



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

OCT 02 2006

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gregory P. Cafouros
Kroger, Gardis & Regas, LLP
111 Monument Circle, Suite 900
Indianapolis, Indiana 46204-5125

Dear Mr. Cafouros::

Enclosed please find a fully executed Administrative Complaint and Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA filed the other original CAFO with the Regional Hearing Clerk on October 2, 2006.

Please have your client pay the CERCLA civil penalty in the amount of \$19,214 to the Superfund in the manner prescribed in paragraphs 25 and 26, and reference your check with the number BD 27507308001 and docket number CERCLA-05-2007-0001. The payment is due on November 2, 2006.

If you choose to wire your payment please ensure the wire transfer is sent to Federal Reserve Bank of New York, Routing ABA Number 021030004 for Account Number 68010727, U.S. EPA. The wire transfers must have the correct docket numbers and billing document numbers as described above.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Stephen R. Thorn, Associate Regional Counsel at (312) 353-9715. Thank you for your assistance in resolving this matter.

Sincerely yours,

Mark J. Horwitz, Chief
Chemical Emergency Preparedness
& Prevention Section

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

Stephen Thorn (w/enclosure)
Office of Regional Counsel
U.S. EPA Region 5

Ian Ewusi-Wilson
IN SERC (w/enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) **Docket No.**
)
Colors, Inc.) **Proceeding to Assess a Civil**
5780 Massachusetts Avenue) **Penalty under Section 109 of**
Indianapolis, IN 46218) **the Comprehensive**
) **Environmental Response,**
) **Compensation, and Liability**
Respondent.) **Act**

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended 42 U.S.C. § 9609, 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 (2004).

2. Complainant is the Chief of the Chemical Emergency Preparedness and Prevention Section, Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency, Region 5 ("Complainant" or "U.S. EPA").

3. Respondent is Colors, Inc., a corporation doing business in Indiana.

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

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issuance of a Consent Agreement and Final Order (CAFO). 40
C.F.R. § 22.13(b) (2004).

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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Colors, Inc., admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Colors, Inc., 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.

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires a person in charge of a facility to immediately notify the National Response Center as soon as that person knows of a release of a hazardous substance from the facility in an amount equal to or greater than the substance's reportable quantity.

10. Under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), "person" means, among other things, an individual, firm, corporation, or commercial entity.

11. Under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), "facility" means, among other things, any building, structure, installation, equipment, ditch, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

12. Under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

13. Sulfuric acid, CAS# 7664-93-9, is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C § 9601(14), with a reportable quantity (RQ) of 1,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

14. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), the EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004 and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

Factual Allegations and Violations

15. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601 (21).

16. Respondent's facility located at 5780 Massachusetts Avenue, Indianapolis, Indiana consists of a building, structure, installation, equipment, ditch, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

17. Respondent's Facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

18. Respondent was in charge of the Facility on July 6, 2005.

19. On July 6, 2005, 1:40 p.m. Central Time, Respondent's Facility released approximately 45,906 pounds of sulfuric acid (the release).

20. Respondent knew or had constructive knowledge of the release on July 6, 2005 at approximately 1:45 p.m. Central Time.

21. Respondent did not notify the National Response Center of the release until July 15, 2005, at 12:27 p.m. Central Time.

22. Respondent did not immediately notify the National Response Center as soon as Respondent knew or had constructive knowledge of the release.

23. Respondent's failure to notify immediately the National Response Center of the release violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Civil Penalty

24. In consideration of Respondents attitude and cooperation, and agreement to quickly settle this matter, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$19,214.

25. Within 30 days after the effective date of this CAFO, Respondent must pay a \$19,214 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. EPA, Region 5
ATTN: Superfund Receivables
P.O. Box 371099M
Pittsburgh, PA 15251-7531

The check must note the case title of this matter: "In the Matter of Colors, Inc.", the docket number CERCLA-05-2007-0001 and the billing document number 2750730B001.

26. A transmittal letter, stating 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. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Ruth McNamara, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Stephen R. Thorn, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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

28. If Respondent does not timely pay the civil penalty, 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.

29. 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, U.S. EPA will assess a six percent per year

penalty on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

General Provisions

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

31. 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.

32. This CAFO does not affect Respondent's responsibility to comply with EPCRA and CERCLA and other applicable federal, state and local laws, and regulations.

33. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 304 of EPCRA and Section 103 of CERCLA.

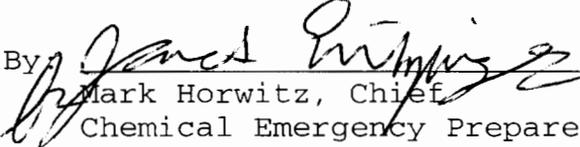
34. The terms of this CAFO bind Respondent and its successors, and assigns.

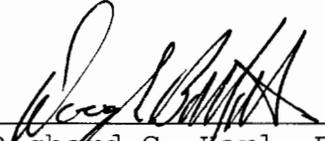
35. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

36. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

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

U.S. Environmental Protection Agency, Complainant

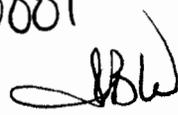
Date: 9/22/06 By: 
Mark Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section
Superfund Division
Region 5

Date: 9/29/06 By: 
for Richard C. Karl, Director
Superfund Division
U.S. EPA, Region 5 Division
Region 5

Colors, Inc., Respondent

Date: 9/14/06 By: 
Secretary Treasurer
Title

In the Matter of:
Colors Inc., Indianapolis, Indiana
Consent Agreement and Final Order
Docket Number: CERCLA-05-2007-0001



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. IT IS SO ORDERED.

Date: 9/29/06

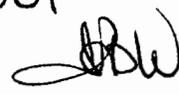
By: 



Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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In the Matter of:
Colors, Inc., Indianapolis, Indiana
Consent Agreement and Final Order
Docket Number: CERCLA-05-2007-0001



In the Matter of:
Colors, Inc., Indianapolis, Indiana
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Docket Number: CERCLA-05-2007-0001



CERTIFICATE OF SERVICE

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on Regional Judicial Officer, and mailed correct copies by first class, postage prepaid, certified mail, return receipt requested, to Colors, Inc.'s Counsel by placing it in the custody of the United States Postal Service addressed as follows:

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Gregory P. Cafouros
Kroger, Gardis & Regas, LLP
111 Monument Circle, Suite 900
Indianapolis, Indiana 46704-5125

on the 2nd day of October, 2006.

Ruth McNamara
Ruth McNamara
U.S. Environmental Protection Agency
Region 5