

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:

Vance Brothers, Inc.

Respondent,

Proceeding under Section 325(c) of the
Emergency Planning and Community Right-to
Know Act, 42 U.S.C. § 11045(c)

Docket No. EPCRA-07-2016-0004

Consent Agreement and Final Order

The United States Environmental Protection Agency, Region 7 (EPA or Complainant) and Vance Brothers, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c).

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA alleges that Respondent has violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and from the Regional Administrator, EPA Region 7, is the Director of the Air and Waste Management Division, EPA Region 7.

4. The Respondent is Vance Brothers, Inc., a company registered and authorized to do business in the State of Missouri. The Respondent's facility is located at 5201 Brighton Avenue, Kansas City, Missouri.

Section III

Statutory and Regulatory Requirements

5. 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:

- a. has ten or more full-time employees;
- b. is an establishment with a primary SIC major group or industry code listed in 40 C.F.R. § 372.23(a) or a primary NAICS subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and
- c. "manufactured, processed, or otherwise used" a toxic chemical listed under Subsection 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27 or 372.28 during the calendar year

to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, for the preceding calendar year, for each toxic chemical known by the owner or operator to be "manufactured, processed, or otherwise used" in quantities exceeding the established threshold quantity during that preceding calendar year.

6. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30 is 25,000 pounds for any toxic chemical "manufactured or processed" and 10,000 pounds for any toxic chemical "otherwise used" for the applicable calendar year. Alternative reporting thresholds for certain other chemicals are set forth in 40 C.F.R. §§ 372.27 and 372.28.

7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of

up to \$25,000 per day of violation, if, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 313, 42 U.S.C. § 11023. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Debt Collection Improvement Act, authorizes the United States to assess civil administrative penalties of up to \$37,500 per day for each violation occurring after January 12, 2009.

Definitions

8. The term “facility” means “all 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 (or by any person which controls, is controlled by, or under common control with such person). A facility may contain more than one establishment.” 40 C.F.R. § 372.3.

9. The term “full-time employees” means “2,000 hours per year of full-time equivalent employment. A facility would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.” 40 C.F.R. § 372.3.

10. The term “toxic chemical” means a “chemical or chemical category listed in 40 C.F.R. § 372.65.” 40 C.F.R. § 372.3.

11. The term “manufacture” means “to produce, prepare, import or compound a toxic chemical. Manufacture also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical mixture of chemicals as an impurity.” 40 C.F.R. § 372.3.

12. The term “process” means “the preparation of a toxic chemical, after its manufacture, for distribution in commerce: (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance; or (2) as part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product.” 40 C.F.R. § 372.3.

13. The term “otherwise use” means “any use of a toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms ‘manufacture’ or ‘process.’ Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless: (1) the toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; or (2) the toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or redistributing of the toxic chemical where no repackaging

of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical.” 40 C.F.R. § 372.3.

Section IV

General Factual Allegations

14. EPA alleges that Respondent has violated EPCRA and federal regulations promulgated pursuant to EPCRA, as follows:

15. Respondent is, and at all times referred to herein was, a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. Respondent’s facility, located at 5201 Brighton Avenue, Kansas City, Missouri, is a “facility” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and by 40 C.F.R. § 372.3.

17. Respondent’s facility has ten or more “full-time employees” pursuant to Section 313(b)(1)(A) of EPCRA, 42 U.S.C. § 11023(b)(1)(A), and as defined by 40 C.F.R. § 372.3.

18. Respondent’s facility is classified as NAICS Code 324121 – Asphalt Paving Mixture & Block Manufacturing.

19. Benzo(g,h,i)perylene and Polycyclic Aromatic Compounds (PACs) are listed “chemical categories” pursuant to 40 C.F.R. § 372.65 and therefore “toxic chemicals” within the meaning of 40 C.F.R. § 372.3.

20. During reporting year 2012, the toxic chemicals identified in Paragraph 19 were “manufactured, processed, or otherwise used” as those terms are defined by 40 C.F.R. § 372.3 at Respondent’s facility.

21. On August 20, 2014, a duly authorized representative from EPA, Region 7, conducted an inspection of Respondent’s facility.

22. On June 3, 2015, Respondent submitted new and/or amended TRI reports regarding Respondent’s toxic chemical release reporting for the reporting years 2009-2013.

