

2008 SEP 24 AM 8:14

U.S. EPA. REGION IX
REGIONAL HEARING CLERK

Respondent

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

1. The Director of the Communities and Ecosystems Division ("Complainant"), United States Environmental Protection Agency ("EPA") Region 9, and Gillig Corporation ("Respondent" or "Gillig") 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 a corporation incorporated in California.

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 \$27,500 for each violation of Section 313 of EPCRA that occurred on or after January 31, 1997 but before March 15, 2004 and up to \$32,500 for each violation of Section 313 of EPCRA that occurred on or after March 15, 2004.

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 and operator of a "facility," as that term is defined by Section 329(4) of EPCRA and 40 C.F.R. § 372.3, located at 25800 Clawiter Road, Hayward, California 94545 ("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 Standard Industrial Classification Code 3711 - Motor Vehicles and Passenger Car Bodies.

10. During calendar years 2003, 2004 and 2005, Respondent processed or otherwise used the following amounts (in pounds) of certain glycol ethers, chlorodifluoromethane, nickel,

chromium and xylene, chemicals listed under 40 C.F.R. § 372.65:

| <u>Year</u> | <u>certain glycol ethers</u> | <u>chlorodi- fluoromethane</u> | <u>nickel</u> | <u>chromium</u> | <u>xylene</u> |
|-------------|----------------------------------|------------------------------------|---------------|-----------------|---------------|
| 2003 | 48,337 | | 34,361 | 34,490 | 13,851 |
| 2004 | 43,540 | 25,903 | 38,571 | 37,332 | 12,465 |
| 2005 | 37,214 | | 34,376 | 34,150 | 10,654 |

11. The quantities of certain glycol ethers, chlorodifluoromethane, nickel and chromium that the Respondent processed at the Facility during calendar years 2003, 2004 and 2005 exceeded the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25(a).
12. The quantities of xylene that the Respondent otherwise used at the Facility during calendar years 2003, 2004 and 2005 exceeded the established threshold of 10,000 pounds set forth at 40 C.F.R. § 372.25(b).
13. Respondent failed to submit Form Rs for certain glycol ethers, nickel, chromium and xylene processed or otherwise used at the Facility to the EPA Administrator and to the State of California on or before July 1, 2004 for calendar year 2003; Respondent failed to submit Form Rs for certain glycol ethers, chlorodifluoromethane, nickel, chromium and xylene processed or otherwise used at the Facility to the EPA Administrator and to the State of California on or before July 1, 2005 for calendar year 2004, and Respondent failed to submit Form Rs for certain glycol ethers, nickel, chromium and xylene processed or otherwise used at the Facility to the EPA Administrator and to the State of California on or before July 1, 2006 for calendar year 2005; as required by Section 313(a) of EPCRA and 40 C.F.R.

§ 372.30.

14. Respondent's failure to submit Form Rs for certain glycol ethers, nickel, chromium and xylene processed or otherwise used at the Facility for calendar year 2003, Form Rs for certain glycol ethers, chlorodifluoromethane, nickel, chromium and xylene processed or otherwise used at the Facility for calendar year 2004, and Form Rs for certain glycol ethers, nickel, chromium and xylene processed or otherwise used at the Facility for calendar year 2005, constitutes thirteen violations of Section 313 of EPCRA and 40 C.F.R. § 372.30.
15. The EPA Enforcement Response Policy for EPCRA Section 313 dated August 10, 1992 provides for a penalty of two hundred forty-four thousand four hundred dollars (\$244,400) for these violations.
16. 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.
17. 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.

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

19. 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.

20. 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.

21. Complainant's finding that Gillig has satisfied the criteria of the Audit Policy is based upon documentation that Gillig 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 Gillig, this CAFO may be voided in whole or in part.

22. 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.

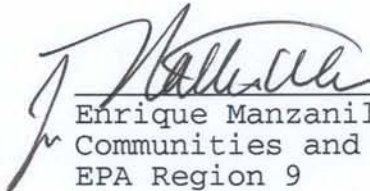
23. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator,

is filed.

24. 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.


FOR COMPLAINANT:

19 SEPT 08
Date


Enrique Manzanilla, Director
Communities and Ecosystems Division
EPA Region 9

FOR RESPONDENT:

12 SEPT 08
Date


Charles Koske, Senior Vice President
Of Engineering
Gillig Corporation

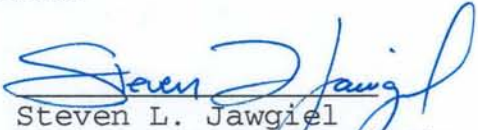
II. FINAL ORDER

Complainant EPA Region 9 and Respondent Gillig Corporation,
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-
09-2008-0010) be entered.

09/23/08

Date


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

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. EPCRA-09-2008- **00 1 0** , was placed in the United States Mail, certified mail, return receipt requested, addressed to the following address:

Charles Koske, Senior Vice President
Of Engineering
Gillig Corporation
25800 Clawiter Road
Hayward, CA 94545

Certified Return Receipt No.:

SEP 24 2008
Date:___/___/2008

By: *Danielle E. Carr*
Danielle Carr
Regional Hearing Clerk
United States Environmental
Protection Agency, Region 9
75 Hawthorne Avenue
San Francisco, California 94105-3143