

FILED

2007 SEP 25 PM 3: 30

U.S. EPA, REGION IX  
REGIONAL HEARING CLERK

1 NANCY J. MARVEL  
Regional Counsel  
2  
3 EDGAR P. CORAL  
Assistant Regional Counsel  
U. S. Environmental Protection Agency  
4 Region IX  
75 Hawthorne Street  
5 San Francisco, CA 94105  
(415) 972-3898  
6

7 UNITED STATES  
8 ENVIRONMENTAL PROTECTION AGENCY  
9 REGION IX

10 In the matter of:

) Docket No. EPCRA-9-2007- 0022

11 SDI Industries, Inc.,

) CONSENT AGREEMENT  
) AND FINAL ORDER

12  
13 Respondent.

) pursuant to 40 C.F.R. §§ 22.13(b),  
) 22.18(b)(2), and 22.18(b)(3)  
)

14  
15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX ("EPA"), and SDI  
17 Industries, Inc. (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  
21 1. This is a civil administrative action brought under Section 325(c) of the Emergency  
22 Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for  
23 assessment of a civil administrative penalty against Respondent for its failure to submit a timely,  
24 complete and correct Toxic Chemical Release Inventory Form for calendar years 2002 through  
25 and including 2005 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the  
26 implementing regulations set forth at 40 C.F.R. Part 372.

27 2. Complainant is the Director of the Communities and Ecosystems Division in EPA,  
28 Region IX (the "Complainant"). Pursuant to EPA Delegation Order Number 22-3-A, dated May  
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 B. STATUTORY AND REGULATORY BASIS

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

9 4. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R.  
10 §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and  
11 the State in which the facility is located a chemical release form published under Section 313(g)  
12 of EPCRA for each toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R.  
13 § 372.65 that it manufactured, processed or otherwise used if: (i) the facility has ten or more full-  
14 time employees; (ii) the facility is in Standard Industrial Classification Code 3535; and (iii) the  
15 facility manufactured, processed or otherwise used during the calendar year the listed toxic  
16 chemical in excess of the threshold quantity established under Section 313(f) of EPCRA and 40  
17 C.F.R. § 372.25.

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

#### 24 C. ALLEGED VIOLATIONS

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

27 7. At all times relevant to this matter, Respondent owned and operated a facility (the  
28 "Facility") in the business of conveyor equipment manufacturing, located at 13000 Pierce Street

1 in Pacoima, California, that fits within the definition of a "facility," as provided in Section  
2 329(4) of EPCRA, 42 U.S.C. § 11049(4).

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

5 9. At all times relevant to this matter, the Facility was in Standard Industrial  
6 Classification Code 3535.

7 10. During the calendar year 2002, Respondent "processed," as that term is defined in 40  
8 C.F.R. § 372.3, approximately 2,344 pounds of lead, a toxic chemical listed under 40 C.F.R.  
9 § 372.65. This quantity exceeded the 100 pound threshold for reporting "processing" of that  
10 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.  
11 § 372.28.

12 11. During the calendar year 2003, Respondent "processed," as that term is defined in 40  
13 C.F.R. § 372.3, approximately 1,045 pounds of lead, a toxic chemical listed under 40 C.F.R.  
14 § 372.65. This quantity exceeded the 100 pound threshold for reporting "processing" of that  
15 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.  
16 § 372.28.

17 12. During the calendar year 2004, Respondent "processed," as that term is defined in 40  
18 C.F.R. § 372.3, approximately 680 pounds of lead, a toxic chemical listed under 40 C.F.R.  
19 § 372.65. This quantity exceeded the 100 pound threshold for reporting "processing" of that  
20 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.  
21 § 372.28.

22 13. During the calendar year 2005, Respondent "processed," as that term is defined in 40  
23 C.F.R. § 372.3, approximately 704 pounds of lead, a toxic chemical listed under 40 C.F.R.  
24 § 372.65. This quantity exceeded the 100 pound threshold for reporting "processing" of that  
25 chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R.  
26 § 372.28.

27 14. Respondent was required to submit a Form R for lead to EPA and the State of  
28 California for calendar year 2002 on or before July 1, 2003.

1 15. Respondent was required to submit a Form R for lead to EPA and the State of  
2 California for calendar year 2003 on or before July 1, 2004.