Alleged Violations

23. The Complainant hereby states and alleges that Respondent has violated EPCRA and federal regulations promulgated thereunder, as follows:

Count 1

24. Paragraphs 14 through 22 are incorporated by reference as if fully set forth herein.

25. Pursuant to 40 C.F.R. § 372.28, the reporting threshold for benzo(g,h,i)perylene is 10 pounds.

26. The toxic chemical benzo(g,h,i)perylene was manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantity during reporting year 2012.

27. Respondent failed to file a Form R report for benzo(g,h,i)perylene with the Administrator of EPA and the State of Missouri for 2012 by the July 1, 2013, deadline. Respondent filed the Form R report on or about June 3, 2015.

28. The failure to timely submit a Form R report for benzo(g,h,i)perylene is a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

Count 2

29. The facts stated in Paragraphs 14 through 22 are incorporated by reference as if fully set forth herein.

30. Pursuant to 40 C.F.R. § 372.28, the reporting threshold for PACs is 100 pounds.

31. PACs were manufactured, processed, and/or otherwise used at Respondent's facility in excess of the applicable threshold quantity during reporting year 2012.

32. Respondent filed a Form R report for PACs with the Administrator of EPA and the State of Missouri for 2012 by the July 1, 2013, deadline. However, Respondent's filed Form R greatly over reported the amount of PACs air emissions released from its facility resulting in a data quality error. Respondent amended the Form R for PACs on or about June 3, 2015.

33. The failure to accurately report stack or point air emissions of PACs is a data quality error and a violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30.

CONSENT AGREEMENT

34. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

35. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

36. Respondent neither admits nor denies the factual allegations and legal conclusions set forth above.

37. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

38. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees incurred as a result of this action.

39. Respondent certifies by signing this CAFO that, to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and all regulations promulgated thereunder.

40. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of Thirty-Five Thousand Dollars (\$35,000), as set forth in Paragraph 1 of the Final Order. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of EPCRA and facts alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of EPCRA or any other applicable law and/or regulation administered by the EPA.

41. The effect of settlement described in Paragraph 40 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 39 of this CAFO.

42. Nothing in this CAFO shall be construed as a release from any other action under law and/or regulation administered by EPA. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

43. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

44. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of the debt collection, including processing and handling costs and attorneys' fees. In addition, a non-payment penalty charge of six (6) percent per year, compounded annually, will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

45. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to legally bind Respondent to it.

46. Nothing in this CAFO shall be construed as a release from any other action under law and/or regulation administered by EPA. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

FINAL ORDER

Pursuant to the provisions of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045, and based upon the information set forth in this Consent Agreement, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Thirty-Five Thousand Dollars (\$35,000) within thirty (30) days of the effective date of this Final Order. Payment shall be made by cashier's or certified check or on-line. Payment must identify the docket number for this matter, be made payable to the "United States Treasury," and shall be remitted to:

U.S. Environmental Protection Agency, Region 7
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000,

or by alternate payment method described at www.epa.gov/financial/makepayment.

2. A copy of the penalty payment should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Kelley Catlin
Assistant Regional Counsel
United States Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of the CAFO shall be claimed by Respondent as a deduction for Federal, State, or local income tax purposes.

4. This Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

5. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

6. The effective date of this Final Order shall be the date on which it is filed by the Regional Hearing Clerk.

COMPLAINANT:

U. S. Environmental Protection Agency

Date: 6/24/16 By: Becky Weber
Becky Weber
Director
Air and Waste Management Division

Date: 6/16/16 By: Kelley Catlin
Kelley Catlin
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:

Vance Brothers, Inc.

Date: 6-13-16 By: 
Signature

Tim Vance
Printed Name

President
Title

IT IS SO ORDERED. The Final Order shall become effective upon filing.

Date: June 27, 2016 By: Karina Borromeo
Karina Borromeo
Regional Judicial Officer
United States Environmental Protection Agency
Region 7

IN THE MATTER Of Vance Brothers, Inc., Respondent
Docket No. EPCRA-07-2016-0004

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

catlin.kelley@epa.gov

Copy by First Class Mail to Respondent:

Dale Guariglia
Bryan Cave LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, Missouri 63102-2750

Dated: 6/27/16



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7