



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

APR 12 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Rebecca Combs-Dulaney
Vice President
Structural Steel Services, Inc.
6210 Saint Louis Street
Meridian, Mississippi 39307

Re: Structural Steel Services, Inc.
Consent Agreement and Final Order
Docket No. EPCRA-04-2018-2019(b)

Dear Ms. Combs-Dulaney:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Should you have any questions concerning this matter or Structural Steel Services, Inc.'s compliance status in the future, please contact Eddie Chow of the EPA staff at (404) 562-8989.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
 Structural Steel Services, Inc.)
)
 Respondent.)
 _____)

Docket Number: EPCRA-04-2018-2019(b)

HEARING CLERK

2018 APR 12 AM 8:07

OFFICE OF REGIONAL
ADMINISTRATION
REGION 4
MEMPHIS, TENNESSEE

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency EPA. Respondent is Structural Steel Services, Inc.

2. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent is Structural Steel Services, Inc., a company doing business in the State of Mississippi.

5. Respondent is a "person" and is the owner and operator of a "facility" as those terms are defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

6. Respondent's facility is located at 6210 St. Louis Street in Meridian, Mississippi.

III. EPA's Allegations of Violations

7. 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 10 or more full-time employees; (b) is in a Standard Industrial Classification (SIC) major group or industry listed in 40 C.F.R. § 372.23(a) for which the corresponding North American Industry Classification System (NAICS) subsector and industry codes are listed in 40 C.F.R. §§ 372.23(b) and 372.23(c); and (c) manufactured, processed, or otherwise used a toxic chemical listed in Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65, in excess of an applicable threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and set forth in 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory reporting Form R (EPA Form 9350-1) to the Administrator of the EPA and to the State in which the 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 the preceding calendar year.

8. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds per calendar year. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds.

9. Respondent has 10 or more full-time employees, as defined at 40 C.F.R. § 372.3 at its facility.

10. Respondent's facility is classified under SIC code 3449 and NAICS code 332312.

11. Respondent's facility is classified in a covered SIC code as described at 40 C.F.R. § 372.22 and in a covered NAICS code as described at 40 C.F.R. § 372.23.

12. Xylene, toluene, and zinc (fume or dust) are toxic chemicals listed under Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65.

13. Respondent's facility processed zinc (fume or dust) in excess of the 25,000 pound threshold quantity for the chemical established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, during calendar years, 2012, 2013, 2014, and 2015. The facility otherwise used xylene during calendar years 2013, 2014, and 2015, and toluene during calendar years 2012, 2013, and 2015 in excess of the 10,000 pound threshold quantity for the chemicals established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25

14. Respondent violated the reporting requirements of Section 313 of EPCRA at its facility by failing to submit the required Form R for zinc (fume or dust) for calendar years 2012, 2013, 2014, and 2015, for xylene for calendar year 2014, and for toluene for calendar years

2012, 2013, and 2015, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

15. Respondent failed to use readily available data to make reasonable estimates of the quantity of a toxic chemical entering each environmental media while completing Form R's for xylene for calendar years 2013 and 2015.

16. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, the EPA may assess a civil penalty for each violation of Section 313 of EPCRA, 42 U.S.C. § 11023. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by an Administrative Order.

IV. Consent Agreement

17. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

18. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

19. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

20. Respondent agrees to undertake and complete the Supplemental Environmental Project (SEP) in accordance with Section VI of this CAFO.

21. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

22. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA, CERCLA or other applicable laws and regulations.

23. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of EPCRA.

V. Final Order

24. Respondent shall pay a civil penalty of **THIRTY-NINE THOUSAND, ONE HUNDRED NINETY-ONE DOLLARS (\$39,191)**, for the EPCRA violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

25. Respondent shall pay the EPCRA penalty by forwarding a cashier's or certified check or electronic transfer, payable to "Treasurer, United States of America," to one of the following addresses:

BY MAIL

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, Missouri 63197-9000

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 425-1819

BY ELECTRONIC TRANSFER*

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: US Environmental Protection Agency

*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the U. S. EPA.

The check shall reference on its face the name and the Docket Number of the CAFO.

