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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

Akzo Nobel Coatings, Inc.;
Respondent.

Docket No.
EPCRA-09-2008- 0005

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

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045 and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. Complainant is the United States

Environmental Protection Agency, Region IX ("EPA"). Respondent is Akzo Nobel Coatings, Inc., a corporation organized under the laws of the state of Delaware.

2. This Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent committed violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and its implementing regulations.

B. STATUTORY AND REGULATORY FRAMEWORK

3. Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. Part 370 require that, on an annual basis, the owner or operator of a facility, which is required to have available a material safety data sheet for any hazardous chemical, prepare an emergency and hazardous chemical inventory form and submit this form to the local emergency planning committee ("LEPC"), state emergency response commission ("SERC"), and fire department with jurisdiction over the facility ("Fire Department").

C. GENERAL ALLEGATIONS

4. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess a civil penalty for any violation of Section 312 of EPCRA, 42 U.S.C § 11022.
5. The Administrator of EPA delegated enforcement authority under EPCRA to the Regional Administrators with EPA delegations 22-3-A and 14-31, respectively dated October 31, 1989, and September 13, 1987. The Regional Administrator, EPA Region IX, in turn, redelegated that authority to the Director of the Superfund Division.

6. Respondent leased and operated a warehouse for the storage and repackaging of paints, coatings and assorted other chemicals. Respondent's business was located at 2639 North 31st Avenue in Phoenix, Arizona ("Facility").
7. EPA conducted an inspection of the Facility on February 23, 2007.
8. As of April 16, 2008, Respondent no longer holds an interest in the Facility, and no longer operates the Facility.

D. ALLEGED VIOLATIONS

COUNTS I & II

(Failure to Prepare and Submit Emergency and Hazardous Chemical Inventory Forms)

9. Paragraphs 1 through 6 above are incorporated herein by this reference as if they were set forth here in their entirety.
10. At all times relevant to this CA/FO, Respondent has been a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
11. The real property and improvements thereto at the Facility are a "facility" as defined by Sections 329(4) of EPCRA, 42 U.S.C. § 11049(4).
12. At all times relevant to this CA/FO, Respondent was the lessee and operator of the Facility.
13. During calendar years 2004 and 2005, Respondent stored hazardous mixtures at the Facility in amounts that were greater than the threshold planning quantity ("TPQ") for such mixtures. These hazardous mixtures included lacquers/clears, stains/glazes, liquid non-stick and thinners/reducers/catalysts.

14. Given that the amounts of hazardous mixtures being stored at the Facility in calendar years 2004 and 2005 exceeded the TPQ for these mixtures, Respondent was required by Section 311 of EPCRA, 42 U.S.C. § 11021, to prepare or have available material safety data sheets.
15. Being subject to the obligation to prepare or have available material safety data sheets means that Respondent was also required by Section 312 of EPCRA, 42 U.S.C. § 11022, to prepare and submit an emergency and hazardous chemical inventory form to the SERC, LEPC, and Fire Department.
16. Respondent failed to prepare an emergency and hazardous chemical inventory form for calendar year 2004, and submit this form to the LEPC, SERC, and Fire Department, by March 1, 2005, as required by Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.25 and 370.28.
17. Respondent failed to prepare an emergency and hazardous chemical inventory form for calendar year 2005, and submit this form to the LEPC, SERC, and Fire Department, by March 1, 2006, as required by Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.25 and 370.28.

E. CIVIL PENALTY

18. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as adjusted by the Debt Collection Improvement Act of 1996, see 40 C.F.R. Part 19, authorizes a civil penalty of up to THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500) per day for each violation of Section 312 of EPCRA, 42 U.S.C. § 11022. *See* Table 1 of 40 C.F.R. § 19.4, 69 Fed. Reg. 7121, 7126 (Feb. 13, 2004).

