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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

FILED

2008 SEP 30 AM 9:17

U.S. EPA REGION IX
REGIONAL HEARING CLERK

In the Matter of:

Guardian Industries Corp.

Respondent

Docket No. EPCRA-09-2008- 0026

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") EPA Region 9, and Guardian Industries Corp. ("Respondent" or "Guardian"), the Parties herein, agree to settle this matter and consent to the entry 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 Delaware corporation headquartered at 2300 Harmon Road, Auburn Hills, Michigan 48326.

- 1 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023
2 and 11048, EPA promulgated the Toxic Chemical Release
3 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part
4 372.
- 5 5. Section 313(a) of EPCRA, as implemented by 40 C.F.R.
6 § 372.30, provides that an owner or operator of a facility
7 that meets the criteria set forth in EPCRA Section 313(b) and
8 40 C.F.R. § 372.22, is required to submit annually to the
9 Administrator of EPA and to the State in which the facility
10 is located, no later than July 1st of each year, a toxic
11 chemical release inventory reporting form (hereinafter "Form
12 R") for each toxic chemical listed under 40 C.F.R. § 372.65
13 that was manufactured, processed or otherwise used at the
14 facility during the preceding calendar year in quantities
15 exceeding the thresholds established under EPCRA Section
16 313(f) and 40 C.F.R. §§ 372.25, 372.27 and 372.28.
- 17 6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that
18 the requirements of Section 313(a) and 40 C.F.R. § 372.30
19 apply to an owner and operator of a facility that has 10 or
20 more full-time employees; that is in a Standard Industrial
21 Classification (SIC) (as in effect on January 1, 1987) major
22 group or industry code listed in § 372.23(a), for which the
23 corresponding North American Industry Classification System
24 (NAICS) (as in effect on January 1, 2007, for reporting year
25 2008 and thereafter) subsector and industry codes are listed
26 in 40 C.F.R. §§ 372.23(b) and (c); 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 30, 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 located at 11535 East Mountain View Avenue, Kingsburg, California 93631 (the "Facility"), which falls within the definition of a "facility" found in Section 329(4) of EPCRA and 40 C.F.R. § 372.3.

10. The Facility employed 10 or more "full-time employees," as that term is defined at 40 C.F.R. § 372.3 and was classified in NAICS Code 32721103 - Glass & Glass Product Manufacturing.

11. During calendar year 2003, Respondent otherwise used approximately 68,581 pounds of polycyclic aromatic compounds, a chemical listed under 40 C.F.R § 372.65, at the Facility.

12. The quantity of polycyclic aromatic compounds Respondent otherwise used at the Facility during calendar year 2003

1 exceeds the established threshold of 100 pounds set forth at
2 40 C.F.R. § 372.28.

3 13. Respondent failed to submit a Form R for polycyclic aromatic
4 compounds otherwise used at the Facility to the EPA
5 Administrator and to the State of California on or before
6 July 1, 2004, for calendar year 2003.

7 14. Respondent's failure to submit a Form R before July 1 of 2004
8 for polycyclic aromatic compounds otherwise used at the
9 Facility during the preceding calendar year constitutes a
10 violation of Section 313 of EPCRA and 40 C.F.R. § 372.30.

11 15. During calendar year 2004, Respondent otherwise used
12 approximately 70,400 pounds of polycyclic aromatic compounds,
13 a chemical listed under 40 C.F.R § 372.65, at the Facility.

14 16. The quantity of polycyclic aromatic compounds Respondent
15 otherwise used at the Facility during calendar year 2003
16 exceeds the established threshold of 100 pounds set forth at
17 40 C.F.R. § 372.28.

18 17. Respondent failed to submit a Form R for polycyclic aromatic
19 compounds otherwise used at the Facility to the EPA
20 Administrator and to the State of California on or before
21 July 1, 2005, for calendar year 2004.

22 18. Respondent's failure to submit a Form R before July 1 of 2005
23 for polycyclic aromatic compounds otherwise used at the
24 Facility during the preceding calendar year constitutes a
25 violation of Section 313 of EPCRA and 40 C.F.R. § 372.30.

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1 19. During calendar year 2005, Respondent otherwise used
2 approximately 72,407 pounds of polycyclic aromatic compounds,
3 a chemical listed under 40 C.F.R. § 372.65, at the Facility.

4 20. The quantity of polycyclic aromatic compounds Respondent
5 otherwise used at the Facility during calendar year 2005
6 exceeds the established threshold of 100 pounds set forth at
7 40 C.F.R. § 372.28.

8 21. Respondent failed to submit a Form R for polycyclic aromatic
9 compounds otherwise used at the Facility to the EPA
10 Administrator and to the State of California on or before
11 July 1, 2006, for calendar year 2005.

