

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. EPCRA-10-2022-0024
)	
SGL COMPOSITES LLC,)	CONSENT AGREEMENT
)	
Moses Lake, Washington,)	
)	
Respondent.)	
)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045, and Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9609.

1.2. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 109 of CERCLA, 42 U.S.C. § 9609, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and SGL Composites LLC (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 109 of CERCLA, 42 U.S.C. § 9609, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of EPCRA and CERCLA are proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of EPCRA and CERCLA together with the specific provisions of EPCRA and CERCLA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires the person in charge of a facility to immediately notify the National Response Center (“NRC”) as soon as he or she has knowledge of a release of a hazardous substance from such facility in an amount equal to or greater than the reportable quantity (“RQ”) listed in 40 C.F.R. § 302.4.

3.2 Under Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), and 40 C.F.R. part 355, subpart C, if a release occurs at a facility at which a hazardous chemical is produced, used, or stored, and the release requires notice under section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility shall immediately notify the State

Emergency Response Commission (“SERC”) of any state likely to be affected by the release and the Local Emergency Planning Committee (“LEPC”) for any area likely to be affected by the release.

3.3 Under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), “person” means, among other things, an individual, firm, corporation, association, or partnership.

3.4 Under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), “facility” means, among other things, any building, structure, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

3.5 Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), “facility” means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person).

3.6 Under Section 101(14)(B) of CERCLA, 42 U.S.C. § 9601(14)(B), the term “hazardous substance” means any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA, 42 U.S.C. § 9602(a).

3.7 Pursuant to section 102(a) of CERCLA, 42 U.S.C. § 9602(a), the elements and compounds and hazardous wastes appearing in 40 C.F.R. § 302.4 are designated as hazardous substances.

3.8 Subject to certain exclusions not relevant here, Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), defines “release” as any spilling, leaking, pumping, pouring, emitting,

emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

3.9 Section 329(8) of EPCRA, 42 U.S.C. § 11049(8), defines “release” as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any hazardous chemical, extremely hazardous substance, or toxic chemical.

3.10 Pursuant to 40 C.F.R. § 302.4, hydrogen cyanide is a hazardous substance with an RQ of 10 pounds.

3.11 Respondent is incorporated in the state of Delaware.

3.12 Respondent is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

3.13 At all relevant times, Respondent was the owner and operator of a carbon fiber production facility located at 8781 Randolph Road Northeast in Moses Lake, Washington (“the Facility”) which meets the definition of “facility” as that term is defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

November 2017 Hydrogen Cyanide Release

COUNT 1

3.14 There was a release from the Facility by means of emission into the air of hydrogen cyanide in a quantity greater than the RQ starting on November 18, 2017 at approximately 10:58 pm Pacific Standard Time (PST) and ending on November 25, 2017 at approximately 3:58 am PST (the “November 2017 release”). The November 2017 release was associated with operation of Line 4 at the Facility.

3.15 Respondent notified the NRC of the November 2017 release on November 27, 2017 at approximately 10:51 am PST, almost 57 hours after the release ended.

3.16 Respondent failed to immediately notify the NRC as soon as Respondent had knowledge that the release of hydrogen cyanide from the Facility was in an amount equal to or greater than the RQ.

3.17 Respondent's failure to immediately notify the NRC of the November 2017 release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

COUNT 2

3.18 Respondent notified the SERC of the November 2017 release on November 27, 2017 at approximately 11:00 am PST, about 57 hours after the release ended.

3.19 Respondent failed to immediately notify the SERC as soon as Respondent had knowledge that the release of hydrogen cyanide from the Facility was in an amount equal to or greater than the RQ.

3.20 Respondent's failure to immediately notify the SERC of the November 2017 release is a violation of Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), and 40 C.F.R. part 355, subpart C.

COUNT 3

3.21 Respondent notified the LEPC of the November 2017 release on November 27, 2017 at approximately 11:00 am PST, about 57 hours after the release ended.

3.22 Respondent failed to immediately notify the LEPC as soon as Respondent had knowledge that the release of hydrogen cyanide from the Facility was in an amount equal to or greater than the RQ.

3.23 Respondent's failure to immediately notify the LEPC of the November 2017 release is a violation of Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), and 40 C.F.R. part 355, subpart C.

COUNT 4

3.24 Under Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. part 355, subpart C, if a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility shall provide a written follow-up emergency notice as soon as practicable after the release.

3.25 Respondent failed to provide a written follow-up emergency notice to the LEPC regarding the November 2017 release.

3.26 Respondent's failure to provide a written follow-up emergency notice to the LEPC is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. part 355, subpart C.

January 2018 Hydrogen Cyanide Release

COUNT 5

3.27 There was a release from the Facility by means of emission into the air of hydrogen cyanide in a quantity greater than the RQ starting on January 6, 2018 at approximately 1:35 am PST and ending on January 29, 2018 at approximately 7:26 pm PST (the "January 2018 release"). The January 2018 release was associated with operation of Line 3 at the Facility.

