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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:

) Docket No. EPCRA-09-2012-~~XXXX~~⁰⁰¹²

11 Henry Company LLC,

)
)
) CONSENT AGREEMENT
) AND FINAL ORDER
) pursuant to 40 C.F.R. §§ 22.13(b),
) 22.18(b)(2), and 22.18(b)(3)
)
)

12 Respondent.
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14

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX ("EPA"), and Henry
17 Company LLC (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/or correct Toxic Chemical Release Inventory Forms for calendar year 2009 in
24 violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing regulations set
25 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 3. Respondent is Henry Company LLC, a corporation with offices located at 4685
5 Finance Way in Kingman, Arizona.

6 B. STATUTORY AND REGULATORY BASIS

7 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA
8 promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for
9 the submission of information relating to the release of toxic chemicals under EPCRA Section
10 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.

11 5. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R.
12 §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and
13 the State in which the facility is located a chemical release form published under Section 313(g)
14 of EPCRA for each toxic chemical or toxic chemical category listed under Section 313(c) of
15 EPCRA and 40 C.F.R. § 372.65 that it manufactured, processed, or otherwise used if: (i) the
16 facility has ten or more full-time employees; (ii) the facility is in North American Industry
17 Classification System Code 324122; and (iii) the facility manufactured, processed, or otherwise
18 used during the calendar year the listed toxic chemical or toxic chemical category in excess of the
19 threshold quantity established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25.

20 6. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a
21 uniform Toxic Chemical Release Inventory Form (hereinafter referred to as a "Form R") for
22 facilities that are subject to the reporting requirements of Section 313. Section 313(a) of
23 EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30(d), provide that each Form R for
24 activities involving a toxic chemical or toxic chemical category that occurred during a calendar
25 year must be submitted on or before July 1 of the next year.

26 C. ALLEGED VIOLATIONS

27 7. Respondent is a corporation and therefore fits within the definition of a "person," as
28 provided in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

1 8. At all times relevant to this matter, Respondent owned and operated a facility (the
2 "Facility") in the business of manufacturing asphalt roof coatings, located at 4685 Finance Way
3 in Kingman, Arizona, that fits within the definition of a "facility," as provided in Section 329(4)
4 of EPCRA, 42 U.S.C. § 11049(4).

5 9. At all times relevant to this matter, the Facility had 10 or more "full-time employees,"
6 as that term is defined at 40 C.F.R. § 372.3.

7 10. At all times relevant to this matter, the Facility was in North American Industry
8 Classification System Code 324122.

9 11. During the calendar year 2009, Respondent "processed," as that term is defined in 40
10 C.F.R. § 372.3, approximately 84,368 pounds of 1,2,4-trimethylbenzene, a toxic chemical listed
11 under 40 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for reporting
12 "processing" of that chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f),
13 and 40 C.F.R. § 372.25.

14 12. During the calendar year 2009, Respondent "processed," as that term is defined in 40
15 C.F.R. § 372.3, approximately 44,602 pounds of naphthalene, a toxic chemical listed under 40
16 C.F.R. § 372.65. This quantity exceeded the 25,000 pound threshold for reporting "processing"
17 of that chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40
18 C.F.R. § 372.25.

19 13. Respondent was required to submit a Form R for 1,2,4-trimethylbenzene to EPA and
20 the State of Arizona for calendar year 2009 on or before July 1, 2010.

21 14. Respondent was required to submit a Form R for naphthalene to EPA and the State
22 of Arizona for calendar year 2009 on or before July 1, 2010.

23 15. Respondent failed to timely submit the Form Rs required of it to EPA and the State
24 of Arizona for calendar year 2009, and thus violated Section 313 of EPCRA, 42 U.S.C. § 11023,
25 and 40 C.F.R. Part 372.

26 16. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty
27 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any
28 requirement of Section 313 shall be liable to the United States for a civil penalty in an amount

1 not to exceed \$37,500 for each such violation that occurred on or after January 12, 2009. Under
2 the Enforcement Response Policy for Section 313 of EPCRA, dated August 10, 1992, and the
3 Civil Monetary Penalty Inflation Adjustment Rule, the two violations cited above would merit an
4 unadjusted, gravity-based civil penalty of FOURTEEN THOUSAND, TWO HUNDRED
5 DOLLARS (\$14,200), given the nature, circumstances, and extent of the violations alleged.

6 D. RESPONDENT'S ADMISSIONS

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

14 E. AUDIT POLICY

15 18. EPA's final policy statement on *Incentives for Self-Policing: Discovery, Disclosure,*
16 *Correction and Prevention of Violations*, 65 Federal Register 19618 (April 11, 2000) (the "Audit
17 Policy") has several important goals, including encouraging greater compliance with the laws and
18 regulations which protect human health and the environment and reducing transaction costs
19 associated with violations of the laws EPA is charged with administering. If certain specified
20 criteria are met, reductions in gravity-based penalties of up to 100% are available under the Audit
21 Policy. These criteria are: (1) systematic discovery of the violation(s) through an environmental
22 audit or compliance management system; (2) voluntary disclosure; (3) prompt disclosure; (4)
23 discovery and disclosure independent of government or third party plaintiff; (5) correction and
24 remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and
25 (9) cooperation.

