed at the Facility to the EPA
14 Administrator and to the State of California on or before
15 July 1, 2002 for calendar year 2001; on or before July 1,
16 2003 for calendar year 2002; and on or before July 1, 2004
17 for calendar year 2003 as required by Section 313(a) of EPCRA
18 and 40 C.F.R. § 372.30.

19 13. Respondent's failure to submit Form Rs on or before July 1 of
20 2002, 2003 and 2004 for mercury compounds and diisocyanates
21 processed at the Facility during the preceding calendar years
22 constitutes six (6) violations of Section 313 of EPCRA and 40
23 C.F.R. § 372.30.

24 14. The EPA Enforcement Response Policy for EPCRA Section 313
25 dated August 10, 1992 provides for a penalty of seventy-six
26 thousand seven hundred and seventy dollars (\$76,770) for
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1 these 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 Small Business Compliance Policy, 65 Fed. Reg. 19630
20 (April 11, 2000) ("Small Business Policy"), is intended to
21 promote environmental compliance among small businesses
22 (defined as 100 or fewer employees) by providing incentives
23 for voluntary discovery, prompt disclosure and expeditious
24 correction of violations. When a small businesses satisfies
25 the criteria of the Small Business Policy, EPA will exercise
26 its enforcement discretion to eliminate gravity-based
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1 penalties. The criteria that must be satisfied under the
2 Small Business Policy are voluntary discovery, prompt
3 disclosure, independent discovery and disclosure, expeditious
4 correction and remediation, prevention of recurrence, no
5 repeat violations, other violations excluded, and
6 cooperation.

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

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

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

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

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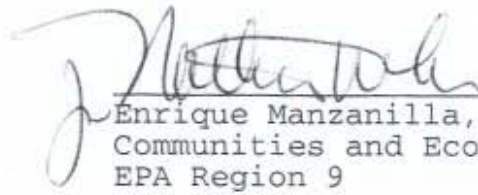
23 FOR RESPONDENT:

24
25 April 23, 2007
26 Date


27 Brian Stransky, President
28 BJB Enterprises, Inc.

1 FOR COMPLAINANT:
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3 5/18/2007
4 Date


Enrique Manzanilla, Director
Communities and Ecosystems Division
EPA Region 9

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24 In the matter of: BJB Enterprises, Inc.
25 EPCRA-09-2007-
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1 II. FINAL ORDER

2 Complainant EPA Region IX and Respondent BJB Enterprises
3 Company, Inc., having entered into the foregoing Consent
4 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 09-2007-0003) be entered.

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9 05/25/07
Date


Steven L. Jawgiel
Regional Judicial Officer
U.S. Environmental Protection
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-09-2007-0003, 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:

Mr. Brian Stransky, President
BJB Enterprises, Inc.
14791 Franklin Avenue
Tustin, CA 92780

Certified Return Receipt No. 7000 1670 0009 3120 8086

Date: 6/15/2007

By:

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



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

Certified Mail No. 7000 1670 0009 3120 8086
Return Receipt Requested

Re: EPCRA-09-2007-000

Date: MAY 25 2007

Brian Stransky, President
BJB Enterprises, Inc.
14791 Franklin Avenue
Tustin, CA 92780

Dear Mr. Stransky:

Enclosed please find your copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R. Sections 22.13 and 22.18 which contains the terms of the settlement reached as a result of your voluntary disclosure under EPA's Small Business Compliance Policy ("Small Business Policy"), 65 Fed. Reg. 19630 (April 11, 2000). Your completion of all actions enumerated in the Consent Agreement and Final Order will close this case. If you have any questions, please contact Patricia Maravilla at (415) 947-4177.

Sincerely,

A handwritten signature in dark ink, appearing to read "Enrique Manzanilla".

Enrique Manzanilla, Director
Communities and Ecosystems Division

Enclosure