19. Based on the facts alleged herein and upon all the factors that the EPA considers pursuant to the Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act ("EPCRA/CERCLA ERP") including the nature, extent, and gravity of the violations, the Respondent's ability to pay, prior history of violations, degree of culpability, and any economic benefit, and such other matters as justice may require, EPA proposes that the Respondent be assessed, and Respondent agrees to pay **twenty three thousand eight hundred dollars** (\$23,800) as the civil penalty for the violations alleged herein. The proposed penalty was calculated in accordance with the EPCRA/CERCLA ERP.

F. ADMISSIONS AND WAIVERS

20. For purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 C.F.R. §§ 22.4 and 22.37. Further, for the purposes of this proceeding, Respondent admits to the general allegations of facts and law set forth in Sections B and C of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

21. Respondent neither admits nor denies any allegations of fact or law set forth in Section D of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

22. This CA/FO shall apply to and be binding upon Respondent and its agents, successors, and assigns and upon all persons acting under or for Respondent, until such time as the civil penalty required under Section E has been paid in accordance with Section I, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
23. No change in ownership or corporate, partnership, or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
24. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, and to legally bind Respondent to it.

H. CERTIFICATION OF COMPLIANCE

25. Upon signing this CA/FO, Respondent certifies to EPA that the Facility has fully complied with the requirements of Section 312 of EPCRA, 42 U.S.C. § 11022; that formed the basis for the violations alleged in Section D above.

26. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

I. PAYMENT OF CIVIL PENALTY

27. Respondent hereby consents to the assessment of and agrees to pay a civil penalty of **twenty three thousand eight hundred dollars** (\$23,800) in settlement of the violations set forth in Section D above. This CA/FO constitutes a settlement of all claims for the violation of Section 312 of EPCRA, 42 U.S.C. § 11022, alleged in Section D above.
28. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO, by sending a certified or cashier's check in the amount of **twenty three thousand eight hundred dollars** (\$23,800), payable to "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check shall reference the name and docket number of the CA/FO, and shall be accompanied by a cover letter stating that payment is being made pursuant to this CA/FO.

The cover letter and civil penalty shall be sent by certified mail, return receipt requested.

Copies of the transmittals shall be sent to:

Richard D. Mednick
Assistant Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Danielle Carr
Regional Hearing Clerk (ORC-1)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

29. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty by the due date will result in imposition of interest from the effective date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 CFR §13.11. In addition, a twelve percent (12%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.
30. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.
- J. DELAY IN PERFORMANCE / STIPULATED PENALTIES
31. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.
32. For failure to submit a payment to EPA by the time required in this CA/FO: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to the thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter.

33. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section I of this CA/FO.
34. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. EPA reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this Agreement or with EPCRA and its implementing regulations. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

K. RESERVATION OF RIGHTS

35. EPA expressly reserves all rights and defenses that it may have.
36. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045. This CA/FO shall not be construed as a covenant not to sue, a release, waiver or limitation of any rights, remedies, powers, or authorities, civil or

criminal, which EPA has under EPCRA, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.

37. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with any applicable local, state or federal laws and regulations.
38. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such action are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section D of this CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.
39. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits.

L. OTHER CLAIMS

Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

M. MISCELLANEOUS

40. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
41. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
42. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
43. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

IT IS SO AGREED,

5/28/08

Date



Alan K. Moseley
General Manager
Clinton Mississippi Facility
Akzo Nobel Coatings, Inc.

6/13/08

Date



Keith Takata
Director
Superfund Division
United States Environmental Protection Agency,
Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. **0005** EPCRA-9-2008-) be entered and that Respondent pay a civil penalty in the amount of **TWENTY THREE THOUSAND EIGHT HUNDRED DOLLARS (\$23,800).**

06/17/08

Date

A handwritten signature in blue ink, appearing to read "Steven Jawgiel", is written over a horizontal line.

Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

Docket No. EPCRA-09-2008-

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I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order with the Docket Number referenced above, has been filed with the Region 9 Hearing Clerk and that a copy was sent certified mail (7005 0390 0000 5329 7352), return receipt requested to:

Alan K. Moseley, General Manager
Akzo Nobel Coatings, Inc.
1000 Industrial Park Drive
Clinton, MS 39056

June 18, 2008
Date



Danielle Carr
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105