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U.S. EPA, REGION IX
REGIONAL HEARING CLERK

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Region IX
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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

Johnson Laminating & Coating, Inc.,

Respondent.

CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

A INTRODUCTION

1. This administrative proceeding was initiated pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("Complainant" or "EPA"). Respondent is Johnson Laminating & Coating, Inc. ("Johnson" or "Respondent").
2. This action commenced with the filing of a Determination of Violation, Compliance Order and Notice of Right to Request a Hearing ("Complaint") on May 1, 2008 under the above-referenced docket number (RCRA-09-2008-0010).

The Complaint alleged that Respondent violated 22 C.C.R. § 66265.173(a), (see also 40 C.F.R. § 265.173(a); 22 C.C.R. § 66265.52 (see also 40 C.F.R. § 265.52); 22 C.C.R. § 66265.35 (see also 40 C.F.R. § 265.35); and 22 C.C.R. § 66270.1 (see also 40 C.F.R. § 270.1).

B. ADMISSIONS AND WAIVERS

3. Complainant, the United States Environmental Protection Agency, Region IX, and Respondent Johnson Laminating & Coating, Inc., the parties herein, have agreed that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Sections 22.13 and 22.18, without further litigation, is the most appropriate means of resolving this matter.
4. For purposes of this proceeding, Respondent admits and agrees that the EPA Administrator and Region IX Administrator have jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. §§ 22.4 and 22.37. Further, for the purposes of this proceeding, Respondent admits to the jurisdictional allegations of facts and law set forth in the Complaint. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
5. Respondent neither admits nor denies any allegations of fact or law set forth in the Complaint. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in the Complaint, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in the Complaint, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent

hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

C. CIVIL PENALTY AND COMPLIANCE TASKS

6. Complainant and Respondent hereby consent to the assessment of a civil penalty in the amount of FIFTY THOUSAND DOLLARS (\$50,000) in settlement of the civil penalty claims set forth in the Complaint. Satisfaction of the terms of this Consent Agreement and Final Order constitutes a settlement of all civil penalty claims for the violations of 22 C.C.R. § 66265.173(a) (*see also* 40 C.F.R. § 265.173(a); 22 C.C.R. § 66265.52 (*see also* 40 C.F.R. § 265.52); 22 C.C.R. § 66265.35 (*see also* 40 C.F.R. § 265.35); and 22 C.C.R. § 66270.1 (*see also* 40 C.F.R. § 270.1) set forth in the Complaint.
7. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final Order is filed after it is signed by the Regional Judicial Officer or the Regional Administrator.
8. Respondent shall submit the payment due under this CA/FO in accordance with one of the options set forth below, and shall reference the Respondent's name and the docket number of this matter:
 - a. A check sent by regular U.S. Postal Service mail should be made payable to the "Treasurer, United States of America" and addressed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000
 - b. Wire transfers should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

- c. A check sent by overnight mail should be payable to the "Treasurer,
United States of America" and addressed to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson, 314-418-4087

- d. If using ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 310006
CTX Format

- e. An On Line Payment Option is available through the U.S. Department of
Treasury. To use this payment option, access WWW.PAY.GOV; enter "sfo
1.1" in the search field; and open the form and complete required fields.

9. Respondent shall concurrently send a copy of the check or other form of payment
or evidence thereof by certified mail, return receipt requested, to:

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

and to:

Cameron McDonald (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

10. Failure to make the civil administrative penalty payment by the deadline specified in this Section may lead to any or all of the following actions:
- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CA/FO shall not be subject to review.
 - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
 - c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
 - d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in this Section. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service),

that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

11. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.
12. Within ten (10) business days after September 30, 2008, December 31, 2008, March 31, 2009, and June 30, 2009, Respondent shall send EPA a report containing the following information: (1) the date of any shipments of hazardous waste in the prior quarterly period, including the volumes and waste codes of such waste (Respondent may comply with this requirement by including copies of manifests), (2) an inventory of the quantity and types of hazardous waste remaining on-site at the time of the report, (3) the earliest accumulation start date for any such waste, and (4) photographs of its containers of hazardous waste and the area immediately surrounding those containers. These reports shall be sent to the name and address specified for EPA in Section E of this CA/FO.
13. Respondent shall ensure that its facility fully complies with 22 C.C.R. § 66265.35 (*see also* 40 C.F.R. § 265.35). Section 66265.35 requires that you maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it can be demonstrated that aisle space is not needed for any of these purposes. 22 C.C.R. § 66265.35. Complainant agrees that maintaining at least four (4) feet of aisle space in the containment area between hazardous materials and hazardous waste at Respondent's facility is sufficient aisle space to comply with this requirement.

D. STIPULATED PENALTIES

14. Respondent hereby agrees to stipulated penalties in the amount of ONE THOUSAND DOLLARS (\$1,000) for each day past the due date that Respondent does not pay the Civil Penalty assessed by this CA/FO.

