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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION IX U.S. EPA REGION IX REGIONAL HEARING CLERK

IN THE MATTER OF: ) Docket No. EPCRA( )-09-2012-00 09 ) ) Precision Castparts Corp. ) CONSENT AGREEMENT ) 6001 Arcturus Avenue, Oxnard, California ) ) 7743 E. Adams Street, Paramount, California) ) ) Respondent. ) AND ) ) PURSUANT TO 40 CFR ) ) SECTIONS 22.13 and 22.18 ) )

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

- 1. This is a civil administrative enforcement action initiated pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is the Precision Castparts Corp., an Oregon corporation. 2. This Compliance Agreement and Final Order ("CA/FO"), pursuant to 40 CFR §§ 22.13(b) and 22.18(b), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, and the implementing regulations.

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2 **B. STATUTORY AND REGULATORY FRAMEWORK**

3 3. Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 CFR §§ 370.40, .40 and .45 require  
4 the owner or operator of a facility to submit an annual emergency and hazardous  
5 chemical inventory form ("Inventory Form") if hazardous chemicals for which the owner  
6 or operator of the facility is required to prepare or have available a material safety data  
7 sheet ("MSDS") under the Occupational Safety and Health Act of 1970 ("OSHA"), 29  
8 U.S.C. § 651 *et seq.*, are present at the facility during the preceding calendar year in  
9 quantities above the threshold levels established in 40 CFR § 370.10. The Inventory  
10 Form must be submitted by March 1 of each year to the State Emergency Response  
11 Commission ("SERC"), the Local Emergency Planning Committee ("LEPC"), and the  
12 fire department(s) having jurisdiction over the facility. The State of California has  
13 delegated authority to implement the EPCRA program to the Certified Unified Reporting  
14 Agencies ("CUPAs") which have jurisdiction over each geographic area in the state. The  
15 points of compliance for the facilities are the City of Oxnard Fire Department, the  
16 designated CUPA for facilities in Oxnard, CA, and the Los Angeles County Fire  
17 Department ("LACFD"), the designated CUPA for facilities in Paramount, CA. In  
18 California, the requirement to submit an annual chemical inventory is satisfied by  
19 submitting Hazardous Materials Business Plan ("HMBP") forms to the CUPA.  
20

21 **C. GENERAL ALLEGATIONS**

22 4. Section 325(c) of EPCRA, 42 U.S.C. § 11045(e), authorizes EPA to assess civil penalties  
23 for any violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

1 5. The Administrator of EPA has delegated enforcement authority under EPCRA to the  
2 Regional Administrators by EPA delegation 22-3-A, dated May 11, 1994. The Regional  
3 Administrator, EPA Region IX, in turn, has delegated the authority to enforce  
4 EPCRA §§ 302, 303, 304, 311, 312, 322, and 323 to the Director of the Superfund  
5 Division with delegation R9 1290.18.

6 6. Respondent owns and operates facilities located at: 6001 Arcturus Avenue, Oxnard,  
7 California (the "Arcturus Facility"); and at 7743 E. Adams Street, Paramount, California  
8 (the "Carlton Facility") (collectively referred to as "the Facilities").

9 7. Respondent acquired the Facilities on September 30, 2009. Prior to this date Respondent  
10 was not responsible for environmental compliance at either Facility.

11 8. At the Arcturus Facility the following hazardous chemicals were present above the  
12 threshold levels established in 40 CFR§ 370.10 : during the calendar year of 2009, an  
13 estimated maximum amount of nickel alloys at 60,718 pounds, steel alloys at 25,997  
14 pounds, and titanium alloys at 43,599 pounds; and during the calendar year 2008, a  
15 maximum amount of nickel alloys at 50,115 pounds and titanium alloys at 43,059  
16 pounds.

17 9. At the Carlton Facility the following hazardous chemicals were present above the  
18 threshold levels established in 40 CFR § 370.10: during the calendar year of 2009, an  
19 estimated maximum amount of aluminum alloys at 1,518,139 pounds, nickel alloys at  
20 791,666 pounds, steel alloys at 1,977,135 pounds, steel shot at 12,000 pounds, and  
21 titanium alloys at 816,567 pounds; and during the calendar year 2008, a maximum  
22 amount of aluminum alloys at 1,624,640 pounds, nickel alloys at 1,048,201 pounds, steel

1 alloys at 1,776,651 pounds, steel shot above 10,000 pounds, and titanium alloys at  
2 1,347,173 pounds.

