



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202 - 2733

3 AUG 2016

**Certified Mail - Return Receipt Requested: 7013 3050 0001 6500 2697**

David Baran  
Vice President of Operations  
Dal-Tile Sunnyvale MFG  
P.O. Box 170130  
7834 C.F. Hawn Freeway  
Dallas, TX 75182

**RE: In the Matter of Dal-Tile Sunnyvale MFG  
Docket No. EPCRA-06-2015-0504**

Dear Mr. Baran:

Enclosed is the fully executed Complaint and Consent Agreement and Final Order (CAFO) filed with the Regional Hearing Clerk. Dal-Tile Sunnyvale MFG has 30 days from the effective date of the CAFO to make payment of the \$24,080 civil penalty, as set forth in section IV beginning on page 6. The effective date is the date the CAFO is stamped in the top right corner of the document.

If you have any questions, or concerns regarding this matter, please contact Stan Lancaster at 214.665.8034. Your cooperation in the settlement of this case is most appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins".

John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosure (1)

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2016 AUG -9 AM 8:59  
REGIONAL HEARING CLERK  
EPA REGION VI

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IN THE MATTER OF:

DAL-TILE SUNNYVALE MFG  
SUNNYVALE, TX

RESPONDENT

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DOCKET NO. EPCRA-06-2016-0504

**CONSENT AGREEMENT AND FINAL ORDER**

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Dal-Tile Sunnyvale MFG (Respondent), 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 and conclusions of law contained in this CAFO.

3. Respondent explicitly waives any right to contest the factual allegations or conclusions of law contained in this CAFO, as well as its right to appeal the Final Order set forth herein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. EPA and Respondent agree that the settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. This CAFO resolves the violation alleged under Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372, for the 2012 through 2014 period, based upon information provided to EPA during the course of the investigation.

5. 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.

6. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.

7. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

8. Respondent hereby certifies that as of the date of the execution of this CAFO, Dal-Tile Sunnyvale MFG 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**

9. 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 ten or more full-time employees; (b) is an establishment with a primary Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) “manufactured, processed, or otherwise used” a toxic chemical listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, 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 during the calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1 of the following 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 that preceding calendar year.

10. According 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(b) of EPCRA, 42 U.S.C. § 11023(b), 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.

**III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**A. PRELIMINARY ALLEGATIONS**

11. Respondent is incorporated under the laws of the State of Pennsylvania and is authorized to do business in the State of TX.

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

13. Respondent owns and operates a facility at 359 Clay Road, Sunnyvale, TX 75182.

14. Respondent owns and operates 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.

15. Respondent's facility has ten (10) or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.

16. Respondent's facility is in NAICS subsector or industry code 327120, clay building material and refractories manufacturing.

17. The chemicals barium compounds and ethylene glycol are "toxic chemicals" within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

18. During the 2012 and 2013 reporting years, barium compounds and ethylene glycol were "manufactured", "processed", and/or "otherwise used" as those terms are defined by 40 C.F.R. § 372.3, at the Respondent's facility. As such, Respondent is subject to the regulatory and statutory provisions cited herein.

19. On July 8, 2015, an inspection of Respondent's facility was conducted by a duly authorized representative of EPA where the violations alleged below were discovered.

**B. VIOLATIONS**

**Failure to timely File Form R for Barium Compounds for Calendar Year 2012**

20. During calendar year 2012, the Respondent “processed” the “toxic chemical” barium compounds at the Respondent’s facility, in excess of the applicable threshold quantities.

21. The Respondent failed to file a Form R with EPA and the State of Texas for barium compounds by July 1, 2013, for the 2012 calendar year.

22. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit complete and accurate Form R for barium compounds for calendar year 2012, to EPA and to the State of Texas by July 1, 2013.

**Failure to timely File Form R for Ethylene Glycol for Calendar Year 2013**

23. During calendar year 2013, the Respondent “otherwise used” the “toxic chemical” ethylene glycol at the Respondent’s facility, in excess of the applicable threshold quantities.

