

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

2007 SEP 28 AM 11:39

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

In the Matter of:

Arch Aluminum & Glass Co., Inc.
10200 NW 67th Street
Tamarac, Florida 33321

Respondent

Docket No. EPCRA-9-2007-0032

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

§§ 22.13 AND 22.18

I. CONSENT AGREEMENT

1. The Director of the Communities and Ecosystems Division ("Complainant"), United States Environmental Protection Agency ("EPA") Region 9, and Arch Aluminum & Glass Co., Inc. ("Respondent" or "Arch Aluminum") 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 Florida.
4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release

1 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part
2 372.

3 5. Section 313(a) of EPCRA, as implemented by 40 C.F.R.

4 § 372.30, provides that an owner or operator of a facility
5 that meets the criteria set forth in EPCRA Section 313(b) and
6 40 C.F.R. § 372.22, is required to submit annually to the
7 Administrator of EPA and to the State in which the facility
8 is located, no later than July 1st of each year, a toxic
9 chemical release inventory reporting form (hereinafter "Form
10 R") for each toxic chemical listed under 40 C.F.R. § 372.65
11 that was manufactured, processed or otherwise used at the
12 facility during the preceding calendar year in quantities
13 exceeding the thresholds established under EPCRA Section
14 313(f) and 40 C.F.R. §§ 372.25 and 372.28.

15 6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that
16 the requirements of Section 313(a) and 40 C.F.R. § 372.30
17 apply to an owner and operator of a facility that has 10 or
18 more full-time employees; that is in a Standard Industrial
19 Classification major group codes 10 (except 1011, 1081, and
20 1094), 12 (except 1241), 20 through 39; industry codes 4911,
21 4931, or 4939 (limited to facilities that combust coal and/or
22 oil for the purpose of generating power for distribution in
23 commerce), or 4953 (limited to facilities regulated under the
24 Resource Conservation and Recovery Act, subtitle C, 42 U.S.C.
25 §6921 et seq.), or 5169, 5171, or 7389 (limited to facilities
26 primarily engaged in solvent recovery services on a contract
27

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

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 31, 1997 but before March 15, 2004 and up to
10 \$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," as that term is defined by
16 Section 329(4) of EPCRA and 40 C.F.R. § 372.3, located at
17 6792 Central Avenue in Newark, California 94560-3937
18 ("Facility"); the Facility had 10 or more "full-time
19 employees," as that term is defined at 40 C.F.R. § 372.3; and
20 the Facility was classified in Standard Industrial
21 Classification Code 3231 - Products of Purchased Glass.

22 10. During calendar year 2003, Respondent otherwise used
23 approximately the following amounts (in pounds) of lead and
24 xylene (mixed isomers), chemicals listed under 40 C.F.R.
25 § 372.65:

| | | |
|-------------|-----------------------|-------------------------------|
| <u>Year</u> | <u>Lead compounds</u> | <u>Xylene (mixed isomers)</u> |
| 2003 | 915 | 19,626 |

- 1 11. The quantities of lead and xylene (mixed isomers) that
2 Respondent otherwise used at the Facility during calendar
3 year 2003 exceed the established threshold of 100 pounds for
4 lead compounds set forth at 40 C.F.R. § 372.28 and 10,000
5 pounds for xylene (mixed isomers) at 40 C.F.R. § 372.25(b).
- 6 12. Respondent failed to timely submit Form Rs for lead and
7 xylene (mixed isomers) otherwise used at the Facility to the
8 EPA Administrator on or before July 1, 2004 for calendar year
9 2003 as required by Section 313(a) of EPCRA and 40 C.F.R.
10 § 372.30.
- 11 13. Respondent's failure to submit Form Rs on or before July 1 of
12 2004 for lead and xylene (mixed isomers) otherwise used at
13 the Facility to the EPA Administrator for calendar year 2003
14 constitutes two (2) violations of Section 313 of EPCRA and 40
15 C.F.R. § 372.30.
- 16 14. The EPA Enforcement Response Policy for EPCRA Section 313
17 dated August 10, 1992 provides for a civil penalty of
18 thirteen thousand dollars (\$13,000) for these violations.
- 19 15. In executing this CAFO, Respondent certifies that (1) it has
20 now fully completed and submitted to EPA all of the required
21 Form Rs in compliance with Section 313 of EPCRA and the
22 regulations promulgated to implement Section 313; and (2) it
23 has complied with all other EPCRA requirements at all
24 facilities under its control.
- 25 16. In accordance with 40 C.F.R. § 22.18(b) (2) and for the
26 purpose of this proceeding only, Respondent (i) admits that
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1 EPA has jurisdiction over the subject matter of this CAFO and
2 over Respondent; (ii) admits the violations and facts alleged
3 in this CAFO; (iii) consents to the terms of this CAFO; (iv)
4 waives any right to contest the allegations in this CAFO; and
5 (v) waives the right to appeal the proposed final order
6 contained in this CAFO.

