



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUL 28 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Carolyn M. Brown, Esq.
Dinsmore & Shohl LLP
250 West Main Street
Suite 1400
Lexington, Kentucky 40507

Re: Florida Tile, Inc. – Lawrenceburg, KY
Consent Agreement and Final Order
Docket Number: EPCRA-04-2015-2031(b)

Dear Ms. Brown:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Emergency Planning and Community Right-to-Know Act of 1986 matter (Docket No. EPCRA-04-2015-2031(b)) involving Florida Tile, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective on the date of filing.

Also enclosed, please find a copy of the “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 (SEC) any environmental enforcement actions taken by the U.S. Environmental Protection Agency. If your client has any questions with regard to the SEC’s environmental disclosure requirements, your client may refer to the contact phone number at the bottom of the SEC notice.

If you have any questions, please contact Ms. Michi Kono at (404) 562-9558.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Toney", with a long horizontal flourish extending to the right.

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

2015 JUL 28 AM 7:53

RECEIVED
EPA REGION IV
HEARING CLERK

IN THE MATTER OF:)
)
Florida Tile, Inc.) Docket Number: EPCRA-04-2015-2031(b)
)
Respondent.)
_____)

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 Florida Tile, 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 the 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 the 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 Florida Tile, Inc., a corporation doing business in the Commonwealth of Kentucky.

5. Respondent is a "person" and an "owner and operator" of a "facility," as those terms are defined by 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 facility is located at 1247 Alton Road, Lawrenceburg, Kentucky.

III. EPA's Allegations of Violations

Violations of Section 313 of EPCRA

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) and 40 C.F.R. § 372.65, in excess of an applicable threshold quantity established under EPCRA Section 313(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 at EPCRA Section 313(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 3253 and under the NAICS code 327122.

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. Zinc compounds are toxic chemicals listed under EPCRA Section 313(c) and 40 C.F.R. § 372.65.

13. Respondent's facility processed zinc compounds in excess of the 25,000 pound threshold quantity for the chemical established under EPCRA Section 313(f) and 40 C.F.R. § 372.25, during calendar years 2013, 2012 and 2011.

14. Respondent violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, at its facility for calendar years 2013, 2012 and 2011, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

15. 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 313 that occurred after December 6, 2013. Each day a violation of Section 313 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by an Administrative Order.

Violations of Section 312 of EPCRA

16. 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, on or before March 1 annually, 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 (TPQ) or 500 pounds, whichever is less.

17. At some time during the calendar years of 2013, 2012 and 2011, lead-acid batteries containing lead and sulfuric acid were present at the facility in amounts equal to or greater than 10,000 pounds and 500 pounds, respectively.

18. Sulfuric acid is a "hazardous chemical" as defined under Section 329(5) of EPCRA, 42 U.S.C. § 11049(5) and 40 C.F.R. § 355.61, and is an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 355.61, for which Respondent is required to prepare or have available an MSDS under OSHA at its facility. Sulfuric acid is also listed as an extremely hazardous substance in 40 C.F.R. Part 355, Appendix A.

19. Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for lead and sulfuric acid to the SERC, the LEPC and fire department with jurisdiction over the facility for calendar years 2013, 2012 and 2011 by March 1 of the following year.

20. Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facility for calendar years 2013, 2012 and 2011, and is therefore subject to the assessment of civil penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

21. 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 of not more than \$37,500 for each violation of EPCRA Section 312 that occurred on or after December 6, 2013. Each day a violation of EPCRA 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

22. 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.

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

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

25. 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.

26. 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.

27. 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

28. Respondent shall pay a civil penalty of SIXTY FIVE THOUSAND, TWO HUNDRED NINE DOLLARS (\$65,209), for the EPCRA violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

29. 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
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL

St. Louis, MO 63101
(314) 425-1818

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

30. 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 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

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

31. 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

32. 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.

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

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

35. The following individual is authorized to receive service for the EPA in this proceeding:

Verne H. George
U.S. EPA, Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9169

36. 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.


THIS SECTION INTENTIONALLY LEFT BLANK.

VI. Effective Date


37. 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:

Florida Tile, Inc.

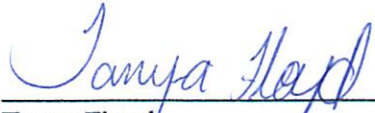
By:  Date: July 6, 2015
Name: Bernard C Schwartz (Typed or Printed)
Title: Executive Vice President (Typed or Printed)
Manufacturing

U.S. Environmental Protection Agency

By:  Date: 7-17-15
Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

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APPROVED AND SO ORDERED this 24th day of July 2015,



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, Florida Tile, Inc., Docket

Number: EPCRA- 04-2015-2031(b), on the parties listed below in the manner indicated:

Verne H. George
U.S. EPA, Region 4
Air, Pesticides and Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303

(Via EPA's internal mail)

Michi Kono
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(Via EPA's internal mail)

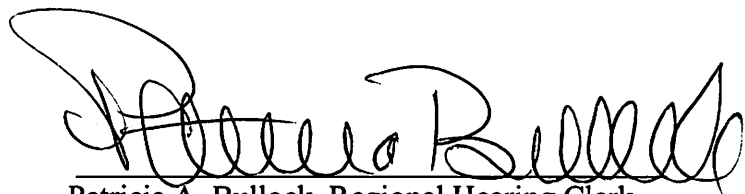
Robert Caplan
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(Via EPA's internal mail)

Carolyn M. Brown
Dinsmore & Shohl LLP
250 West Main Street
Suite 1400
Lexington, Kentucky 40507

(Certified Mail - Return Receipt Requested)

Date: 7-28-15



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