



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1201 Elm Street, Suite 500
Dallas, Texas 75270-2102

TRANSMITTED VIA EMAIL

David Conner
Axis Pipe and Tube
Bryan, Texas 77087

david.conner@axispipeandtube.com

**RE: In the Matter of Axis Pipe and Tube, Bryan, Texas
EPA Docket # EPCRA-06-2020-0503**

Dear Mr. Conner:

Attached is a copy of the fully executed Consent Agreement and Final Order (CAFO) for the above referenced facility that has been filed with the EPA Region 6 Regional Hearing Clerk. As set forth in Section IV, of the CAFO, and agreed upon by both parties, **Axis Pipe and Tube** has until the end of June to make its first installment of \$50,000. The payment schedule in the CAFO should be followed for subsequent payments.

Payment 1: June 30, 2020 - \$50,000

Payment 2: September 30, 2020 - \$50,000

Payment 3: December 31, 2020 - \$50,000

Payment 4 (Final): March 31, 2021 - \$50,000

When I wrote this CAFO I did not think it would take this amount of time to get it through the system. If you find the June 30th payment too soon, please notify me immediately what date you can make the first installment so that I can notify Cincinnati. I do not want you to be assessed a late fee.

Your installment should be made payable to the Treasurer, United States of America, EPA – Region 6. To ensure proper credit is applied to your case, please specify the docket number, listed above, on your method of payment. In addition, please forward a photocopy of your installment and transmittal letter to the EPA personnel listed in the CAFO. Once our Cincinnati Finance Office acknowledges receipt of your final installment, we shall consider this case closed.

Please remember to utilize EPA's Audit Policy to self-disclose any federal environmental violations your environmental staff discover. If all 9 conditions of the Audit Policy are met, then all gravity-based penalties shall be waived. The biggest condition is that you self-disclose within 21 days you know or think there may be a violation. I hope you find this information helpful.

If you have any questions regarding this matter, please contact me via email or phone (214) 665-8116. Your cooperation in the settlement of this case is greatly appreciated.

Sincerely,

A handwritten signature in blue ink that reads "Morton E. Wakeland, Jr." with a stylized flourish at the end.

Morton E. Wakeland, Jr.
EPCRA 313 Enforcement and TRI Program
Coordinator, U.S. EPA Region 6
Enforcement and Compliance Assurance
Division (ECD)

Enclosure (1) Executed Axis Pipe & Tube CAFO

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

IN THE MATTER OF:	§	
	§	
AXIS PIPE & TUBE, LLC	§	EPA DOCKET NUMBER
1451 LOUIS E. MIKULIN ROAD	§	EPCRA-06-2020-0503
BRYAN, TEXAS 77807	§	
	§	CONSENT AGREEMENT
RESPONDENT	§	AND FINAL ORDER
	§	

CONSENT AGREEMENT

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Axis Pipe & Tube Inc. (Respondent) (hereinafter "Axis") in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding 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), is simultaneously commenced and concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b), and 22.18(b)(2) and (3).
2. For the purposes of this proceeding, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth herein and waives all defenses which have been raised or could have been raised to the claims set forth in this CAFO.

3. Compliance with all the terms and conditions of this CAFO shall resolve federal civil liability for only those violations which are set forth herein.
4. Respondent consents to the issuance of this CAFO, and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.
5. Respondent represents it is duly authorized to execute this CAFO and the party signing this CAFO on behalf of Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.
6. Respondent agrees the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.
7. Respondent hereby certifies that as of the date of the execution of this CAFO, Respondent has corrected the violations alleged in this CAFO and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

II. STATUTORY AND REGULATORY BACKGROUND

8. Section 313 of EPCRA, 42 U.S.C. § 11023, 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility with: (a) ten or more full-time employees; (b) a Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), for which the corresponding North American Industry Classification System (NAICS) subsector or industry codes are listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) a toxic chemical listed under Subsection 313(c) of EPCRA, 42 U.S.C. § 11023(e), and 40 C.F.R. § 372.65, that manufactured, processed, or otherwise used the chemical in excess of the threshold quantity established under

Subsection 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, or 372.28, to complete and submit a toxic chemical release inventory Form R, for each toxic chemical known by the owner or operator to be "manufactured, processed, or otherwise used" in quantities exceeding the established threshold quantity, to the Administrator of EPA and to the State in which the facility is located by July 1, for the preceding calendar year.

