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1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION 9

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REGIONAL HEARING CLERK

4 In the Matter of:)

5 PRC-De Soto International,)
6 Inc., a wholly owned subsidiary)
7 of PPG Industries, Inc.,)

Respondent)

Docket No. EPCRA-09-2008- 00 3 0

CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO 40 C.F.R.
§§ 22.13 AND 22.18

9 I. CONSENT AGREEMENT

10 1. The Director of the Communities and Ecosystems Division
11 ("Complainant"), United States Environmental Protection
12 Agency ("EPA") Region 9, and PRC-De Soto International, Inc.,
13 a wholly owned subsidiary of PPG Industries, Inc.

14 ("Respondent" or "PRC") agree to settle this matter and
15 consent to the filing of this Consent Agreement and Final
16 Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 ("CAFO"),
17 which simultaneously commences and concludes this matter in
18 accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

19 2. This is a civil administrative proceeding initiated pursuant
20 to Section 325(c) of Title III of the Superfund Amendments
21 and Reauthorization Act, 42 U.S.C. § 11001 et seq., also
22 known as the Emergency Planning and Community Right-to-Know
23 Act of 1986 ("EPCRA"), for violation of Section 313 of EPCRA,
24 42 U.S.C. § 11023, and the regulations promulgated to
25 implement Section 313 at 40 C.F.R. Part 372.

26 3. Complainant has been duly delegated the authority to file
27 this action and sign a consent agreement settling this
28 action. Respondent is a corporation incorporated in

1 California.

2 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023
3 and 11048, EPA promulgated the Toxic Chemical Release
4 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part
5 372.

6 5. Section 313(a) of EPCRA, as implemented by 40 C.F.R.
7 § 372.30, provides that an owner or operator of a facility
8 that meets the criteria set forth in EPCRA Section 313(b) and
9 40 C.F.R. § 372.22, is required to submit annually to the
10 Administrator of EPA and to the State in which the facility
11 is located, no later than July 1st of each year, a toxic
12 chemical release inventory reporting form (hereinafter "Form
13 R") for each toxic chemical listed under 40 C.F.R. § 372.65
14 that was manufactured, processed or otherwise used at the
15 facility during the preceding calendar year in quantities
16 exceeding the thresholds established under EPCRA Section
17 313(f) and 40 C.F.R. §§ 372.25, 375.27, and 372.28.

18 6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that
19 the requirements of Section 313(a) and 40 C.F.R. § 372.30
20 apply to an owner and operator of a facility that has 10 or
21 more full-time employees; that is in a Standard Industrial
22 Classification major group codes 10 (except 1011, 1081, and
23 1094), 12 (except 1241), 20 through 39; industry codes 4911,
24 4931, or 4939 (limited to facilities that combust coal and/or
25 oil for the purpose of generating power for distribution in
26 commerce), or 4953 (limited to facilities regulated under the
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1 Resource Conservation and Recovery Act, subtitle C, 42 U.S.C.
2 §6921 et seq.), or 5169, 5171, or 7389 (limited to facilities
3 primarily engaged in solvent recovery services on a contract
4 or fee basis); and that manufactures, processes, or otherwise
5 uses one or more toxic chemicals listed under Section 313(c)
6 of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of
7 the applicable thresholds established under EPCRA Section
8 313(f) and 40 C.F.R. §§ 372.25, 372.27, and 372.28.

9 7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R.
10 Part 19 authorize EPA to assess a penalty of up to \$27,500
11 for each violation of Section 313 of EPCRA that occurred on
12 or after January 31, 1997, but before March 15, 2004, and up
13 to \$32,500 for each violation of Section 313 of EPCRA that
14 occurred on or after March 15, 2004.

15 8. Respondent is a "person," as that term is defined by Section
16 329(7) of EPCRA.

17 9. At all times relevant to this CAFO, Respondent was the owner
18 and operator of a "facility," as that term is defined by
19 Section 329(4) of EPCRA and 40 C.F.R. § 372.3, located at
20 11601 United Street, Mojave, California 93501 ("Facility");
21 the Facility had 10 or more "full-time employees," as that
22 term is defined at 40 C.F.R. § 372.3; and the Facility was
23 classified in Standard Industrial Classification Code 2891 -
24 adhesives and sealants.

25 10. During calendar year 2005, Respondent processed the following
26 amounts (in pounds) of certain glycol ethers, dimethyl
27
28

1 phthalate and ethylbenzene, chemicals listed under 40 C.F.R.
2 § 372.65:

3 <u>Year</u>	<u>certain glycol</u>	<u>dimethyl</u>	<u>ethylbenzene</u>
4	<u>ethers</u>	<u>phthalate</u>	
2005	107,524	55,244	36,057

5 11. The quantities of certain glycol ethers, dimethyl phthalate
6 and ethylbenzene that Respondent processed at the Facility
7 during calendar year 2005 exceeded the established threshold
8 of 25,000 pounds set forth at 40 C.F.R. § 372.25(a).