3 16. Respondent was required to submit a Form R for lead to EPA and the State of  
4 California for calendar year 2004 on or before July 1, 2005.

5 17. Respondent was required to submit a Form R for lead to EPA and the State of  
6 California for calendar year 2005 on or before July 1, 2006.

7 18. Respondent failed to timely submit the Form Rs required of it to EPA and the State  
8 of California for calendar years 2002, 2003, 2004, and 2005, and thus violated Section 313 of  
9 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

10 19. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty  
11 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any  
12 requirement of Section 313 shall be liable to the United States for a civil penalty in an amount  
13 not to exceed \$27,500 for each such violation that occurred between January 31, 1997 and  
14 March 14, 2004 and \$32,500 for each such violation that occurred on or after March 15, 2004.  
15 Under the Enforcement Response Policy for Section 313 of EPCRA, dated August 10, 1992, and  
16 the Civil Monetary Penalty Inflation Adjustment Rule, the violations cited above would merit a  
17 total gravity-based civil penalty of ONE HUNDRED AND ONE THOUSAND AND FOUR  
18 HUNDRED DOLLARS (\$101,400), given the nature, circumstances, and extent of the violations  
19 alleged.

20 **D. RESPONDENT'S ADMISSIONS**

21 20. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
22 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over  
23 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section  
24 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the  
25 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any  
26 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the  
27 proposed Final Order contained in this CAFO.  
28

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

E. CIVIL ADMINISTRATIVE PENALTY

21. In settlement of the violations specifically alleged in Section I.C of this CAFO, Respondent shall pay a civil administrative penalty of NINETEEN THOUSAND, ONE HUNDRED, AND NINETY-SEVEN DOLLARS (\$19,197) and perform the tasks set forth in Section I.F of this CAFO, according to the terms of this CAFO. Respondent shall pay this civil penalty within thirty (30) days of the effective date of this CAFO, shall make this payment by cashier's or certified check payable to the "Treasurer, United States of America," and shall send the check by certified mail, return receipt requested, to the following address:

U.S. Environmental Protection Agency, Region IX  
P.O. Box 371099M  
Pittsburgh, PA 15251

Respondent shall accompany its payment with a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Mariela Lopez  
Communities and Ecosystems Division (CED-4)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Edgar Coral  
Office of Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

22. Respondent shall not use payment of any penalty under this CAFO or any and all costs incurred in performing the tasks specified in Section I.F of this CAFO as a tax deduction from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to use such payment or incurred cost as a tax deduction.

23. If Respondent fails to pay the assessed civil administrative penalty of NINETEEN

1 THOUSAND, ONE HUNDRED, AND NINETY-SEVEN DOLLARS (\$19,197), as identified in  
2 Paragraph 21, by the deadline specified in that Paragraph, then Respondent shall also pay a  
3 stipulated penalty to EPA and Section I.F of this CAFO will be nullified. The amount of the  
4 stipulated penalty will be EIGHTY-TWO THOUSAND, TWO HUNDRED, AND THREE  
5 DOLLARS (\$82,203), and will be immediately due and payable on the day following the  
6 deadline specified in Paragraph 21, together with the initially assessed civil administrative  
7 penalty of NINETEEN THOUSAND, ONE HUNDRED, AND NINETY-SEVEN DOLLARS  
8 (\$19,197), resulting in a total penalty due of ONE HUNDRED AND ONE THOUSAND AND  
9 FOUR HUNDRED DOLLARS (\$101,400). Failure to pay the civil administrative penalty  
10 specified in Paragraph 21 by the deadline specified in that Paragraph may also lead to any or all  
11 of the following actions:

12 (1) EPA may refer the debt to a credit reporting agency, a collection  
13 agency, or to the Department of Justice for filing of a collection action in the appropriate United  
14 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and  
15 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such  
16 collection proceeding.

17 (2) The U.S. Government may collect the debt by administrative offset  
18 (i.e., the withholding of money payable by the United States to, or held by the United States for,  
19 a person to satisfy the debt the person owes the U.S. Government), which includes, but is not  
20 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40  
21 C.F.R. §§ 13(C) and 13(H).

22 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke  
23 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing  
24 business with EPA or engaging in programs EPA sponsors or funds.

