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U.S. Environmental Protection Agency
REGIONAL HEARING OFFICE

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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. EPCRA-09-2011- 0015
11)
12 Western Metal Decorating Company,)
13 Respondent.)
14)

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

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX ("EPA"), and Western
17 Metal Decorating Company (the "Respondent") agree to settle this matter and consent to the
18 entry of this Consent Agreement and Final Order ("CAFO").
19

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 2008 and 2009
25 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing regulations set
26 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
11, 1994, the Administrator of EPA has delegated the authority to file this action under EPCRA

1 to the Regional Administrator of EPA, Region IX, and pursuant to EPA Regional Order Number
2 R1260.14B, dated May 19, 2005, the Regional Administrator re-delegated that authority to
3 Complainant.

4 B. STATUTORY AND REGULATORY BASIS

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

9 4. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R.
10 §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and
11 the State in which the facility is located a chemical release form published under Section 313(g)
12 of EPCRA for each toxic chemical or toxic chemical category listed under Section 313(c) of
13 EPCRA and 40 C.F.R. § 372.65 that it manufactured, processed or otherwise used if: (i) the
14 facility has ten or more full-time employees; (ii) the facility is in North American Industry
15 Classification System Code 332439; and (iii) the facility manufactured, processed or otherwise
16 used during the calendar year the listed toxic chemical or toxic chemical category in excess of the
17 threshold quantity established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25.

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

24 C. ALLEGED VIOLATIONS

25 6. Respondent is a corporation and therefore fits within the definition of a "person," as
26 provided in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

27 7. At all times relevant to this matter, Respondent owned and operated a facility (the
28 "Facility") in the business of manufacturing and finishing fabricated metal products, located at

1 8875 Industrial Lane in Rancho Cucamonga, California, that fits within the definition of a
2 “facility,” as provided in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

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

5 9. At all times relevant to this matter, the Facility was in North American Industry
6 Classification System Code 332439.

7 10. During the calendar year 2008, Respondent “otherwise used,” as that term is defined
8 in 40 C.F.R. § 372.3, approximately 26,312 pounds of certain glycol ethers, a toxic chemical
9 category listed under 40 C.F.R. § 372.65, at the Facility. This quantity exceeded the 10,000
10 pound threshold for reporting “otherwise use” of that toxic chemical category established under
11 Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

12 11. During the calendar year 2008, Respondent “otherwise used,” as that term is defined
13 in 40 C.F.R. § 372.3, approximately 29,205 pounds of xylene (mixed isomers), a toxic chemical
14 listed under 40 C.F.R. § 372.65, at the Facility. This quantity exceeded the 10,000 pound
15 threshold for reporting “otherwise use” of that toxic chemical established under Section 313(f) of
16 EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

17 12. During the calendar year 2008, Respondent “otherwise used,” as that term is defined
18 in 40 C.F.R. § 372.3, approximately 11,015 pounds of methyl n-butyl alcohol, a toxic chemical
19 listed under 40 C.F.R. § 372.65, at the Facility. This quantity exceeded the 10,000 pound
20 threshold for reporting “otherwise use” of that toxic chemical established under Section 313(f) of
21 EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

22 13. During the calendar year 2009, Respondent “otherwise used,” as that term is defined
23 in 40 C.F.R. § 372.3, approximately 16,696 pounds of certain glycol ethers, a toxic chemical
24 category listed under 40 C.F.R. § 372.65, at the Facility. This quantity exceeded the 10,000
25 pound threshold for reporting “otherwise use” of that toxic chemical category established under
26 Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

27 14. During the calendar year 2009, Respondent “otherwise used,” as that term is defined
28 in 40 C.F.R. § 372.3, approximately 10,782 pounds of xylene (mixed isomers), a toxic chemical

1 listed under 40 C.F.R. § 372.65, at the Facility. This quantity exceeded the 10,000 pound
2 threshold for reporting “otherwise use” of that toxic chemical established under Section 313(f) of
3 EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

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

6 16. Respondent was required to submit a Form R for xylene (mixed isomers) to EPA and
7 the State of California for calendar year 2008 for the Facility on or before July 1, 2009.

8 17. Respondent was required to submit a Form R for n-butyl alcohol to EPA and the
9 State of California for calendar year 2008 for the Facility on or before July 1, 2009.

10 18. Respondent was required to submit a Form R for certain glycol ethers to EPA and the
11 State of California for calendar year 2009 for the Facility on or before July 1, 2010.

12 19. Respondent was required to submit a Form R for xylene (mixed isomers) to EPA and
13 the State of California for calendar year 2009 for the Facility on or before July 1, 2010.

