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EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	
Fluid Motion, LLC	)	Docket No. EPCRA-10-2009-0187
25802 Pacific Highway, South	)	
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"), 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 redelegated this authority to the Regional Judicial Officer.

1.2 Pursuant to Section 325 of EPCRA, and 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 Fluid Motion, LLC, ("Respondent") hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

## 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 in Kent, Washington, located at 25802 Pacific Highway, South ("the Facility").

2.3 The Facility manufactures recreational fiberglass tug boats.

2.4 A concise statement of the factual basis 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.

2.5 Under Section 325(e) of EPCRA, 42 U.S.C. § 11045(c), the EPA Administrator may assess a civil penalty of up to \$25,000 for each day of violation of Section 313 of EPCRA, 42 U.S.C. § 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.

## III. ALLEGATIONS

3.1 Under Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.22 and 372.30, the owner or operator of a facility covered by Section 313 must submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 ("Form R") for each toxic chemical referenced in Section 313(c) of EPCRA and listed in

40 C.F.R. § 372.65 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical threshold specified in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, and 372.28.

3.2 The regulations at 40 C.F.R. Part 372 set forth the definitions and requirements for submission of information relating to the release of toxic chemicals under Section 313 of EPCRA.

3.3 Under 40 C.F.R. § 372.22, a facility that meets each of the following criteria in a calendar year is a covered facility for that calendar year and must report under 40 C.F.R. § 372.30:

- a. the facility has 10 or more full-time employees;
- b. the facility is in a Standard Industrial Classification (SIC) major group or industry code or North American Industrial Classification System (NAICS) code listed in 40 C.F.R. § 372.23; and
- c. the facility manufactured (including imported), processed, or otherwise used a toxic chemical in excess of an applicable threshold quantity of that chemical set forth in 40 C.F.R. § 372.25, 40 C.F.R. § 372.27, or 40 C.F.R. § 372.28.

3.4 The toxic chemicals which are subject to the reporting requirement of 40 C.F.R. § 372.30 are listed at 40 C.F.R. § 372.65.

3.5 Styrene is a toxic chemical listed at 40 C.F.R. § 372.65. The threshold quantity for styrene reporting is 25,000 pounds manufactured or processed for the year, as set forth at 40 C.F.R. § 372.25.

3.6 Respondent is the owner and operator of the Facility.

3.7 The Facility has 10 or more full-time employees.

3.8 The Facility is included in NAICS code 336612, which is included in the list of covered industry codes found at 40 C.F.R. § 372.23.

3.9 The Facility processed more than 25,000 pounds of styrene during each of the calendar years 2004, 2006, and 2007.

3.10 Respondent failed to file a Form R Report with EPA and the state of Washington in accordance with the requirements of 40 C.F.R. § 372.30 by July 1, 2005, July 1, 2007, and July 1, 2008.

3.11 Subsequent to receiving notification from Complainant that Respondent had failed to comply with the requirements of 40 C.F.R. § 372.30, Respondent has taken actions to correct these violations and has filed the Form R Reports for styrene covering calendar years 2004, 2006, and 2007 prior to the date of Respondent's signature of this CAFO.

#### 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, below, 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 actions to correct the violations after having been notified by Complainant, Respondent's agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, and in accordance with the *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act and Section 6607 of the Pollution Prevention Act*, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is two-thousand, eight-hundred and fifty dollars (\$2,850.00).

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:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. 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:

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

Graham Kim  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Suite 900, Mail Stop AWT-128  
Seattle, Washington 98101

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 EPCRA Section 325(f), 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 complete the following SEP, which the parties agree is intended to reduce the amount of pollutants being released from the Respondent's operations into the environment. Respondent shall lower emissions generated by the application of styrene during its tugboat manufacturing activities by replacing the high-pressure high-volume spraying equipment currently used at the Facility with low-pressure high-output equipment whose performance, specifications, and components are similar or identical to those of the Patriot Conversion System manufactured by Magnum Venus Plastech, and by implementing controlled spraying work practices. Respondent shall purchase and install the low-pressure high-output pumping system and shall train facility employees in controlled spraying techniques that reduce the release of pollutants in a 32-hour training course approved by the American Composite

Manufacturers Association. Respondent agrees that the new spraying system will replace the system currently in use at the facility, and will not serve to augment the existing system.

