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U.S. EPA. REGION IX
REGIONAL HEARING CLERK

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4 Region IX
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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
REGION IX

9
10 In the matter of:

Docket No. EPCRA-⁰⁹~~9~~-2007-0005

11
12 K-Tube Corporation,

CONSENT AGREEMENT
AND FINAL ORDER

13 Respondent.
14

pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX ("EPA"), and K-Tube
17 Corporation (the "Respondent") agree to settle this matter and consent to the entry of this
18 Consent Agreement and Final Order ("CAFO").

19 A. AUTHORITY AND PARTIES

20 1. This is a civil administrative action brought under Section 325(c) of the Emergency
21 Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for
22 assessment of a civil administrative penalty against Respondent for its failure to submit timely,
23 complete and correct Toxic Chemical Release Inventory Forms for calendar years 2001 through
24 and including 2005 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the
25 implementing regulations set forth at 40 C.F.R. Part 372.

26 2. Complainant is the Director of the Communities and Ecosystems Division in EPA,
27 Region IX (the "Complainant"). Pursuant to EPA Delegation Order Number 22-3-A, dated May
28 11, 1994, the Administrator of EPA has delegated the authority to file this action under EPCRA

1 to the Regional Administrator of EPA, Region IX, and pursuant to EPA Regional Order Number
2 R1260.14B, dated May 19, 2005, the Regional Administrator re-delegated that authority to
3 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 Standard Industrial Classification Code 3841; and (iii) the
15 facility manufactured, processed or otherwise used during the calendar year the listed toxic
16 chemical in excess of the threshold quantity established under Section 313(f) of EPCRA and 40
17 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 medical tubing manufacturing, located at 13400 Kirkham Way in

1 Poway, California, that fits within the definition of a "facility," as provided in Section 329(4) of
2 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 Standard Industrial
6 Classification Code 3841.

7 10. During the calendar year 2001, Respondent "processed," as that term is defined in 40
8 C.F.R. § 372.3, approximately 50,886 pounds of chromium compounds, a toxic chemical
9 category listed under 40 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for
10 reporting "processing" of that chemical category established under Section 313(f) of EPCRA, 42
11 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

12 11. During the calendar year 2002, Respondent "processed," as that term is defined in 40
13 C.F.R. § 372.3, approximately 59,500 pounds of chromium compounds, a toxic chemical
14 category listed under 40 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for
15 reporting "processing" of that chemical category established under Section 313(f) of EPCRA, 42
16 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

17 12. During the calendar year 2003, Respondent "processed," as that term is defined in 40
18 C.F.R. § 372.3, approximately 65,300 pounds of chromium compounds, a toxic chemical
19 category listed under 40 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold
20 for reporting "processing" of that chemical category established under Section 313(f) of EPCRA,
21 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

22 13. During the calendar year 2004, Respondent "processed," as that term is defined in 40
23 C.F.R. § 372.3, approximately 62,104 pounds of chromium compounds, a toxic chemical
24 category listed under 40 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for
25 reporting "processing" of that chemical category established under Section 313(f) of EPCRA, 42
26 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

27 14. During the calendar year 2005, Respondent "processed," as that term is defined in 40
28 C.F.R. § 372.3, approximately 62,933 pounds of chromium compounds, a toxic chemical

1 category listed under 40 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for
2 reporting “processing” of that chemical category established under Section 313(f) of EPCRA, 42
3 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

4 15. During the calendar year 2001, Respondent “otherwise used,” as that term is defined
5 in 40 C.F.R. § 372.3, approximately 25,072 pounds of trichloroethylene, a toxic chemical listed
6 under 40 C.F.R. § 372.65. This quantity exceeded the 10,000 pound threshold for reporting
7 “otherwise use” of that chemical established under Section 313(f) of EPCRA, 42 U.S.C.
8 § 11023(f), and 40 C.F.R. § 372.25.

9 16. During the calendar year 2002, Respondent “otherwise used,” as that term is defined
10 in 40 C.F.R. § 372.3, approximately 30,858 pounds of trichloroethylene, a toxic chemical listed
11 under 40 C.F.R. § 372.65. This quantity exceeded the 10,000 pound threshold for reporting
12 “otherwise use” of that chemical established under Section 313(f) of EPCRA, 42 U.S.C.
13 § 11023(f), and 40 C.F.R. § 372.25.

