

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

FILED

2008 SEP 30 AM 9:17

U.S. EPA, REGION IX  
REGIONAL HEARING CLERK  
0026

In the Matter of:  
Guardian Industries Corp.

Docket No. EPCRA-09-2008-

CONSENT AGREEMENT AND FINAL  
ORDER PURSUANT TO 40 C.F.R.  
§§ 22.13 AND 22.18

Respondent

I. CONSENT AGREEMENT

1. The Director of the Communities and Ecosystems Division ("Complainant"), United States Environmental Protection Agency ("EPA") EPA Region 9, and Guardian Industries Corp. ("Respondent" or "Guardian"), the Parties herein, agree to settle this matter and consent to the entry 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 a Delaware corporation headquartered at 2300 Harmon Road, Auburn Hills, Michigan 48326.



- 1 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023  
2 and 11048, EPA promulgated the Toxic Chemical Release  
3 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part  
4 372.
- 5 5. Section 313(a) of EPCRA, as implemented by 40 C.F.R.  
6 § 372.30, provides that an owner or operator of a facility  
7 that meets the criteria set forth in EPCRA Section 313(b) and  
8 40 C.F.R. § 372.22, is required to submit annually to the  
9 Administrator of EPA and to the State in which the facility  
10 is located, no later than July 1st of each year, a toxic  
11 chemical release inventory reporting form (hereinafter "Form  
12 R") for each toxic chemical listed under 40 C.F.R. § 372.65  
13 that was manufactured, processed or otherwise used at the  
14 facility during the preceding calendar year in quantities  
15 exceeding the thresholds established under EPCRA Section  
16 313(f) and 40 C.F.R. §§ 372.25, 372.27 and 372.28.
- 17 6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that  
18 the requirements of Section 313(a) and 40 C.F.R. § 372.30  
19 apply to an owner and operator of a facility that has 10 or  
20 more full-time employees; that is in a Standard Industrial  
21 Classification (SIC) (as in effect on January 1, 1987) major  
22 group or industry code listed in § 372.23(a), for which the  
23 corresponding North American Industry Classification System  
24 (NAICS) (as in effect on January 1, 2007, for reporting year  
25 2008 and thereafter) subsector and industry codes are listed  
26 in 40 C.F.R. §§ 372.23(b) and (c); and that manufactures,



1 processes, or otherwise uses one or more toxic chemicals  
2 listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65  
3 in quantities in excess of the applicable thresholds  
4 established under EPCRA Section 313(f) and 40 C.F.R. §§  
5 372.25, 372.27 and 372.28.

6 7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R.  
7 Part 19 authorize EPA to assess a penalty of up to \$27,500  
8 for each violation of Section 313 of EPCRA that occurred on  
9 or after January 30, 1997, but before March 15, 2004, and up  
10 to \$32,500 for each violation of Section 313 of EPCRA that  
11 occurred on or after March 15, 2004.

12 8. Respondent is a "person," as that term is defined by Section  
13 329(7) of EPCRA.

14 9. At all times relevant to this CAFO, Respondent was the owner  
15 and operator of a facility located at 11535 East Mountain  
16 View Avenue, Kingsburg, California 93631 (the "Facility"),  
17 which falls within the definition of a "facility" found in  
18 Section 329(4) of EPCRA and 40 C.F.R. § 372.3.

19 10. The Facility employed 10 or more "full-time employees," as  
20 that term is defined at 40 C.F.R. § 372.3 and was classified  
21 in NAICS Code 32721103 - Glass & Glass Product Manufacturing.

22 11. During calendar year 2003, Respondent otherwise used  
23 approximately 68,581 pounds of polycyclic aromatic compounds,  
24 a chemical listed under 40 C.F.R § 372.65, at the Facility.

25 12. The quantity of polycyclic aromatic compounds Respondent  
26 otherwise used at the Facility during calendar year 2003  
27



1 exceeds the established threshold of 100 pounds set forth at  
2 40 C.F.R. § 372.28.

