



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

AUG 29 2013

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. J. Scott Duff  
President  
Ohio Ready-Mix, Inc.  
9016 State Route 117, P.O Box 305  
Huntsville, OH 43324

Re: Ohio Ready-Mix, Inc., Consent Agreement and Final Order,  
Docket No. **EPCRA-05-2013-0024**

Dear Mr. Duff:

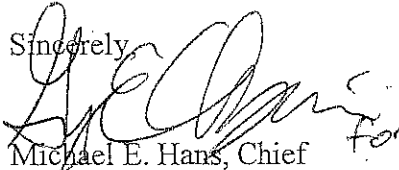
Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on August 29, 2013.

Please pay the EPCRA civil penalty in the amount of \$40,000 in the manner prescribed in paragraphs 122 and 123, and reference your check with the docket number  
**EPCRA-05-2013-0024**

Your payment is due on September 30, 2013.

Please feel free to contact Ginger Jager at (312) 886-0767 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert H. Smith, Associate Regional Counsel, at (312) 886-0765. Thank you for your assistance in resolving this matter.

Sincerely,

  
Michael E. Hans, Chief For  
Chemical Emergency Preparedness  
and Prevention Section

Enclosure

cc: Jeff Beattie, Ohio EPA (w/ enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
) Docket No. EPCRA-05-2013-0024  
)  
)  
Ohio Ready Mix, Inc. )  
Huntsville, Ohio, ) Proceeding to Assess a Civil Penalty  
) Under Section 325(c)(1) of the Emergency  
) Planning and Community Right-to-Know  
Respondent. ) Act of 1986  
)  
\_\_\_\_\_ )

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT



1. This is an administrative action commenced and concluded under Section 325(e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Ohio Ready Mix, Inc., a corporation doing business in the State of Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

#### **JURISDICTION AND WAIVER OF RIGHT TO HEARING**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

#### **STATUTORY AND REGULATORY BACKGROUND**

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC), and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDSs.

12. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1910.1200(c).

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$37,500 per day of violation for violations that occurred after January 12, 2009.

#### **FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS**

15. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. Portland cement (CAS #65997-15-1) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

17. Portland cement (CAS #65997-15-1) is a “hazardous chemical” within the meaning

of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

18. Portland cement (CAS #65997-15-1) has a minimum threshold level of ten thousand pounds, as provided in 40 C.F.R. Part 370.

19. Slag contains crystalline silica that is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

20. Slag (CAS #65996-69-2) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

21. Slag (CAS #65996-69-2) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

22. Diesel fuel is a chemical which severely irritates skin on contact and mildly irritates eyes upon contact.

23. Diesel fuel is a “health hazard” within the meaning of 29 C.F.R. § 1910.1200(c).

24. Diesel fuel is a chemical that is flammable.

25. Diesel fuel is a “physical hazard” within the meaning of 29 C.F.R. § 1910.1200(c).

26. Diesel fuel is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

27. Diesel fuel has a minimum threshold level of ten thousand pounds, as provided in 40 C.F.R. Part 370.

28. Calcium chloride is a chemical which irritates eyes and skin on contact, lungs upon inhalation, and digestive tracts upon ingestion.