14 17. During the calendar year 2003, Respondent “otherwise used,” as that term is defined
15 in 40 C.F.R. § 372.3, approximately 16,715 pounds of trichloroethylene, a toxic chemical listed
16 under 40 C.F.R. § 372.65. This quantity exceeded the 10,000 pound threshold for reporting
17 “otherwise use” of that chemical established under Section 313(f) of EPCRA, 42 U.S.C.
18 § 11023(f), and 40 C.F.R. § 372.25.

19 18. During the calendar year 2004, Respondent “otherwise used,” as that term is defined
20 in 40 C.F.R. § 372.3, approximately 29,572 pounds of trichloroethylene, a toxic chemical listed
21 under 40 C.F.R. § 372.65. This quantity exceeded the 10,000 pound threshold for reporting
22 “otherwise use” of that chemical established under Section 313(f) of EPCRA, 42 U.S.C.
23 § 11023(f), and 40 C.F.R. § 372.25.

24 19. During the calendar year 2005, Respondent “otherwise used,” as that term is defined
25 in 40 C.F.R. § 372.3, approximately 25,715 pounds of trichloroethylene, a toxic chemical listed
26 under 40 C.F.R. § 372.65. This quantity exceeded the 10,000 pound threshold for reporting
27 “otherwise use” of that chemical established under Section 313(f) of EPCRA, 42 U.S.C.
28 § 11023(f), and 40 C.F.R. § 372.25.

1 20. During the calendar year 2002, Respondent "processed," as that term is defined in 40
2 C.F.R. § 372.3, approximately 28,733 pounds of nickel compounds, a toxic chemical category
3 listed under 40 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for
4 reporting "processing" of that chemical category established under Section 313(f) of EPCRA, 42
5 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

6 21. During the calendar year 2003, Respondent "processed," as that term is defined in 40
7 C.F.R. § 372.3, approximately 32,471 pounds of nickel compounds, a toxic chemical category
8 listed under 40 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for
9 reporting "processing" of that chemical category established under Section 313(f) of EPCRA, 42
10 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

11 22. During the calendar year 2004, Respondent "processed," as that term is defined in 40
12 C.F.R. § 372.3, approximately 30,422 pounds of nickel compounds, a toxic chemical category
13 listed under 40 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for
14 reporting "processing" of that chemical category established under Section 313(f) of EPCRA, 42
15 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

16 23. During the calendar year 2005, Respondent "processed," as that term is defined in 40
17 C.F.R. § 372.3, approximately 30,744 pounds of nickel compounds, a toxic chemical category
18 listed under 40 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for
19 reporting "processing" of that chemical category established under Section 313(f) of EPCRA, 42
20 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

21 24. Respondent was required to submit Form Rs for chromium compounds and
22 trichloroethylene to EPA and the State of California for calendar year 2001 on or before July 1,
23 2002.

24 25. Respondent was required to submit Form Rs for chromium compounds,
25 trichloroethylene, and nickel compounds to EPA and the State of California for calendar year
26 2002 on or before July 1, 2003.

27 26. Respondent was required to submit Form Rs for chromium compounds,
28 trichloroethylene, and nickel compounds to EPA and the State of California for calendar year

1 2003 on or before July 1, 2004.

2 27. Respondent was required to submit Form Rs for chromium compounds,
3 trichloroethylene, and nickel compounds to EPA and the State of California for calendar year
4 2004 on or before July 1, 2005.

5 28. Respondent was required to submit Form Rs for chromium compounds,
6 trichloroethylene, and nickel compounds to EPA and the State of California for calendar year
7 2005 on or before July 1, 2006.

8 29. Respondent failed to timely submit the Form Rs required of it to EPA and the State
9 of California for calendar years 2001, 2002, 2003, 2004, and 2005, and thus violated Section 313
10 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

11 30. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty
12 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any
13 requirement of Section 313 shall be liable to the United States for a civil penalty in an amount
14 not to exceed \$27,500 for each such violation that occurred between January 31, 1997 and March
15 14, 2004 and \$32,500 for each such violation that occurred on or after March 15, 2004. Under
16 the Enforcement Response Policy for Section 313 of EPCRA, dated August 10, 1992, and the
17 Civil Monetary Penalty Inflation Adjustment Rule, the violations cited above would merit a total
18 gravity-based civil penalty of TWO HUNDRED AND FIFTY-TWO THOUSAND AND FOUR
19 HUNDRED DOLLARS (\$252,400), given the nature, circumstances, and extent of the violations
20 alleged.

21 D. RESPONDENT'S ADMISSIONS

22 31. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
23 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
24 Respondent; (ii) admits the specific factual allegations contained in Section I.C of this CAFO;
25 (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil
26 administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the
27 allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order
28 contained in this CAFO.

