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6 Region IX
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8 San Francisco, CA 94105
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10 UNITED STATES
11 ENVIRONMENTAL PROTECTION AGENCY
12 REGION IX

13 In Re:) Docket No. EPCRA-⁰⁹2007-0013
14)
15 Ennis Paint, Inc.) CONSENT AGREEMENT
16) AND FINAL ORDER
17 Respondent.) pursuant to 40 C.F.R. §§ 22.13(b),
18) 22.18(b)(2), and 22.18(b)(3)

19 I. CONSENT AGREEMENT

20 1. The United States Environmental Protection Agency, Region IX ("EPA" or
21 "Complainant") and Ennis Paint Inc. ("Respondent") agree to settle this matter and consent to
22 the entry of this Consent Agreement and Final Order ("CAFO"). This CAFO simultaneously
23 commences and concludes this proceeding in accordance with Section 22.13(b) of the
24 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,
25 Issuance of Compliance or Corrective Action Order, and the Revocation, Termination or
26 Suspension of Permits, 40 C.F.R. § 22.13(b).

27 A. AUTHORITY AND PARTIES

28 2. This is a civil administrative action instituted 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

1 Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations promulgated to
2 implement Section 313 at 40 C.F.R Part 372.

3
4 3. Complainant is the Director of the Communities and Ecosystems Division in EPA,
5 Region IX, who has been duly delegated the authority to bring this action. Respondent is Ennis
6 Paint, Inc. This administrative action serves as notice that Complainant believes that Respondent
7 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations promulgated to
8 implement Section 313 at 40 C.F.R Part 372.

9 4. Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), since it
10 is a corporation.

11 5. Respondent owns, operates and is wholly responsible for a place of business with an
12 address at 200 2nd Street, Bakersfield, California (the "Facility").

13
14 **B. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

15 6. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA
16 promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule at 40
17 C.F.R. Part 372.

18
19 7. Section 313(a) of EPCRA, as implemented by 40 C.F.R. § 372.30, provides that an owner
20 or operator of a facility that meets the criteria set forth in EPCRA Section 313(b) and 40 C.F.R. §
21 372.22, is required to submit annually to the Administrator of EPA and to the State in which the
22 facility is located, no later than July 1st of each year, a toxic chemical release inventory reporting
23 form (hereinafter "Form R") for each toxic chemical listed under 40 C.F.R. § 372.65 that was
24 manufactured, processed or otherwise used at the facility during the preceding calendar year in
25 quantities exceeding the thresholds established under EPCRA Section 313(f) and 40 C.F.R. §
26 372.25.

27 8. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that the requirements of
28 Section 313(a) and 40 C.F.R. § 372.30 apply to an owner and operator of a facility that has 10 or

1 more full-time employees; that is in a Standard Industrial Classification major group codes 10
2 (except 1011, 1081, and 1094), 12 (except 1241), 20 through 39; industry codes 4911, 4931, or
3 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for
4 distribution in commerce), or 4953 (limited to facilities regulated under the Resource
5 Conservation and Recovery Act, subtitle C, 42 U.S.C. §6921 et seq.), or 5169, 5171, or 7389
6 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis);
7 and that manufactures, processes, or otherwise uses one or more toxic chemicals listed under
8 Section 313(c) of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of the applicable
9 thresholds established under EPCRA Section 313(f) and 40 C.F.R. § 372.25.

10 9. The applicable thresholds for reporting established under EPCRA Section 313(f) and 40
11 C.F.R. § 372.25 are (i) 25,000 pounds of a regulated toxic chemical manufactured or processed
12 for the year or (ii) 10,000 pounds of a regulated toxic chemical otherwise used for the calendar
13 year.

14 10. Under 40 C.F.R. § 372.3, process generally means the incorporation of an EPCRA
15 Section 313 chemical into a product.

17 C. ALLEGATIONS

18 11. Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C.
19 § 11049(7).

20 12. At all times relevant to this Complaint, Respondent was an owner and operator of a
21 "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40
22 C.F.R. § 372.3.

23 13. At all times relevant to this CAFO, the Facility had 10 or more "full-time employees," as
24 that term is defined at 40 C.F.R. § 372.3.

25 14. The Facility is classified in Standard Industrial Classification code 2851, which falls
26 within the Standard Industrial Classification code 28.
27
28

1 15. In calendar year 2005, the Facility processed methanol as a constituent in its paint
2 products.

3
4 Count 1

5 16. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

6
7 17. During calendar year 2005, Respondent processed between 25,001 and 100,000 pounds
8 of methanol, a chemical listed under 40 C.F.R. § 372.65, CAS No. 67-56-1 (Form R reporting
9 range 04).

10 18. The quantity of methanol that Respondent processed at the Facility during calendar year
11 2005 exceeds the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25(b).

12
13 19. Respondent failed to submit a Form R for methanol to the EPA Administrator and to the
14 State of California on or before July 1, 2006.

15 20. Respondent's failure to submit a timely Form R for methanol that Respondent processed
16 at the Facility during calendar year 2005 constitutes a violation of Section 313 of EPCRA, 42
17 U.S.C. § 11023, and 40 C.F.R. Part 372.

