



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
September 16, 2008

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8921 5658

Paul E. Miller
Vice President and General Manager
R.A. Miller Industries, Inc
14500 168th Avenue
P.O. Box 858
Grand Haven, Michigan 49417

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V

2008 SEP 16 AM 10: 22

Consent Agreement and Final Order, Docket No. EPCRA-05-2008-0026

Dear Mr. Miller:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 16, 2008, with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,673.00 is to be paid in the manner described in paragraph 31 and 32. In the comment or description field of the electronic funds transfer, please state: R.A. Miller Industries, Inc. and the docket number of this CAFO (above), and the following billing document number BD 2750844E020. Payment is due by October 16, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Robert Allen
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. EPCRA-05-2008-0026
)	
R.A. Miller Industries, Inc.)	Proceeding to Assess a Civil Penalty
Grand Haven, Michigan,)	Under Section 325(c) of the Emergency
)	Planning and Community Right-to-Know
Respondent.)	Act of 1986, 42 U.S.C. § 11045(c)
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is R.A. Miller Industries, Inc., a corporation doing business in the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with Section 313 of EPCRA, 42 U.S.C. § 11023.

Statutory and Regulatory Background

10. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed, or otherwise used a toxic chemical in an amount in excess of an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. §§ 372.25 and 372.28, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of U.S. EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed, or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years

including and subsequent to 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

12. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28, the reporting threshold amount for lead manufactured, processed, or otherwise used at a facility is 100 pounds for calendar years including and subsequent to 2001.

13. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of U.S. EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that can be imposed pursuant to each agency's statutes. The U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 of EPCRA that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 of EPCRA that occurred after March 15, 2004, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

14. Respondent is a "person" as that term is defined at Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 14500 168th Avenue, Grand Haven, Michigan (facility).

16. At all times relevant to this CAFO, Respondent had "10 or more full-time employees," as defined at 40 C.F.R. § 372.3, and was an employer at the facility.

17. Respondent's facility consists of buildings, equipment, structures, and other

stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

18. Respondent's facility is a "facility" as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

19. The facility has a SIC code of 3669, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

Count 1

20. During calendar year 2004, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, copper, a chemical category or CAS No. 7440-50-8 listed under 40 C.F.R. § 372.65, in the amount of 134,500 pounds which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

21. Respondent was required to submit to the Administrator of U.S. EPA and to Michigan a Form R for copper for calendar year 2004 by July 1, 2005.

22. Respondent did not submit to the Administrator of U.S. EPA and to Michigan a Form R for copper for calendar year 2004 by July 1, 2005.

23. Respondent submitted Form R for copper to the Administrator of U.S. EPA and to Michigan on December 21, 2006 for calendar year 2004.

24. Respondent's failure to submit timely a Form R for copper to the Administrator of U.S. EPA and to Michigan for calendar year 2004 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 2

25. During calendar year 2004, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, lead, a chemical category or CAS No. 7439-92-1 listed under 40 C.F.R.

§ 372.65, in the amount of 481 pounds which is greater than 100 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

26. Respondent was required to submit to the Administrator of U.S. EPA and to Michigan a Form R for lead for calendar year 2004 by July 1, 2005.

27. Respondent did not submit to the Administrator of U.S. EPA and to Michigan a Form R for lead for calendar year 2004 by July 1, 2005.

28. Respondent submitted Form R for lead to the Administrator of U.S. EPA and to Michigan on December 21, 2006 for calendar year 2004.

29. Respondent's failure to submit timely a Form R for lead to the Administrator of U.S. EPA and to Michigan for calendar year 2004 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Civil Penalty

30. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$ 7,673. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and its agreement to perform supplemental environmental projects, and any other matters as justice may require. Complainant also considered U.S. EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (amended)* (April 12, 2001).

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,673 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a

cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note the case title, the docket number of this CAFO and the billing document number.

32. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert Allen (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Peter Felitti (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

33. This civil penalty is not deductible for federal tax purposes.

34. If Respondent does not pay the civil penalty timely, or any stipulated penalties due under paragraph 49, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

35. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

36. Respondent must complete two supplemental environmental projects (SEP) designed to protect the environment or public health by reducing the amount of hazardous substances, specifically mercury and lead, that could be released into the environment.

37. At its Grand Haven facility, Respondent must complete the SEP as follows:

- a. Within 45 days of the effective date of this CAFO, Respondent will replace 47 460-Watt Metal Halide Hi Bay lights, that each contain about 65 mg of mercury, with Sylvania Ecologic 3 bulbs that are RoHS compliant for hazardous material. The 47 460-Watt Metal Halide Hi Bay lights will be disposed of as universal or hazardous waste.
- b. Within 45 days of the effective date of this CAFO, Respondent will switch from using a 60/40 tin lead solder to a lead free solder for a period of at least five years in its heavy truck/automotive department.

38. Respondent must spend at least \$13,946 replacing the mercury containing bulbs and fixtures and at least \$24,386, over five years, in using lead free solder.

39. In the switching to lead free solder, Respondent must not use any chemical that is more toxic or hazardous than lead. Respondent must use Material Safety Data Sheets to determine the chemical's toxic and hazardous characteristics.