1 E. CIVIL ADMINISTRATIVE PENALTY

2 32. In settlement of the violations specifically alleged in Section I.C of this CAFO,
3 Respondent shall pay a civil administrative penalty of SIXTY-THREE THOUSAND AND ONE
4 HUNDRED DOLLARS (\$63,100). Respondent shall pay this civil penalty within thirty (30)
5 days of the effective date of this CAFO, shall make this payment by cashier's or certified check
6 payable to the "Treasurer, United States of America," and shall send the check by certified mail,
7 return receipt requested, to the following address:

8 U.S. Environmental Protection Agency, Region IX
9 P.O. Box 371099M
10 Pittsburgh, PA 15251

11 Respondent shall accompany its payment with a transmittal letter identifying the case name, the
12 case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty,
13 Respondent shall send a copy of the check and transmittal letter to the following addresses:

14 Regional Hearing Clerk
15 Office of Regional Counsel (ORC-1)
16 U.S. Environmental Protection Agency, Region IX
17 75 Hawthorne Street
18 San Francisco, CA 94105

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

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

33. 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.

34. If Respondent fails to pay the assessed civil administrative penalty of SIXTY-
THREE THOUSAND AND ONE HUNDRED DOLLARS (\$63,100), as identified in Paragraph
32, by the deadline specified in that Paragraph, then Respondent shall also pay a stipulated

1 penalty to EPA. The amount of the stipulated penalty will be ONE HUNDRED AND EIGHTY-
2 NINE THOUSAND AND THREE HUNDRED DOLLARS (\$189,300), and will be immediately
3 due and payable on the day following the deadline specified in Paragraph 32, together with the
4 initially assessed civil administrative penalty of SIXTY-THREE THOUSAND AND ONE
5 HUNDRED DOLLARS (\$63,100), resulting in a total penalty due of TWO HUNDRED AND
6 FIFTY-TWO THOUSAND AND FOUR HUNDRED DOLLARS (\$252,400). Failure to pay the
7 civil administrative penalty specified in Paragraph 32 by the deadline specified in that Paragraph
8 may also lead to any or all 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 32 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 35. 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 36. 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 37. 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 38. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
3 this proceeding.

4 I. EFFECTIVE DATE

5 39. 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 40. 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 41. 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.

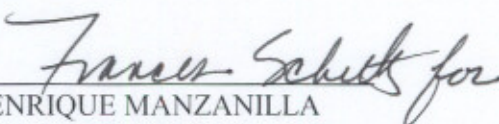
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19 FOR RESPONDENT K-TUBE CORPORATION:

20
21 5/1/2007
22 DATE

23 Terry McCune
24 TERRY MCCUNE
25 President
26 K-Tube Corporation
27 13400 Kirkham Way
28 Poway, CA 92064

1 FOR COMPLAINANT EPA:
2

3 6/20/07
4 DATE

5 
6 ENRIQUE MANZANILLA
7 Director, Communities and Ecosystems Division
8 U.S. Environmental Protection Agency, Region IX
9 75 Hawthorne Street
10 San Francisco, California 94105
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1 II. FINAL ORDER

2 EPA and K-Tube Corporation having entered into the foregoing Consent Agreement,

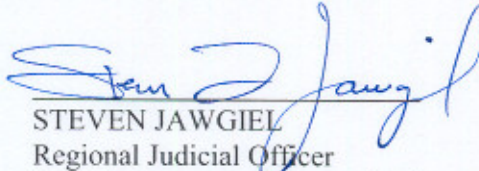
3 IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA 9-2007-0005) be

4 entered, and Respondent shall pay a civil administrative penalty in the amount of SIXTY-

5 THREE THOUSAND AND ONE HUNDRED DOLLARS (\$63,100), and comply with the terms

6 and conditions set forth in the Consent Agreement.

7
8
9
10
11 06/20/07
12 DATE

13 
14 STEVEN JAWGIEL
15 Regional Judicial Officer
16 U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original fully executed Consent Agreement and Final Order ("CAFO"),
Docket Number EPCRA-09-2007-0005, 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 CAFO was sent to Respondent at the following address:

Mr. Terry McCune
President
K-Tube Corporation
13400 Kirkham Way
Poway, CA 92064

Certified Mail No: 7005 3110 0002 8247 1780

Danielle E Carr

Danielle Carr
Regional Hearing Clerk
Region IX, EPA
Office of Regional Counsel

6-20-07
Date