26 19. Complainant has determined that Respondent has satisfied all of the criteria under the
27 Audit Policy and thus qualifies for the elimination of civil penalties in this matter. Accordingly,
28 the civil penalty assessed in this matter is ZERO DOLLARS (\$0).

1 20. Complainant's finding that Respondent has satisfied the criteria of the Audit Policy is
2 based upon documentation that Respondent has provided to establish that it satisfies these
3 criteria. Complainant and Respondent agree that, should any material fact upon which
4 Complainant relied in making its finding subsequently prove to be other than as represented by
5 Respondent, this CAFO may be voided in whole or in part.

6 F. CERTIFICATION OF COMPLIANCE

7 21. In executing this CAFO, Respondent certifies that (1) it has now fully completed and
8 submitted to EPA all of the required Toxic Chemical Release Inventory Forms in compliance
9 with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder;
10 and (2) it has complied with all other EPCRA requirements at all facilities under its control.

11 G. RETENTION OF RIGHTS

12 22. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
13 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
14 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
15 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
16 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
17 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
18 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
19 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

20 23. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
21 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
22 and permits.

23 H. ATTORNEYS' FEES AND COSTS

24 24. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
25 this proceeding.

26 I. EFFECTIVE DATE

27 25. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
28 effective on the date that the Final Order contained in this CAFO, having been approved and

1 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

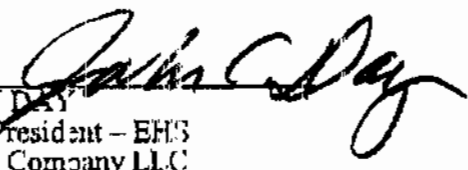
2 J. BINDING EFFECT

3 26. The undersigned representative of Complainant and the undersigned representative of
4 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
5 of this CAFO and to bind the party he or she represents to this CAFO.

6 27. The provisions of this CAFO shall apply to and be binding upon Respondent and its
7 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
8 and assigns.

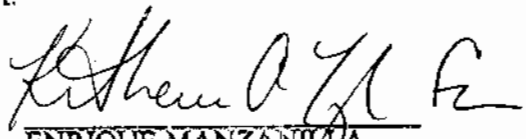
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10 FOR RESPONDENT HENRY COMPANY LLC:

11
12 9/25/12
DATE

13 
14 JOHN DAY
15 Vice President - EHS
Henry Company LLC
330 Coldstream Road
Kimberton, PA 19442

16 FOR COMPLAINANT EPA:

17
18 9/20/2012
DATE

19 
20 ENRIQUE MANZANILLA
21 Director, Communities and Ecosystems Division
22 U.S. Environmental Protection Agency, Region IX
23 75 Hawthorne Street
24 San Francisco, California 94105

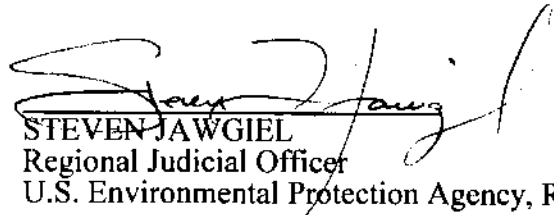
1 II. FINAL ORDER

2 EPA and Henry Company LLC having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-09-2012- 0011) be

4 entered, and Respondent shall comply with the terms and conditions set forth in the Consent
5 Agreement.

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7
8 09/27/12
9 DATE

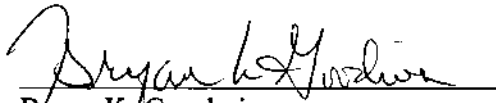
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STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original fully executed Consent Agreement and Final Order ("CAFO"), Docket Number EPCRA-09-2012-0012, 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:

John Day
Vice-President - EHS
Henry Company LLC
330 Coldstream Road
Kimberton, PA 19442

Certified Mail No: 7005 3110 0002 8247 2190



Bryan K. Goodwin
Regional Hearing Clerk
Region IX, EPA
Office of Regional Counsel

9/28/12
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No. 7005 3110 0002 8247 2190
Return Receipt Requested

Re: EPCRA-09-2012- 0017

Date: SEP 28 2012

John Day
Vice President - EHS
Henry Company LLC
330 Coldstream Road
Kimberton, PA 19442

Dear Mr. Day:

Enclosed please find your copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R. Sections 22.13 and 22.18 which contains the terms of the settlement reached as a result of your voluntary disclosure under EPA's *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (EPA Audit Policy). Your completion of all actions enumerated in the Consent Agreement and Final Order will close this case. If you have any questions, please contact Patricia Maravilla at (415) 947-4177.

Sincerely,

A handwritten signature in black ink, appearing to read "Enrique Manzanilla".

Enrique Manzanilla, Director
Communities and Ecosystems Division

Enclosure