26. At the time of payment, Respondent shall send a separate copy of the check or proof of the electronic transfer (such as screen shot of the transmission report), and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Eddie Chow
U.S. EPA, Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

27. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made

pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

28. Respondent shall complete a SEP in the category of an Emergency Planning and Preparedness project designed to protect the environment and the people that could be harmed by chemical accidents by providing assistance (such as, response equipment or training) to responsible state or local emergency response or planning entities as follows (hereinafter referred to as the SEP):

- a. Respondent must purchase and donate the following to the recipient selected by the Respondent as identified below:

Recipient: The City of Meridian Fire Department

<u>Quantity</u>	<u>Description</u>
2	Multi Gas Detector
61	Scott Sight Mask with Thermal Imaging Camera
2	Thermal Imaging Camera
1	Diesel Exhaust system Station 8
Misc	Rope Rescue Equipment for HazMat
Misc	Stabilization Equipment for HazMat
137	Majestic Hood, P84 Red, NFPA 21" Total Length 2-Ply

- b. Respondent's total expenditure for purchase of the above equipment shall not be less than ONE HUNDRED FORTY-SEVEN THOUSAND, THIRTY-TWO DOLLARS (\$147,032);
- c. Respondent must complete the purchase and donation of the above equipment within 45 days of the effective date of this CAFO.

29. This CAFO shall not be construed to constitute the EPA's endorsement of any product, equipment, technology or service purchased and donated by Respondent in connection with the SEP.

30. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$147,032;

- b. That, as of the effective date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law, regulation, permit, order or agreement and is not required to perform or develop the SEP by agreement, grant or as injunctive relief awarded in any other action in any forum;
- c. That the SEP is not a project the Respondent was planning or intending to construct, perform or implement other than in settlement of the claim resolved in this CAFO;
- d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action of any kind;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That for federal income tax purposes, Respondent agrees it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
- g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and
- h. That Respondent has inquired of The City of Meridian Fire Department whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by The City of Meridian Fire Department that it is not a party to such a transaction.

31. Respondent agrees that any public statement, oral or written, in print film or other media made by Respondent making any reference to the SEP under this CAFO from the effective date of this CAFO shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violation of Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA)”.

32. Respondent shall complete and submit a SEP Completion Report for the SEP under this CAFO as follows:

- a. The SEP Completion Report shall include the following:
 - i. An affidavit from an authorized company official, certifying that the SEP has been completed or explaining in detail any failure to complete, and

- ii. Copies of appropriate documentation, including invoices and receipts, showing that Respondent's total expenditure for the SEP was no less than the minimum total expenditure required above.
- b. The SEP Completion Report shall be submitted to the EPA within sixty (60) days of the effective date of this CAFO to the following:

Eddie Chow
U.S.EPA, Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

33. Upon request, Respondent shall send the EPA any additional documentation requested by EPA.

34. Respondent agrees that in order to receive credit for the SEP, Respondent must fully and timely complete the SEP in accordance with and as indicated in this CAFO. In the event that Respondent fails to comply with any of the terms or provisions of the CAFO relating to the performance of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. If Respondent fails to spend the minimum amount of ONE HUNDRED FORTY-SEVEN THOUSAND, THIRTY-TWO DOLLARS (\$147,032), Respondent shall pay to the United States, a stipulated penalty of the difference between the minimum amount noted above and the actual SEP expenditure.
- b. If Respondent fails to timely submit the SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.
- c. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

35. The determination as to whether Respondent has fully and timely completed the SEP shall be in the sole discretion of the EPA.

36. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from the EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth in the written demand from the EPA.

VII. Other Provisions

37. Pursuant to 31 U.S.C. § 3717, the 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. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

38. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

39. This CAFO shall be binding upon the Respondent, its successors and assigns.

40. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

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VIII. Effective Date

41. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Structural Steel Services, Inc.

By: Rebecca Combs-Dulaney Date: 3/5/2018
Name: Rebecca Combs-Dulaney (Typed or Printed)
Title: Vice President (Typed or Printed)

U.S. Environmental Protection Agency

By: Beverly H. Banister Date: 3/21/2018
Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 11th day of April, 2018

Tanya Floyd
Tanya Floyd
Regional Judicial Officer

3/21/2018

Robert Lewis Johnson
Robert Lewis Johnson
Vice President

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Structural Steel Services, Inc., Docket Number: EPCRA-04-2018-2019(b), on the parties listed below in the manner indicated:

Robert W. Bookman
Chief
U.S. EPA, Region 4
Chemical Management and
Emergency Planning Section

(Via EPA's internal mail)

Robert Caplan
Senior Attorney
U.S. EPA Region 4
Office of Regional Counsel

(Via EPA's internal mail)

Ms. Rebecca Combs-Dulaney
Vice President
Structural Steel Services, Inc.
6210 Saint Louis Street
Meridian, Mississippi 39307

(Via Certified Mail—Return Receipt Requested)

Date:

4-12-18



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511