

FILED

2008 SEP 30 AM 10:54

U.S. EPA. REGION IX
REGIONAL HEARING CLERK

1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION 9

4 In the Matter of:) Docket No. EPCRA-09-2008- 0028
5 IMACC Corporation,)
6 Respondent) CONSENT AGREEMENT AND FINAL
7) ORDER PURSUANT TO 40 C.F.R.
8) §§ 22.13 AND 22.18
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

I. CONSENT AGREEMENT

1. The Director of the Communities and Ecosystems Division ("Complainant"), United States Environmental Protection Agency ("EPA") EPA Region 9, and IMACC Corporation ("Respondent" or "IMACC"), the Parties herein, agree to settle this matter and consent to the entry of this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
2. This is a civil administrative proceeding initiated 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 Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated to implement Section 313 at 40 C.F.R. Part 372.
3. Complainant has been duly delegated the authority to file this action and sign a consent agreement settling this action. Respondent is a California corporation headquartered at Box #410, 3527 Mt. Diablo Boulevard, Lafayette, California

1 94549.

2 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023
3 and 11048, EPA promulgated the Toxic Chemical Release
4 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part
5 372.

6 5. Section 313(a) of EPCRA, as implemented by 40 C.F.R.
7 § 372.30, provides that an owner or operator of a facility
8 that meets the criteria set forth in EPCRA Section 313(b) and
9 40 C.F.R. § 372.22, is required to submit annually to the
10 Administrator of EPA and to the State in which the facility
11 is located, no later than July 1st of each year, a toxic
12 chemical release inventory reporting form (hereinafter "Form
13 R") for each toxic chemical listed under 40 C.F.R. § 372.65
14 that was manufactured, processed or otherwise used at the
15 facility during the preceding calendar year in quantities
16 exceeding the thresholds established under EPCRA Section
17 313(f) and 40 C.F.R. §§ 372.25, 372.27 and 372.28.

18 6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that
19 the requirements of Section 313(a) and 40 C.F.R. § 372.30
20 apply to an owner and operator of a facility that has 10 or
21 more full-time employees; that is in a Standard Industrial
22 Classification (SIC) (as in effect on January 1, 1987) major
23 group or industry code listed in § 372.23(a), for which the
24 corresponding North American Industry Classification System
25 (NAICS) (as in effect on January 1, 2007, for reporting year
26 2008 and thereafter) subsector and industry codes are listed
27

28

1 in 40 C.F.R. §§ 372.23(b) and (c); and that manufactures,
2 processes, or otherwise uses one or more toxic chemicals
3 listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65
4 in quantities in excess of the applicable thresholds
5 established under EPCRA Section 313(f) and 40 C.F.R. §§
6 372.25, 372.27 and 372.28.

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 30, 1997, but before March 15, 2004, and up
11 to \$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 sole owner
16 of the Myers Container Corporation, which itself was the
17 owner and operator of a facility located at 21508 #B Ferrero
18 Parkway, City of Industry, California 91789 (the "Facility").
19 The Facility falls within the definition of a "facility"
20 found in Section 329(4) of EPCRA and 40 C.F.R. § 372.3.

21 10. The Facility employed 10 or more "full-time employees," as
22 that term is defined at 40 C.F.R. § 372.3 and was classified
23 in SIC Code 3412 - Metal shipping barrels, drums, kegs, and
24 pails.

25 11. During calendar year 2005, Respondent otherwise used
26 approximately 14,421 pounds of certain glycol ethers, a
27

- 1 chemical category listed under 40 C.F.R § 372.65, at the
2 Facility.
- 3 12. The quantity of certain glycol ethers Respondent otherwise
4 used at the Facility during calendar year 2005 exceeds the
5 established threshold of 10,000 pounds set forth at 40 C.F.R.
6 § 372.25(b).
- 7 13. Respondent failed to submit a Form R for certain glycol
8 ethers otherwise used at the Facility to the EPA
9 Administrator and to the State of California on or before
10 July 1, 2006, for calendar year 2005.
- 11 14. Respondent's failure to submit a Form R before July 1 of 2006
12 for certain glycol ethers otherwise used at the Facility
13 during the preceding calendar year constitutes a violation of
14 Section 313 of EPCRA and 40 C.F.R. § 372.30.
- 15 15. During calendar year 2006, Respondent otherwise used
16 approximately 41,130 pounds of certain glycol ethers, a
17 chemical category listed under 40 C.F.R § 372.65, at the
18 Facility.
- 19 16. The quantity of certain glycol ethers Respondent otherwise
20 used at the Facility during calendar year 2006 exceeds the
21 established threshold of 10,000 pounds set forth at 40 C.F.R.
22 § 372.25(b).
- 23 17. Respondent failed to submit a Form R for certain glycol
24 ethers otherwise used at the Facility to the EPA
25 Administrator and to the State of California on or before
26 July 1, 2007, for calendar year 2006.

1 18. Respondent's failure to submit a Form R before July 1 of 2007
2 for certain glycol ethers otherwise used at the Facility
3 during the preceding calendar year constitutes a violation of
4 Section 313 of EPCRA and 40 C.F.R. § 372.30.

5 19. The EPA Enforcement Response Policy for EPCRA Section 313
6 dated August 10, 1992, as amended by 40 C.F.R. Part 19,
7 provides for a penalty of eight thousand, seven hundred
8 dollars (\$8,700) for these violations.