40. For the elimination of the lead solder, Respondent must continuously use lead free solder for at least five years.

41. Respondent certifies that it is not required to perform or develop either SEP by any

law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for either SEP in any other enforcement action.

42. The U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

43. Respondent must submit an annual report, due upon the anniversary date of the effective date of this CAFO, on the lead free solder SEP, including in the report, costs incurred by the Respondent and the amount of lead use that was reduced for the year covered by the report.

44. Respondent must submit a SEP completion report to U.S. EPA for the bulb replacement SEP by December 31, 2008 and for the lead free solder SEP by December 31, 2013.

This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

45. Respondent must submit all notices and reports required by this CAFO by first class mail to Robert Allen of the Pesticides and Toxics Compliance Section.

46. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

47. Following receipt of the SEP completion report described in paragraph 44, above, U.S. EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report.
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 49, below.

48. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 49, below.

49. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent does not complete within 45 days of the effective date of this CAFO the lighting replacement project described in Paragraph 37a, Respondent will pay a stipulated penalty of \$8,500. If Respondent pays this stipulated penalty, Respondent will not perform the lighting replacement project described in Paragraph 37a and will not be liable for any other stipulated penalties for the lighting replacement project.

- b. If Respondent commences the lighting replacement project described in Paragraph 37a, and abandons or otherwise does not complete the project, then Respondent will pay a stipulated penalty of \$8,500.
- c. If Respondent has completed the lighting replacement project described in Paragraph 37a and has spent less than \$13,946,
 - i. If Respondent has spent at least 90% of the \$13,946 required for the this project, then, Respondent will not pay a stipulated penalty under this Paragraph.
 - ii. If Respondent has spent less than 90% of the \$13,946 required for this project, then Respondent will pay a stipulated penalty of \$4,500.
- d. If Respondent has completed the lighting replacement SEP described in Paragraph 37a, but the SEP is not satisfactory, Respondent must pay \$4,500, in addition to any penalty required under subparagraph c, above.
- e. If Respondent does not commence within 45 days of the effective date of this CAFO the solder substitution project described in Paragraph 37b, Respondent will pay a stipulated penalty of \$14,500. If Respondent pays this stipulated penalty, Respondent will not perform the solder substitution project described in Paragraph 37b and will not be liable for any other stipulated penalties for the solder replacement project.
- f. If Respondent commences the solder substitution project described in Paragraph 37b, and abandons or otherwise does not complete the project, then Respondent will pay a stipulated penalty of \$14,500.
- g. If Respondent has completed the solder substitution project described in Paragraph 37b and has spent less than \$24,386,
 - i. If Respondent has spent at least 90% of the \$24,386 required for this project, then, Respondent will not pay a stipulated penalty under this Paragraph.
 - ii. If Respondent has spent less than 90% of the \$24,386 required for this project, then Respondent will pay a stipulated penalty of \$12,000.
- h. If Respondent has completed the SEP described in Paragraph 37b, but the SEP is not satisfactory, Respondent must pay \$12,000, in addition to any penalty required under subparagraph g, above.
- i. If Respondent fails to timely submit the SEP completion report for either or both SEPs, or fails to timely submit any other reports required in paragraph 43, Respondent must pay a stipulated penalty of \$100 per day for up to 30 days. These

penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone. If Respondent does not submit any report within 30 days after the date required in Paragraphs 43 or 44, then Respondent will be considered to have abandoned the project for which the report is due, will owe the stipulated penalty set forth in Paragraph 49i and will be subject to the stipulated penalty in Paragraph 49b or 49f as appropriate.

50. The U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

51. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 31, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

52. Any public statement that Respondent makes referring to the SEP must include the following language, "R.A. Miller Industries, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against R.A. Miller Industries, Inc. for violations of Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11023.

53. Nothing in this CAFO is intended to, nor will be construed to, constitute U.S. EPA approval of the equipment or technology installed by the Respondent in connection with the SEP under the terms of this CAFO.

54. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

55. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

56. This CAFO does not affect the right of the U.S. EPA or the United States to pursue

appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

57. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state, and local laws.

58. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 313 of EPCRA.

59. The terms of this CAFO bind Respondent, its successors, and assigns.

60. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

61. Each party agrees to bear its own costs and attorney's fees, in this action.

62. This CAFO constitutes the entire agreement between the parties.

R.A. Miller Industries, Inc., Respondent

8-18-08
Date

Paul E. Miller
Paul E. Miller, Vice President & General Manager
R.A. Miller Industries, Inc.

United States Environmental Protection Agency, Complainant

9/5/08
Date

Margaret M. Guerriero
Margaret M. Guerriero, Director
Land and Chemicals Division

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving R.A. Miller Industries, Inc., was filed on September 16, 2008, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed, by Certified Mail, Receipt No. 7001 0320 0005 8921 5658 a copy of the original to the Respondent:

Paul E. Miller, V.P. and G. M.
R.A. Miller Industries, Inc
14500 168th Avenue P.O. Box 858
Grand Haven, Michigan 49417

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Peter Felitti, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. EPCRA-05-2008-0026

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In the Matter of:
R.A. Miller Industries, Inc.
Docket No. EPCRA-05-2008-0026

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-11-08
Date



Lynn Buhl
Regional Administrator
United States Environmental Protection Agency
Region 5

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