24. The Respondent failed to file a Form R with EPA and the State of Texas for ethylene glycol by July 1, 2014, for the 2013 calendar year.

25. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit complete and accurate Form R for ethylene glycol for calendar year 2013, to EPA and to the State of Texas by July 1, 2014.

#### **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).<sup>1</sup> 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, ability to pay, lack of prior EPCRA Section 313 violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, cooperation, institution of corrective actions, and other factors as justice may require, it is **ORDERED** that Respondent be assessed a civil penalty of **TWENTY-FOUR THOUSAND AND EIGHTY DOLLARS (\$24,080)**, which will settle the violations as alleged herein.

27. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the fully-assessed civil penalty of \$24,080, 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 regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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<sup>1</sup> The amount of penalty that can be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$27,500 per day of violation, for violations occurring between January 30, 1997 and March 15, 2004; and \$32,500 per day of violation for violations which occurred between March 15, 2004 and January 12, 2009; and to \$37,500 per day of violation for violations which occurred after January 12, 2009.

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"

**PLEASE NOTE: Docket number EPCRA-06-2016-0504 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 CAFO. 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 CAFO. 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:



Stan Lancaster  
EPCRA 313 Enforcement Officer  
Compliance Section 3 (6EN-H3)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Lorena Vaughn  
Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

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

28. The 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.

29. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f), to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

30. 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 CAFO will begin to accrue thirty (30) days after the effective date of the CAFO 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).

31. EPA will also assess a fifteen dollar (\$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 fifteen dollar (\$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.

32. 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, April 12, 2001; for the purpose of demonstrating a history of "prior such violations".

**B. RETENTION OF ENFORCEMENT RIGHTS**

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

34. Nothing in this CAFO 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.

35. Except as specifically provided in this CAFO, nothing herein 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, or contaminants on, at, or from Respondent's facility.

Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments, to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

**C. COSTS**

36. 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. AGREEMENT TO TERMS**


37. To agree to the terms of this CAFO, Respondent shall forward a copy of this CAFO, with original signature and date, to:

Stan Lancaster  
EPCRA 313 Enforcement Officer  
Compliance Section 3 (6EN-H3)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

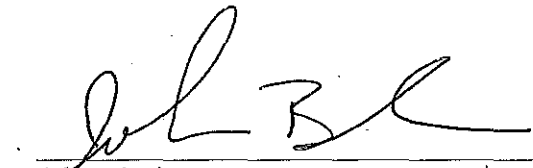
**FOR THE RESPONDENT:**

Date: 7/20/2016

  
\_\_\_\_\_  
David Baran, Vice President of Operations  
Dal-Tile Sunnyvale MFG.

**FOR THE COMPLAINANT:**

Date: 8.3.16

  
\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

**V. FINAL ORDER**

Pursuant to 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(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 8/8/16



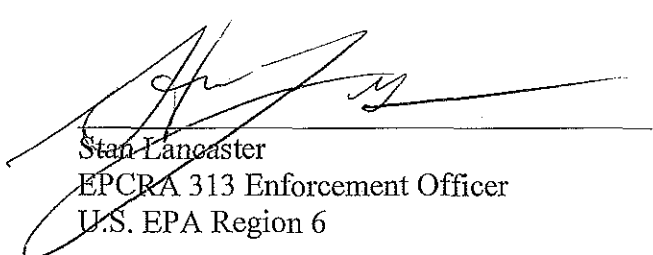
Thomas Rucki  
EPA Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of August, 2016, the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

**CERTIFIED MAIL - RETURN RECEIPT # 7012 3050 0001 6500 2697**

David Baran, Vice President of Operations  
Dal-Tile Sunnyvale MFG  
P.O. Box 170130 7834 C.F. Hawn Freeway  
Dallas, TX 75182

  
Stan Lancaster  
EPCRA 313 Enforcement Officer  
U.S. EPA Region 6