



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

FEB 07 2012

REPLY TO THE ATTENTION OF:  
LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7672 0960

Burton Industries  
ATTN: Mr. Mark Leman  
P.O. Box 250  
9821 Cedar Falls Road  
Hazelhurst, Wisconsin 54531

In the Matter of Burton Industries, Inc.  
Consent Agreement and Final Order, Docket No. EPCRA-05-2012-0008

Dear Mr. Leman:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on February 7, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$16,856 is to be paid in the manner described in paragraphs 26 and 27. Please be certain that the number BD 275124E001 and the docket number are written on both the transmittal letter and on the checks. Initial payment is due by March 9, 2012, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Maynard Shaw  
Pesticides and Toxics Compliance Section

Enclosures

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY FEB 07 2012  
REGION 5

REGIONAL HEARING CLERK  
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REGION 5

<p>In the Matter of:</p> <p>Burton Industries, Inc.</p> <p>Ironwood, Michigan,</p> <p>Respondent.</p> <hr/>	<p>) Docket No. EPCRA-05-2012-0008</p> <p>)</p> <p>) Proceeding to Assess a Civil Penalty</p> <p>) Under Section 325(c) of the Emergency</p> <p>) Planning and Community Right-to-Know</p> <p>) Act of 1986, 42 U.S.C. § 11045(c)</p> <p>)</p>
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Consent Agreement and Final Order

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, the United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Burton Industries, Inc. a corporation doing business in the State of Michigan.

4. Under 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with Section 313 of EPCRA, 42 U.S.C. § 11023.

### **Statutory and Regulatory Background**

10. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes, including 3679; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed, or otherwise used a toxic chemical in an amount exceeding an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. § 372.28, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed, or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years including and subsequent to 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

12. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28, the reporting threshold amount for lead manufactured, processed, or otherwise used at a facility is 100 pounds for calendar years including and subsequent to 2001.

13. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that may be assessed pursuant to each agency's statutes. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 of EPCRA that occurred after March 15, 2004 through January 12, 2009; \$37,500 per day for each violation of Section 313 of EPCRA that occurred after January 12, 2009, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

14. Respondent is a "person" as that term is defined at Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 1260 Wall Street, Ironwood, Michigan (facility).

16. At all times relevant to this CAFO, Respondent had "10 or more full-time employees," as defined at 40 C.F.R. § 372.3, and was an employer at the facility.

17. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person.

18. Respondent's facility is a "facility" as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

19. The facility has a SIC code of 3679, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

20. During calendar year 2008, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, lead, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 1,344 pounds which is greater than 100 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

21. Respondent was required to submit to the Administrator of EPA and to Michigan a Form R for lead for calendar year 2008 by July 1, 2009.

22. Respondent did not submit to the Administrator of EPA and to Michigan a Form R for lead for calendar year 2008 by July 1, 2009.

23. Respondent submitted Form R for lead to the Administrator of EPA and to Michigan on October 8, 2010 for calendar year 2008.

24. Respondent's failure to submit timely a Form R for lead to the Administrator of EPA and to Michigan for calendar year 2008 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

#### **Civil Penalty**

25. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$16,856. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant

also considered EPA's Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (amended) (April 12, 2001).

26. Respondent must pay a \$16,856 civil penalty for the EPCRA violation in 4 installments with interest as follows: \$4,214 within 30 days of the effective date of this CAFO; \$4,245.17 within 120 days of the effective date of this CAFO; \$4,241.71 within 240 days of the effective date of this CAFO; and \$4,227.85 within 360 days of the effective date of this CAFO.

<b>SUMMARY:</b>				
<b>1st 30 days interest free</b>	<b>Due by:</b>	<b>Payment</b>	<b>Principal</b>	<b>Interest</b>
Payment 1	within 30 days of Filing Date	<b>4,214.00</b>	4,214.00	0.00
Payment 2	Filing Date+120 days	<b>4,245.17</b>	4,214.00	31.17
Payment 3	Filing Date+240 days	<b>4,241.71</b>	4,214.00	27.71
Payment 4	Filing Date+360 days	<b>4,227.85</b>	4,214.00	13.85
	<b>Totals:</b>	<b>16,928.73</b>	16,856.00	72.73

For payment using the U.S. Postal Service, Respondent must pay the installments by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
 Fines and Penalties  
 Cincinnati Finance Center  
 P.O. Box 979077  
 St. Louis, Missouri 63197-9000

For checks sent by express mail, Respondent must send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note the case title "In the Matter of: Burton Industries, Inc.", the docket number of this CAFO, and the billing document number.

27. When paying include a transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Maynard Shaw (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Cynthia A. King (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

28. This civil penalty is not deductible for federal tax purposes.

29. If Respondent does not pay any installment payment as set forth in paragraph 26, above the entire unpaid balance of the civil penalty and any amount required by paragraph 30, below, shall become due and owing, upon written notice by EPA to Respondent of the delinquency. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the

collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

30. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

31. This CAFO resolves only Respondent's liability for federal civil penalties for the violation and facts alleged in the CAFO.

32. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

33. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state, and local laws.

34. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for Section 313 of EPCRA.

35. The terms of this CAFO bind Respondent, its successors, and assigns.

36. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

37. Each party agrees to bear its own costs and attorney's fees in this action.

38. This CAFO constitutes the entire agreement between the parties.



39. This CAFO is effective when it is filed with the Regional Hearing Clerk.

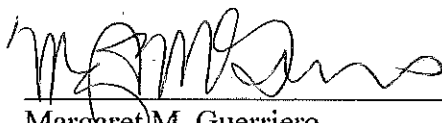
**Burton Industries, Inc., Respondent**

28. Dec. 2011  
Date

  
\_\_\_\_\_  
Mark Leman  
Corporate Secretary  
Burton Industries, Inc.

**United States Environmental Protection Agency, Complainant**

January 27, 2012  
Date

  
\_\_\_\_\_  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

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REGION 5

In the Matter of:  
Burton Industries, Inc.  
Docket No. EPCRA-05-2012-0008

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

2-2-12

Date



Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Burton Industries, Inc., was filed on February 7, 2012, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed, by Certified Mail, Receipt No. 7009 1680 0000 7672 0960, a copy of the original to the Respondent:

Burton Industries  
ATTN: Mr. Mark Leman  
P.O. Box 250  
9821 Cedar Falls Road  
Hazelhurst, WI 54531

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FEB 07 2012

REGIONAL HEARING CLERK  
USEPA  
REGION 5

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Cynthia A. King, Counsel for Complainant ORC/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. EPCRA-05-2012-0008