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EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	
GKN Aerospace Chemtronics, Inc.	)	Docket No. EPCRA-10-2009-0204
	)	
Kent, Washington	)	Consent Agreement and Final Order
	)	
Respondent.	)	
	)	
	)	

I. AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA" or "the Act"), 42 U.S.C. § 11045. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has re delegated this authority to the Regional Judicial Officer.

1.2. In accordance with Section 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues and GKN Aerospace Chemtronics, Inc. ("Respondent") hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

Consent Agreement and Final Order  
Page 1  
Docket No. EPCRA-10-2009-0204

U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
(206) 553-1037

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. Respondent owns and operates a facility located at 20231 72<sup>nd</sup> Avenue South in Kent, Washington ("the Facility").

2.3. Respondent manufactures aircraft equipment at the Facility.

2.4. A concise statement of the factual bases for alleging violations of the Act, together with specific references to the provisions of the Act and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

## III. ALLEGATIONS

3.1. Section 312 of EPCRA, 42 U.S.C. § 11022, provides that the owner or operator of a facility which is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act ("OSHA") shall submit annually (on March 1) to the State Emergency Response Commission ("SERC"), Local Emergency Planning Committee ("LEPC") and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form. The inventory form may either be aggregate information by hazard category ("Tier I") or specific information by chemical ("Tier II"). Inventory forms must include information on all hazardous chemicals present at the facility during the previous calendar year in amounts that meet or exceed the threshold planning quantity ("TPQ").

3.2. Section 313 of EPCRA, 42 U.S.C. § 11023, requires certain manufacturers, processors and users of specific toxic chemicals to submit annual reports (by July 1) to EPA and the state in which a facility is located regarding the chemicals and any associated release amounts on Toxic Chemical Inventory Reporting Forms ("Form Rs") for the previous year. 40 C.F.R. § 372.30.

3.3. Under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), "person" means, among other things, any corporation.

3.4. Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), "facility" means all buildings, equipment, structures and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person).

3.5. Hydrofluoric acid and nitric acid are both listed as toxic and hazardous substances under OSHA regulations at 29 C.F.R. § 1910.119, App. A; therefore, the owner or operator of a facility with hydrofluoric and/or nitric acid on-site must prepare or have available an MSDS for each of these substances. Hydrofluoric acid is an extremely hazardous substance under Section 302 of EPCRA, 42 U.S.C. § 11002, with a reporting threshold of 100 pounds, as provided in 40 C.F.R. Part 370, and a TPQ of 100 pounds, as provided in 40 C.F.R. Part 355, Appendix A. Nitric acid is an extremely hazardous substance under Section 302 of EPCRA, 42 U.S.C. § 11002, with a reporting threshold of 1,000 pounds, as provided in 40 C.F.R. Part 370, and a TPQ of 1,000 pounds, as provided in 40 C.F.R. Part 355, Appendix A. Nitric acid is a toxic chemical referenced in Section 313 of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R.

§ 372.65. The reporting threshold for a facility that "otherwise used" nitric acid is 10,000 pounds.

3.6. Under Section 325(c) of EPCRA, 42 U.S.C. § 11045(b), EPA may assess a civil penalty of up to \$25,000 for each day of violation of Section 312 or Section 313 of EPCRA, 42 U.S.C. § 11022 or § 11023. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 42 C.F.R. Part 19, increased these statutory maximum penalties to \$32,500 per day of violation occurring after March 15, 2004.

3.7. Respondent is a corporation incorporated in the state of California.

3.8. Respondent stored approximately 8,000 pounds of hydrofluoric acid and 34,000 pounds of nitric acid at the Facility during the 2007 calendar year.

3.9. For the calendar year 2007, Respondent failed to file a Tier I or Tier II report with the SERC, LEPC or fire department.

3.10. Respondent otherwise used approximately 12,000 pounds of nitric acid during calendar year 2006.

3.11. For the calendar year 2006, Respondent failed to file a Form R with EPA and the state of Washington by July 1, 2007.

#### IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors and assigns.

4.5. Except as provided in Paragraph 4.10, each party shall bear its own costs in bringing or defending this action.

4.6. Based on Respondent's willingness to settle this matter without litigation, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, and in accordance with 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* and the *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act*, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$12,333.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty cited in Paragraph 4.6 within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "U.S. Treasury" and shall be delivered to the following address:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Respondent shall note on the check the title and docket number of this case.

4.9. Respondent shall submit a photocopy of the check described above to the following individuals:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Suite 900  
Mail Stop ORC-158  
Seattle, Washington 98101

Suzanne Powers  
U.S. Environmental Protection Agency  
Region 10  
Washington Operations Office  
300 Desmond Drive SE, Suite 102  
Lacey, Washington 98503

4.10 Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action under Section 325(f) of EPCRA, 42 U.S.C. § 11045(f), to collect any unpaid penalties, together with interest, handling charges and nonpayment penalties, as set forth below.

4.11. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

(a) Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

(b) Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

(c) Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.12. Respondent shall implement and complete a SEP providing a high-speed emergency communication system (elements of the system are listed at Appendix A to this CAFO) to the City of Kent, Washington in accordance with all provisions described in this Consent Agreement and at Appendix A to this CAFO. The purpose of the SEP is to allow for quick notification to the community of emergency situations that threaten human health, safety and/or the environment. Respondent shall provide the SEP for a period of two years and shall arrange for the system to be in effect within 90 days of the effective date of this CAFO.

4.13. Respondent's deadline to perform the SEP shall be excused or extended if such performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the reasonable control

of Respondent, including its employees, agents, consultants and contractors, or which could not be overcome by due diligence and which delays or prevents the performance of the SEP within the specified time period. A Force Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state or local permits.