9 12. Respondent failed to submit Form Rs for certain glycol
10 ethers, dimethyl phthalate and ethylbenzene processed at the
11 Facility to the EPA Administrator and to the State of
12 California on or before July 3, 2006 for calendar year 2005,
13 as required by Section 313(a) of EPCRA and 40 C.F.R. §
14 372.30.

15 13. Respondent's failure to submit Form Rs for certain glycol
16 ethers, dimethyl phthalate and ethylbenzene processed at the
17 Facility for calendar year 2005, constitutes three violations
18 of Section 313 of EPCRA and 40 C.F.R. § 372.30.

19 14. The EPA Enforcement Response Policy for EPCRA Section 313
20 dated August 10, 1992, provides for a penalty of sixty-five
21 thousand eight hundred dollars (\$65,800) for these
22 violations.

23 15. In executing this CAFO, Respondent certifies that (1) it has
24 now fully completed and submitted to EPA all of the required
25 Form Rs in compliance with Section 313 of EPCRA and the
26 regulations promulgated to implement Section 313; and (2) it
27

1 has complied with all other EPCRA requirements at all
2 facilities under its control.

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

11 17. The terms of this CAFO constitute a full settlement of the
12 civil administrative matter filed under the docket number
13 above.

14 18. EPA's final policy statement on Incentives for Self-Policing:
15 Discovery, Disclosure, Correction and Prevention of
16 Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit
17 Policy") has several important goals, including encouraging
18 greater compliance with the laws and regulations which
19 protect human health and the environment and reducing
20 transaction costs associated with violations of the laws EPA
21 is charged with administering. If certain specified criteria
22 are met, reductions in gravity-based penalties of up to 100%
23 are available under the Audit Policy. These criteria are (1)
24 discovery of the violation(s) through an environmental audit
25 or due diligence; (2) voluntary disclosure; (3) prompt
26 disclosure; (4) discovery and disclosure independent of

1 government or third party plaintiff; (5) correction and
2 remediation; (6) prevent recurrence; (7) no repeat
3 violations; (8) other violations excluded; and (9)
4 cooperation.

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

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

10 20. Complainant's finding that PRC has satisfied the criteria of
11 the Audit Policy is based upon documentation that PRC has
12 provided to establish that it satisfies these criteria.

13 Complainant and Respondent agree that, should any material
14 fact upon which Complainant relied in making its finding
15 subsequently prove to be other than as represented by PRC,
16 this CAFO may be voided in whole or in part.

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

23 Nothing in this CAFO is intended to or shall be construed to
24 resolve (i) any civil liability for violations of any
25 provision of any federal, state, or local law, statute,
26 regulation, rule, ordinance, or permit not specifically
27

1 alleged in this CAFO; or (ii) any criminal liability. EPA
2 specifically reserves any and all authorities, rights, and
3 remedies available to it (including, but not limited to,
4 injunctive or other equitable relief or criminal sanctions)
5 to address any violation of this CAFO or any violation not
6 specifically alleged in this CAFO.

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

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

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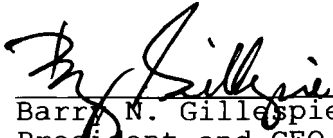
FOR COMPLAINANT:

SEPT. 30 2008
Date


Enrique Manzanilla, Director
Communities and Ecosystems Division
EPA Region 9

FOR RESPONDENT:

9-29-08
Date


Barry N. Gillespie
President and CEO
PRC-De Soto International, Inc.

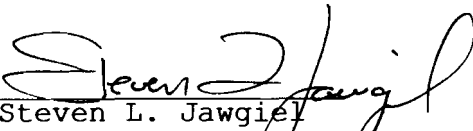
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1 **II. FINAL ORDER**

2 Complainant EPA Region 9 and Respondent PRC-De Soto
3 International, Inc., having entered into the foregoing Consent
4 Agreement,

5 IT IS HEREBY ORDERED that this Consent Agreement and Final
6 Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-
7 09-2008-0030) be entered.

8
9
10 09/30/08
11 Date


12 Steven L. Jawgiel
13 Regional Judicial Officer
14 U.S. Environmental Protection
15 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-09-2008- **0030**, was placed in the United States Mail, certified mail, return receipt requested, addressed to the following address:

Barry N. Gillespie,
President and CEO
PRC-De Soto International, Inc.
11601 United Street
Mojave, CA 93501

Certified Return Receipt No.:

Date: 10/02/2008

By: *Danielle E. Carr*
Danielle Carr
Regional Hearing Clerk
United States Environmental
Protection Agency, Region 9
75 Hawthorne Avenue
San Francisco, California 94105-3143