9 20. In executing this CAFO, Respondent certifies that (1) it has
10 now fully completed and submitted to EPA all required Form
11 Rs, in compliance with Section 313 of EPCRA and the
12 regulations promulgated to implement Section 313; and (2) it
13 has complied with all other EPCRA requirements at all
14 facilities under its control.

15 21. In accordance with 40 C.F.R. § 22.18(b) (2) and for the
16 purpose of this proceeding, Respondent (i) admits that EPA
17 has jurisdiction over the subject matter of this CAFO and
18 over Respondent; (ii) admits the violations and facts alleged
19 in this CAFO; (iii) consents to the terms of this CAFO; (iv)
20 waives any right to contest the allegations in this CAFO; and
21 (v) waives the right to appeal the proposed final order
22 contained in this CAFO.

23 22. The terms of this CAFO constitute a full settlement of the
24 civil administrative matter filed under the docket number
25 above.

26 23. EPA's final policy statement on Incentives for Self-Policing:
27
28

1 Discovery, Disclosure, Correction and Prevention of
2 Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit
3 Policy") has several important goals, including encouraging
4 greater compliance with the laws and regulations which
5 protect human health and the environment and reducing
6 transaction costs associated with violations of the laws EPA
7 is charged with administering. If certain specified criteria
8 are met, reductions in gravity-based penalties of up to 100%
9 are available under the Audit Policy. These criteria are (1)
10 discovery of the violation(s) through an environmental audit
11 or a compliance management system; (2) voluntary disclosure;
12 (3) prompt disclosure; (4) discovery and disclosure
13 independent of government or third party plaintiff; (5)
14 correction and remediation; (6) prevention of recurrence; (7)
15 no repeat violations; (8) exclusion of the policy's
16 applicability to certain types of violations, including those
17 resulting in serious actual harm to the environment and those
18 that may have presented an imminent and substantial
19 endangerment to the public health or the environment; and (9)
20 cooperation.

21 24. Complainant has determined that Respondent has satisfied all
22 of the criteria under the Audit Policy and thus qualifies for
23 the elimination of civil penalties in this matter.

24 Accordingly, the civil penalty assessed in this matter is
25 zero (\$0) dollars.

26 25. Complainant's finding that Respondent has satisfied the
27

1 criteria of the Audit Policy is based upon documentation that
2 Respondent has provided to establish that it satisfies these
3 criteria. Complainant and Respondent agree that, should any
4 material fact upon which Complainant relied in making its
5 finding subsequently prove to be other than as represented by
6 Respondent, this CAFO may be voided in whole or in part.

7 26. Nothing in this CAFO modifies, affects, exempts or relieves
8 Respondent's duty to comply with all applicable provisions of
9 EPCRA and other federal, state or local laws and permits. In
10 accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves
11 Respondent's liability for federal civil penalties for the
12 violations and facts specifically alleged in this CAFO.

13 Nothing in this CAFO is intended to or shall be construed to
14 resolve (i) any civil liability for violations of any
15 provision of any federal, state, or local law, statute,
16 regulation, rule, ordinance, or permit not specifically
17 alleged in this CAFO; or (ii) any criminal liability. EPA
18 specifically reserves any and all authorities, rights, and
19 remedies available to it (including, but not limited to,
20 injunctive or other equitable relief or criminal sanctions)
21 to address any violation of this CAFO or any violation not
22 specifically alleged in this CAFO.

23 27. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b),
24 this CAFO shall be effective on the date that the final order
25 contained in this CAFO, having been approved and issued by
26 either the Regional Judicial Officer or Regional

1 Administrator, is filed.

2 28. The provisions of this CAFO shall be binding upon Respondent,
3 its agents, successors or assigns. Respondent's obligations
4 under this Consent Agreement, if any, shall end when
5 Respondent has performed all of the terms of the Consent
6 Agreement in accordance with the Final Order. Complainant
7 and Respondent consent to the entry of the CAFO without
8 further notice.

9
10 FOR RESPONDENT:

11
12 9-25-08

13 Date

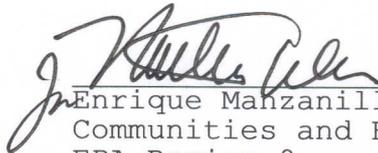


John Cutt, CEO
IMACC Corporation

14
15 FOR COMPLAINANT:

16
17 SEPT. 29, 2008

18 Date



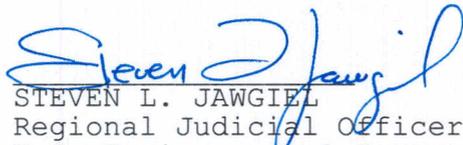
Enrique Manzanilla, Director
Communities and Ecosystems Division
EPA Region 9

1 **II. FINAL ORDER**

2 Complainant EPA Region IX and Respondent IMACC Corporation,
3 having entered into the foregoing Consent Agreement,

4 IT IS HEREBY ORDERED that this Consent Agreement and Final
5 Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-
6 09-2008 **0028**), be entered.

7
8 09/30/08
9 Date


10 STEVEN L. JAWGIEL
11 Regional Judicial Officer
12 U.S. Environmental Protection
13 Agency, Region 9
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

