

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF	)	
	)	<b>CWA SECTION 311 CLASS I</b>
	)	<b>CONSENT AGREEMENT</b>
<b>DANA CORPORATION</b>	)	<b>AND FINAL ORDER</b>
4500 Dorr Street	)	<b>UNDER 40 C.F.R. § 22.13(b)</b>
Toledo, Ohio 43615-4040	)	
	)	
Respondent	)	
_____	)	Docket No.: CWA-04-2007-5170(b)

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This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(i) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities through the Director, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division ("Complainant").

**CONSENT AGREEMENT**

**Stipulations**

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Respondent, Dana Corporation, is a corporation organized under the laws of Virginia with a place of business located at 750 N. Black Branch Road, Elizabethtown, KY 42701. The Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

2. On March 3, 2006, Dana Corporation and 40 of its U.S. subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the U.S. Bankruptcy Code. The company continues to operate and is still under Chapter 11 Bankruptcy.

3. The Respondent was at all times relevant to this Consent Agreement an owner or operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of an equipment supplier facility located at 750 N. Black Branch Road, Elizabethtown, Kentucky ("the facility").

4. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

5. Black Branch Creek is a navigable water, as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, and is therefore subject to the jurisdiction of Section 311 of the Act.

6. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

7. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited

beneath the surface of the water or upon the adjoining shorelines.

8. Respondent admits the jurisdictional statements contained herein.

### **Allegations**

Complainant alleges, and Respondent neither admits nor denies, that:

9. On August 19, 2006, Respondent discharged 2,000 gallons of oil (a mixture of an oil, cleaning fluid, and water) as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), from its hydrofoam bath into or upon Black Branch Creek in Elizabethtown, Kentucky.

10. The discharged oil/water mixture was recovered and sent to the facility's onsite wastewater treatment plant.

11. Respondent's discharge of oil, on August 19, 2006, caused a sheen upon or discoloration of or caused a sludge or emulsion to be deposited beneath the waters of Black Branch Creek, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the Act.

### **Waiver of Rights**

12. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and to appeal any Final Order accompanying the Consent Agreement in this matter pursuant to Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

13. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum

or communication is to persuade such official to accept and issue this Consent Agreement and the Final Order.

#### **Penalty**

14. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$0.00**.

#### **General Provisions**

15. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

16. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

17. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to this Consent Agreement.

**Effective Date**

18. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.


**DANA CORPORATION**

Date: August 23, 2007

  
\_\_\_\_\_  
**Teresa Mulawa, Treasurer  
Dana Corporation**

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 8/28/07

  
\_\_\_\_\_  
**Narindar Kumar, Chief  
RCRA & OPA Enforcement and Compliance  
Branch  
RCRA Division  
Region 4  
U.S. Environmental Protection Agency**

**FINAL ORDER**

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

Date: 9/6/07

Susan P. Schub

**Susan Schub  
Regional Judicial Officer**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreements and the attached Final Orders (CA/FOs), in the Matter of Dana Corporation, Docket Numbers: CWA-04-2007-5168(b), CWA-04-2007-5169(b), and CWA-04-2007-5170(b), on the parties listed below in the manner indicated:

Susan Capel, Associate Regional Counsel  
U.S. Environmental Protection Agency  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(Via EPA's internal mail)

Ms. Teresa Mulawa  
DANA CORPORATION  
4500 Dorr Street  
Toledo, Ohio 43615-4040

(Via Certified Mail- Return Receipt  
Requested)

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Via Certified Mail - Return Receipt  
Requested)

Date

9-6-07



Patricia Bullock  
Law Clerk