29. Calcium chloride is a “health hazard” within the meaning of 29 C.F.R. § 1910.1200(c).

30. Calcium chloride is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

31. Calcium chloride has a minimum threshold level of ten thousand pounds, as provided in 40 C.F.R. Part 370.

32. Accelguard 90 is a chemical which irritates eyes and skin upon contact, and digestive tracts upon ingestion.

33. Accelguard 90 is a "health hazard" within the meaning of 29 C.F.R. § 1910.1200(c).

34. Accelguard 90 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

35. Accelguard 90 has a minimum threshold level of ten thousand pounds, as provided in 40 C.F.R. Part 370.

36. Unleaded gasoline is a chemical which moderately irritates skin on contact and mildly irritates eyes upon contact.

37. Unleaded gasoline is a "health hazard" within the meaning of 29 C.F.R. § 1910.1200(c).

38. Unleaded gasoline is a chemical that is flammable.

39. Unleaded gasoline is a "physical hazard" within the meaning of 29 C.F.R. § 1910.1200(c).

40. Unleaded gasoline is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

41. Unleaded gasoline has a minimum threshold level of ten thousand pounds, as provided in 40 C.F.R. Part 370.

42. Propane (CAS #74-98-6) is listed as a toxic and hazardous substance under OSHA

regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

43. Propane (CAS #74-98-6) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

44. Propane (CAS #74-98-6) has a minimum threshold level of ten thousand pounds, as provided in 40 C.F.R. Part 370.

#### **Huntsville Facility**

45. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 9016 State Route 117, Huntsville, Logan County, Ohio (Huntsville Facility).

46. At all times relevant to this Complaint, Respondent was an employer at the Huntsville Facility.

47. Respondent’s Huntsville Facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

48. Respondent’s Huntsville Facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

49. During at least one period of time in calendar year 2007, Portland cement, slag, diesel fuel, calcium chloride, Accelguard 90, and unleaded gasoline were present at the Huntsville Facility in amounts equal to or greater than their minimum threshold level.

50. During at least one period of time in calendar year 2008, Portland cement, slag, diesel fuel, calcium chloride, Accelguard 90, and unleaded gasoline were present at the Huntsville Facility in amounts equal to or greater than their minimum threshold level.

51. During at least one period of time in calendar year 2009, Portland cement, slag, diesel fuel, calcium chloride, Accelguard 90, and unleaded gasoline were present at the

Huntsville Facility in amounts equal to or greater than their minimum threshold level.

52. At all times relevant to this Complaint, OSHA required Respondent to prepare, or have available at the Huntsville Facility, MSDSs for Portland cement, slag, diesel fuel, calcium chloride, Accelguard 90, and unleaded gasoline.

#### **Bellefontaine Facility**

53. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 3980 US Highway 68S, Bellefontaine, Logan County, Ohio (Bellefontaine Facility).

54. At all times relevant to this Complaint, Respondent was an employer at the Bellefontaine Facility.

55. Respondent's Bellefontaine Facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

56. Respondent's Bellefontaine Facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

57. During at least one period of time in calendar year 2007, Portland cement, slag, diesel fuel, calcium chloride, and propane were present at the Bellefontaine Facility in an amount equal to or greater than their minimum threshold level.

58. During at least one period of time in calendar year 2008, Portland cement, slag, diesel fuel, calcium chloride, and propane were present at the Bellefontaine Facility in an amount equal to or greater than their minimum threshold level.

59. During at least one period of time in calendar year 2009, Portland cement, slag, diesel fuel, calcium chloride, and propane were present at the Bellefontaine Facility in an amount



equal to or greater than their minimum threshold level.

60. At all times relevant to this Complaint, OSHA required Respondent to prepare, or have available at the Bellefontaine Facility, MSDSs for Portland cement, slag, diesel fuel, calcium chloride, and propane.

#### **Marysville Facility**

61. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 24515 Honda Parkway, Marysville, Union County, Ohio (Marysville Facility).

62. At all times relevant to this Complaint, Respondent was an employer at the Marysville Facility.

63. Respondent's Marysville Facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

64. Respondent's Marysville Facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

65. During at least one period of time in calendar year 2007, Portland cement, slag, diesel fuel, and calcium chloride were present at the Marysville Facility in an amount equal to or greater than their minimum threshold level.

66. During at least one period of time in calendar year 2008, Portland cement, slag, diesel fuel, and calcium chloride were present at the Marysville Facility in an amount equal to or greater than their minimum threshold level.

67. During at least one period of time in calendar year 2009, Portland cement, slag, diesel fuel, and calcium chloride were present at the Marysville Facility in an amount equal to or greater than their minimum threshold level.