4.13 The cost to Respondent of implementing the SEP described in Paragraph 4.12 shall be not less than ten-thousand, six-hundred and eighty-eight dollars (\$10,688.00). Respondent must purchase and install the aforementioned low-pressure high-output spraying equipment prior to expending resources on the training expenses in order for the training costs to be considered an allowable cost for purposes of Paragraph 4.12 of the CAFO.

4.14 Respondent shall implement and complete the SEP within 90 days of the effective date of this CAFO, in accordance with all provisions described in this Consent Agreement.

4.15 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 contracts, 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.



4.16 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, funding for the implementation of this SEP from any governmental source, or credit in any other enforcement action for the SEP. 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.

4.17 Respondent shall submit a SEP Completion Report to EPA within 120 days of the Effective Date of the CAFO. The SEP Completion 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. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;
  - d. A description of any operating problems encountered and the solutions thereto;
- and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP.

4.18 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."

4.19 Respondent agrees that failure to submit the SEP Completion Report required by 4.17, above, shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to this CAFO.

4.20 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:

Graham Kim.  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Suite 900, Mail Stop AWT-128  
Seattle, Washington 98101

4.21 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.

4.22 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 4.23, 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 a 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.

4.23 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 4.25.

4.24 In the event 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 above, then stipulated penalties shall be due and payable by Respondent to the U.S. Treasury in accordance with Paragraph 4.25. Schedules herein may be extended based upon mutual written agreement of the parties.

4.25 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 or if 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) For incomplete or unsatisfactory completion of the SEP, as determined by EPA, Respondent shall pay a stipulated penalty in the amount of ten-thousand, six-hundred and eighty-eight dollars (\$10,688.00) less the amount actually expended.

(ii) For failure to submit the SEP Completion Report as required by Paragraph 4.17 above, Respondent shall pay a stipulated penalty of one-hundred dollars (\$100.00) for each day after the report is due until the report is received by EPA, not to exceed two-thousand five-hundred dollars (\$2,500.00).

4.26 Stipulated penalties under Paragraph 4.25 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.

4.27 Respondent shall pay stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraph 4.8. Interest and late charges shall be paid as stated in Paragraph 4.11.

4.28 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 other applicable provision of law.


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 installed 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. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original. A facsimile signature shall be treated as an original.

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 above.

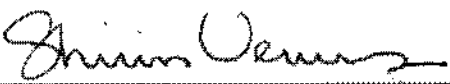
STIPULATED AND AGREED:

FOR FLUID MOTION, LLC

  
Signature  
Print Name: John Livingston  
Title: owner/manager

Dated: 7/13/09

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

  
Shirin Venus  
Assistant Regional Counsel

Dated: 7/16/09

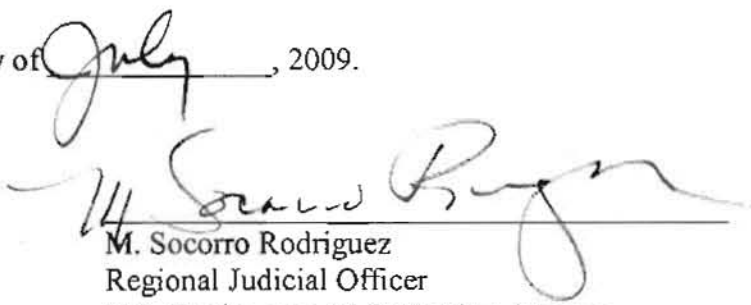
V. FINAL ORDER

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 CERCLA for the particular violations alleged in Part III, above. 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 and permits issued thereunder.

This Final Order shall become effective upon filing.

SO ORDERED this 20<sup>th</sup> day of July, 2009.

  
M. Socorro Rodriguez  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: FLUID MOTION, LLC., DOCKET NO.: EPCRA-10-2009-0187** was filed with the Regional Hearing Clerk on July 23, 2009.

On July 23, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Shirin Venus, 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 July 23, 2009, to:

John Livingston  
Owner/Manager  
25802 Pacific Highway, South  
Kent, WA 98030

DATED this 23<sup>rd</sup> day of July 2009.



Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10