



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 10 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ethan R. Ware, Esq.
McNair Law Firm, P.A.
1221 Main Street
Suite 1600
Columbia, South Carolina 29201

Re: Concrete Supply Company
Consent Agreement and Final Order
Docket No. EPCRA-04-2015-2018(b)

Dear Mr. Ware:

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.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you or your client have any questions concerning this matter or Concrete Supply Company's compliance status in the future, please contact Ms. Lucia Mendez of the EPA staff at (404) 562-9637.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kimberly L. Bingham".

Kimberly L. Bingham
Acting Chief
Chemical Safety & Enforcement Branch

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV**

IN THE MATTER OF:)
)
Concrete Supply Company)
)
Respondent.)
_____)

Docket Number: EPCRA-04-2015-2018

HEARING CLERK

2016 MAR 10 PM 2:58

USEPA REGION 4
OFFICE OF REGIONAL
COUNSEL

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of 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 of 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 IV, the United States Environmental Protection Agency. Respondent is Concrete Supply Company.

2. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of 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 IV, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region IV 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), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent is Concrete Supply Company, a corporation doing business in the State of North Carolina and the State of South Carolina.

5. Respondent is a "person" and owns and operates 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), respectively.

6. Respondent's facilities are located at: 436 Old Vacluse Road, Aiken, South Carolina 29829; 100 Truman Road, Bishopville, South Carolina 29010; 573 Duke Power Road, Cliffside, North Carolina 28024; 158 Withrow Road, Forest City, North Carolina 28043; 12148 Nations Ford Road, Charlotte, North Carolina 28210; 10768 Farrow Road, Blythewood, South Carolina 29016; 246 Kinard Road, Lugoff, South Carolina 29078; 296 South Edwardia Drive, Greensboro, North Carolina 27409; 3905 Liberty Road, Greensboro, North Carolina 27406; 470 McGill Avenue, Concord, North Carolina 28027; 6528 Lakeview Road, Croft, North Carolina 28213; 247 North Pilot Knob Road, Denver, North Carolina 28037; 7607 Richard Street, Columbia, South Carolina; 3041 Irby Street, Florence, South Carolina 29501; 201 North Hartman Road, Gastonia, North Carolina 28034; 9165 Northfield Drive, Fort Mill, South Carolina 29715; 265 Bazen Trail Road, Johnsonville, South Carolina 29555; 2461 Linda Avenue, Kannapolis, North Carolina 28081; 181 Quarry Road, Kings Mountain, North Carolina 28086; 311 South Longstreet Street, Kingstree, South Carolina 29556; 481 Industrial Drive, Lexington, South Carolina 29072; 831 South Madison Street, Lincolnton, North Carolina 28092; 1218 Hamilton Road, Manning, South Carolina 29102; 440 Seaboard Drive, Matthews, North Carolina 28104; 215 Industrial Drive, Mocksville, North Carolina 27028; 1109 North Sutherland, Monroe, North Carolina 28810; 123 Haney Way, Mooresville, North Carolina 28115; 1021 Vereen Drive, North Myrtle Beach, South Carolina 29582; 2231 Hwy 643, Myrtle Beach South Carolina 29577; 3823 Raleigh Street, Charlotte, North Carolina 28206; 1260 Porter Road, Rock Hill, South Carolina 29732; 1833 Jake Alexander Boulevard, Salisbury, North Carolina 28144; 5630 John Franklin Road, Sumter, South Carolina 29514; 200 West Graham Street, Shelby, North Carolina 28150; 400 Minuet Lane, Charlotte, North Carolina 28210; 222 Dingle Street, Sumter, South Carolina 29150; 3030 West Trade Street, Charlotte, North Carolina 28208; 195 Apac Street, Winston-Salem, North Carolina 28043; and 116 Old Aquadale Road, Albermarle, North Carolina 28001.

III. EPA's Allegations of Violations

7. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, by March 1, 1988, and on or before March 1 annually thereafter, a completed emergency and hazardous chemical inventory form (Tier I or Tier II) as described in 40 C.F.R. Part 370, containing the information required by that part for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds and containing the information required by that part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPO) or 500 pounds, whichever is less.

8. At some time during the calendar years of 2010, 2009 and 2008, fly ash and portland cement were each present at each facility listed above in an amount equal to or greater than 10,000 pounds.

9. Fly ash and portland cement are each “hazardous chemicals” as that term is defined under Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), and 40 C.F.R. § 355.61, for which Respondent is required to prepare or have available a MSDS under OSHA at each of its facilities listed above.

10. The EPA alleges that Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for fly ash and portland cement to the SERC, the LEPC, and fire department with jurisdiction over each of the facilities listed above for calendar years 2010, 2009, and 2008, by March 1 of the following calendar year.