18
19 D. RESPONDENT'S ADMISSIONS

20 21. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
21 Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
22 Respondent; (ii) neither admits nor denies the specific factual allegations contained in the
23 Complaint; (iii) consents to any and all conditions specified in this CAFO and to the assessment
24 of the civil administrative penalty under Section IV of this CAFO; (iv) waives any right to
25 contest the allegations contained in the Complaint; and (v) waives the right to appeal the
26 proposed final order contained in this CAFO.

1 E. CIVIL ADMINISTRATIVE PENALTY

2
3 22. Respondent hereby consents to the assessment of a civil penalty in the amount of
4 THIRTEEN THOUSAND NINE HUNDRED (\$13,900), as full, final, and complete settlement
5 of the civil claims alleged in Section I.C. of this CAFO. The civil penalty shall be paid within
6 thirty (30) days of the effective date of this CAFO and according to the terms of this CAFO.
7 Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of
8 America," and shall be sent by certified mail, return receipt requested, to the following address:

9 Mellon Bank
10 U.S. EPA Region IX Hearing Clerk
11 P.O. Box 371099M
Pittsburgh, PA 15251

12 The payment shall be accompanied by a transmittal letter identifying the case name, the case
13 docket number, and this CAFO. Concurrent with delivery of the payment of the penalty,
14 Respondent shall send a copy of the check and transmittal letter to the following addresses:

15 Regional Hearing Clerk
16 Office of Regional Counsel (ORC 1)
17 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
18 San Francisco, CA 94105

19 Russell Frazer
20 Toxics Office (CED-4)
21 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
22 San Francisco, CA 94105

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

25 24. If Respondent fails to pay the civil administrative penalty specified in Paragraph 22 of
26 this CAFO within thirty (30) days after the effective date of this CAFO, then Respondent shall
27 pay to EPA the stipulated penalty of \$250 a day for every day after the 30-day period. Stipulated
28 Penalties under this Paragraph will continue to accrue until such time Respondent pays the civil

1 penalty plus any accrued stipulated penalties and interest, pursuant to Paragraph 25, for the late
2 payment of the penalty.

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

18 F. CERTIFICATION AND COMPLIANCE

19 26. In executing this CAFO, Respondent certifies that it is in full compliance with the
20 requirements of EPCRA for all facilities that it owns or operates.

21 G. RETENTION OF RIGHTS

22
23 27. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability
24 for federal civil penalties for the violations and facts specifically alleged in the Complaint.
25 Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for
26 violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance,
27 or permit not specifically alleged in the Complaint; or (ii) any criminal liability. EPA
28 specifically reserves any and all authorities, rights, and remedies available to it (including, but

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

3
4 28. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to
5 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
6 permits.

7 H. ATTORNEYS' FEES AND COSTS

8
9 29. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
10 proceeding.

11 I. EFFECTIVE DATE

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

16 J. BINDING EFFECT

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

21 32. The provisions of this CAFO shall apply to and be binding upon Respondent and its
22 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
23 and assigns.

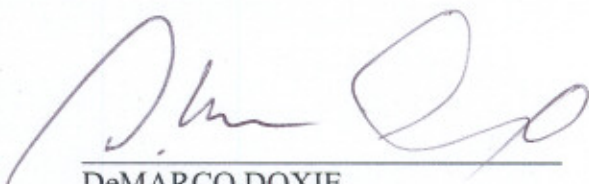
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ENNIS PAINT, INC.

Docket No. EPCRA-9-2007-

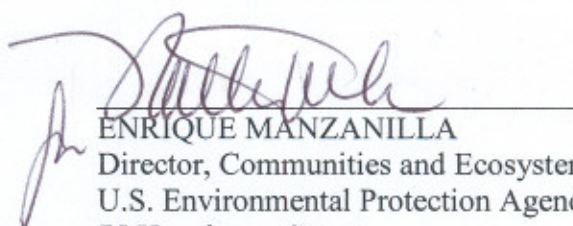
FOR RESPONDENT ENNIS PAINT, INC.:

14 May 2007
DATE


DeMARCO DOXIE
Corporate EHS Manager
1855 Plymouth Road NW
Atlanta, GA 30318

FOR COMPLAINANT EPA REGION IX:

July 24, 2007
DATE

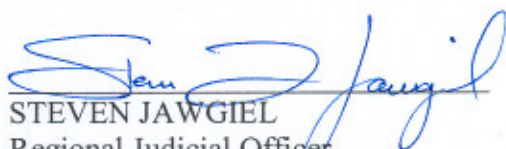

ENRIQUE MANZANILLA
Director, Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

1 II. FINAL ORDER

2 EPA Region IX and Ennis Paints, Inc. having entered into the foregoing Consent
3 Agreement,

4
5 IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-⁰⁹2007-0013)
6 be entered, and Respondent shall pay a civil administrative penalty in the amount of \$13,900 and
7 otherwise comply with the terms set forth in the CAFO.

8
9
10
11
12 07/25/07
DATE

13 
STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original fully executed Consent Agreement and Final Order ("CAFO"),
Docket Number EPCRA-09-2007-0013, was filed this day with the Regional Hearing Clerk, U.S.
EPA, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, and that a true and
correct copy of the CAFO was sent to Respondent at the following address:

Mr. DeMarco Doxie
Corporate EHS Manager
Ennis Paint, Inc.
1855 Plymouth Road NW
Atlanta, GA 30318

Certified Mail No: 7005 3110 0002 8247 1797

Danielle E. Carr

Danielle Carr
Regional Hearing Clerk
Region IX, EPA
Office of Regional Counsel

7-25-07

Date