3 13. Respondent failed to submit a Form R for polycyclic aromatic  
4 compounds otherwise used at the Facility to the EPA  
5 Administrator and to the State of California on or before  
6 July 1, 2004, for calendar year 2003.

7 14. Respondent's failure to submit a Form R before July 1 of 2004  
8 for polycyclic aromatic compounds otherwise used at the  
9 Facility during the preceding calendar year constitutes a  
10 violation of Section 313 of EPCRA and 40 C.F.R. § 372.30.

11 15. During calendar year 2004, Respondent otherwise used  
12 approximately 70,400 pounds of polycyclic aromatic compounds,  
13 a chemical listed under 40 C.F.R § 372.65, at the Facility.

14 16. The quantity of polycyclic aromatic compounds Respondent  
15 otherwise used at the Facility during calendar year 2003  
16 exceeds the established threshold of 100 pounds set forth at  
17 40 C.F.R. § 372.28.

18 17. Respondent failed to submit a Form R for polycyclic aromatic  
19 compounds otherwise used at the Facility to the EPA  
20 Administrator and to the State of California on or before  
21 July 1, 2005, for calendar year 2004.

22 18. Respondent's failure to submit a Form R before July 1 of 2005  
23 for polycyclic aromatic compounds otherwise used at the  
24 Facility during the preceding calendar year constitutes a  
25 violation of Section 313 of EPCRA and 40 C.F.R. § 372.30.

26 ////



1 19. During calendar year 2005, Respondent otherwise used  
2 approximately 72,407 pounds of polycyclic aromatic compounds,  
3 a chemical listed under 40 C.F.R § 372.65, at the Facility.

4 20. The quantity of polycyclic aromatic compounds Respondent  
5 otherwise used at the Facility during calendar year 2005  
6 exceeds the established threshold of 100 pounds set forth at  
7 40 C.F.R. § 372.28.

8 21. Respondent failed to submit a Form R for polycyclic aromatic  
9 compounds otherwise used at the Facility to the EPA  
10 Administrator and to the State of California on or before  
11 July 1, 2006, for calendar year 2005.

12 22. Respondent's failure to submit a Form R before July 1 of 2006  
13 for polycyclic aromatic compounds otherwise used at the  
14 Facility during the preceding calendar year constitutes a  
15 violation of Section 313 of EPCRA and 40 C.F.R. § 372.30.

16 23. The EPA Enforcement Response Policy for EPCRA Section 313  
17 dated August 10, 1992, as amended by 40 C.F.R. Part 19,  
18 provides for a penalty of ninety-seven thousand, five hundred  
19 dollars (\$97,500) for these violations.

20 ////

21 ////

22

23

24

25

26

27

28



1 24. In executing this CAFO, Respondent certifies that, to the  
2 best of its knowledge and belief, (1) it has now fully  
3 completed and submitted to EPA all required Form Rs, in  
4 compliance with Section 313 of EPCRA and the regulations  
5 promulgated to implement Section 313; and (2) it has complied  
6 with all other applicable EPCRA requirements at all  
7 facilities under its ownership and control.

8 25. In accordance with 40 C.F.R. § 22.18(b)(2) and for the  
9 purpose of this proceeding, Respondent (i) admits that EPA  
10 has jurisdiction over the subject matter of this CAFO and  
11 over Respondent; (ii) admits the violations and facts alleged  
12 in this CAFO; (iii) consents to the terms of this CAFO; (iv)  
13 waives any right to contest the allegations in this CAFO; and  
14 (v) waives the right to appeal the proposed final order  
15 contained in this CAFO.

16 26. The terms of this CAFO constitute a full settlement of the  
17 civil administrative matter filed under the docket number  
18 above.

