

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

FILED

2011 SEP 28 AM 11:20

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

In the Matter of:)
Ardagh Metal Packaging) Docket No. EPCRA-09-2011-0016
USA, Inc.,)
Respondent) CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO 40 C.F.R.
§§ 22.13 AND 22.18

I. CONSENT AGREEMENT

1. The Director of the Communities and Ecosystems Division ("Complainant"), United States Environmental Protection Agency ("EPA") Region 9, and Ardagh Metal Packaging USA, Inc. ("Respondent" or "Ardagh") agree to settle this matter and consent to the filing of this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
2. This is a civil administrative proceeding initiated pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 et seq., also known as the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), for violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated to implement Section 313 at 40 C.F.R. Part 372.
3. Complainant has been duly delegated the authority to file

this action and sign a consent agreement settling this action. Respondent is headquartered in Pennsylvania.

4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule at 40 C.F.R. Part 372.
5. Section 313(a) of EPCRA, as implemented by 40 C.F.R. § 372.30, provides that an owner or operator of a facility that meets the criteria set forth in EPCRA Section 313(b) and 40 C.F.R. § 372.22, is required to submit annually to the Administrator of EPA and to the State in which the facility is located, no later than July 1st of each year, a toxic chemical release inventory reporting form (hereinafter "Form R") for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed or otherwise used at the facility during the preceding calendar year in quantities exceeding the thresholds established under EPCRA Section 313(f) and 40 C.F.R. §§ 372.25, 375.27, and 372.28.
6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that the requirements of Section 313(a) and 40 C.F.R. § 372.30 apply to an owner and operator of a facility that has 10 or more full-time employees; that is in a Standard Industrial Classification major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), 20 through 39; industry codes 4911,

4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce), or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. §6921 et seq.), or 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); and that manufactures, processes, or otherwise uses one or more toxic chemicals listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of the applicable thresholds established under EPCRA Section 313(f) and 40 C.F.R. §§ 372.25, 372.27, and 372.28.

7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R. Part 19 authorize EPA to assess a penalty of up to \$32,500 for each violation of Section 313 of EPCRA that occurred on or after March 15, 2004 through January 12, 2009 and \$37,500 for each violation of Section 313 of EPCRA that occurred after January 12, 2009 .
8. Respondent is a "person," as that term is defined by Section 329(7) of EPCRA.
9. At all times relevant to this CAFO, Respondent was the owner or operator of a "facility," as that term is defined by Section 329(4) of EPCRA and 40 C.F.R. § 372.3, located at 936 Barracuda Street, Los Angeles, CA 90731 ("Facility"); the Facility had 10 or more "full-time employees," as that term

is defined at 40 C.F.R. § 372.3; and the Facility was classified in the North American Industry Classification System Code 332431.

10. During calendar years 2006, 2007 and 2008 Respondent otherwise used the following amounts (in pounds) of xylene (mixed isomers), a chemical listed under 40 C.F.R. § 372.65:

<u>Year</u>	<u>xylene (mixed isomers) otherwise used</u>
2006	46,665
2007	22,963
2008	20,140

11. The quantities of xylene (mixed isomers) that Respondent otherwise used at the Facility during calendar years 2006, 2007 and 2008 exceeded the established threshold of 10,000 pounds set forth at 40 C.F.R. § 372.25(a).
12. Respondent failed to submit Form Rs for xylene (mixed isomers) otherwise used at the Facility to the EPA Administrator and to the State of California on or before July 1, 2008 for calendar year 2007 and on or before July 1, 2009 for calendar year 2008, as required by Section 313(a) of EPCRA and 40 C.F.R. § 372.30.
13. Respondent's failure to submit Form Rs for xylene (mixed isomers) otherwise used at the Facility for calendar year 2007 and 2008 constitute two violations of Section 313 of EPCRA and 40 C.F.R. § 372.30.
14. Respondent failed to submit a complete Form R because it contained a significant data quality error for calendar year

2006, as required by Section 313(a) of EPCRA and 40 C.F.R. § 372.30(a).

