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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)	
)	
Ennis Paint, Inc.)	Docket No. CERCLA-10-2007-0177
)	
Salem, Oregon)	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 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9609. 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 109 of CERCLA, 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 Ennis Paint, Inc. ("Respondent") hereby

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U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101
(206) 553-1037

SCANNED

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 Salem, Oregon located at 1675 Commercial St. NE ("the Facility").

2.3. The Facility produces paint products used to mark streets and highways.

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.

III. ALLEGATIONS

3.1. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires the person in charge of a facility to immediately notify the National Response Center (NRC) as soon as he or she has knowledge of a release of a hazardous substance from such facility in an amount equal to or greater than the reportable quantity (RQ).

3.2. Under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), "person" means, among other things, any corporation.

3.3. Under Section 101(94) of CERCLA, 42 U.S.C. § 9601(9), "facility" means, among other things, any building, structure, installation, storage container, equipment, or any site

or area where a hazardous substance has been deposited, stored, disposed of or placed, or otherwise come to be located.

3.4 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.

3.5 Xylene is a CERCLA "hazardous substance" listed in 40 C.F.R. Part 302, Table 302.4. The RQ for Xylene is 100 pounds. *Id.*

3.6 Under Section 109 of CERCLA, 42 U.S.C. § 9609, the EPA Administrator may assess a civil penalty of up to \$25,000 for each day of violation of Section 103 of CERCLA. 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.

3.7 Respondent is a corporation incorporated in the state of Texas.

3.8 On July 22, 2006, the Facility released approximately 725 pounds of Xylene to the environment.

3.9 Respondent failed to notify the NRC of the release of Xylene from the Facility.

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 agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, and in accordance with the *Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act*, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$4,257.00.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty cited in Paragraph 4.6 above 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 "EPA Hazardous Substances Superfund" and shall be delivered to the

following address: U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
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, Suite 900
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Suzanne Powers
U.S. Environmental Protection Agency
Region 10
Washington Operations Office
300 Desmond Drive S.E., Suite 102
Lacey, Washington 98503

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 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. Respondent agrees that the SEP is intended to improve emergency management by allowing a more immediate and effective response in the event of an emergency.

4.13. Respondent shall donate at least 9,000 reflective road markers to the City of Salem, Transportation Department. These markers will be used to identify parking and response areas for emergency vehicles at facilities with chemicals on-site, and to make roads safer in high hazard areas by maximizing driver awareness of speed and upcoming hazards to allow them the most time possible to make driving decisions. Also, by increasing visibility at night and during inclement conditions, the use of these markers will potentially lessen the threat of accidents

involving cars and trucks which may be hauling hazardous materials.

4.14. 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 contractors, 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.

4.15. The cost to Respondent of implementing the SEP shall be not less than \$8,280.00 in accordance with the specifications set forth in Paragraph 4.13. above. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

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, credit in any other enforcement action for

the SEP and that no federal tax credit will be taken for this project.

4.17. Respondent shall submit a SEP Completion Report to EPA within 90 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. 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.

4.19. 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:

Suzanne Powers
U.S. Environmental Protection Agency, Region 10
Washington Operations Office
300 Desmond Drive SE, Suite 102
Lacey, WA 98503

4.20. 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.

4.21. 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 4.22., 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.

4.22. Following receipt of the SEP Completion Report described in Paragraph 4.17 above, 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 4.24.

4.23. 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 by Paragraph 4.14., above, then stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 4.24., below. Schedules herein may be extended based upon mutual written agreement of the parties.

4.24. 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 described in the preceding and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) For a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$8,280.00, 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 in the amount \$100.00 for each day after the report is due until the report is received by EPA, not to exceed \$2,500.00.

4.25. Stipulated penalties under Paragraph 4.24., above, 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, subject to the maximum set forth in Paragraph 4.24.(ii), above.

4.26. 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., above. Interest and late charges shall be paid as stated in Paragraph 4.11, above.

4.27. Except as provided in Paragraph 4.31., below, 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 statute and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

4.28. 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 Comprehensive Environmental Response, Compensation, and Liability Act."

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.

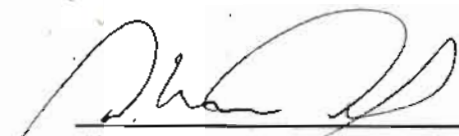
4.30. Respondent represents that it is duly authorized to execute this CAFO and that the

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:

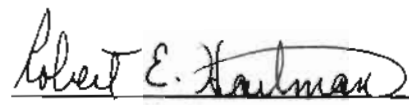
FOR ENNIS PAINT, INC.



Signature
Print Name: De Marco Dovic
Title: Corporate Environmental Manager

Dated: 17 September 2007

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10



Robert E. Hartman
Assistant Regional Counsel

Dated: September 21, 2007

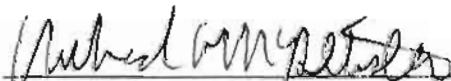
V. FINAL ORDER

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 25th day of September, 2007.



Richard G. McAllister
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: Ennis Paint, Inc., DOCKET NO.: CERCLA-10-2007-0177**, was filed with the Regional Hearing Clerk on September 25, 2007.


On September 25, 2007 the undersigned certifies that a true and correct copy of the document was delivered to:

Robert Hartman
US Environmental Protection Agency
Suite #900
1200 Sixth Avenue, ORC-158
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 September 25, 2007, to:

DeMarco Doxie
Corporate Environmental Manager
Ennis Paint, Inc.
1675 Commercial St. NE
Salem, Oregon 97301

DATED this 25th day of September 2007.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10