15. Respondent hereby agrees to stipulated penalties in the amount of FIVE HUNDRED DOLLARS (\$500) for each day of delay in providing the reports required by Paragraph 12 of this CA/FO. Those reports shall not be considered by EPA to be delayed unless they arrive more than twenty (20) business days after the quarterly end dates specified in Paragraph 12.
16. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has cured any future violations for purposes of stipulated penalties under this CA/FO are within the sole discretion of the Director, Waste Management Division, EPA Region IX. The decision of that Director is not reviewable in any forum.
17. All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.
18. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
19. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of the penalty in Paragraphs 8 and 9 of this CA/FO. All payments shall indicate Respondent's name and the EPA docket number assigned to this action.
20. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
21. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

22. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.
23. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

E. NOTIFICATION

24. All notices and submissions to EPA shall include a certification under penalty of law that the information submitted is true, accurate and complete, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information. All notices and submissions shall be sent by email and fax, and shall be effective upon receipt, unless otherwise provided herein. All notices and submissions sent to EPA shall be directed to:

Cameron McDonald
Waste Management Division, WST-3
U.S. Environmental Protection Agency, Region IX
75 Hawthorne St.
San Francisco, CA 94105
Phone: 415-972-3301
Fax: 415-947-3530
Email: mcdonald.cameron@epa.gov

25. All notices and submissions to Respondent shall be directed to:

Scott Davidson
20631 Annalee Avenue
Carson, CA 90746
Phone: 310-635-4929
Fax: 310-603-1266
Email: sdavidson@johnsonlaminating.com

F. PARTIES BOUND

26. This CA/FO shall apply to and be binding upon Respondent and Respondent's agents, successors and assigns and upon all persons acting under or for Respondent, until such time as the compliance tasks required under Section C have been completed in accordance with the terms of this CA/FO, and any delays

in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the civil penalty claims for the violations alleged in the Complaint.

27. No change in ownership or corporate, partnership or legal status relating to the Respondent's facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
28. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Respondent's facility and shall notify EPA within seven (7) days prior to such transfer.
29. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. CERTIFICATION OF COMPLIANCE

30. Upon signing this CA/FO, Respondent certifies under penalty of law to EPA that the Respondent has fully complied with the requirements of 22 C.C.R. § 66265.173(a) (*see also* 40 C.F.R. § 265.173(a); 22 C.C.R. § 66265.52 (*see also* 40 C.F.R. § 265.52); 22 C.C.R. § 66265.35 (*see also* 40 C.F.R. § 265.35); and 22 C.C.R. § 66270.1 (*see also* 40 C.F.R. § 270.1), that formed the basis for the violations alleged in the Complaint. This certification of compliance is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

H. RESERVATION OF RIGHTS

31. EPA expressly reserves all rights and defenses that it may have.
32. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including without limitation, the right to require that Respondent perform tasks in addition to those required by this CA/FO and the right to assess penalties under Section 3008 of RCRA, 42 U.S.C. § 6928,

or take other appropriate action, in the event that Respondent fails to comply with any of the requirements of this CA/FO.

33. This CA/FO shall not be construed as a covenant not to sue, a release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, that EPA has under RCRA, or any other statutory, regulatory or common law enforcement authority of the United States, except as otherwise set forth herein.
34. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted, except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations set forth in the Complaint. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations alleged in the Complaint.
35. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state or federal permits. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligation to comply with any applicable local, state or federal laws and regulations.
36. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA. EPA reserves its right to seek reimbursement from Respondent for any response costs incurred by the United States that may result or arise from the alleged counts set forth in the Complaint.

I. OTHER CLAIMS

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

hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

J. MISCELLANEOUS

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

IT IS SO AGREED,

For Respondent **JOHNSON LAMINATING & COATING, INC.**

8/8/08

Date

Scott Davidson

Scott Davidson
President
Johnson Laminating & Coating, Inc.

For Complainant **U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX**

9/3/08

Date

Jeff Scott

Jeff Scott
Director
Waste Management Division
United States Environmental Protection Agency,
Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. RCRA-09-2008-0010) be entered and that Respondent Johnson Laminating & Coating, Inc. pay a civil penalty in the amount of FIFTY THOUSAND DOLLARS (\$50,000), in accordance with the terms of this Consent Agreement and Final Order.

This Final Order shall be effective upon filing.

09/04/08

Date

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

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

CERTIFICATE OF SERVICE

I hereby certify that the original copy of the foregoing Consent Agreement and Final Order in the matter of Johnson Laminating & Coating, Inc., has been filed with the Regional Hearing Clerk, Region IX, and that copies have been sent

by Certified Mail, Return Receipt Requested, to:

**Scott Davidson, President
Johnson Laminating & Coating, Inc.
20631 Annalee Avenue
Carson, CA 90746**

CERTIFIED MAIL NO.

by Hand Delivery to:

**Letitia D. Moore
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105**

9-5-08

Date

Danielle E. Carr

**Danielle Carr
Regional Hearing Clerk**