

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)	
)	
Blakeslee Prestress, Inc.)	Docket No: EPCRA-01-2021-0001
25 McDermott Road)	
Branford, Connecticut 06405,)	
)	
Respondent.)	CONSENT AGREEMENT AND FINAL ORDER
)	
Proceeding under Section 325(c) of the)	
Emergency Planning and Community)	
Right-to-Know Act, 42 U.S.C. § 11045(c))	
)	

CONSENT AGREEMENT

The United States Environmental Protection Agency (“EPA”), Region 1 (“Complainant”), alleges that Blakeslee Prestress, Inc. (“Respondent”) violated the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11001 – 11050, and federal regulations promulgated thereunder.

Complainant and Respondent (together, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), set out at 40 C.F.R. Part 22, Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

Therefore, before any hearing, and without adjudication of any issue of fact or law, the Parties agree to comply with the terms of this CAFO as follows:

I. STATUTORY AND REGULATORY AUTHORITY

1. Pursuant to Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), EPA promulgated Hazardous Chemical Reporting: Community Right-to-Know regulations at 40 C.F.R. Part 370.

2. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), requires that owners or operators of facilities that are required to prepare or have available a material data safety sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act of 1970 (“OSHA”) and regulations promulgated thereunder (“hazardous chemicals”) must prepare and submit an emergency and hazardous chemical inventory form (“Tier 1” or “Tier 2” form) to the local emergency planning committee (“LEPC”), the state emergency response commission (“SERC”), and the local fire department. Tier 1 or Tier 2 forms must be submitted annually on or before March 1 and are required to contain information with respect to the preceding calendar year.

3. The term “MSDS” has been replaced by the term “safety data sheet” (“SDS”) in OSHA’s hazard communication regulations at 29 C.F.R. § 1910.1200.

4. Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), authorizes EPA to establish minimum threshold levels of hazardous chemicals for the purposes of reporting under EPCRA Section 312. In accordance with Section 312(b) of EPCRA, 40 C.F.R. § 370.10 establishes minimum threshold levels for hazardous chemicals for the purposes of 40 C.F.R. Part 370.

5. Under 40 C.F.R. §§ 370.20, 370.40, and 370.44, the owner or operator of a facility that has present a quantity of a hazardous chemical exceeding the minimum threshold level, as set forth in 40 C.F.R. § 370.10, must prepare and submit a Tier 1 or Tier 2 form to the LEPC, SERC, and local fire department. Forty C.F.R. § 370.45(a) requires that Tier 1 or Tier 2 forms be submitted annually on or before March 1 and contain information relating to the

preceding calendar year. Forty C.F.R. § 370.40(b) allows the LEPC, SERC or local fire department to request that a facility submit the more comprehensive Tier 2 form in lieu of the Tier 1 form. The State of Connecticut requires the use of Tier 2 forms rather than Tier 1 forms.

6. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1) (as amended by the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and the Debt Collection Improvement Act, 31 U.S.C. § 3701), and EPA’s Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder at 40 C.F.R. Part 19, authorize the assessment of civil administrative penalties of up to \$59,017 for each violation of Section 312 of EPCRA that occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020. *See* 85 Fed. Reg. 83818 (Jan. 23, 2020). Pursuant to Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day a Section 312 violation continues constitutes a separate violation.

II. GENERAL ALLEGATIONS

7. Respondent is a privately-held corporation organized under the laws of the State of Connecticut.

8. Respondent owns and operates a facility that manufactures precast concrete structural components at 25 McDermott Road, Branford, Connecticut 06405 (the “Facility”).

9. At the Facility, Respondent manufactures custom precast concrete structural components for various uses, including parking garages, stadiums, and bridges. Raw materials used by Respondent in its manufacturing processes at the Facility include Type 3 Portland cement, sand, gravel, and liquid add-mixtures that are used to add specific properties to the poured concrete material.

10. On October 24, 2019, a duly authorized representative of EPA Region 1 conducted a compliance evaluation inspection of the Facility to determine its compliance with EPCRA reporting requirements.

11. Respondent is a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

12. Respondent owns and operates a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.

13. During calendar year 2016, Respondent’s Facility processed calcium nitrate in aqueous solution in quantities greater than 25,000 pounds. During calendar year 2018, Respondent stored hazardous chemicals, including powdered Portland Cement, Black Beauty, Diesel Fuel, Fuel Oil #2, Iron Oxide Pigment – Black, Iron Oxide Pigment – Red, Planigrout 712, Sika CNI, and Sikament 610 at the Facility in a quantity that exceeded the minimum threshold level of 10,000 pounds for EPCRA Tier 2 reporting set forth in 40 C.F.R. § 370.10.

14. The requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, apply to the Facility.

III. VIOLATIONS

Count 1: Failure to Submit Tier 2 Form

15. Paragraphs 1 through 14, above, are incorporated by reference as if fully set forth herein.

16. In calendar year 2018, Respondent stored a number of chemicals that are “hazardous chemicals” as defined under 40 C.F.R. § 370.66, at the Facility, each in an amount equal to or in excess of the threshold level for that hazardous chemical set forth in 40 C.F.R. § 370.10. These hazardous chemicals included, but were not limited to: powdered Portland

Cement, Black Beauty, Diesel Fuel, Fuel Oil #2, Iron Oxide Pigment – Black, Iron Oxide Pigment – Red, Planigrout 712, Sika CNI, and Sikament 610.