25 (4) Pursuant to 31 U.S.C. § 3701 et seq. and 40 C.F.R. Part 13, the U.S.  
26 Government may assess interest, administrative handling charges, and nonpayment penalties  
27 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
28 civil administrative penalty specified in Paragraph 21 by the deadline specified in that Paragraph.

1 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.  
2 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established  
3 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
4 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
5 (30) days of the effective date of this CAFO.

6 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.  
7 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,  
8 based on either actual or average cost incurred (including both direct and indirect costs), for  
9 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

10 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)  
11 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,  
12 may be assessed on all debts more than ninety (90) days delinquent.

13 F. SUPPLEMENTAL ENVIRONMENTAL PROJECT

14 24. Within 30 days entry of this CAFO, Respondent shall purchase and donate the  
15 emergency response equipment specified in the July 16, 2007 letter from Tracy Pansini, Fire  
16 Chief, City of Burbank Fire Department, 311 Orange Grove Avenue, Burbank, California,  
17 91502-1221, to Edgar Coral of U.S. EPA, Region IX. (This July 16, 2007 letter, along with its  
18 technical specification attachments and a follow-up August 16, 2007 email from Thomas  
19 Lenahan, Battalion Chief, Burbank Fire Department, are attached to this CAFO as Exhibit A.)  
20 The total cost of the emergency response equipment donated to the City of Burbank Fire  
21 Department shall be SIXTY-FOUR THOUSAND, SEVEN HUNDRED, AND TWENTY-NINE  
22 DOLLARS (\$64,729).

23 25. Within 60 days of entry of this CAFO, Respondent shall submit a final report to  
24 Mariela Lopez of U.S. EPA, Region IX that certifies completion of the donation required by  
25 Paragraph 24 of this CAFO and includes all receipts for purchases of emergency response  
26 equipment specified in Attachment A. This Report shall also include a written acknowledgment  
27 from Tracy Pansini of the City of Burbank Fire Department that all emergency response  
28 equipment specified in Attachment A has been received by his office.

1           26. Respondent shall pay a stipulated penalty of \$250 for each and every day that its  
2 performance of the tasks specified in Paragraphs 24 and 25 is delinquent.

3                           G. CERTIFICATION OF COMPLIANCE

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

8                           H. RETENTION OF RIGHTS

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

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

21                           I. ATTORNEYS' FEES AND COSTS

22           30. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in  
23 this proceeding.

24                           J. EFFECTIVE DATE

25           31. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be  
26 effective on the date that the Final Order contained in this CAFO, having been approved and  
27 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

28                           K. BINDING EFFECT

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

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

7  
8  
9  
10           FOR RESPONDENT SDI INDUSTRIES, INC.:

11  
12           9-21-07  
13           DATE

14             
15           \_\_\_\_\_  
16           MARY ADAMS  
17           President  
18           SDI Industries, Inc.  
19           13000 Pierce Street  
20           Pacoima, CA 91331

21           FOR COMPLAINANT EPA:

22           9-24-2007  
23           DATE

24             
25           \_\_\_\_\_  
26           JEFF SCOTT  
27           Acting Director, Communities and Ecosystems Division  
28           U.S. Environmental Protection Agency, Region IX  
              75 Hawthorne Street  
              San Francisco, California 94105

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

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

7  
8  
9  
10 FOR RESPONDENT SDI INDUSTRIES, INC.:

11  
12 9-21-07  
13 DATE

14   
15 MARY ADAMS  
16 President  
17 SDI Industries, Inc.  
18 13000 Pierce Street  
19 Pacoima, CA 91331

20 FOR COMPLAINANT EPA:

21 DATE

22 \_\_\_\_\_  
23 JEFF SCOTT  
24 Acting Director, Communities and Ecosystems Division  
25 U.S. Environmental Protection Agency, Region IX  
26 75 Hawthorne Street  
27 San Francisco, California 94105  
28



CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R Sections 22.13 and 22.18 (Docket No. EPCRA-09-2007-0022) against SDI Industries, Inc., 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 same was sent to Respondent at the following address:

Donald DeSanctis  
President  
SDI Industries, Inc.  
13000 Pierce Street  
Pacoima, CA 91331

Certified Mail No. 7005 3110 0002 8247 6891

Danielle Carr  
Danielle Carr  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region IX

Date 09-26-07