12 22. Respondent's failure to submit a Form R before July 1 of 2006
13 for polycyclic aromatic compounds otherwise used at the
14 Facility during the preceding calendar year constitutes a
15 violation of Section 313 of EPCRA and 40 C.F.R. § 372.30.

16 23. The EPA Enforcement Response Policy for EPCRA Section 313
17 dated August 10, 1992, as amended by 40 C.F.R. Part 19,
18 provides for a penalty of ninety-seven thousand, five hundred
19 dollars (\$97,500) for these violations.

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1 24. In executing this CAFO, Respondent certifies that, to the
2 best of its knowledge and belief, (1) it has now fully
3 completed and submitted to EPA all required Form Rs, in
4 compliance with Section 313 of EPCRA and the regulations
5 promulgated to implement Section 313; and (2) it has complied
6 with all other applicable EPCRA requirements at all
7 facilities under its ownership and control.

8 25. In accordance with 40 C.F.R. § 22.18(b)(2) and for the
9 purpose of this proceeding, Respondent (i) admits that EPA
10 has jurisdiction over the subject matter of this CAFO and
11 over Respondent; (ii) admits the violations and facts alleged
12 in this CAFO; (iii) consents to the terms of this CAFO; (iv)
13 waives any right to contest the allegations in this CAFO; and
14 (v) waives the right to appeal the proposed final order
15 contained in this CAFO.

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

19 27. EPA's final policy statement on Incentives for Self-Policing:
20 Discovery, Disclosure, Correction and Prevention of
21 Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit
22 Policy") has several important goals, including encouraging
23 greater compliance with the laws and regulations which
24 protect human health and the environment and reducing
25 transaction costs associated with violations of the laws EPA
26 is charged with administering. If certain specified criteria
27

1 are met, reductions in gravity-based penalties of up to 100%
2 are available under the Audit Policy. These criteria are (1)
3 discovery of the violation(s) through an environmental audit
4 or a compliance management system; (2) voluntary disclosure;
5 (3) prompt disclosure; (4) discovery and disclosure
6 independent of government or third party plaintiff; (5)
7 correction and remediation; (6) prevention of recurrence; (7)
8 no repeat violations; (8) exclusion of the policy's
9 applicability to certain types of violations, including those
10 resulting in serious actual harm to the environment and those
11 that may have presented an imminent and substantial
12 endangerment to the public health or the environment; and (9)
13 cooperation.

14 28. Complainant has determined that Respondent has satisfied all
15 of the criteria under the Audit Policy and thus qualifies for
16 the elimination of civil penalties in this matter.
17 Accordingly, the civil penalty assessed in this matter is
18 zero (\$0) dollars.

19 29. Complainant's finding that Respondent has satisfied the
20 criteria of the Audit Policy is based upon documentation that
21 Respondent has provided to establish that it satisfies these
22 criteria. Complainant and Respondent agree that, should any
23 material fact upon which Complainant relied in making its
24 finding subsequently prove to be other than as represented by
25 Respondent, this CAFO may be voided in whole or in part.

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1 30. Nothing in this CAFO modifies, affects, exempts or relieves
2 Respondent's duty to comply with all applicable provisions of
3 EPCRA and other federal, state or local laws and permits. In
4 accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves
5 Respondent's liability for federal civil penalties for the
6 violations and facts specifically alleged in this CAFO.
7 Nothing in this CAFO is intended to or shall be construed to
8 resolve (i) any civil liability for violations of any
9 provision of any federal, state, or local law, statute,
10 regulation, rule, ordinance, or permit not specifically
11 alleged in this CAFO; or (ii) any criminal liability. EPA
12 specifically reserves any and all authorities, rights, and
13 remedies available to it (including, but not limited to,
14 injunctive or other equitable relief or criminal sanctions)
15 to address any violation of this CAFO or any violation not
16 specifically alleged in this CAFO.

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

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1 32. The provisions of this CAFO shall be binding upon Respondent,
2 its agents, successors or assigns. Respondent's obligations
3 under this Consent Agreement, if any, shall end when
4 Respondent has performed all of the terms of the Consent
5 Agreement in accordance with the Final Order. Complainant
6 and Respondent consent to the entry of the CAFO without
7 further notice.

8
9 FOR RESPONDENT:

10
11 25 Sept. '08
12 Date

Michael W. Turnbull
Michael W. Turnbull
Director of International Environmental
Management
Guardian Industries Corp.

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14
15 FOR COMPLAINANT:

16
17 29 SEPT. 2008
18 Date

Enrique Manzanilla
Enrique Manzanilla, Director
Communities and Ecosystems Division
EPA Region 9

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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-09-20080026) be entered.


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 2,6 was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail, return receipt requested, addressed to the following address:

Don Tullman
Kingsburg Facility Plant Manager
Guardian Industries Corp.
11535 East Mountain View Avenue
Kingsburg, CA 93631-9233

Certified Return Receipt No.

SEP 30 2008
Date: ___/___/2008

By: _____

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