4.14. The cost to Respondent of implementing the SEP shall be not less than \$50,000. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

4.15. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, under a grant, or as injunctive relief in any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. Furthermore, for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

4.16. Respondent shall submit an initial SEP Report to EPA within 90 days of the effective date of the CAFO. The initial SEP Report shall contain the following information:



- (a) A description of the SEP as implemented;
- (b) Itemized costs, documented by copies of purchase orders and receipts or cancelled checks;
- (c) A description of any operating problems encountered and the solutions thereto;
- (d) A description of the environmental and public health benefits resulting from implementation of the SEP; and
- (e) a copy of the contract under which Respondent has arranged for implementation of the SEP over a two-year period.

4.17. Respondent shall submit a final SEP Completion Report within 60 days of the conclusion of the two-year period over which the SEP is provided. The final report shall contain a certification by a corporate officer that the SEP has been completed in accordance with the terms of this CAFO.

4.18. Respondent agrees that failure to implement the SEP and/or submit the initial SEP Report or Completion Report required by Paragraphs 4.16 and 4.17 shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to this CAFO.

4.19. Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports required by this CAFO by first class mail, overnight mail, or hand delivery to:

Suzanne Powers  
U.S. Environmental Protection Agency, Region 10  
Washington Operations Office  
300 Desmond Drive SE, Suite 102  
Lacey, WA 98503

4.20. Respondent agrees that EPA may inspect Respondent's records related to the SEP at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

4.21. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this CAFO until the SEP Completion Report is accepted pursuant to Paragraph 4.22., and Respondent shall provide the documentation of any such underlying data to EPA within 15 days of a written request for such information. In all documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this CAFO, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such document or report is true, accurate and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

4.22. Following receipt of the SEP Completion Report described in Paragraph 4.17, EPA will do one of the following: (i) accept the Report; (ii) reject the Report, notify Respondent, in writing of deficiencies in the Report and provide Respondent an additional 30 days in which to

correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraph 4.24.

4.23. In the event that the SEP is not completed as contemplated by this CAFO and this failure was not caused solely by events which constitute a Force Majeure as defined by Paragraph 4.13, then stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 4.24. Schedules herein may be extended based upon mutual written agreement of the parties.

4.24. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP specified in this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) If the SEP is not satisfactorily completed pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$50,000, less the amount actually expended.

(ii) For failure to submit the initial SEP Report or SEP Completion Report as required by Paragraphs 4.16 and 4.17, Respondent shall pay a stipulated penalty in the amount \$100 for each day after the report is due until the report is received by EPA, not to exceed \$2,500 for each late report.

4.25. Stipulated penalties under Paragraph 4.24 shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of satisfactory completion of the activity, subject to the maximum set forth in Paragraph 4.24(ii).

4.26. Respondent shall pay stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. Payment shall be made in accordance with the provisions of Paragraph 4.8. Interest and late charges shall be paid as specified in Paragraph 4.10.

4.27. Except as provided in Paragraph 4.31, nothing in the CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

4.28. Any public statement, oral or written, in print, film or other media made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the Emergency Planning and Community Right-to-Know Act."

4.29. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology purchased by Respondent in connection with the SEP under the terms of this CAFO.

4.30. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.

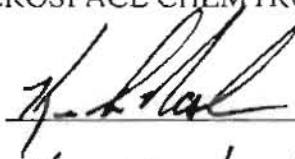
4.31. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III.

\*

STIPULATED AND AGREED:

FOR GKN AEROSPACE CHEMTRONICS, INC.

Signature:

  
\_\_\_\_\_

Print Name:

KEVIN L. NASH

Title:

VP/GM

Dated:

8/5/2009

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

  
\_\_\_\_\_

Edward J. Kowalski, Director  
Office of Compliance and Enforcement

Dated:

8/20/09

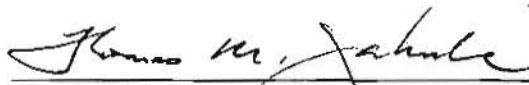
V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to EPCRA for the particular violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations issued thereunder.

This Final Order shall become effective upon filing.

SO ORDERED this 21<sup>st</sup> day of August, 2009.



Thomas M. Jahnke  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

## APPENDIX A

GKN Aerospace Chemtronics, Inc. will provide, for a period of two years, a high-speed emergency telephone communication system ("Code Red") to the City of Kent, Washington. The purpose of this system is to provide for quick communication to the community in the event of an emergency. The cost for each year is \$25,000, which includes the following items:

- Code Red system setup
- Up to 100,000 minutes system time annually
- Initial database
- Initial customer-supplied data upload (including 911 data and utility data)
- Code Red user pass codes for up to 5 groups or individuals
- 24/7 technical support
- 500 testing and training system minutes
- Initial Code Red system distance training
- Design and web hosting custom database update page



CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: GKN Aerospace Chemtronics, Inc., DOCKET NO.: EPCRA-10-2009-0204** was filed with the Regional Hearing Clerk on August 24, 2009.

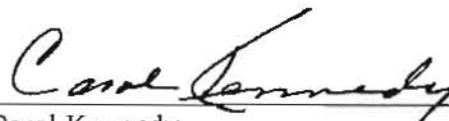
On August 24, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Stephanie Mairs, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on August 24, 2009, to:

GKN Aerospace  
Mr. Kevin Nash  
Vice President  
Thermal Joining Center  
20231 72<sup>nd</sup> Avenue South  
Kent, WA 98032

DATED this 24<sup>th</sup> day of August 2009.



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Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10