

2013 FEB -8 PM 4: 36

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4 U.S. Environmental Protection Agency
5 Region IX
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US EPA - REGION IX
HEARING CLERK

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:

) Docket No. EPCRA-09-2013-0006

11)
12 Philips Lighting Technologies
13 International, a Division of Philips
14 Electronics North America Corporation,

) CONSENT AGREEMENT
) AND FINAL ORDER
) pursuant to 40 C.F.R. §§ 22.13(b),
) 22.18(b)(2), and 22.18(b)(3)

14 Respondent.

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX ("EPA"), and Philips
17 Lighting Technologies International, a Division of Philips Electronics North America
18 Corporation (the "Respondent"), agree to settle this matter and consent to the entry of this
19 Consent Agreement and Final Order ("CAFO").

20 A. AUTHORITY AND PARTIES

21 1. This is a civil administrative action brought under Section 325(c) of the Emergency
22 Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for
23 assessment of a civil administrative penalty against Respondent for its failure to submit timely,
24 complete and correct Toxic Chemical Release Inventory Forms for calendar years 2007, 2008,
25 2009, and 2010 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing
26 regulations set forth at 40 C.F.R. Part 372.

27 2. Complainant is the Director of the Communities and Ecosystems Division in EPA,
28 Region IX (the "Complainant"). Pursuant to EPA Delegation Order Number 22-3-A, dated May

1 11, 1994, the Administrator of EPA has delegated the authority to file this action under EPCRA
2 to the Regional Administrator of EPA, Region IX, and pursuant to EPA Regional Order Number
3 R1260.14B, dated May 19, 2005, the Regional Administrator re-delegated that authority to
4 Complainant.

5 B. STATUTORY AND REGULATORY BASIS

6 3. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA
7 promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for
8 the submission of information relating to the release of toxic chemicals under EPCRA Section
9 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.

10 4. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R.
11 §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and
12 the State in which the facility is located a chemical release form published under Section 313(g)
13 of EPCRA for each toxic chemical or toxic chemical category listed under Section 313(c) of
14 EPCRA and 40 C.F.R. § 372.65 that it manufactured, processed, or otherwise used if: (i) the
15 facility has ten or more full-time employees; (ii) the facility is in North American Industry
16 Classification System Code 335129; and (iii) the facility manufactured, processed, or otherwise
17 used during the calendar year the listed toxic chemical or toxic chemical category in excess of the
18 threshold quantity established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25 (or 40
19 C.F.R. § 372.28 for a chemical of special concern).

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

26 C. ALLEGED VIOLATIONS

27 6. Respondent is a corporation and therefore fits within the definition of a "person," as
28 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 very large lamps for cinema projectors, located at
3 13700 Live Oak Avenue in Baldwin Park, California, that fits within the definition of a
4 “facility,” as provided in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

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

7 9. At all times relevant to this matter, the Facility was in North American Industry
8 Classification System Code 335129.

9 10. During the calendar year 2007, Respondent “processed,” as that term is defined in 40
10 C.F.R. § 372.3, approximately 41 pounds of mercury, a toxic chemical category listed under 40
11 C.F.R. § 372.65, at the Facility. This quantity exceeded the 10 pound threshold for reporting
12 “processing” of that chemical of special concern established under Section 313(f) of EPCRA, 42
13 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

14 11. During the calendar year 2008, Respondent “processed,” as that term is defined in 40
15 C.F.R. § 372.3, approximately 39 pounds of mercury, a toxic chemical category listed under 40
16 C.F.R. § 372.65, at the Facility. This quantity exceeded the 10 pound threshold for reporting
17 “processing” of that chemical of special concern established under Section 313(f) of EPCRA, 42
18 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

19 12. During the calendar year 2009, Respondent “processed,” as that term is defined in 40
20 C.F.R. § 372.3, approximately 33 pounds of mercury, a toxic chemical category listed under 40
21 C.F.R. § 372.65, at the Facility. This quantity exceeded the 10 pound threshold for reporting
22 “processing” of that chemical of special concern established under Section 313(f) of EPCRA, 42
23 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

24 13. During the calendar year 2010, Respondent “processed,” as that term is defined in 40
25 C.F.R. § 372.3, approximately 38 pounds of mercury, a toxic chemical category listed under 40
26 C.F.R. § 372.65, at the Facility. This quantity exceeded the 10 pound threshold for reporting
27 “processing” of that chemical of special concern established under Section 313(f) of EPCRA, 42
28 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

1 14. Respondent was required to submit a Form R for mercury to EPA and the State of
2 California for calendar year 2007 on or before July 1, 2008.

3 15. Respondent was required to submit a Form R for mercury to EPA and the State of
4 California for calendar year 2008 on or before July 1, 2009.

5 16. Respondent was required to submit a Form R for mercury to EPA and the State of
6 California for calendar year 2009 on or before July 1, 2010.

7 17. Respondent was required to submit a Form R for mercury to EPA and the State of
8 California for calendar year 2010 on or before July 1, 2011.

