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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING OFFICE

1 NANCY J. MARVEL
Regional Counsel

2 EDGAR P. CORAL
3 Assistant Regional Counsel
4 U.S. Environmental Protection Agency
5 Region IX
6 75 Hawthorne Street
7 San Francisco, CA 94105
8 (415) 972-3898

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:

) Docket No. EPCRA-09-2011- 0007

11
12 Greenlee Textron Inc.,

)
)
) CONSENT AGREEMENT
AND FINAL ORDER

13 Respondent.
14

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

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX ("EPA"), and Greenlee
17 Textron 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 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 correct Toxic Chemical Release Inventory Forms for calendar years 2005, 2007,
24 2008, and 2009 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing
25 regulations set 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 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 for
7 the submission of information relating to the release of toxic chemicals under EPCRA Section
8 313. 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 or toxic chemical category listed under Section 313(c) of
13 EPCRA and 40 C.F.R. § 372.65 that it manufactured, processed, or otherwise used if: (i) the
14 facility has ten or more full-time employees; (ii) the facility is in North American Industry
15 Classification System Code 334515; and (iii) the facility manufactured, processed, or otherwise
16 used during the calendar year the listed toxic chemical or toxic chemical category of special
17 concern in excess of the threshold quantity established under Section 313(f) of EPCRA and 40
18 C.F.R. § 372.28.

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

25 C. ALLEGED VIOLATIONS

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

1 7. At all times relevant to this matter, Respondent owned and operated a facility (the
2 “Facility”) in the business of manufacturing test equipment and instrumentation for use in tracing
3 electrical wires and marking underground utility lines, located at 325 S. El Dorado in Mesa,
4 Arizona, that fits within the definition of a “facility,” as provided in Section 329(4) of EPCRA,
5 42 U.S.C. § 11049(4).

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

8 9. At all times relevant to this matter, the Facility was in North American Industry
9 Classification System Code 334515.

10 10. During the calendar year 2005, Respondent “processed,” as that term is defined in 40
11 C.F.R. § 372.3, approximately 458 pounds of lead, a toxic chemical listed under 40 C.F.R.
12 § 372.65. This quantity exceeded the 100 pound threshold for reporting “processing” of that
13 chemical of special concern established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f),
14 and 40 C.F.R. § 372.28.

15 11. During the calendar year 2007, Respondent “processed,” as that term is defined in 40
16 C.F.R. § 372.3, approximately 301 pounds of lead, a toxic chemical listed under 40 C.F.R.
17 § 372.65. This quantity exceeded the 100 pound threshold for reporting “processing” of that
18 chemical of special concern established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f),
19 and 40 C.F.R. § 372.28.

20 12. During the calendar year 2008, Respondent “processed,” as that term is defined in 40
21 C.F.R. § 372.3, approximately 612 pounds of lead, a toxic chemical listed under 40 C.F.R.
22 § 372.65. This quantity exceeded the 100 pound threshold for reporting “processing” of that
23 chemical of special concern established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f),
24 and 40 C.F.R. § 372.28.

25 13. During the calendar year 2009, Respondent “processed,” as that term is defined in 40
26 C.F.R. § 372.3, approximately 413 pounds of lead, a toxic chemical listed under 40 C.F.R.
27 § 372.65. This quantity exceeded the 100 pound threshold for reporting “processing” of that
28 chemical of special concern established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f),

1 and 40 C.F.R. § 372.28.

2 14. Respondent was required to submit a Form R for lead to EPA and the State of
3 Arizona for calendar year 2005 on or before July 1, 2006.

4 15. Respondent was required to submit a Form R for lead to EPA and the State of
5 Arizona for calendar year 2007 on or before July 1, 2008.

6 16. Respondent was required to submit a Form R for lead to EPA and the State of
7 Arizona for calendar year 2008 on or before July 1, 2009.

8 17. Respondent was required to submit a Form R for lead to EPA and the State of
9 Arizona for calendar year 2009 on or before July 1, 2010.

10 18. Respondent failed to timely submit the Form Rs required of it to EPA and the State
11 of Arizona for calendar years 2005, 2007, 2008, and 2009, and thus violated Section 313 of
12 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

13 19. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty
14 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any
15 requirement of Section 313 shall be liable to the United States for a civil penalty in an amount
16 not to exceed (1) \$32,500 for each such violation that occurred after March 15, 2004 but on or
17 before January 12, 2009, and (2) \$37,500 for each such violation that occurred on or after
18 January 12, 2009. Under the Enforcement Response Policy for Section 313 of EPCRA, dated
19 August 10, 1992, and the Civil Monetary Penalty Inflation Adjustment Rule, the four violations
20 cited above would merit an unadjusted, gravity-based civil penalty of SEVENTY-FOUR
21 THOUSAND, EIGHT HUNDRED DOLLARS (\$74,800), given the nature, circumstances, and
22 extent of the violations alleged.

23 **D. RESPONDENT'S ADMISSIONS**

24 20. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
25 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
26 Respondent; (ii) admits the specific factual allegations contained in Section I.C of this CAFO;
27 (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil
28 administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the

1 allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order
2 contained in this CAFO.