14 20. Respondent failed to timely submit the Form Rs required of it to EPA and the State
15 of California for calendar years 2008 and 2009 for the Facility and thus violated Section 313 of
16 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

17 21. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty
18 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any
19 requirement of Section 313 shall be liable to the United States for a civil penalty in an amount
20 not to exceed \$37,500 for each such violation that occurred on or after January 12, 2009. Under
21 the Enforcement Response Policy for Section 313 of EPCRA, dated August 10, 1992, and the
22 Civil Monetary Penalty Inflation Adjustment Rule, the five violations cited above would merit an
23 unadjusted, gravity-based civil penalty of TWENTY-NINE THOUSAND, THREE HUNDRED
24 DOLLARS (\$29,300) given the nature, circumstances, and extent of the violations alleged.

25 D. RESPONDENT'S ADMISSIONS

26 22. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
27 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
28 Respondent; (ii) admits the specific factual allegations contained in Section I.C of this CAFO;

1 (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil
2 administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the
3 allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order
4 contained in this CAFO.

5 E. AUDIT POLICY

6 23. EPA's final policy statement on *Incentives for Self-Policing: Discovery, Disclosure,*
7 *Correction and Prevention of Violations*, 65 Federal Register 19618 (April 11, 2000) (the "Audit
8 Policy") has several important goals, including encouraging greater compliance with the laws and
9 regulations which protect human health and the environment and reducing transaction costs
10 associated with violations of the laws EPA is charged with administering. If certain specified
11 criteria are met, reductions in gravity-based penalties of up to 100% are available under the Audit
12 Policy. These criteria are: (1) systematic discovery of the violation(s) through an environmental
13 audit or compliance management system; (2) voluntary disclosure; (3) prompt disclosure; (4)
14 discovery and disclosure independent of government or third party plaintiff; (5) correction and
15 remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and
16 (9) cooperation.

17 24. Complainant has determined that Respondent has satisfied all of the criteria under the
18 Audit Policy and thus qualifies for the elimination of civil penalties in this matter. Accordingly,
19 the civil penalty assessed in this matter is ZERO DOLLARS (\$0).

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

25 F. CERTIFICATION OF COMPLIANCE

26 26. In executing this CAFO, Respondent certifies that (1) it has now fully completed and
27 submitted to EPA all of the required Toxic Chemical Release Inventory Forms in compliance
28 with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder;

1 and (2) it has complied with all other EPCRA requirements at all facilities under its control.

2 G. RETENTION OF RIGHTS

3 27. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
4 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
5 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
6 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
7 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
8 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
9 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
10 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

11 28. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
12 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
13 and permits.

14 H. ATTORNEYS' FEES AND COSTS

15 29. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
16 this proceeding.

17 I. EFFECTIVE DATE

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

21 J. BINDING EFFECT

22 31. The undersigned representative of Complainant and the undersigned representative of
23 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
24 of this CAFO and to bind the party he or she represents to this CAFO.

25 32. The provisions of this CAFO shall apply to and be binding upon Respondent and its
26 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
27 and assigns.

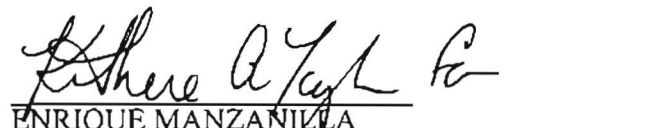
1 FOR RESPONDENT WESTERN METAL DECORATING COMPANY:
2

3 9/14/11
4 DATE


5 SCOTT L. BROTZMAN
6 CEO
7 Western Metal Decorating Company
8 8875 Industrial Lane
9 Rancho Cucamonga, CA 91730

10 FOR COMPLAINANT EPA:
11

12 9/22/11
13 DATE



14 ENRIQUE MANZANILLA
15 Director, Communities and Ecosystems Division
16 U.S. Environmental Protection Agency, Region IX
17 75 Hawthorne Street
18 San Francisco, California 94105

1 II. FINAL ORDER

2 EPA and Western Metal Decorating Company having entered into the foregoing Consent
3 Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-09-2011-0015) be
5 entered, and Respondent shall comply with the terms and conditions set forth in the Consent
6 Agreement.

7
8
9 09/23/11
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 against **Western Metal Decorating Company (Docket #: EPCRA-09-2011-0015)** 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:

Scott L. Brotzman
CEO
Western Metal Decorating Company
8875 Industrial Lane
Rancho Cucamongo, CA 91730

CERTIFIED MAIL NUMBER: 7010-1060-0002-0234-7038

An additional 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 9/26/11



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

SEP 22 2011

Certified Mail No. 7010 1060 0002 0234 7038
Return Receipt Requested

Re: EPCRA-09-2011-005

Scott L. Brotzman
CEO
Western Metal Decorating Company
8875 Industrial Lane
Rancho Cucamonga, CA 91730

Dear Mr. Brotzman:

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 Lily Lee at (415) 947-4187 or have your attorney contact Edgar 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