3 10. In a letter dated July 9, 2010, Respondent voluntarily disclosed to EPA that it had not  
4 submitted, for either Facility, Inventory Forms or HMBP forms for the chemicals and  
5 calendar years identified in paragraphs 8 and 9, as required by Section 312 of EPCRA, 42  
6 U.S.C. § 11022.

7 11. Respondent submitted HBMP forms containing information on chemicals present at each  
8 Facility during calendar year 2009 to the appropriate CUPA on August 2, 2010.

9  
10 D. ALLEGED VIOLATIONS

11 COUNT 1

12 (Failure to Timely Submit Annual Chemical Inventory Forms for the Arcturus Facility for  
13 Calendar Years 2008 and 2009)

14 12. Paragraphs 1 through 11 above are incorporated herein by this reference as if they were  
15 set forth here in their entirety.

16 13. The Arcturus Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C.  
17 § 11049(4).

18 14. From September 30, 2009, to the date of this CA/FO, Respondent has been responsible  
19 for environmental compliance at the Arcturus Facility.

20 15. At all times relevant to this CA/FO, Respondent has been a "person" as defined by  
21 Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

- 1 16. Respondent is required to prepare or have available an MSDS under 29 CFR  
2 § 1910.1200(g) because it is engaged in a business where chemicals are either used or  
3 distributed, or are produced for use or distribution.
- 4 17. Nickel alloys, steel alloys and titanium alloys are "hazardous chemicals" as defined under  
5 Occupational Safety and Health Act of 1970 ("OSHA"), 29 U.S.C. § 651 *et seq.*
- 6 18. During the calendar year 2008 and 2009, nickel alloys, steel alloys, and/or titanium alloys  
7 were present at the Arcturus Facility in quantities above the applicable thresholds  
8 established in 40 CFR § 370.10, as set forth in paragraph 8.
- 9 19. Respondent's failure to timely submit an Inventory Forms or HMBP forms containing  
10 information on hazardous chemicals present at the Arcturus Facility described in  
11 paragraphs 8 and 18 during the calendar years 2009 and 2009 to the Oxnard CUPA is a  
12 violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

13  
14 COUNT II

15 (Failure to Timely Submit Annual Chemical Inventory Forms for the Carlton Facility for  
16 Calendar Years 2008 and 2009)

- 17 20. Paragraphs 1 through 19 above are incorporated herein by this reference as if they were  
18 set forth here in their entirety.
- 19 21. The Carlton Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C.  
20 § 11049(4).
- 21 22. From September 30, 2009, to the date of this CA/FO, Respondent has been responsible  
22 for environmental compliance at the Carlton Facility.

- 1 23. At all times relevant to this CA/FO, Respondent has been a “person” as defined by  
2 Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
- 3 24. Respondent is required to prepare or have available an MSDS under 29 CFR  
4 § 1910.1200(g) because it is engaged in a business where chemicals are either used or  
5 distributed, or are produced for use or distribution.
- 6 25. Aluminum alloys, nickel alloys, steel alloys, steel shot, and titanium alloys are  
7 “hazardous chemicals” as defined under OSHA.
- 8 26. During the calendar years 2008 and 2009, aluminum alloys, nickel alloys, steel alloys,  
9 steel shot, and titanium alloys were present at the Carlton Facility in quantities above the  
10 applicable thresholds established in 40 CFR § 370.10, as set forth in paragraph 9.
- 11 27. Respondent’s failure to timely submit Inventory Forms or HMBP forms containing  
12 information on hazardous chemicals present at the Carlton Facility described in  
13 paragraphs 9 and 26 during the calendar years 2008 and 2009 to the LACFD CUPA is a  
14 violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

15  
16 E. CIVIL PENALTY

- 17 28. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as adjusted by the Debt  
18 Collection Improvement Act of 1996, *see* 40 CFR Part 19, authorizes a civil penalty of up  
19 to \$27,500 per day for each day a violation of EPCRA occurs after January 30, 1997. For  
20 violations that occur on or after March 15, 2004, a civil administrative penalty of \$32,500  
21 per day is authorized. For violations that occur on or after January 12, 2009, a civil  
22 administrative penalty of \$37,500 per day is authorized.

