



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

FILED

2007 AUG 16 PM 1:04

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK

DOCKET NO: EPCRA-09-2007- 0015
This ESA is issued to: Backhoe & Excavation Services Inc.
100 Kio Loop, Kihei, HI 96753

For: Violation of Section 312 of the Emergency Planning and Community Right-To-Know Act.
At: Backhoe & Excavation Services Inc., 100 Kio Loop, Kihei, HI 96753

This Expedited Settlement Agreement (ESA) is being entered into by the United States Environmental Protection Agency (EPA), Region IX, by its duly delegated official, Keith Takata, Superfund Director, and by Backhoe & Excavation Services Inc., (Respondent) pursuant to Section 325 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. § 11045, and by 40 CFR 22.13(b).

ALLEGED VIOLATIONS

Respondent failed to timely submit a completed emergency and hazardous chemical inventory form (Tier I or Tier II form as described in 40 CFR 370.25 and 40 CFR Part 370, Subpart D, or the state equivalent), for the year 2006 as required by Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations set forth at 40 CFR Part 370. Under Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations set forth at 40 CFR Part 370, Respondent was required to submit its Tier I or Tier II form for the year 2006 on or before March 1, 2007.

SETTLEMENT

EPA and Respondent agree that settlement of this matter for a penalty of \$ 2,000 is in the public interest. In signing this Agreement, Respondent: (1) admits that Respondent is subject to the requirements of section 312 of EPCRA; (2) admits that EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein, (3) neither admits nor denies the factual allegations contained herein; (4) consents to the assessment of this penalty; and (5) waives any right to contest the allegations or appeal the final order contained herein.

Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that (1) the Respondent has corrected the violations listed above, and (2) Respondent has sent a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of \$2000.00 in payment of the full penalty amount to the following address:

U.S. Environmental Protection Agency
Region 9
P.O. Box 371099M
Pittsburgh, PA 15251

The check should reference Respondent's name and a copy of this ESA must be included with the check.

This original ESA and a copy of the check must be sent by certified mail to:

Janice Witul
U.S. Environmental Protection Agency
Region IX (SFD-9-3)
75 Hawthorne Street
San Francisco, CA 94105

Upon Respondent's submission of the original signed ESA, EPA will take no further civil penalty action against Respondent for the alleged violations of EPCRA identified in the ESA. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region IX office at the above address in correct form by the Respondent within 45 days of the date of Respondent's receipt of the proposed ESA, the ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

This ESA is binding on the parties signing below.

In accordance with 40 CFR 22.31(b), this ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT – Backhoe & Excavation Services Inc.

Signature: Sasha Natividad

Date: 8/11/07

Name (print): Sasha Natividad

Title (print): Secretary Officer

FOR COMPLAINANT:

Keith Takata
Keith Takata
Superfund Director
U.S. EPA Region IX

Date: 8/13/07

It is hereby ORDERED that this ESA be entered and Respondent pay the above penalty.

Steven L. Jawgiel
Steven L. Jawgiel
Chief Judicial Officer
U.S. EPA Region IX

Date: 08/16/08

 **OFFICIAL BANK CHECK**
First Hawaiian Bank
P.O. Box 3200 Honolulu, HI 96847-8916
KIHEI

DATE: 08/01/2007

1017754 2 90-78
1211

PAY TWO THOUSAND DOLLARS AND 00 CENTS
TO THE ORDER OF **TREASURER, UNITED STATES OF AMERICA**

AMOUNT
\$2,000.00

NOTICE TO CUSTOMER

In the event this Official Bank Check is lost, misplaced, or stolen, please call the branch where it was purchased for instructions on submitting a claim.

CUSTOMER RECEIPT
NOT NEGOTIABLE

BACKHOE & EXCAVATION SVC. EPCRA-09-2007

OFFICIAL BANK CHECK

KIHEI

DATE: 08/01/2007

1017754 2 90-78
1211

\$2,000.00

PAY ***TWO THOUSAND DOLLARS AND 00 CENTS
TO THE ORDER OF **TREASURER, UNITED STATES OF AMERICA**

Two Signatures Required for \$100,000 and Over

BACKHOE & EXCAVATION SVC. EPCRA-09-2007

 **First Hawaiian Bank 1213**

P.O. Box 3200 Honolulu, HI 96847-8916

Payable through Bank of the West, Walnut Creek, CA

Authorized Signature

Authorized Signature

THE BACK OF THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD AT ANGLE TO VIEW.

⑈ 10177542⑈ ⑆ 121100782⑆ 184007912⑈ 9450

CERTIFICATE OF SERVICE

Docket No. CAA-09-2007- 0015

I hereby certify that the original copy of the foregoing Expedited Settlement Agreement, with the Docket number referenced above, has been filed with the Region 9 Hearing Clerk and that a copy was sent by certified mail, return receipt requested, to:

Stewart Norrie, President
Backhoe & Excavation Services Inc
100 Kio Loop
Kihei HI 96753

Aug. 16, 2007
Date

Danielle E. Carr
Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105