

FILED

2015 MAY 11 PM 2:46

US EPA REGION IX
HEARING CLERK

1 SYLVIA A. QUAST
Regional Counsel
2
3 EDGAR P. CORAL
Assistant Regional Counsel
U.S. Environmental Protection Agency
4 Region IX
75 Hawthorne Street
5 San Francisco, CA 94105
(415) 972-3898
6

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:

) Docket No. EPCRA-09-2015-0001

11)
12 Vulcan Materials Company,
13 Respondent.
14)

) CONSENT AGREEMENT
) AND FINAL ORDER
) pursuant to 40 C.F.R. §§ 22.13(b),
) 22.18(b)(2), and 22.18(b)(3).
15

16 I. CONSENT AGREEMENT

17 The United States Environmental Protection Agency, Region IX ("EPA"), and Vulcan
18 Materials Company (the "Respondent"), agree to settle this matter and consent to the entry of this
19 Consent Agreement and Final Order ("CAFO").

20 A. AUTHORITY AND PARTIES

21 1. This is a civil administrative action brought under Section 325(c) of the Emergency
22 Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for
23 assessment of a civil administrative penalty against Respondent for its failure to submit timely,
24 complete and correct Toxic Chemical Release Inventory Forms for calendar year 2012 in
25 violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing regulations set
26 forth at 40 C.F.R. Part 372.

27 2. Complainant is the Assistant Director of the Enforcement Division in EPA, Region
28 IX. The Administrator of EPA delegated to the Regional Administrator of Region IX the
authority to bring this action under EPCRA by EPA Delegation Order Number 22-3-A, dated

1 May 11, 1994. The Regional Administrator of Region IX further delegated the authority to bring
2 this action under EPCRA to the Director, Deputy Director, and Assistant Directors of the
3 Enforcement Division by EPA Regional Order Number R9-22-3-A, dated February 11, 2013.

4 3. Respondent is Vulcan Materials Company, a corporation headquartered in
5 Birmingham, Alabama.

6 B. STATUTORY AND REGULATORY BASIS

7 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA
8 promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for
9 the submission of information relating to the release of toxic chemicals under EPCRA Section
10 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.

11 5. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R.
12 §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and
13 the State in which the facility is located a chemical release form published under Section 313(g)
14 of EPCRA for each toxic chemical or toxic chemical category listed under Section 313(c) of
15 EPCRA and 40 C.F.R. § 372.65 that it manufactured, processed, or otherwise used if: (i) the
16 facility has ten or more full-time employees; (ii) the facility is in North American Industry
17 Classification System Code 324121; and (iii) the facility manufactured, processed, or otherwise
18 used during the calendar year the listed toxic chemical or toxic chemical category in excess of the
19 threshold quantity established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25 (or 40
20 C.F.R. § 372.28 for a chemical of special concern).

21 6. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a
22 uniform Toxic Chemical Release Inventory Form (hereinafter referred to as a "Form R") for
23 facilities that are subject to the reporting requirements of Section 313. Sections 313(a) and (b) of
24 EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. § 372.30(d), provide that each Form R for
25 activities involving a toxic chemical or toxic chemical category that occurred during a calendar
26 year must be submitted on or before July 1 of the next year.

1 C. ALLEGED VIOLATIONS

2 7. Respondent is a corporation and therefore fits within the definition of a “person,” as
3 provided in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

4 8. At all times relevant to this matter, Respondent owned and operated a facility (the
5 “Facility”) in the business of manufacturing asphalt paving mixture, located at 4850 South 47th
6 Avenue in Phoenix, Arizona, that fits within the definition of a “facility,” as provided in Section
7 329(4) of EPCRA, 42 U.S.C. § 11049(4).

8 9. At all times relevant to this matter, the Facility had 10 or more “full-time employees,”
9 as that term is defined at 40 C.F.R. § 372.3.

10 10. At all times relevant to this matter, the Facility was in North American Industry
11 Classification System Code 324121.