1 29. Under EPA's Final Policy Statement on *Incentives for Self-Policing: Discovery,*  
2 *Disclosures, Correction and Prevention of Violations*, 65 Fed. Reg. 19618, ("Audit  
3 Policy"), effective May 11, 2000, EPA has the discretion to eliminate or substantially  
4 reduce the gravity component of a penalty if it determines that a respondent has satisfied  
5 the nine conditions set forth in the Audit Policy.

6 30. The nine conditions a respondent must satisfy under the Audit Policy are: (1) systematic  
7 discovery of the violation through an environmental audit or a compliance management  
8 system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure  
9 independent of government or third party plaintiff; (5) correction and remediation; (6)  
10 prevention of recurrence; (7) no repeat violations; (8) other violations excluded; and (9)  
11 cooperation.

12 31. Regulated entities deemed by EPA to have satisfied the nine conditions in the Audit  
13 Policy will not face any gravity-based civil penalties. If the regulated entity meets all but  
14 the first condition (Systematic Discovery), EPA will reduce the gravity-based penalties  
15 by 75%. EPA reserves the right to collect any economic benefit realized as a result of the  
16 violation disclosed.

17 32. EPA has concluded that Respondent has, as described herein, satisfied the nine conditions  
18 outlined in the Audit Policy and therefore will not face gravity-based civil penalties.

19 33. Systematic Discovery of the Violation Through an Environmental Audit or a Compliance  
20 Management System. Respondent discovered the violations during an internal  
21 environmental audit of the Facilities, which concluded on June 30, 2010.

1 34. Voluntary Discovery. Respondent's discovery of the violations was voluntary and did  
2 not result from any legally mandated monitoring or sampling requirement prescribed by  
3 statute, regulation, permit, judicial or administrative order, or consent agreement.

4 35. Prompt Disclosure. Respondent disclosed violations to EPA within 21 days after it  
5 discovered the violations had, or may have, occurred, advised that the process of  
6 verifying its EPCRA Section 312 reporting thresholds for the prior three years was  
7 ongoing and advised that there may be additional violations discovered. The initial  
8 violations were discovered during an internal environmental audit of the Facilities, which  
9 concluded on June 30, 2010, and were reported to the EPA 9 days later in a letter dated  
10 July 9, 2010.

11 36. Discovery and Disclosure Independent of Government or Third Party Plaintiff.

12 Respondent discovered and disclosed the violations to EPA prior to any federal, state, or  
13 local agency inspection or investigation, notice of citizen suit, the filing of a third-party  
14 complaint, the reporting of the violations by a "whistle-blower," or imminent discovery  
15 by a regulatory agency.

16 37. Correction and Remediation. Respondent provided the chemical hazard information and  
17 submitted the Inventory Forms for each Facility for the calendar year 2009 to the  
18 appropriate CUPA on August 2, 2010.

19 38. Prevent Recurrence. Respondent has told EPA that it plans to take the following steps to  
20 prevent a recurrence of any violation of Section 312 of EPCRA, 42 U.S.C. § 11022:  
21 Respondent has committed that company environmental compliance staff will work with  
22 the Facilities to ensure they have successful EPCRA Section 312 compliance programs;



1 and Respondent will also ensure that training is provided to Facility staff responsible for  
2 EPCRA compliance..

3 39. Repeat Violations. Respondent has not had any other occurrence of these specific  
4 violations at the Facilities within the past three years or at any other facility owned or  
5 operated by Respondent within the past five years.

6 40. Other Violations Excluded. The violations did not result in serious actual harm, present  
7 an imminent and substantial endangerment to public health or the environment, or violate  
8 the specific terms of any judicial or administrative order or consent agreement.

9 41. Cooperation. Respondent has fully cooperated with EPA in determining the applicability  
10 of the Audit Policy.

11 42. In signing this CA/FO, Respondent certifies under penalty of law that the information  
12 submitted to EPA in the letter dated July 9, 2010, disclosing violations of  
13 EPCRA Section 312, 42 U.S.C. § 11022, and the information in paragraphs 32 - 41 of  
14 this CA/FO are based upon true, accurate, and complete information that the signatory  
15 can verify personally, or regarding which the signatory has inquired of the person or  
16 persons directly responsible for gathering the information.

17 43. EPA has determined that the violations resulted in an insignificant amount of economic  
18 benefit.