9. Pursuant to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), the owner or operator of a facility shall complete a toxic chemical release form for each toxic chemical listed under 313(c) of EPCRA, 42 U.S.C. § 11023(c), that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

10. Pursuant 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(6) of EPCRA, 42 U.S.C. § 11023(6), 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 are set forth in 40 C.F.R. §§ 372.27 and 372.28.

11. 40 C.F.R. § 372.30(a) requires that for each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in 40 C.F.R. §§ 372.25, 372.27, or 372.28 at its covered facility

described in 40 C.F.R. § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350-1), or EPA Form A (EPA Form 9350-2), and, for the dioxin and dioxin-like compounds category, EPA Form R Schedule 1 (EPA Form 9350-3) in accordance with the instructions referred to in subpart E of this part.

12. Pursuant to Section 313(g)(1)(C)(iii) of EPCRA, 42 U.S.C. § 11023(g)(1)(C)(iii), and 40 C.F.R. § 372.85(b)(16), the Form R shall include information relative to waste treatment, including the type of waste stream containing the reported chemical, the treatment method applied to the waste stream, and an estimate of the efficiency of the treatment.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW
A. PRELIMINARY ALLEGATIONS

13. Respondent is a corporation organized under the laws of the State of Texas and authorized to do business in the State of Texas.

14. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. Respondent owns and operates the facility at 1451 Louis E. Mikulin Road, Bryan, Texas 77087.

16. Respondent's facility identified in Paragraph 15 is a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

17. At the time of the violations, Respondent's facility had ten (10) or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.

18. Respondent's facility is in primary NAICS code 331221 (rolled steel shape manufacturing), is within subsector code 331 (Primary Metals), which is listed in

40 C.F.R. § 372.23(b).

19. Chromium, manganese, and nickel (2014); and chromium, manganese, nickel, and copper (2015) are "toxic chemicals" within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

20. During calendar years 2014 and 2015 the toxic chemicals in Paragraph 19 were "manufactured, processed, or otherwise used," as those terms are defined by Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.3, at Respondent's facility.

21. On or about January 28, 2020, an off-site investigation was initiated to determine compliance of Respondent's Bryan, Texas facility with Section 313 of EPCRA. During the off-site investigation, EPA alleged Axis had failed to file 2014 and 2015 TRJ reporting forms for the chemicals in Paragraph 19 on or before the due dates of July 1, 2015 and July 1, 2016; respectively.

B. VIOLATIONS

22. Complainant hereby restates and incorporates by reference Paragraphs 1 through 21.

23. During calendar years 2014 and 2015, Respondent "manufactured, processed, or otherwise used" the TRJ chemicals identified in Paragraph 19, at the Respondent's facility, in excess of the applicable threshold quantities for reporting.'

24. Respondent did not submit TRJ reporting forms until November 10, 2017; greater than one-year after the required due dates of July 1, 2015 and July 1, 2016; respectively.

25. EPA finds Respondent violated 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30(d) by failing to submit TRJ reporting forms for the TRJ chemicals identified in Paragraph 19 on or before the due dates of July 1, 2015 for 2014 reports; and July 1, 2016 for 2015 reports.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

26. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), which authorizes EPA to assess a civil penalty of up to Fifty-Eight Thousand Three Hundred and Twenty-Eight Dollars (\$58,328) per day per violation of EPCRA.¹ Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the nature, circumstances, extent and gravity of the alleged violations, and with respect to Respondent's ability to pay, history of prior EPCRA Section 313 violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and other factors as justice may require, it is **ORDERED** that Respondent be assessed a civil penalty of **Two-Hundred Thousand Dollars and No Cents (\$200,000.00)**.

27. Payment of the penalty shall be made in four (4) equal consecutive quarterly payments according to the following schedule:

Payment 1: June 30, 2020 - \$50,000

Payment 2: September 30, 2020 - \$50,000

¹ The statutory maximum penalty level under Section 325(c) of EPCRA, 42 USC 11045(c) has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701). EPA implements these adjustments through rulemaking which are codified in 40 CFR Part 19. As adjusted by the *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 13, 2020) and Transmittal of the 2020 Civil Monetary Penalty Inflation Adjustment Rule (2020 Rule)* (85 Fed. Reg. 1751), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$58,328 per violation per day of violation occurring after November 2, 2015 and where penalties are assessed on or after January 13, 2020.