3 E. CIVIL ADMINISTRATIVE PENALTY

4 21. In settlement of the violations specifically alleged in Section I.C of this CAFO,
5 Respondent shall pay a civil administrative penalty of THIRTY-SEVEN THOUSAND, FOUR
6 HUNDRED DOLLARS (\$37,400). Respondent shall pay this civil penalty within thirty (30)
7 days of the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or
8 cashier's check, including the name and docket number of this case, for the amount, payable to
9 "Treasurer, United States of America," (or be paid by one of the other methods listed below) and
10 sent as follows:

11 Regular Mail:

12 U.S. Environmental Protection Agency
13 Fines and Penalties
14 Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

15 Wire Transfers:

16 Wire transfers must be sent directly to the Federal Reserve Bank in New
17 York City with the following information:
18 Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
19 SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
20 Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

21 Overnight Mail:

22 U.S. Bank
23 1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
24 St. Louis, MO 63101

25 ACH (also known as REX or remittance express):

26 Automated Clearinghouse (ACH) for receiving U.S. currency
27 PNC Bank
808 17th Street, NW
Washington, DC 20074
28 ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 31006

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CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo1.1" in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, 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

Russell Frazer
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 as a tax deduction from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to use such payment as a tax deduction.

23. If Respondent fails to pay the assessed civil administrative penalty of THIRTY-SEVEN THOUSAND, FOUR HUNDRED DOLLARS (\$37,400), as identified in Paragraph 21, by the deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA upon EPA's written request. The amount of the stipulated penalty will be THIRTY-SEVEN THOUSAND, FOUR HUNDRED DOLLARS (\$37,400), and will be immediately due and payable upon EPA's written request on the day following the deadline specified in Paragraph

1 21, together with the initially assessed civil administrative penalty of THIRTY-SEVEN
2 THOUSAND, FOUR HUNDRED DOLLARS (\$37,400), resulting in a total penalty due of
3 SEVENTY-FOUR THOUSAND, EIGHT HUNDRED DOLLARS (\$74,800). Failure to pay the
4 civil administrative penalty specified in Paragraph 21 by the deadline specified in that Paragraph
5 may also lead to any or all of the following actions:

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

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

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

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

23 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
24 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
25 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
26 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
27 (30) days of the effective date of this CAFO.

28 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.

1 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
2 based on either actual or average cost incurred (including both direct and indirect costs), for
3 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

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

7 F. CERTIFICATION OF COMPLIANCE

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

12 G. RETENTION OF RIGHTS

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

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

24 H. ATTORNEYS' FEES AND COSTS

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

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I. EFFECTIVE DATE

28. 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.


J. BINDING EFFECT

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

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

FOR RESPONDENT GREENLEE TEXTRON INC.:

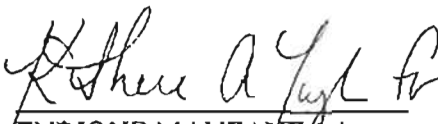
4-12-11
DATE



ED CERTISIMO
Chief Financial Officer
Greenlee Textron Inc.
4455 Boeing Drive
Rockford, IL 61109

FOR COMPLAINANT EPA:

6/28/11
DATE



ENRIQUE MANZANILLA
Director, Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

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II. FINAL ORDER

EPA and Greenlee Textron Inc. having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-09-2011-007) be entered, and Respondent shall pay a civil administrative penalty in the amount of THIRTY-SEVEN THOUSAND, FOUR HUNDRED DOLLARS (\$37,400), and comply with the terms and conditions set forth in the Consent Agreement.

06/29/11
DATE

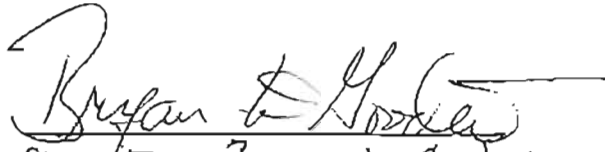

STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original fully executed Consent Agreement and Final Order ("CAFO"),
Docket Number EPCRA-09-2011- , was filed this day with the Regional Hearing
Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, and that
true and correct copies of the CAFO were sent to the Respondent at the following addresses:

Mr. Ed Certisimo
CFO
Greenlee Textron, Inc.
4455 Boeing Drive
Rockford, IL 61109

Certified Mail No: 7007 0710 0003 6239 9783


~~Steven Anthony Bryan K Goodwin~~
Regional Hearing Clerk
Region IX, EPA
Office of Regional Counsel

6/29/11
Date



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

JUN 28 2011

Certified Mail No. 7007 0710 0003 6239 9783
Return Receipt Requested

Re: EPCRA-09-2011-0007

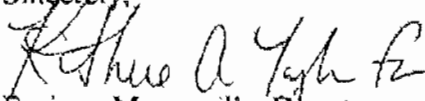
Ed Certisimo
CFO
Greenlee Textron, Inc.
4455 Boeing Drive
Rockford, IL 61109

Dear Mr. Certisimo:

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 Edgar Coral of the EPA Region IX Office of Regional Counsel and Russ Frazer of 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 Edgar Coral at (415) 972-3898 or Russ Frazer at (415) 947-4220.

Sincerely,


Enrique Manzanilla, Director
Communities and Ecosystems Division

Enclosure