19 44. For the reasons set forth above, all penalties based on the gravity of the violations and the  
20 savings of economic costs related to the failure to timely submit the Inventory Forms are  
21 waived.

1 F. ADMISSIONS AND WAIVERS

2 45. For purposes of this proceeding, Respondent admits the jurisdictional allegations above,  
3 and agrees that the EPA Administrator and Region IX Administrator have jurisdiction  
4 and authority over the subject matter of the action commenced in this CA/FO and over  
5 Respondent pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 CFR §§ 22.4  
6 and 22.34. Respondent consents to and agrees not to contest EPA's jurisdiction and  
7 authority to enter into and issue this CA/FO and to enforce its terms. Further,  
8 Respondent will not contest EPA's jurisdiction and authority to compel compliance with  
9 this CA/FO in any enforcement proceedings, either administrative or judicial, or to  
10 impose sanctions for violations of this CA/FO.

11 46. Respondent admits any allegations of fact or law set forth in Section C and D of this  
12 CA/FO. Respondent hereby waives any rights it may have to contest the allegations set  
13 forth in this CA/FO and waives any rights it may have to a hearing on any issue relating  
14 to the factual allegations or legal conclusions set forth in this CA/FO, including without  
15 limitation a hearing pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. Respondent  
16 hereby consents to the issuance of this CA/FO without adjudication and waives any rights  
17 it may have to appeal the Final Order attached to this Consent Agreement and made part  
18 of this CA/FO.

19  
20 G. PARTIES BOUND

21 47. This CA/FO shall apply to and be binding upon Respondent and its agents, successors,  
22 and assigns and upon all persons acting under or for Respondent. This CA/FO shall  
23 constitute full settlement of the violations alleged herein.

1 48. No change in ownership or corporate, partnership, or legal status relating to the Facilities  
2 will in any way alter Respondent's obligations and responsibilities under this CA/FO.

3 49. The undersigned representative of Respondent hereby certifies that he or she is fully  
4 authorized by Respondent to enter into this CA/FO, to execute it, and to legally bind  
5 Respondent to it.

6  
7 H. PAYMENT OF CIVIL PENALTY

8 50. Because EPA has concluded that Respondent has, as described herein, satisfied the nine  
9 conditions set forth in the Audit Policy, Complainant has not sought gravity-based  
10 penalties for the violations alleged.

11 51. Based on Complainant's determination that any economic benefit derived from the  
12 violations was insignificant, Complainant has not sought to collect any economic benefit  
13 penalty for the violations alleged.

14 52. Complainant and Respondent hereby consent to the assessment of a civil penalty in the  
15 amount of **ZERO DOLLARS (\$0)** in settlement of the violations set forth in Section D  
16 above. This CA/FO constitutes a settlement of the civil and administrative penalty claims  
17 of the United States for the violations of Section 312 of EPCRA specifically alleged in  
18 Section D above.

19 53. The effect of the settlement described above is conditional upon the accuracy of  
20 Respondent's representations to EPA as memorialized in paragraphs 32 – 41 of this  
21 CA/FO and Respondent's self-disclosure dated July 9, 2010.

1 I. RESERVATION OF RIGHTS

2 54. EPA expressly reserves all rights and defenses that it may have.

3 55. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and  
4 remedies, both legal and equitable, including without limitation, the right to require  
5 Respondent to perform tasks in addition to those required by this CA/FO and the right to  
6 assess penalties under Section 325 of EPCRA, 42 U.S.C. § 11045, or take other  
7 appropriate action, in the event that Respondent fails to comply with any of the  
8 requirements of this CA/FO.

9 56. This CA/FO shall not be construed as a covenant not to sue, a release, waiver, or  
10 limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has  
11 under EPCRA or any other statutory, regulatory, or common law enforcement authority  
12 of the United States, except as otherwise set forth herein.

13 57. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise  
14 preclude EPA from taking additional enforcement actions should EPA determine that  
15 such actions are warranted, except as they relate to Respondent's liability for federal civil  
16 penalties for the specific alleged violations set forth in Section D of this CA/FO.

17 58. This CA/FO is not intended to be, nor shall it be construed as, a permit. This CA/FO  
18 does not relieve Respondent of any obligation to obtain and comply with any local, state,  
19 or federal permits.

20 59. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released  
21 from liability, if any, for the costs of any response actions taken by EPA. EPA reserves  
22 its right to seek reimbursement from Respondent for any response costs incurred by the  
23 United States that may result or arise from the alleged counts set forth in Section D.