15. Respondent's failure to submit a complete Form R for xylene (mixed isomers) otherwise used at the Facility for calendar year 2006 constitutes one violation of Section 313 of EPCRA and 40 C.F.R. § 372.30.
16. The EPA Enforcement Response Policy for EPCRA Section 313 dated August 10, 1992 provides for a penalty of fifty-eight thousand nine hundred dollars (\$58,900) for these violations.
17. In executing this CAFO, Respondent certifies that (1) it has now fully completed and submitted to EPA all of the required Form Rs in compliance with Section 313 of EPCRA and the regulations promulgated to implement Section 313; and (2) it has complied with all other EPCRA requirements at all facilities under its control.
18. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) admits the violations and facts alleged in this CAFO; (iii) consents to the terms of this CAFO; (iv) waives any right to contest the allegations in this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.
19. The terms of this CAFO constitute a full settlement of the

civil administrative matter filed under the docket number above.

20. EPA's final policy statement on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit Policy") has several important goals, including encouraging greater compliance with the laws and regulations which protect human health and the environment and reducing transaction costs associated with violations of the laws EPA is charged with administering. If certain specified criteria are met, reductions in gravity-based penalties of up to 100% are available under the Audit Policy. These criteria are (1) discovery of the violation(s) through an environmental audit or due diligence; (2) voluntary disclosure; (3) prompt disclosure; (4) discovery and disclosure independent of government or third party plaintiff; (5) correction and remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.
21. Complainant has determined that Respondent has satisfied all of the criteria under the Audit Policy and thus qualifies for the elimination of civil penalties in this matter. Accordingly, the civil penalty assessed in this matter is zero (\$0) dollars.

22. Complainant's finding that Ardagh has satisfied the criteria of the Audit Policy is based upon documentation that Ardagh has provided to establish that it satisfies these criteria. Complainant and Respondent agree that, should any material fact upon which Complainant relied in making its finding subsequently prove to be other than as represented by Ardagh, this CAFO may be voided in whole or in part.
23. Nothing in this CAFO modifies, affects, exempts or relieves Respondent's duty to comply with all applicable provisions of EPCRA and other federal, state or local laws and permits. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in this CAFO.
24. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b),

this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

25. The provisions of this CAFO shall be binding upon Respondent, its agents, successors or assigns. Respondent's obligations under this Consent Agreement, if any, shall end when Respondent has performed all of the terms of the Consent Agreement in accordance with the Final Order. Complainant and Respondent consent to the entry of the CAFO without further notice.

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FOR COMPLAINANT:

9/22/11
Date

Enrique Manzanilla
Enrique Manzanilla, Director
Communities and Ecosystems Division
EPA Region 9

FOR RESPONDENT:

9/14/11
Date

John G. Boyas
John G. Boyas
Vice President, Finance and
Administration
Ardagh Metal Packaging USA, Inc.

II. FINAL ORDER

Complainant EPA Region 9 and Respondent Ardagh Metal Packaging USA, Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-09-2011-0016) be entered.

09/27/11
Date

Steven L. Jawgiel
Steven L. Jawgiel
Regional Judicial Officer
U.S. Environmental Protection
Agency, Region 9

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order with **Ardagh Metal Packaging (Docket #: EPCRA-09-2011-0016)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

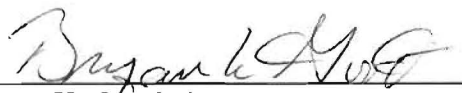
A copy was mailed via CERTIFIED MAIL to:

Mr. John G. Boyas
Vice President, Finance & Administration
Ardagh Metal Packaging USA, Inc.
600 N. Bell Avenue, Bldg 1, Ste 200
Carnegie, PA 15106

CERTIFIED MAIL NUMBER: 7010-1060-0002-0234-7045

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Daniel Reich, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/28/11
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Certified Mail No. 7010 1060 0002 0234 7045
Return Receipt Requested

SEP 26 2011

Re: EPCRA-09-2011- 0016

John G. Boyas
Vice President, Finance & Administration
Ardagh Metal Packaging USA, Inc.
600 N Bell Avenue, Building 1, Suite 200
Carnegie, PA 15106

Dear Mr. Boyas:

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 with the EPA Region IX Toxic Chemical Release Inventory Program. Your completion of all actions enumerated in the Consent Agreement and Final Order will close this case.

If you have any questions, please contact Russ Frazer at (415) 947-4220 or have your attorney contact Daniel Reich at (415) 972-3911.

Sincerely,

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

Enrique Manzanilla, Director
Communities and Ecosystems Division

cc: Peter G. Stein

Enclosure