



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone: 800-227-8917
http://www.epa.gov/region08

2016 SEP 23 AM 11:18

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: EPCRA-08-2016-0003

IN THE MATTER OF:

Vance Brothers, Inc.
380 West 62nd Avenue
Denver, Colorado 80216

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(3), of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 23rd DAY OF September, 2016.

Elyana Sutin
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT** in the matter of **Vance Brothers, Inc.; DOCKET NO.: EPCRA-08-2016-0003** was filed with the Regional Hearing Clerk on September 22, 2016. The **FINAL ORDER** was filed with the Regional Hearing Clerk on Sept 23, 2016.

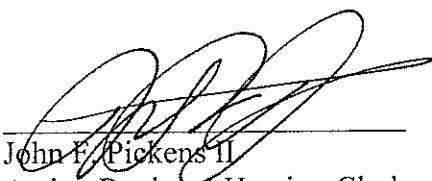
Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on Sept 23, 2016, to:

Respondent

Dale Guariglia, Esq.
Bryan Cave LLP
One Metropolitan Square, 211 North Broadway, Suite 3600
St. Louis, Missouri 63102-2750

And emailed to:

Jessica Farmer
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268



John F. Pickens II
Acting Regional Hearing Clerk



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2016 SEP 22 PM 2:40

Docket No.: EPCRA-08-2016-0003

FILED
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IN THE MATTER OF:)
)
Vance Brothers, Inc.)
380 West 62nd Avenue) COMBINED COMPLAINT AND
Denver, Colorado 80216) CONSENT AGREEMENT
)
Respondent.)

Complainant, United States Environmental Protection Agency, Region 8 (the EPA or Complainant), and Vance Brothers Inc., (Respondent) (together, the Parties), hereby consent and agree as follows:

1. This civil administrative enforcement action is issued to Respondent pursuant to section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045, also known as the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) for alleged violations of the implementing regulations associated with the "Toxic Release Inventory" requirements of section 313 of EPCRA, 42 U.S.C. § 11023. This proceeding is subject to EPA's *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Rules of Practice), 40 C.F.R. part 22.
2. The undersigned EPA official has been properly delegated the authority to issue this action.
3. 40 C.F.R. § 22.13(b) provides that where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a Combined Complaint and Consent Agreement (CCCA).
4. The parties agree that the settling of this action and refraining from the adjudication of any issue of fact or law, with regard to the issues herein, is in their interest and in the public interest.

5. Respondent consents to the terms of this CCCA, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

6. Solely for the purposes of this CCCA, Respondent consents to the EPA's jurisdiction, and waives all objections and defenses it may have to the EPA's jurisdiction.

7. Respondent neither admits nor denies the specific allegations contained in this CCCA.

8. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have against the EPA with respect to the terms and conditions set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

STATUTORY AND REGULATORY FRAMEWORK

9. Pursuant to sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, the EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 C.F.R. part 372. Section 313(b) of EPCRA and 40 C.F.R. § 372.22, address owners and operators of facilities that have 10 or more full-time employees; are in specific Standard Industrial Classification Codes; and manufacture, process, or otherwise use a toxic chemical listed under section 313(c) of EPCRA and 40 C.F.R. § 372.65, in quantities exceeding the appropriate threshold as set forth in 40 C.F.R. § 372.25. Under section 313(b) of EPCRA, owners and operators are required to annually submit a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (Form R), for each toxic chemical listed under section 313(c) of EPCRA and 40 C.F.R. § 372.65, that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. 40 C.F.R. § 372.10 requires each person subject to this part to maintain documentation supporting the determination of whether a threshold under 40 C.F.R. § 372.38 applies.

SPECIFIC ALLEGATIONS

10. Respondent is a corporation authorized to do business in the State of Colorado.
11. Respondent is a "person" as that term is defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
12. Respondent is the owner or operator of a "facility" as that term is defined by section 329(4), 42 U.S.C. § 11049(4).
13. Respondent's facility has 10 or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.
14. Respondent's facility is in a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. § 372.3. Specifically, Respondent owns and operates a facility located at 380 West 62ⁿd Avenue in Denver, Colorado (Facility), which is in the NAICS code 324121 (Asphalt Paving Mixture and Block Manufacturing).
15. Respondent's Facility processes benzo(g,h,i)perylene (CAS # 00191-24-2), phenanthrene (CAS#: 85-01-8), and polycyclic aromatic compounds (PACs)(Category N-590), which are toxic chemicals listed under 40 C.F.R. § 372.65, for which reporting is required pursuant to 40 C.F.R. § 372.22.
16. On September 3, 2014, an authorized representative of the EPA conducted an inspection (EPA inspection) of the Facility, with the consent of the Respondent, to determine compliance with EPCRA. During the EPA inspection, the EPA representatives observed alleged violations of EPCRA 313. The alleged violations are described in paragraphs 17-19.
17. 40 C.F.R. § 372.30 provides that for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in excess of an applicable threshold quantity at its covered facility for a calendar year, the owner or operator must submit to the EPA and to the State in which the facility is located a completed EPA Form R in accordance with subpart E of 40 C.F.R. Part