1  
2 J. OTHER CLAIMS

3 60. Nothing in this CA/FO shall constitute or be construed as a release from any other claim,  
4 cause of action, or demand in law or equity by or against any person, firm, partnership,  
5 entity, or corporation for any liability it may have arising out of or relating in any way to  
6 the generation, storage, treatment, handling, transportation, release, or disposal of any  
7 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or  
8 contaminants found at, taken to, or taken from the Facilities.

9  
10 K. MISCELLANEOUS

11 61. This CA/FO may be amended or modified only by written agreement executed by both  
12 EPA and Respondent.

13 62. The headings in this CA/FO are for convenience of reference only and shall not affect  
14 interpretation of this CA/FO.


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

17 64. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on  
18 the date that the Final Order contained in this CA/FO, having been approved and issued  
19 by either the Regional Judicial Officer or Regional Administrator, is filed.


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**IT IS SO AGREED,**

09/07/12  
Date

  
\_\_\_\_\_  
Kevin Dahlin, Vice President  
Arcturus and Carlton Facilities  
Precision Castparts Corp.

18 September 2012  
Date

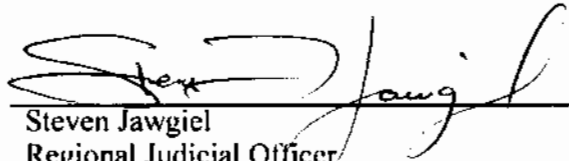
  
\_\_\_\_\_  
for Jane Diamond  
Director  
Superfund Division  
United States Environmental Protection Agency,  
Region IX

**FINAL ORDER**

**IT IS HEREBY ORDERED** that this Consent Agreement and Final Order (EPA Docket No. EPCRA(312)-09-2012-0099) be entered and that Respondent pay a civil penalty in the amount of **ZERO DOLLARS (\$0)**.

09/26/12

Date

  
\_\_\_\_\_  
Steven Jawgiel

Regional Judicial Officer  
United States Environmental Protection Agency,  
Region IX

**CERTIFICATE OF SERVICE**

Docket No. EPCRA(312)-09-2012-

I hereby certify that the original copy of the foregoing CAFO with the Docket number referenced above, has been filed with the Region 9 Hearing Clerk and that a copy was sent by certified mail, return receipt requested, to:

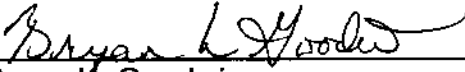
Kevin Dahlin  
Vice-President  
Precision Castparts Corp.  
7743 E. Adams Street  
Paramount, CA 90723-4200

**CERTIFIED MAIL NUMBER:** 7011 0470 0002 9197 7418

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

Thanne Cox, Esq.  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne St.  
San Francisco, CA 94105

9/28/12  
Date

  
\_\_\_\_\_  
Bryan K. Goodwin  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105





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

Certified Mail No.: 7011 0470 0002 9197 7418

Refer to: Precision Castparts Corp., Arcturus and Carlton Facilities, CA

SEP 28 2012

Kevin Dahlin, Vice-President  
Precision Castparts Corp.  
7743 E. Adams Street  
Paramount, CA 90723-4200

Re: Consent Agreement and Final Order, Settlement of Audit Policy Disclosures


Dear Mr. Dahlin:

Please find enclosed the fully executed Consent Agreement and Final Order (CA/FO) negotiated between the United States Environmental Protection Agency, Region IX (EPA), and Precision Castparts Corp. concerning the facilities located in Oxnard (Arcturus Facility) and Paramount (Carlton Facility), CA.

This CA/FO simultaneously commences and concludes the above-referenced proceeding concerning the outstanding Emergency Planning and Community Right-to-Know Act (EPCRA) compliance matters between Precision Castparts Corp. and EPA as alleged in the CA/FO.

If you have any questions regarding the EPCRA requirements governing operations at Precision Castparts Inc., or which concern the proceedings terminated by the enclosed documents, please contact Elizabeth Cox at (415) 972-3908.

Sincerely,

  
Jane Diamond  
Director  
Superfund Division

Enclosures

cc (w/enclosures):

J. Johnstone, EPA Region IX  
T. Cox, EPA Region IX  
G. Tichenor, Stoel Rives LLP