17. At all times relevant to the violations cited herein, pursuant to OSHA and the regulations promulgated thereunder, Respondent was required to, and did in fact, prepare or have available onsite a SDS for each of the hazardous chemicals listed above in paragraph 16.

18. Under 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, Respondent was required to prepare and submit an emergency and hazardous chemical information form (“Tier 2 Form”) to the SERC, LEPC, and the location fire department with jurisdiction over the Facility in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), for calendar year 2018 by March 1st of 2019.

19. Respondent prepared and submitted a Tier 2 form for calendar year 2018 to the SERC and LEPC on November 26, 2019.

20. Respondent’s failure to timely submit the Tier 2 Form for the hazardous chemicals listed above in paragraph 16 for calendar year 2018 violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45.

IV. TERMS OF CONSENT AGREEMENT

21. Respondent certifies that it has corrected the alleged violations cited in this CAFO and will operate its Facility in compliance with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and regulations promulgated thereunder at 40 C.F.R. Part 370.

22. Respondent admits, for the purposes of this proceeding, that Complainant has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states a claim upon which relief may be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue.

23. Respondent acknowledges that it has been informed of the right to request a hearing and hereby waives its right to request a judicial or administrative hearing or appeal on any issue of law or fact set forth in this CAFO.

24. Respondent also hereby waives its right to appeal the Final Order accompanying this Consent Agreement.

25. Without admitting or denying the facts and violations alleged in Section III of this CAFO, Respondent hereby consents to the terms and issuance of this CAFO, and consents for the purposes of settlement to the payment of the civil penalty in the manner set forth in this CAFO. The provisions of this CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns.

26. Pursuant to the relevant factors for penalties issued pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and taking into account any such matters as justice may require, Complainant has determined that it is fair and proper that Respondent pay a total civil penalty in the amount of **\$20,513** to resolve the violations alleged in Section III of this CAFO.

27. Respondent agrees to:

- a. pay the civil penalty of **\$20,513** ("EPA Penalty") within 30 calendar days of the Effective Date of this CAFO; and
- b. pay the EPA Penalty using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and every payment shall reference "*In the Matter of: Blakeslee Prestress, Inc.* Consent Agreement and Final Order, EPA Region 1," Respondent's name and address, and the EPA Docket Number of this action "Docket No. EPCRA-01-2021-0001." Within 24 hours of payment of the EPA

Penalty, proof of payment shall be sent by e-mail and first class or commercial delivery service to Wanda I. Santiago, Regional Hearing Clerk, at U.S. EPA, Region 1, 5 Post Office Square, Suite 100 (ORC 04-6), Boston, MA 02109-3912, and R1_Hearing_Clerk_Filings@epa.gov, and Kevin P. Pechulis, Senior Enforcement Counsel, U.S. EPA, Region 1, 5 Post Office Square, Suite 100 (ORC 04-3), Boston, MA 02109-3912, and Pechulis.Kevin@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with “Docket No. EPCRA-01-2021-0001”).

28. 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. In the event that Respondent does not fully pay the civil penalty required by Paragraph 26 and 27 of this CAFO when due, the unpaid penalty shall be payable with accrued interest from the original due date to the date of payment, with the interest calculated at the rate established in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys’ fees. In addition, a penalty charge of six 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, with the charge accruing from the date of delinquency in accordance with 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

29. The civil penalty due and any interest, non-payment penalties, and other charges paid pursuant to any penalty collection action arising from this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f), and shall not be deductible for purposes of federal, state, or local taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

30. This CAFO constitutes a full and complete settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), for the violations and facts alleged in Sections II and III of this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

31. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent is in violation of this CAFO or continues to be in violation of the statutes and regulations upon which the allegations in this CAFO are based, or if Respondent violates any other applicable provision of federal, state, or local law.

32. Complainant and Respondent, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondent further consents to

accept electronic service of the full executed CAFO, by electronic mail, to the following address: DMonz@uks.com. Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing Order, dated June 19, 2020. Electronic signatures shall comply with, and be maintained in accordance with, that Order.

33. Except as described in paragraph 28 above, each Party shall bear its own costs and attorneys' fees in this proceeding and specifically waives any right to recover such costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

34. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties, and approval of a Regional Judicial Officer.

35. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed with the Regional Hearing Clerk.

36. Each of the undersigned representatives of the Parties certifies that he, she, or they is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that Party to it.

For Respondent, Blakeslee Prestress, Inc.

Alan S Vine

Alan S. Vine, President
Blakeslee Prestress, Inc.

Date: 3/4/21

For Complainant, U.S. EPA, Region 1:

James Chow, Deputy Director *for* Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

Date: _____