



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

February 9, 2009

REPLY TO THE ATTENTION OF

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0183 0166

Thomas M. Smrt, President
Fox Valley Systems, Inc.
640 Industrial Drive
Cary, Illinois 60013

Consent Agreement and Final Order, Docket No. ~~EPCRA-05-2009-0012~~

Dear Mr. Smrt:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on February 9, 2009, with the Regional Hearing Clerk.

The civil penalty in the amount of \$16,016 is to be paid in the manner described in paragraph 50 and 51. In the comment or description field of the electronic funds transfer, please state: Fox Valley Systems, Inc., the docket number of this CAFO (above), and the following billing document number BD 2750944E013. Payment is due by March 11, 2009, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Robert Allen".

Robert Allen
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
FEB - 9 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:) Docket No. EPCRA-05-2009-0012
)
Fox Valley Systems, Inc.) Proceeding to Assess a Civil Penalty
Cary, Illinois) Under Section 325(c) of the Emergency
Respondent.) Planning and Community Right-to-Know
) Act of 1986, 42 U.S.C. § 11045(c)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Fox Valley Systems, Inc., a corporation doing business in the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with Section 313 of EPCRA, 42 U.S.C. § 11023.

Statutory and Regulatory Background

10. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed, or otherwise used a toxic chemical in an amount in excess of an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. § 372.25, 40 C.F.R. § 372.27 and 40 C.F.R. §§ 372.28, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of U.S. EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed, or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years

including and subsequent to 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

12. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of U.S. EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that can be imposed pursuant to each agency's statutes. The U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 of EPCRA that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 of EPCRA that occurred after March 15, 2004, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

14. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 640 Industrial Drive, Cary, Illinois (facility).

15. At all times relevant to this CAFO, Respondent had "10 or more full-time employees," as defined at 40 C.F.R. § 372.3, and was an employer at the facility.

16. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

17. Respondent's facility is a "facility" as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

18. The facility has a SIC code of 2851, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

Count 1

19. During calendar year 2003, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, toluene, CAS No. 108-88-3, listed under 40 C.F.R. § 372.65, in the amount of 1,388,780 pounds which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

20. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for toluene for calendar year 2003 by July 1, 2004.

21. Respondent did not submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for toluene for calendar year 2003 by July 1, 2004.

22. Respondent submitted Form R for toluene to the Administrator of U.S. EPA and to the State of Illinois on August 1, 2006, for calendar year 2003.

23. Respondent's failure to submit timely a Form R for toluene to the Administrator of U.S. EPA and to the State of Illinois for calendar year 2003 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 2

24. During calendar year 2003, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, xylene, CAS No. 1330-20-7, listed under 40 C.F.R. § 372.65, in the amount of 254,534 pounds which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

25. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for xylene for calendar year 2003 by July 1, 2004.

26. Respondent did not submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for xylene for calendar year 2003 by July 1, 2004.

27. Respondent submitted Form R for xylene to the Administrator of U.S. EPA and to the State of Illinois on August 1, 2006, for calendar year 2003.

28. Respondent's failure to submit timely a Form R for xylene to the Administrator of U.S. EPA and to the State of Illinois for calendar year 2003 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 3

29. During calendar year 2003, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, ethylenebenzene, CAS No. 100-41-4, listed under 40 C.F.R. § 372.65, in the amount of 45,417 pounds which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

30. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for ethylenebenzene for calendar year 2003 by July 1, 2004.

31. Respondent did not submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for ethylbenzene for calendar year 2003 by July 1, 2004.

32. Respondent submitted Form R for ethylbenzene to the Administrator of U.S. EPA and to the State of Illinois on August 1, 2006, for calendar year 2003.

33. Respondent's failure to submit timely a Form R for ethylbenzene to the Administrator of U.S. EPA and to the State of Illinois for calendar year 2003 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 4

34. During calendar year 2005, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, toluene, CAS No. 108-88-3, listed under 40 C.F.R. § 372.65, in the amount of 494,224 pounds which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

35. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for toluene for calendar year 2005 by July 1, 2006.

36. Respondent did not submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for toluene for calendar year 2005 by July 1, 2006.

37. Respondent submitted Form R for toluene to the Administrator of U.S. EPA and to the State of Illinois on August 1, 2006, for calendar year 2005.

38. Respondent's failure to submit timely a Form R for toluene to the Administrator of U.S. EPA and to the State of Illinois for calendar year 2005 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 5

39. During calendar year 2005, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, xylene, CAS No. 1330-20-7, listed under 40 C.F.R. § 372.65, in the amount of 116,085 pounds which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

40. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for xylene for calendar year 2005 by July 1, 2006.

41. Respondent did not submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for xylene for calendar year 2005 by July 1, 2006.

42. Respondent submitted Form R for xylene to the Administrator of U.S. EPA and to the State of Illinois on August 1, 2006, for calendar year 2005.