11. The EPA alleges that Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022 at each of its facilities listed above for calendar years 2010, 2009, and 2008, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

12. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 for each violation of Section 312 that occurred after January 12, 2009. Each day a violation of Section 312 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by Administrative Order.

IV. Consent Agreement

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

14. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

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

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

17. 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.

18. Compliance with this CAFO shall resolve the allegations of violations contained herein. 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.

19. 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

20. Respondent shall pay a civil penalty of **TWELVE THOUSAND AND THREE HUNDRED SEVENTY-NINE DOLLARS (\$12,379)**, for the violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

21. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to the following address:

BY MAIL

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 631979000

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(513) 487-2091

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

22. At the time of payment, Respondent shall send a separate copy of the check, 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 IV
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Erika White
U.S. EPA, Region IV
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region IV
Office of Regional Counsel
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

23. 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

24. Respondent shall undertake and complete, in accordance with the approved SEP in this matter, the following Pollution Reduction project within 90 days of the effective date of this CAFO. Respondent shall expend no less than **FORTY SIX THOUSAND FOUR HUNDRED NINETEEN DOLLARS (\$46,419)** for the purchase and installation of a new central dust collection system, as described below, to be installed at its Concrete Supply Company facility, located in Lugoff, South Carolina.

a. Respondent must purchase and install the following at its Concrete Supply Company facility, located in Lugoff, South Carolina:

| <u>Quantity</u> | <u>Description</u> |
|-----------------|---|
| 1 | RA140 Dust Collector |
| 2 | Air Control valves, air rams solenoid valves, line filter, regulator and air piping |
| 1 | 6,500 cfm blower |
| 1 | Lower frame complete with structural steel support |
| 1 | Pyramidal collecting hopper |
| 1 | Magnehelic gauge |
| 1 | Automatic NEMA 4R control panel |
| 1 | Automatic Cement Recycle System |
| 1 | 14" EZ-Up Ducting for Shrouds |
| 1 | 8" EX-Up Ducting for Silos |
| 1 | 3" Fill Pipe |
| 1 | Back-in Bridge Master Shroud |

b. Respondent's total expenditure for purchase and installation of the above equipment shall not be less than **FORTY SIX THOUSAND FOUR HUNDRED NINETEEN DOLLARS (\$46,419)**.

c. Respondent must complete the purchase and installation of the above equipment within 90 days of the effective date of this CAFO.

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

26. 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 **\$46,419**;
- 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; and
- 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.

27. 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 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA)”.

28. 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, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

ii. copies of appropriate documentation, including invoices and receipts, showing a total expenditure of **FORTY SIX THOUSAND FOUR HUNDRED NINETEEN DOLLARS (\$46,419)**, or greater, was spent for the purchase and installation of a dust collection system at the Lugoff, South Carolina facility described in paragraph 24.

b. The SEP Completion Report shall be submitted to the EPA within one hundred and twenty (120) days of the effective date of this CAFO to the following:

Erika White
U.S. EPA, IV
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

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

30. 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 timely and fully perform the activities described in paragraph 24, including failure to spend the minimum amount of **FORTY SIX THOUSAND FOUR HUNDRED NINETEEN DOLLARS (\$46,419)**, Respondent shall pay to the United States a stipulated penalty of the difference between **\$46,419** 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.

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

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

VII. Other Provisions

33. 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.

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

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

36. This following individual is authorized to receive service for EPA in this proceeding:

Robert W. Bookman
U.S. EPA, Region IV
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303


37. 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.

VII. Effective Date


38. 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:

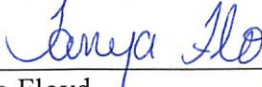
Concrete Supply Company

By:  Date: 2-17-16
Henry Batten
President

U.S. Environmental Protection Agency

By:  Date: 3-3-16
Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 10th day of March, 2016


Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

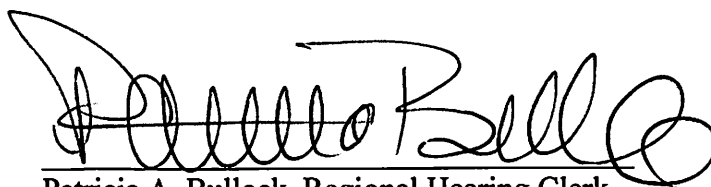
I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Concrete Supply Company, Docket Number: EPCRA- 04-2015-2018(b), on the parties listed below in the manner indicated:

Robert W. Bookman (Via EPA's internal mail)
U.S. EPA, Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street
Atlanta, GA 30303

Lucia Mendez (Via EPA's internal mail)
U.S. EPA, Region IV
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Mr. Ethan R. Ware, Esq. (Via Certified Mail - Return Receipt Requested)
McNair Law Firm, P.A.
1221 Main Street
Suite 1600
Columbia, South Carolina 29201

Date: 3-10-16



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