7 17. The terms of this CAFO constitute a full settlement of the
8 civil administrative matter filed under the docket number
9 above.

10 18. EPA's final policy statement on Incentives for Self-Policing:
11 Discovery, Disclosure, Correction and Prevention of
12 Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit
13 Policy") has several important goals, including encouraging
14 greater compliance with the laws and regulations which
15 protect human health and the environment and reducing
16 transaction costs associated with violations of the laws EPA
17 is charged with administering. If certain specified criteria
18 are met, reductions in gravity-based penalties of up to 100%
19 are available under the Audit Policy. These criteria are (1)
20 discovery of the violation(s) through an environmental audit
21 or due diligence; (2) voluntary disclosure; (3) prompt
22 disclosure; (4) discovery and disclosure independent of
23 government or third party plaintiff; (5) correction and
24 remediation; (6) prevent recurrence; (7) no repeat
25 violations; (8) other violations excluded; and (9)
26 cooperation.

1 19. Complainant has determined that Respondent has satisfied all
2 of the criteria under the Audit Policy and thus qualifies for
3 the elimination of civil penalties in this matter.

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

6 20. Complainant's finding that Arch Aluminum has satisfied the
7 criteria of the Audit Policy is based upon documentation that
8 Arch Aluminum has provided to establish that it satisfies
9 these criteria. Complainant and Respondent agree that,
10 should any material fact upon which Complainant relied in
11 making its finding subsequently prove to be other than as
12 represented by Arch Aluminum, this CAFO may be voided in
13 whole or in part.

14 21. Nothing in this CAFO modifies, affects, exempts or relieves
15 Respondent's duty to comply with all applicable provisions of
16 EPCRA and other federal, state or local laws and permits. In
17 accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves
18 Respondent's liability for federal civil penalties for the
19 violations and facts specifically alleged in this CAFO.

20 Nothing in this CAFO is intended to or shall be construed to
21 resolve (i) any civil liability for violations of any
22 provision of any federal, state, or local law, statute,
23 regulation, rule, ordinance, or permit not specifically
24 alleged in this CAFO; or (ii) any criminal liability. EPA
25 specifically reserves any and all authorities, rights, and
26 remedies available to it (including, but not limited to,
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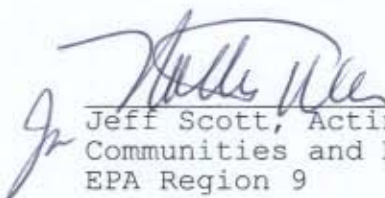
1 injunctive or other equitable relief or criminal sanctions)
2 to address any violation of this CAFO or any violation not
3 specifically alleged in this CAFO.

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

9 23. The provisions of this CAFO shall be binding upon Respondent,
10 its agents, successors or assigns. Respondent's obligations
11 under this Consent Agreement, if any, shall end when
12 Respondent has performed all of the terms of the Consent
13 Agreement in accordance with the Final Order. Complainant
14 and Respondent consent to the entry of the CAFO without
15 further notice.

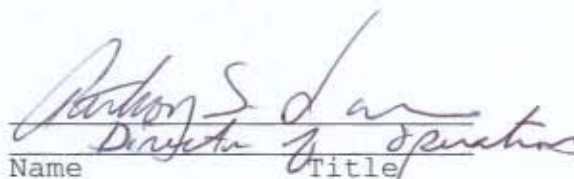
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17 FOR COMPLAINANT:

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19 9/28/2007
20 Date

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23 Jeff Scott, Acting Director
24 Communities and Ecosystems Division
25 EPA Region 9

26
27 FOR RESPONDENT:

28
29 08-31-07
30 Date

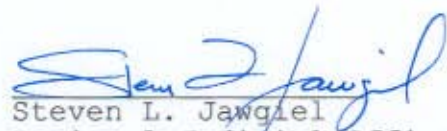
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33 Name Title

1 II. FINAL ORDER

2 Complainant EPA Region 9 and Respondent Arch Aluminum Co.,
3 Inc., 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 09-2007-0032) be entered.

7
8 09/28/07
9 Date

10 
11 Steven L. Javziel
12 Regional Judicial Officer
13 U.S. Environmental Protection
14 Agency, Region 9
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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-09-2006-0032, was placed in the United States Mail, certified mail, return receipt requested, addressed to the following address:

Certified Return Receipt No.

Date: 09 / 28 / 2007

By:

Danielle E Carr

DANIELLE CARR
Regional Hearing Clerk
United States Environmental
Protection Agency, Region IX
75 Hawthorne Avenue
San Francisco, California 94105-3143