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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:

Electronic Evolution Technologies Inc.

Respondent.

) Docket No. EPCRA-09-2008- 0004
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CONSENT AGREEMENT
AND FINAL ORDER
pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA"), and Electronic Evolution Technologies Inc. (the "Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought under Section 325(c) of the Emergency Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for assessment of a civil administrative penalty against Respondent for its failure to submit timely, complete and correct Toxic Chemical Release Inventory Forms for calendar years 2002, 2003, 2004, and 2005 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing regulations set forth at 40 C.F.R. Part 372.

2. Complainant is the Acting Director of the Communities and Ecosystems Division in EPA, Region IX (the "Complainant"). Pursuant to EPA Delegation Order Number 22-3-A, dated May 11, 1994, the Administrator of EPA has delegated the authority to file this action under

1 EPCRA to the Regional Administrator of EPA, Region IX, and pursuant to EPA Regional Order
2 Number R1260.14B, dated May 19, 2005, the Regional Administrator re-delegated that authority
3 to Complainant.

4 **B. STATUTORY AND REGULATORY BASIS**

5 3. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA
6 promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for
7 the submission of information relating to the release of toxic chemicals under EPCRA Section
8 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.

9 4. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R.
10 §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and
11 the State in which the facility is located a chemical release form published under Section 313(g)
12 of EPCRA for each toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R.
13 § 372.65 that it manufactured, processed or otherwise used if: (i) the facility has ten or more full-
14 time employees; (ii) the facility is in North American Industry Classification System Code
15 334418; and (iii) the facility manufactured, processed or otherwise used during the calendar year
16 the listed toxic chemical in excess of the threshold quantity established under Section 313(f) of
17 EPCRA and 40 C.F.R. § 372.25.

18 5. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a
19 uniform Toxic Chemical Release Inventory Form (hereinafter referred to as a "Form R") for
20 facilities that are subject to the reporting requirements of Section 313. Sections 313(a) and (b) of
21 EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. § 372.30(d), provide that each Form R for
22 activities involving a toxic chemical that occurred during a calendar year must be submitted on or
23 before July 1 of the next year.

24 **C. ALLEGED VIOLATIONS**

25 6. Respondent is a corporation and therefore fits within the definition of a "person," as
26 provided in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

27 7. At all times relevant to this matter, Respondent owned and operated a facility (the
28 "Facility") in the business of printed circuit board manufacturing, located at 9455 Double R

1 Boulevard Reno, Nevada, that fits within the definition of a "facility," as provided in Section
2 329(4) of EPCRA, 42 U.S.C. § 11049(4).

3 8. At all times relevant to this matter, the Facility had 10 or more "full-time employees,"
4 as that term is defined at 40 C.F.R. § 372.3.

5 9. At all times relevant to this matter, the Facility was in North American Industry
6 Classification System Code 334418.

7 10. During the calendar year 2002, Respondent "processed," as that term is defined in 40
8 C.F.R. § 372.3, approximately 1,701 pounds of lead, a toxic chemical listed under 40 C.F.R.
9 § 372.65. This quantity exceeded the 100 pound threshold for reporting "processing" of that
10 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
11 § 372.28.

12 11. During the calendar year 2003, Respondent "processed," as that term is defined in 40
13 C.F.R. § 372.3, approximately 1,385 pounds of lead, a toxic chemical listed under 40 C.F.R.
14 § 372.65. This quantity exceeded the 100 pound threshold for reporting "processing" of that
15 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
16 § 372.28.

17 12. During the calendar year 2004, Respondent "processed," as that term is defined in 40
18 C.F.R. § 372.3, approximately 464 pounds of lead, a toxic chemical listed under 40 C.F.R.
19 § 372.65. This quantity exceeded the 100 pound threshold for reporting "processing" of that
20 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
21 § 372.28.

22 13. During the calendar year 2005, Respondent "processed," as that term is defined in 40
23 C.F.R. § 372.3, approximately 2,937 pounds of lead, a toxic chemical listed under 40 C.F.R.
24 § 372.65. This quantity exceeded the 100 pound threshold for reporting "processing" of that
25 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.
26 § 372.28.

27 14. Respondent was required to submit a Form R for lead to EPA and the State of
28 Nevada for calendar year 2002 on or before July 1, 2003.

1 15. Respondent was required to submit a Form R for lead to EPA and the State of
2 Nevada for calendar year 2003 on or before July 1, 2004.

3 16. Respondent was required to submit a Form R for lead to EPA and the State of
4 Nevada for calendar year 2004 on or before July 1, 2005.

5 17. Respondent was required to submit a Form R for lead to EPA and the State of
6 Nevada for calendar year 2005 on or before July 1, 2006.

7 18. Respondent failed to timely submit the Form Rs required of it to EPA and the State
8 of Nevada for calendar years 2002 through 2005, and thus violated Section 313 of EPCRA, 42
9 U.S.C. § 11023, and 40 C.F.R. Part 372.

10 19. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty
11 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any
12 requirement of Section 313 shall be liable to the United States for a civil penalty in an amount
13 not to exceed \$27,500 for each such violation that occurred before March 15, 2004, and \$32,500
14 for each such violation that occurred on or after March 15, 2004. Under the Enforcement
15 Response Policy for Section 313 of EPCRA, dated August 10, 1992, and the Civil Monetary
16 Penalty Inflation Adjustment Rule, the violations cited above would merit a total gravity-based
17 civil penalty of ONE HUNDRED AND FOURTEEN THOUSAND AND FOUR HUNDRED
18 DOLLARS (\$114,400), given the nature, circumstances, and extent of the violations alleged.