19 27. EPA's final policy statement on Incentives for Self-Policing:  
20 Discovery, Disclosure, Correction and Prevention of  
21 Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit  
22 Policy") has several important goals, including encouraging  
23 greater compliance with the laws and regulations which  
24 protect human health and the environment and reducing  
25 transaction costs associated with violations of the laws EPA  
26 is charged with administering. If certain specified criteria  
27



1 are met, reductions in gravity-based penalties of up to 100%  
2 are available under the Audit Policy. These criteria are (1)  
3 discovery of the violation(s) through an environmental audit  
4 or a compliance management system; (2) voluntary disclosure;  
5 (3) prompt disclosure; (4) discovery and disclosure  
6 independent of government or third party plaintiff; (5)  
7 correction and remediation; (6) prevention of recurrence; (7)  
8 no repeat violations; (8) exclusion of the policy's  
9 applicability to certain types of violations, including those  
10 resulting in serious actual harm to the environment and those  
11 that may have presented an imminent and substantial  
12 endangerment to the public health or the environment; and (9)  
13 cooperation.

14 28. Complainant has determined that Respondent has satisfied all  
15 of the criteria under the Audit Policy and thus qualifies for  
16 the elimination of civil penalties in this matter.

17 Accordingly, the civil penalty assessed in this matter is  
18 zero (\$0) dollars.

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

26 ////



1 30. Nothing in this CAFO modifies, affects, exempts or relieves  
2 Respondent's duty to comply with all applicable provisions of  
3 EPCRA and other federal, state or local laws and permits. In  
4 accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves  
5 Respondent's liability for federal civil penalties for the  
6 violations and facts specifically alleged in this CAFO.  
7 Nothing in this CAFO is intended to or shall be construed to  
8 resolve (i) any civil liability for violations of any  
9 provision of any federal, state, or local law, statute,  
10 regulation, rule, ordinance, or permit not specifically  
11 alleged in this CAFO; or (ii) any criminal liability. EPA  
12 specifically reserves any and all authorities, rights, and  
13 remedies available to it (including, but not limited to,  
14 injunctive or other equitable relief or criminal sanctions)  
15 to address any violation of this CAFO or any violation not  
16 specifically alleged in this CAFO.

17 31. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b),  
18 this CAFO shall be effective on the date that the final order  
19 contained in this CAFO, having been approved and issued by  
20 either the Regional Judicial Officer or Regional  
21 Administrator, is filed.

22 ////

23 ////



1 32. The provisions of this CAFO shall be binding upon Respondent,  
2 its agents, successors or assigns. Respondent's obligations  
3 under this Consent Agreement, if any, shall end when  
4 Respondent has performed all of the terms of the Consent  
5 Agreement in accordance with the Final Order. Complainant  
6 and Respondent consent to the entry of the CAFO without  
7 further notice.  
8

9 FOR RESPONDENT:

10  
11 25 Sept. '08  
12 Date

Michael W. Turnbull  
13 Michael W. Turnbull  
14 Director of International Environmental  
15 Management  
16 Guardian Industries Corp.

17 FOR COMPLAINANT:

18 29 SEPT, 2008  
19 Date

Enrique Manzanilla  
20  
21  
22  
23  
24  
25  
26  
27  
28 Enrique Manzanilla, Director  
Communities and Ecosystems Division  
EPA Region 9

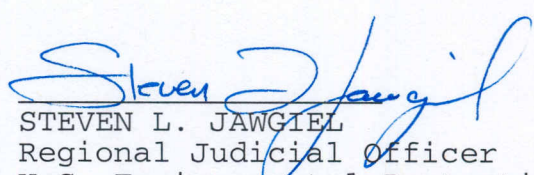


1 **II. FINAL ORDER**

2 Complainant EPA Region IX and Respondent Guardian Industries  
3 Corp., having entered into the foregoing Consent Agreement,

4 IT IS HEREBY ORDERED that this Consent Agreement and Final  
5 Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-  
6 09-20080026) be entered.

7  
8 09/29/08  
9 Date

10   
11 STEVEN L. JANGIEL  
12 Regional Judicial Officer  
13 U.S. Environmental Protection  
14 Agency, Region 9  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