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Payment 3: December 31, 2020 - \$50,000

Payment 4 (Final): March 31, 2021 - \$50,000

28. Respondent shall make the first, and subsequent quarterly payments of the assessed civil penalty, by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail (including certified mail), overnight mail, or wire transfer.

For U.S. Postal Service mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account= 68010727
SWIFT address= FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

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PLEASE NOTE: Docket number EPCRA 06-2020-0503 shall be clearly typed on the check, or other method of payment, to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the CAPO. If payment is made by wire transfer, the wire transfer instructions shall reference Respondent's name and address, the case name, and docket number of the CAPO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Morton E. Wakeland, Jr., Ph.D.
EPCRA 313 Enforcement Coordinator
U.S. EPA, Region 6
Toxic Enforcement Section (ECDST)
1201 Elm Street, Suite 500
Dallas, TX 75270-2102;

Courtney Carter
Office of Regional Counsel (ORC-ER)
U.S. EPA Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102; and

Lorena Vaughn
Regional Hearing Clerk
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

29. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

30. If Respondent fails to submit the initial payment within thirty (30) days June 1, 2020, Respondent may be subject to a civil action to collect the total penalty in an appropriate district court of the United States pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f).

31. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAPO will begin to accrue thirty (30) days after the effective date of the CAPO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b)

32. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

33. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be

a ruling on, or determination of, any issue related to any federal, state or local permit.

34. This document is a "Final Order" as that term is defined in the "Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)," dated August 10, 1992 (Amended: 1996, 1997, 2001, and 2020; and updated in accordance with the 2020 Civil Monetary Penalty Inflation Adjustment Rule on January 13, 2020) for the purpose of demonstrating a history of "prior such violations."

B. RETENTION OF ENFORCEMENT RIGHTS

35. EPA does not waive any rights or remedies available to EPA for any violations by Respondent of Federal or State laws, regulations, or permitting conditions.

36. Nothing in this CAPO shall relieve Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

37. Nothing in this CAPO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at, or from Respondent's facility. Furthermore, nothing in this CAPO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of Federal, State, or local agencies or departments to obtain penalties or injunctive relief under Federal, State, or local laws or regulations.

C. COSTS

38. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

D. EFFECTIVE DATE

39. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

40. The EPA and Respondent agree to the use of electronic signatures for this matter. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

To EPA:

wake/and.morton@epa.gov

To Respondent:

david.conner@axispipeandtube.com

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THEMSENT
AGREEMENT AND FINAL ORDER:
FOR THE RESPONDENT:**

Date 10/20/20 _____
/O, 2Q;lt} _____
Controller
Axis Pipe & Tube, LLC
1451 Louis E. Mikulin Road
P.O. Box 6780
Bryan, TX 77805

FOR THE COMPLAINANT:

_____ Cheryl T. Seager _____
Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=CHERYL SEAGER,
0.9.2342.19200300.100.1.1=68001003651793
Date: 2020.06.12 15:47:18 -0500
Date:
Cheryl T. Seager
Director
Enforcement and Compliance Assurance
Division
U.S. EPA Region 6
Dallas, TX 5270-2102

FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent' s (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(6), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 6/15/2020 -----

**Rucki,
Thomas**

Digitally signed by Rucki, Thomas
DN: cn=Rucki, Thomas,
email=Rucki.Thomas@epa.gov
Date: 2020.06.15 09:00:10 -05'00'

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

wakeland.morton@epa.gov

carter.courtney@epa.gov

vaughn.lorena@epa.gov

Copy via Email to Respondent:

david.conner@axispipeandtube.com

Dated this 16th day of June

MORTON
WAKELAND

Digitally signed by MORTON
WAKELAND
Date: 2020.06.16 09:17:32 -05'00'

Morton E. Wakeland, Jr., Ph.D. ("Mort")
EPCRA Section 313 Enforcement and TRI
Program Coordinator
Toxics Enforcement Section (ECDST)
Enforcement & Compliance Assurance
Division (ECD)
U.S. EPA Region 6
Dallas, TX 75270