



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

FEB 26 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ronald P. Kahle
President
Kahle Company
10391 State Route 15
Ottawa, Ohio 45875

Re: Kahle Company d/b/a K & L Ready Mix, Inc., Ottawa, Ohio, Consent Agreement and Final Order, Docket No. EPCRA-05-2013- 0017

Dear Mr. Kahle:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on February 26, 2014.

Please pay the civil penalty in the amount of \$32,500 in the manner prescribed in paragraph 9, and reference your check with the docket number EPCRA-05-2013-0017.

Your payment is due on March 28, 2014.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed document. Please direct any legal questions to Jeffery Trevino, Associate Regional Counsel, at (312) 886-6729. Thank you for your assistance in resolving this matter.

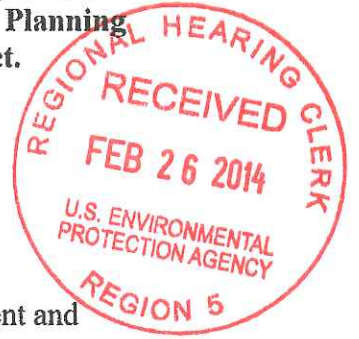
Sincerely,

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. EPCRA-05-2013-0017
)
Kahle Company d/b/a/ K & L) Proceeding to Assess a Civil Penalty Under
Ready Mix, Inc., Ottawa, Ohio.) Section 325(c)(1) of the Emergency Planning
) and Community Right-to-Know Act.
Respondent.)
)
_____)



Consent Agreement and Final Order

1. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
2. On June 13, 2013, U.S. EPA filed the Complaint in this action against Respondent Kahle Company d/b/a/ K & L Ready Mix, Inc., Ottawa, Ohio. The Complaint alleged that Respondent and its Ottawa, Ohio, facility, failed to submit to the Ohio State Emergency Response Commission (SERC), the Putnam County Local Emergency Planning Committee (LEPC), and the Ottawa Township Fire Department, a completed Emergency and Hazardous Chemical Inventory Form that included limestone and diesel fuel for calendar years 2008, 2009, and 2010, which violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a). The Complaint also alleged that Respondent and its McComb, Ohio, facility, failed to submit to the Ohio SERC, the Hancock County LEPC, and the McComb Fire Department, a completed Emergency and Hazardous Chemical Inventory Form that included limestone and diesel fuel for calendar years 2008, 2009, and 2010, which violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a). The Complaint finally alleged that Respondent and its Kalida, Ohio, facility, failed to submit to the Ohio SERC, the Putnam County LEPC, and the Kalida Fire Department, a completed Emergency

and Hazardous Chemical Inventory Form that included limestone and diesel fuel for calendar years 2008, 2009, and 2010, which violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

3. On July 31, 2013, Respondent filed its Answer and requested a hearing under Section 325(b)(1)(B) of EPCRA, 42 U.S.C. § 11045(b)(1)(B).

Stipulations

4. Respondent admits the jurisdictional allegations in the Complaint and its Answer either admitted or denied the factual allegations in the Complaint.

5. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).

6. The parties consent to the terms of this CAFO.

7. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

8. In consideration of Respondent's agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$32,500 for the alleged EPCRA violations.

9. Within 30 days after the effective date of this CAFO, Respondent must pay a \$32,500 civil penalty for the alleged EPCRA violations by electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

The comment or description field of the electronic funds transfer shall state the following: In the Matter of Kahle Company d/b/a/ K & L Ready Mix, Inc., Ottawa, Ohio; Docket No. EPCRA-05-2013-0017, and Billing Document No. N/A.

10. A transmittal letter, stating Kahle Company, Inc., 10391 State Route 15, Ottawa, Ohio, 45875, and Kahle Company d/b/a/ K & L Ready Mix, Inc., and EPA Docket No. EPCRA05-2013-0017 must accompany the payment. Respondent must send evidence of the electronic funds transfer and transmittal letter to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

James Entzminger, (SC-5J)
Chemical Emergency Preparedness and
Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

12. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 25 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.

13. 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, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

14. Respondent must complete the following supplemental environmental project (SEP) designed to protect the environment or public health. Respondent must decommission its 1999 Sterling Cement Mixer Truck (Caterpillar 3606 Diesel Engine, Serial No. 97L20024) within 14 days of the effective date of this CAFO, and replace it with a 2014 Cement Mixer Truck (Detroit Diesel Blue Tech Engine, Model DD13, 435 HP, 1550 ft-lbs. Peak Torque, 2100 RPM Governed, which utilizes SCR Technology to dramatically reduce Particulate Matter and NOx Emissions to near-zero levels) by June 30, 2014.