19 D. RESPONDENT'S ADMISSIONS

20 20. 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 Section
23 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
24 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
25 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
26 proposed Final Order contained in this CAFO.

1 E. CIVIL ADMINISTRATIVE PENALTY

2 21. In settlement of the violations specifically alleged in Section I.C of this CAFO,
3 Respondent shall pay a civil administrative penalty of EIGHTY THOUSAND AND EIGHTY
4 DOLLARS (\$80,080). Respondent shall pay this civil penalty within thirty (30) days of the
5 effective date of this CAFO, shall make this payment by cashier's or certified check payable to
6 the "Treasurer, United States of America," and shall send the check to the following address:

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

12 Respondent shall accompany its payment with a transmittal letter identifying the case name, the
13 case 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
18 75 Hawthorne Street
19 San Francisco, CA 94105

20 Mariela Lopez
21 Communities and Ecosystems Division (CED-4)
22 U.S. Environmental Protection Agency, Region IX
23 75 Hawthorne Street
24 San Francisco, CA 94105

25 Edgar Coral
26 Office of Regional Counsel (ORC-2)
27 U.S. Environmental Protection Agency, Region IX
28 75 Hawthorne Street
San Francisco, CA 94105

22. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
use such payment as a tax deduction.

23. If Respondent fails to pay the assessed civil administrative penalty of EIGHTY
THOUSAND AND EIGHTY DOLLARS (\$80,080), as identified in Paragraph 21, by the
deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA.

1 The amount of the stipulated penalty will be THIRTY-FOUR THOUSAND, THREE
2 HUNDRED, AND TWENTY DOLLARS (\$34,320), and will be immediately due and payable
3 on the day following the deadline specified in Paragraph 21, together with the initially assessed
4 civil administrative penalty of EIGHTY THOUSAND AND EIGHTY DOLLARS (\$80,080),
5 resulting in a total penalty due of ONE HUNDRED AND FOURTEEN THOUSAND AND
6 FOUR HUNDRED DOLLARS (\$114,400). Failure to pay the civil administrative penalty
7 specified in Paragraph 21 by the deadline specified in that Paragraph may also lead to any or all
8 of the following actions:

9 (1) EPA may refer the debt to a credit reporting agency, a collection
10 agency, or to the Department of Justice for filing of a collection action in the appropriate United
11 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
12 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
13 collection proceeding.

14 (2) The U.S. Government may collect the debt by administrative offset
15 (i.e., the withholding of money payable by the United States to, or held by the United States for, a
16 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
17 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
18 C.F.R. §§ 13(C) and 13(H).

19 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
20 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
21 business with EPA or engaging in programs EPA sponsors or funds.

22 (4) Pursuant to 31 U.S.C. § 3701 et seq. and 40 C.F.R. Part 13, the U.S.
23 Government may assess interest, administrative handling charges, and nonpayment penalties
24 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
25 civil administrative penalty specified in Paragraph 21 by the deadline specified in that Paragraph.

26 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
27 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
28 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,

1 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
2 (30) days of the effective date of this CAFO.

3 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
4 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
5 based on either actual or average cost incurred (including both direct and indirect costs), for
6 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

7 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
8 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
9 may be assessed on all debts more than ninety (90) days delinquent.

10 F. CERTIFICATION OF COMPLIANCE

11 24. In executing this CAFO, Respondent certifies that (1) it has now fully completed and
12 submitted to EPA all of the required Toxic Chemical Release Inventory Forms in compliance
13 with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder;
14 and (2) it has complied with all other EPCRA requirements at all facilities under its control.

15 G. RETENTION OF RIGHTS

16 25. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
17 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
18 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
19 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
20 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
21 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
22 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
23 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

24 26. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
25 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
26 and permits.

1 H. ATTORNEYS' FEES AND COSTS

2 27. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
3 this proceeding.

4 I. EFFECTIVE DATE

5 28. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
6 effective on the date that the Final Order contained in this CAFO, having been approved and
7 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

8 J. BINDING EFFECT

9 29. The undersigned representative of Complainant and the undersigned representative of
10 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
11 of this CAFO and to bind the party he or she represents to this CAFO.

12 30. The provisions of this CAFO shall apply to and be binding upon Respondent and its
13 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
14 and assigns.

15
16 FOR RESPONDENT ELECTRONIC EVOLUTION TECHNOLOGIES INC.:

17
18 3/13/09
19 DATE

20 
21 SONNY NEWMAN
22 President
23 Electronic Evolution Technologies Inc.
24 9455 Double R Blvd.
25 Reno, NV 89521-5904

26
27 FOR COMPLAINANT EPA:

28 4/30/2008
DATE

29 
30 JEFF SCOTT
31 Acting Director, Communities and Ecosystems Division
32 U.S. Environmental Protection Agency, Region IX
33 75 Hawthorne Street
34 San Francisco, California 94105

1 II. FINAL ORDER

2 EPA and Electronic Evolution Technologies Inc. having entered into the foregoing
3 Consent Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-9-2008-____) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of EIGHTY
6 THOUSAND AND EIGHTY DOLLARS (\$80,080), and comply with the terms and conditions
7 set forth in the Consent Agreement.

8
9
10 05/02/08
11 DATE

12 
13 STEVEN JAWGIEL
14 Regional Judicial Officer
15 U.S. Environmental Protection Agency, Region IX
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CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R Sections 22.13 and 22.18 (Docket No. EPCRA-9-2008-~~0004~~) against Electronic Evolution Technologies, Inc., 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 same was sent to Respondent at the following address:

Sonny Newman
President
Electronic Evolution Technologies
9455 Double R Road
Reno, NV 89521

Certified Mail No. 7007-3020-0000-9806-7777



Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX

Date

5-2-08