43. Respondent's failure to submit timely a Form R for xylene to the Administrator of U.S. EPA and to the State of Illinois for calendar year 2005 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 6

44. During calendar year 2005, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, ethylbenzene, CAS No. 100-41-4, listed under 40 C.F.R. § 372.65, in the amount of 27,130 pounds which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

45. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for ethylbenzene for calendar year 2005 by July 1, 2006.

46. Respondent did not submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for ethylbenzene for calendar year 2005 by July 1, 2006.

47. Respondent submitted Form R for ethylbenzene to the Administrator of U.S. EPA and to the State of Illinois on August 1, 2006, for calendar year 2005.

48. Respondent's failure to submit timely a Form R for ethylbenzene to the Administrator of U.S. EPA and to the State of Illinois for calendar year 2005 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Civil Penalty

49. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle Counts 1 through 6 is \$16,016. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the

violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and its agreement to perform a supplemental environmental project, and any other matters as justice may require. Complainant also considered U.S. EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (amended)*. (April 12, 2001).

50. Within 30 days after the effective date of this CAFO, Respondent must pay a \$16,016 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending by regular U.S. Postal Service mail a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note In the Matter of: Fox Valley Systems, Inc., the docket number of this CAFO and the billing document number.

51. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert Allen (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Steven P. Kaiser (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

52. This civil penalty is not deductible for federal tax purposes.

53. If Respondent does not pay the civil penalty timely, or any stipulated penalties due under paragraph 69, below," U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

54. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

55. Respondent must undertake a supplemental environmental project (SEP) designed to protect the environment or public health by converting the Easy Marker Paint product line at its Cary, Illinois facility to a non-solvent, aqueous-based formula, eliminating all hydrocarbon

solvent usage for that line. Respondent will complete the SEP according to the following schedule:

<u>Task</u>	<u>Start Date</u>	<u>Completion Date</u>
1. Research and testing of existing formulas	January 1, 2009	February 28, 2009
Prepare progress report number 1	March 1, 2009	March 15, 2009
2. Research and testing of new formulas	January 1, 2009	November 30, 2009
Prepare progress report number 2	May 1, 2009	May 15, 2009
Prepare progress report number 3	October 1, 2009	October 15, 2009
3. Refurbish production equipment for aqueous formula	October 1, 2009	October 31, 2009
Prepare progress report	November 1, 2009	November 15, 2009
4. Begin production using aqueous formula	November 1, 2009	-----
Prepare progress report	December 1, 2009	December 15, 2009
5. Phase out production of solvent based formula	December 1, 2009	January 1, 2010
Prepare Completion Report	January 1, 2010	January 31, 2010

56. Within 15 days after commencing the project described in paragraph 55,

Respondent will notify U.S. EPA that Respondent has commenced the project.

57. Respondent must spend at least \$33,240 to fund the research to identify the aqueous product formula and \$12,500 to refurbish the production equipment.

58. In the Easy Marker Paint reformulation, Respondent must not use any chemical that is more toxic or hazardous than xylene, toluene or ethylbenzene. Respondent must use Material Safety Data Sheets to determine the chemical's toxic and hazardous characteristics.

59. Respondent must successfully identify a non-solvent, aqueous formula for its Easy Marker Paint product line and bring the reformulated product line to market in order for the project to yield an actual environmental benefit. Respondent estimates preliminarily that this SEP may reduce its use of ethylbenzene by 8,228 pounds per year, toluene by 148,098 pounds per year, and xylene by 29,973 pounds per year.

60. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

61. The U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

62. Respondent must maintain copies of the underlying research, cost and other data for all reports submitted to U.S. EPA pursuant to this CAFO. Respondent must provide the documentation of any underlying research, cost and other data to U.S. EPA within seven days of U.S. EPA's request for the information.

63. Respondent must submit the reports required by the scope of work to U.S. EPA according to the schedule in paragraph 55.

64. Respondent must submit a SEP Completion Report to U.S. EPA by January 31, 2010. This report must contain the following information:

- a. Detailed description of the SEP as completed or an explanation of why the SEP was not completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed or failed to complete the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

65. Respondent must submit all notices and reports required by this CAFO by first class mail to Robert Allen of the Pesticides and Toxics Compliance Section at the address set forth in paragraph 51.

66. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

67. Following receipt of the SEP completion report described in paragraph 64, above, U.S. EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 69, below.

68. If U.S. EPA exercises option b., above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. In the event the written decision concludes that deficiencies remain in the SEP as completed or in the SEP report, EPA will again identify those steps necessary to cure the deficiencies. Respondent may take those steps necessary to cure the deficiencies. If Respondent elects not to cure the

deficiencies, Respondent will pay stipulated penalties to the United States under paragraph 69, below.

69. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent fails to commence the SEP within 15 days after the date required in paragraph 55, Respondent will not continue the SEP. Respondent will pay a stipulated penalty of \$27,700. If Respondent pays the stipulated penalty specified in this section, Respondent will not complete the SEP and will not be liable for any other stipulated penalties in paragraph 69.
- b. If Respondent conducts the research as described in paragraph 55, but does not identify a formula for an aqueous product, the SEP will end. U.S. EPA will not receive the environmental benefit described in paragraph 59. Respondent will pay a stipulated penalty of \$27,700 and will not be liable for any other stipulated penalties in paragraph 69 except as specified in section h. of this paragraph.
- c. If Respondent completed the SEP as described in paragraph 55, identified a formula for an aqueous product, refurbished equipment, and began production of the aqueous product, but Respondent did not spend at least 90 percent of the funds required for the research and Respondent did not spend at least 90 percent of the funds required to refurbish equipment, then Respondent will pay a stipulated penalty of \$13,800 and will not be liable for any other stipulated penalties in paragraph 69 except as specified in section h. of this paragraph.
- d. If Respondent completed the SEP as described in paragraph 55, identified a formula for an aqueous product and began production of the aqueous product, and Respondent did not spend at least 90 percent of the funds required for the research, but did spend at least 90 percent of the funds required to refurbish equipment, then Respondent will pay a stipulated penalty of \$10,800 and will not be liable for any other stipulated penalties in paragraph 69 except as specified in section h. of this paragraph.
- e. If Respondent completed the SEP as described in paragraph 55, identified a formula for an aqueous product and began production of the aqueous product, and Respondent spent at least 90 percent of the funds required for the research, but did not spend at least 90 percent of the funds required to refurbish equipment, then Respondent will pay a stipulated penalty of \$3,000 and will not be liable for any other stipulated penalties in paragraph 69 except as specified in section h. of this paragraph.

- f. If Respondent did not complete the SEP as described in paragraph 55, identified an aqueous product, but did not begin production of the water-based product, or began production of the water-based product but also continued production of the hydrocarbon solvent-based formula, then U.S. EPA does not receive the benefit described in paragraph 59. Respondent will pay a stipulated penalty of \$27,700 and will not be liable for any other stipulated penalties in paragraph 69 except as specified in section h. of this paragraph.
- g. If Respondent halts or abandons work on the SEP, the Respondent must pay a stipulated penalty of \$27,700.
- h. If Respondent fails to comply with the schedule in paragraph 55 for implementing the SEP, fails to submit timely the SEP completion report or fails to submit timely any other reports required in paragraph 55, Respondent must pay a stipulated penalty for each failure to meet an applicable milestone, as follows: \$100 per day for up to 30 days.

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone. If Respondent does not submit any report within 30 days after the date required in paragraph 55, then Respondent will be considered to have abandoned the project and will be subject to the stipulated penalty in part (g) of paragraph 69.

70. The U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

71. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 50 and 51, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

72. Any public statement that Respondent makes referring to the SEP must include the following language, "Fox Valley Systems, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Fox Valley Systems, Inc. for violations of Section 313 of EPCRA."

73. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify the U.S. EPA in writing within ten days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If the U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and will not excuse any delays in completing the SEP.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above.

74. Nothing in this CAFO is intended to, nor will be construed to, constitute U.S. EPA approval of the equipment or technology installed by the Respondent in connection with the SEP under the terms of this CAFO.

75. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

76. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

77. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

78. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state, and local laws. Other than as set forth above, this CAFO does not limit the Respondent's ability or right to produce product using the listed chemicals, so long as the Respondent otherwise complies with applicable regulations.

79. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 313 of EPCRA.

80. The terms of this CAFO bind Respondent, its successors, and assigns.


81. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

82. Each party agrees to bear its own costs and attorney's fees, in this action.

83. This CAFO constitutes the entire agreement between the parties.

Fox Valley Systems, Inc., Respondent


20-JAN-2009
Date



Thomas M. Smrt
President, Fox Valley Systems, Inc.

United States Environmental Protection Agency, Complainant

2/4/09
Date



Margaret M. Guerriero
Director, Land and Chemicals Division

In the Matter of:
Fox Valley Systems, Inc.
Docket No. EPCRA-05-2009-0012

RECEIVED
FEB - 9 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

2/6/09
Date

Walter W. Kordulski
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Complaint in resolution of the civil administrative action involving Fox Valley Systems, Inc., was filed on February 9, 2009, with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed, by Certified Mail, Receipt No. 7001 0320 0006 0183 0166 a copy of the original to the Respondent:

Thomas M. Smrt, President
Fox Valley Systems, Inc.
640 Industrial Drive
Cary, Illinois 60013

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Steve Kaiser, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD

Frederick Brown

Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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FEB - 9 2009

Docket No. EPCRA-05-2009-0012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

bcc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)