3.28 Respondent had knowledge that the January 2018 release was an amount equal to or greater than the RQ for hydrogen cyanide as of 7:12 pm on January 29, 2018.

3.29 Respondent reported the January 2018 release to the NRC on January 29, 2018 at approximately 7:51 pm PST, almost 40 minutes after Respondent had knowledge of the reportable release.

3.30 Respondent failed to immediately notify the NRC as soon as Respondent had knowledge that the release of hydrogen cyanide from the Facility was in an amount equal to or greater than the RQ.

3.31 Respondent's failure to immediately notify the NRC of the January 2018 release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

COUNT 6

3.32 Respondent notified the SERC of the January 2018 release on January 29, 2018 at 7:52 pm PST, approximately 40 minutes after Respondent had knowledge of the reportable release.

3.33 Respondent failed to immediately notify the SERC as soon as Respondent had knowledge that the release of hydrogen cyanide from the Facility was in an amount equal to or greater than the RQ.

3.34 Respondent's failure to immediately notify the SERC of the January 2018 release is a violation of Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), and 40 C.F.R. part 355, subpart C.

COUNT 7

3.35 Respondent notified the LEPC of the January 2018 release on January 29, 2018 at 7:52 pm PST, approximately 40 minutes after Respondent had knowledge of the reportable release.

3.36 Respondent failed to immediately notify the LEPC as soon as Respondent had knowledge that the release of hydrogen cyanide from the Facility was in an amount equal to or greater than the RQ.

3.37 Respondent's failure to immediately notify the LEPC of the January 2018 release is a violation of Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), and 40 C.F.R. part 355, subpart C.

October 2019 Hydrogen Cyanide Release

COUNT 8

3.38 There was a release from the Facility by means of emission into the air of hydrogen cyanide in a quantity greater than the RQ on or about October 11, 2019, starting at approximately 2:00 am PST and ending at approximately 6:52 am PST (the "October 2019 release"). The release was associated with blocked extraction ports in a high temperature furnace on Line 3 at the Facility.

3.39 Respondent notified the NRC of the October 2019 release on October 11, 2019 at 9:34 am PST, almost 3 hours after the release ended.

3.40 Respondent failed to immediately notify the NRC as soon as Respondent had knowledge that the release of hydrogen cyanide from the Facility was in an amount equal to or greater than the RQ.

3.41 Respondent's failure to immediately notify the NRC of the October 2019 release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

COUNT 9

3.42 Respondent notified the SERC of the October 2019 release on October 11, 2019 at 9:40 am PST, almost 3 hours after the release ended.

3.43 Respondent failed to immediately notify the SERC as soon as Respondent had knowledge that the release of hydrogen cyanide from the Facility was in an amount equal to or greater than the RQ.

3.44 Respondent's failure to immediately notify the SERC of the October 2019 release is a violation of Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), and 40 C.F.R. part 355, subpart C.

COUNT 10

3.45 Respondent notified the LEPC of the October 2019 release on October 11, 2019 at 9:40 am PST, almost 3 hours after the release ended.

3.46 Respondent failed to immediately notify the LEPC as soon as Respondent had knowledge that the release of hydrogen cyanide from the Facility was in an amount equal to or greater than the RQ.

3.47 Respondent's failure to immediately notify the LEPC of the October 2019 release is a violation of Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), and 40 C.F.R. part 355, subpart C.

ENFORCEMENT AUTHORITY

3.48 Under Section 325 of EPCRA, 42 U.S.C. § 11045, Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$59,017 per day.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$139,100 (the “Assessed Penalty”), \$39,000 of which reflects violations of CERCLA, and \$100,100 of which reflects violations of EPCRA.

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action. Respondent must also include a note with the payment indicating that \$39,000 is for the CERCLA penalty and \$100,100 is for the EPCRA penalty.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Erin Williams
U.S. Environmental Protection Agency
Region 10
Williams.Erin@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 325(f)(1) of EPCRA, 42 U.S.C. § 11045(f)(1), and/or Section 109 of CERCLA, 42 U.S.C. § 9609, to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

JASON LEE MCKINLEY, President
SGL Composites LLC

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. EPCRA-10-2022-0024
)	
SGL COMPOSITES LLC,)	FINAL ORDER
)	
Moses Lake, Washington,)	
)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under EPCRA and CERCLA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of EPCRA and CERCLA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2021.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: SGL Composites LLC, Docket No.: EPCRA-10-2022-0024**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered electronically to:

Danielle Meinhardt
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
meinhardt.danielle@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was deliver electronically to:

Jason Lee McKinley
President
SGL Composites LLC
8781 Randolph Road, NE
Moses Lake, Washington 98837

lee.mckinley@sglcarbon.com
cc: anna.blackwelder@sglcarbon.com

DATED this _____ day of _____, 2021.

Regional Hearing Clerk
EPA Region 10