15. Respondent must expend at least \$235,000 to complete its SEP.

16. Respondent must complete its SEP by June 30, 2014.

17. Respondent certifies as follows:

I certify that Kahle Company d/b/a/ K & L Ready Mix, Inc., is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Kahle Company d/b/a/ K & L Ready Mix, Inc. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Kahle Company d/b/a/ K & L Ready Mix, Inc., is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to U.S. EPA within two years of the date that I am signing this CAFO (unless the

project was barred from funding as statutorily ineligible). For purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

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

19. Respondent must maintain copies of the data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any data to U.S. EPA within seven days of U.S. EPA’s request for the information.

20. Respondent must submit a SEP Completion Report to U.S. EPA by July 30, 2014.

The report must contain the following information:

- a. A detailed description of the SEP as completed, including clear documentation, photographs, and certifications;
- b. A description of any operating problems and the actions taken to correct the problems;
- c. An 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, including clear documentation to demonstrate it decommissioned its 1999 Sterling Cement Mixer Truck (Caterpillar 3606 Diesel Engine);
- d. A certification that Respondent completed the SEP in compliance with this CAFO; and,
- e. A complete description of the environmental and public health benefits resulting from the SEP (including a quantification of the benefits and the pollution reduction).

21. Respondent must submit all notices and reports required by this CAFO by first class mail to James Entzminger of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 10, above.

22. 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.

23. Following receipt of the SEP Completion Report described in paragraph 20, above, U.S. EPA must notify Respondent in writing that:

- a. It 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 25.

24. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 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 25 below.

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

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 15, Respondent must pay a penalty of \$97,500.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and

certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 16, Respondent will not be liable for any stipulated penalty under subparagraph a, above.

- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 16, Respondent must pay a penalty of the difference between \$235,000 and the amount it expended to complete the SEP.
- d. If Respondent did not submit timely the SEP completion report Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$ 500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

26. U.S. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

27. 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 paragraphs 9 and 10 above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

28. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of EPCRA Section 312."

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

30. 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

31. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

32. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

33. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

35. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, dated September 30, 1999.

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

37. Each person signing this consent 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.

38. Each party agrees to bear its own costs and attorney's fees for this action.


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

40. The effective date of this CAFO is the date Complainant files it with the Regional Hearing Clerk.

In the Matter of: Kahle Company d/b/a/ K & L Ready Mix, Inc., Ottawa, Ohio.
Docket No. EPCRA-05-2013-0017.

Kahle Company d/b/a/ K & L Ready Mix, Inc., Ottawa, Ohio.
Respondent

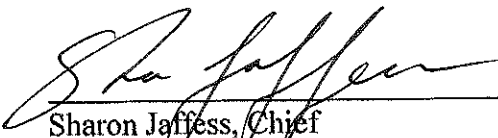
2-10-14
Date



Ronald P. Kahle
President
Kahle Company, Ottawa, Ohio


U.S. Environmental Protection Agency, Complainant

2/20/14
Date



Sharon Jaffess, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

2/20/2014
Date




Richard C. Karl, Director
for Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Kahle Company d/b/a/ K & L Ready Mix, Inc., Ottawa, Ohio.
Docket No. EPCRA-05-2013-0017.

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.

2/24/14
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5



**In the Matter of: Kahle Company d/b/a/ K & L Ready Mix, Inc., Ottawa, Ohio.
Docket No. EPCRA-05-2013-0017.**

Certificate of Service

I, Jarrah P. Sanders, certify that I filed one original and one copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, and mailed a second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Joseph S. Simpson
Shumaker, Loop & Kendrick, LLP
1000 Jackson Street
Toledo, Ohio 43604-5573.

Ronald P. Kahle, President
Kahle Company
10391 State Route 15
Ottawa, Ohio 45875

I also certify that I mailed a copy of the CAFO by first-class mail, addressed as follows:

Judge Christine D. Coughlin
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
(Mail Code 1900L)
Washington, D.C. 20460



Original copy mailed to

Ms. Cindy DeWulf, Co-Chairperson
Ms. Nancy Dragani, Co-Chairperson
Jeff Beattie
Mel House
Ohio SERC

Jeffery M. Trevino, Attorney
U.S. EPA, Region 5

James Entzminger
U.S. EPA, Region 5

on the 26th day of February, 2014

A handwritten signature in black ink that appears to read "Jarrah P. Sanders".

Jarrah P. Sanders
U.S. Environmental Protection Agency
Region 5