372. Respondent processed more than a threshold quantity of benzo(g,h,i)perylene in calendar years 2010, 2011, 2012, and 2013 but failed to submit a completed EPA Form R in accordance with subpart E of 40 C.F.R. Part 372.

18. 40 C.F.R. § 372.30 provides that for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in excess of an applicable threshold quantity at its covered facility for a calendar year, the owner or operator must submit to the EPA and to the State in which the facility is located a completed EPA Form R in accordance with subpart E of 40 C.F.R. Part 372. Respondent processed more than a threshold quantity of phenanthrene in calendar year 2011 but failed to submit a completed EPA Form R in accordance with subpart E of 40 C.F.R. Part 372.

19. 40 C.F.R. § 372.30 provides that for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in excess of an applicable threshold quantity at its covered facility for a calendar year, the owner or operator must submit to the EPA and to the State in which the facility is located a completed EPA Form R in accordance with subpart E of 40 C.F.R. Part 372. Respondent submitted an EPA Form R that contained an inaccurate amount of PACs released for calendar years 2010, 2011, 2012, and 2013. Respondent failed to submit a completed EPA Form R in accordance with subpart F of 40 C.F.R. Part 372.

PENALTY

20. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c), as amended, and 40 C.F.R. § 372.18, authorize EPA to assess a civil penalty of up to \$37,500 for each violation of the EPCRA. For purposes of determining the amount of any civil penalty to be assessed, the EPA is required to consider, in addition to such other factors as justice may require, to the extent known, the nature, circumstances, extent and gravity of the violations alleged, any of Respondent's history of prior violations of EPCRA, or lack thereof, and degree of culpability, and any voluntary disclosure, or lack thereof.

21. Respondent consents and agrees to pay a civil penalty in the amount of twenty five thousand four hundred dollars (\$25,400) (the "Penalty") within thirty (30) calendar days of the Effective Date of this Agreement. Payment of the Penalty in full shall resolve all civil and administrative claims for all violations of EPCRA and facts alleged in this CCCA.

22. Respondent shall make a payment by cashier's check or certified check, or by wire transfer in the amount of \$25,400 and shall include the case name and docket number on the face of the check or wire transfer confirmation. A check should be payable to "Treasurer, United States of America," The payment shall be remitted as follows:

If remitted by regular U.S. mail

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

If sent by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri
63101

If sent by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

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

23. In addition, at the time of payment, Respondent shall forward notice of payment of the civil penalty as well as copy of the payment check or payment receipt to:

Greg Bazley, Technical Enforcement Program
U.S. Environmental Protection Agency
(8ENF-AT) 1595 Wynkoop Street
Denver, Colorado 80202-1129

COMPLIANCE

24. Respondent agrees, by signing this CCCA, that all alleged violations have been corrected.

OTHER TERMS

25. This CCCA contains all terms of the settlement agreed to by the parties.

26. This CCCA, upon incorporation into a final order, applies to and is binding upon the EPA, Respondent, and Respondent's successors or assigns.

27. Nothing in the CCCA shall relieve Respondent of the duty to comply with EPCRA and its implementing regulations.

28. Failure of Respondent to comply with any terms of this CCCA shall constitute a breach and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and such other relief as may be appropriate.

29. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.

30. Nothing in the CCCA shall be construed as a waiver by the United States of its authority to seek costs or any appropriate penalty associated with any action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCCA.

31. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into and legally bind Respondent to the terms and conditions of the CCCA.

32. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.


33. Each party shall bear its own costs and attorney fees in connection with this administrative matter.
34. Respondent agrees that the Penalty shall never be claimed as a federal or other tax deduction or credit.
35. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil and administrative settlement of the violations alleged in this CCCA.

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, REGION 8,
Office of Enforcement, Compliance and
Environmental Justice

Complainant

Date: _____

By: _____

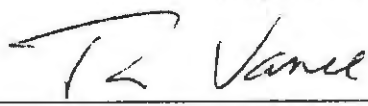

Suzanne J. Bohan
Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Vance Brothers, Inc.

Respondent

Date: 9-21-16

By: _____


Print: Tim Vance