9 18. Respondent failed to timely submit the Form Rs required of it to EPA and the State
10 of California for calendar years 2007, 2008, 2009, and 2010, and thus violated Section 313 of
11 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

12 19. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty
13 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any
14 requirement of Section 313 shall be liable to the United States for a civil penalty in an amount
15 not to exceed (1) \$32,500 for each such violation that occurred after March 15, 2004 but on or
16 before January 12, 2009, and (2) \$37,500 for each such violation that occurred on or after
17 January 12, 2009. Under the Enforcement Response Policy for Section 313 of EPCRA, dated
18 August 10, 1992, and the Civil Monetary Penalty Inflation Adjustment Rule, the four violations
19 cited above would merit an unadjusted, gravity-based civil penalty of NINETY-FOUR
20 THOUSAND, TWO HUNDRED DOLLARS (\$94,200), given the nature, circumstances, and
21 extent of the violations alleged.

22 **D. RESPONDENT'S ADMISSIONS**

23 20. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
24 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
25 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
26 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
27 assessment of the civil administrative penalty under Section I.F of this CAFO; (iv) waives any
28 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the

1 proposed Final Order contained in this CAFO.

2 E. CIVIL ADMINISTRATIVE PENALTY

3 21. In settlement of the violations specifically alleged in Section I.C of this CAFO,
4 Respondent shall pay a civil administrative penalty of SIXTY-FIVE THOUSAND, NINE
5 HUNDRED, AND FORTY DOLLARS (\$65,940). Respondent shall pay this civil penalty
6 within thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid by
7 remitting a certified or cashier's check, including the name and docket number of this case, for
8 the amount, payable to "Treasurer, United States of America," (or be paid by one of the other
9 methods listed below) and sent as follows:

10 Regular Mail:

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

16 Wire Transfers:

17 Wire transfers must be sent directly to the Federal Reserve Bank in New
18 York City with the following information:
19 Federal Reserve Bank of New York
20 ABA = 021030004
21 Account = 68010727
22 SWIFT address = FRNYUS33
23 33 Liberty Street
24 New York, NY 10045
25 Field Tag 4200 of the Fedwire message should read "D 68010727
26 Environmental Protection Agency"

27 Overnight Mail:

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

ACH (also known as REX or remittance express):

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

1 deadline specified in Paragraph 21, together with the initially assessed civil administrative
2 penalty of SIXTY-FIVE THOUSAND, NINE HUNDRED, AND FORTY DOLLARS (\$65,940),
3 resulting in a total penalty due of NINETY-FOUR THOUSAND, TWO HUNDRED DOLLARS
4 (\$94,200). Failure to pay the civil administrative penalty specified in Paragraph 21 by the
5 deadline specified in that Paragraph 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(e)(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 PHILIPS LIGHTING TECHNOLOGIES INTERNATIONAL, A DIVISION OF PHILIPS ELECTRONICS NORTH AMERICA CORPORATION:

1-29-13
DATE



JOSEPH E. INNAMORATI
Senior Vice President
Philips Electronics North America Corporation
3000 Minuteman Road
Andover, MA 01810

FOR COMPLAINANT EPA:

2-7-13
DATE



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

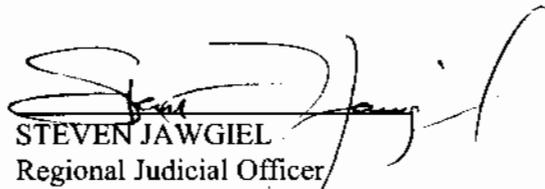
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II. FINAL ORDER

EPA and Philips Lighting Technologies International, a Division of Philips Electronics North America Corporation, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-09-2013-~~0006~~) be entered, and Respondent shall pay a civil administrative penalty in the amount of SIXTY-FIVE THOUSAND, NINE HUNDRED, AND FORTY DOLLARS (\$65,940), and comply with the terms and conditions set forth in the Consent Agreement.

02/08/13
DATE


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

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Philips Lighting Technologies Intl (**Docket #: EPCRA-09-2013-0006**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

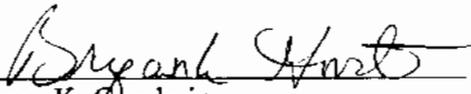
A copy was mailed via CERTIFIED MAIL to:

Joseph E. Innamorati
Senior Vice President
Philips Lighting Technologies International,
a division of Philips Electronics North America
3000 Minuteman Road
Andover, MA 01810

CERTIFIED MAIL NUMBER: 7001 0320 0002 4540 4969

A copy was hand-delivered to the following U.S. EPA case attorney:

Edgar Coral, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

Date 2/8/13



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

Certified Mail No. 7001 0320 0002 4540 4969
Return Receipt Requested

Re: EPCRA-09-2013-0006

FEB 7 2013

Joseph E. Innamorati
Senior Vice President
**Philips Lighting Technologies International, a Division of Philips Electronics North
America Corporation**
3000 Minuteman Road
Andover, MA 01810

Dear Mr. Innamorati:

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 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 Russ Frazer at (415) 947-4220 or have your attorney contact Edgar P. Coral at (415) 972-3898.

Sincerely,

A handwritten signature in black ink, appearing to read "Enrique Manzanilla".

Enrique Manzanilla, Director
Communities and Ecosystems Division

Enclosure