12 11. During the calendar year 2012, Respondent “processed,” as that term is defined in 40
13 C.F.R. § 372.3, approximately 1,084 pounds of benzo(g,h,i)perylene, a toxic chemical listed
14 under 40 C.F.R. § 372.65, at the Facility. This quantity exceeded the 10 pound threshold for
15 reporting “processing” of that chemical of special concern established under Section 313(f) of
16 EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

17 12. During the calendar year 2012, Respondent “processed,” as that term is defined in 40
18 C.F.R. § 372.3, approximately 20,178 pounds of polycyclic aromatic compounds, a toxic
19 chemical category listed under 40 C.F.R. § 372.65, at the Facility. This quantity exceeded the
20 100 pound threshold for reporting “processing” of that chemical of special concern established
21 under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

22 13. Respondent was required to submit a Form R for benzo(g,h,i)perylene to EPA and
23 the State of Arizona for calendar year 2012 on or before July 1, 2013.

24 14. Respondent was required to submit a Form R for polycyclic aromatic compounds to
25 EPA and the State of Arizona for calendar year 2012 on or before July 1, 2013.

26 15. Respondent failed to timely submit the Form Rs required of it to EPA and the State
27 of Arizona for calendar year 2012, and thus violated Section 313 of EPCRA, 42 U.S.C. § 11023,
28 and 40 C.F.R. Part 372.

1 Wire Transfers:

2 Wire transfers must be sent directly to the Federal Reserve Bank in New
3 York City with the following information:

4 Federal Reserve Bank of New York

5 ABA = 021030004

6 Account = 68010727

7 SWIFT address = FRNYUS33

8 33 Liberty Street

9 New York, NY 10045

10 Field Tag 4200 of the Fedwire message should read "D 68010727

11 Environmental Protection Agency"

12 Overnight Mail:

13 U.S. Bank

14 1005 Convention Plaza

15 Mail Station SL-MO-C2GL

16 ATTN Box 979077

17 St. Louis, MO 63101

18 ACH (also known as REX or remittance express):

19 Automated Clearinghouse (ACH) for receiving U.S. currency

20 PNC Bank

21 808 17th Street, NW

22 Washington, DC 20074

23 ABA = 051036706

24 Transaction Code 22 – checking

25 Environmental Protection Agency

26 Account 31006

27 CTX Format

28 On Line Payment:

 This payment option can be accessed from the information below:

www.pay.gov

 Enter "sfo1.1" in the search field

 Open form and complete required fields

 If clarification regarding a particular method of payment remittance is
 needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

21 A copy of each check, or notification that the payment has been made by one of the other
22 methods listed above, including proof of the date payment was made, shall be sent with a
23 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
24 following addresses:

25 Regional Hearing Clerk

26 Office of Regional Counsel (ORC-1)

27 U.S. Environmental Protection Agency, Region IX

28 75 Hawthorne Street

 San Francisco, CA 94105

1 Russell Frazer
2 Enforcement Division (ENF-2-1)
3 U.S. Environmental Protection Agency, Region IX
4 75 Hawthorne Street
5 San Francisco, CA 94105

6 Edgar Coral
7 Office of Regional Counsel (ORC-2)
8 U.S. Environmental Protection Agency, Region IX
9 75 Hawthorne Street
10 San Francisco, CA 94105

11 19. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
12 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
13 use such payment as a tax deduction.

14 20. If Respondent fails to pay the assessed civil administrative penalty of TWENTY-SIX
15 THOUSAND AND FORTY DOLLARS (\$26,040), as identified in Paragraph 18, by the deadline
16 specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA upon
17 EPA's written request. The amount of the stipulated penalty will be ELEVEN THOUSAND,
18 ONE HUNDRED, AND SIXTY DOLLARS (\$11,160), and will be immediately due and payable
19 upon EPA's written request on the day following the deadline specified in Paragraph 18, together
20 with the initially assessed civil administrative penalty of TWENTY-SIX THOUSAND AND
21 FORTY DOLLARS (\$26,040), resulting in a total penalty due of THIRTY-SEVEN
22 THOUSAND, TWO HUNDRED DOLLARS (\$37,200). Failure to pay the civil administrative
23 penalty specified in Paragraph 18 by the deadline specified in that Paragraph may also lead to any
24 or all of the following actions:

25 (1) EPA may refer the debt to a credit reporting agency, a collection
26 agency, or to the Department of Justice for filing of a collection action in the appropriate United
27 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
28 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
collection proceeding.

(2) The U.S. Government may collect the debt by administrative offset
(i.e., the withholding of money payable by the United States to, or held by the United States for, a
person to satisfy the debt the person owes the U.S. Government), which includes, but is not

1 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
2 C.F.R. §§ 13(C) and 13(H).

3 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
4 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
5 business with EPA or engaging in programs EPA sponsors or funds.

6 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
7 Government may assess interest, administrative handling charges, and nonpayment penalties
8 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
9 civil administrative penalty specified in Paragraph 18 by the deadline specified in that Paragraph.

10 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
11 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
12 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
13 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
14 (30) days of the effective date of this CAFO.

15 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
16 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
17 based on either actual or average cost incurred (including both direct and indirect costs), for
18 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

19 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
20 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
21 may be assessed on all debts more than ninety (90) days delinquent.

22 F. CERTIFICATION OF COMPLIANCE

23 21. In executing this CAFO, Respondent certifies to its actual knowledge that (1) it has
24 now fully completed and submitted to EPA all of the required Toxic Chemical Release Inventory
25 Forms in compliance with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations
26 promulgated thereunder; and (2) it is in compliance with all other EPCRA requirements at all
27 facilities under its control.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

G. RETENTION OF RIGHTS

22. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

23. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEYS' FEES AND COSTS

24. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE DATE

25. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the Final Order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

26. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

27. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOR RESPONDENT VULCAN MATERIALS COMPANY:

4-24-15

DATE



Michael R. Mills
Senior Vice-President & General Counsel
Vulcan Materials Company
1200 Urban Center Drive
Birmingham, AL 35242-2545

FOR COMPLAINANT EPA:

4/30/15

DATE



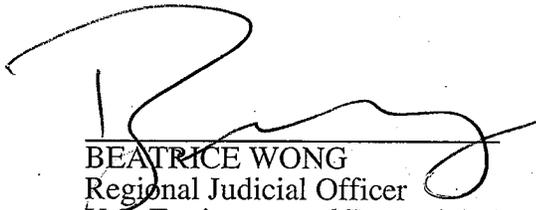
JOEL JONES
Assistant Director, Air, Waste & Toxics Branch
Enforcement Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and Vulcan Materials Company having entered into the foregoing Consent
3 Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-09-2015-0001) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of TWENTY-SIX
6 THOUSAND AND FORTY DOLLARS (\$26,040), and comply with the terms and conditions set
7 forth in the Consent Agreement.

8
9
10 May 11, 2015
11 DATE


12 BEATRICE WONG
13 Regional Judicial Officer
14 U.S. Environmental Protection Agency, Region IX
15
16
17
18
19
20
21
22
23
24
25
26
27
28

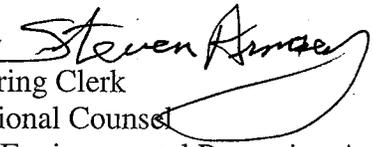
CERTIFICATE OF SERVICE

I certify that the original ~~and one copy~~ of the foregoing Consent Agreement and Final Order, Docket Number EPCRA-09-2015- 0001, was filed on ~~April~~ ^{May 11,} ~~___,~~ 2015, with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Michael R. Mills
Senior Vice-President & General Counsel
Vulcan Materials Company
1200 Urban Center Drive
Birmingham, AL 35242-2545
Certified Return Receipt Article No: 7013 1090 0000 1618 3233

Penny A. Shamblin, Esq.
Hunton & Williams, L.L.C.
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219

Dated: May 11, 2015

Steve Armsey 
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region IX