68. At all times relevant to this Complaint, OSHA required Respondent to prepare, or have available at the Marysville Facility, MSDSs for Portland cement, slag, diesel fuel, and calcium chloride.

**Additional General Allegations**

69. For each of the facilities referenced in this Complaint, Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including each hazardous chemical present at the facility on or before March 1, for the preceding calendar year.

70. At all times relevant to this Complaint, the Ohio Environmental Protection Agency was the SERC for Ohio under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

71. At all times relevant to this Complaint, the Logan County Local Emergency Planning Committee was the LEPC for Logan County, Ohio under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

72. At all times relevant to this Complaint, the Union County Local Emergency Planning Committee was the LEPC for Union County, Ohio under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

73. At all times relevant to this Complaint, the Huntsville Fire Department was the fire department with jurisdiction over the Huntsville Facility.

74. At all times relevant to this Complaint, the West Liberty Fire Department was the fire department with jurisdiction over the Bellefontaine Facility.

75. At all times relevant to this Complaint, the Allen Township Fire Department was the fire department with jurisdiction over the Marysville Facility.

**Count 1 (Huntsville Facility – Past Year – 2007)**

76. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth in this paragraph.

77. As of January 31, 2011, Respondent had not submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Huntsville Facility including Portland cement, slag, diesel fuel, calcium chloride, Accelguard 90, and unleaded gasoline for calendar year 2007.

78. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Huntsville Facility including Portland cement, slag, diesel fuel, calcium chloride, Accelguard 90, and unleaded gasoline by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 2 (Huntsville Facility – Past Year – 2008)**

79. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth in this paragraph.

80. As of January 31, 2011, Respondent had not submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Huntsville Facility including Portland cement, slag, diesel fuel, calcium chloride, Accelguard 90, and unleaded gasoline for calendar year 2008.

81. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Huntsville Facility including Portland cement, slag, diesel fuel, calcium chloride, Accelguard 90, and unleaded gasoline by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C.

§ 11022(a).

**Count 3 (Huntsville Facility – SERC – 2009)**

82. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth in this paragraph.

83. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Huntsville Facility including Portland cement, slag, diesel fuel, calcium chloride, Accelguard 90, and unleaded gasoline on February 1, 2011, for calendar year 2009.

84. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Huntsville Facility including Portland cement, slag, diesel fuel, calcium chloride, Accelguard 90, and unleaded gasoline by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C.

§ 11022(a).

**Count 4 (Huntsville Facility – LEPC – 2009)**

85. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth in this paragraph.

86. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form for the Huntsville Facility including Portland cement, slag, diesel fuel, calcium chloride, Accelguard 90, and unleaded gasoline on February 1, 2011, for calendar year 2009.

87. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form for the Huntsville Facility including Portland cement, slag, diesel fuel, calcium chloride, Accelguard 90, and unleaded gasoline by March 1, 2010, for

calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 5 (Huntsville Facility – Fire Department – 2009)**

88. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth in this paragraph.

89. Respondent submitted to the Huntsville Fire Department a completed Emergency and Hazardous Chemical Inventory Form for the Huntsville Facility including Portland cement, slag, diesel fuel, calcium chloride, Accelguard 90, and unleaded gasoline on February 1, 2011, for calendar year 2009.

90. Each day Respondent failed to submit to the Huntsville Fire Department a completed Emergency and Hazardous Chemical Inventory Form for the Huntsville Facility including Portland cement, slag, diesel fuel, calcium chloride, Accelguard 90, and unleaded gasoline by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 6 (Bellefontaine Facility – Past Year – 2007)**

91. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth in this paragraph.

92. As of January 31, 2011, Respondent had not submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Bellefontaine Facility including Portland cement, slag, diesel fuel, calcium chloride, and propane for calendar year 2007.

93. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Bellefontaine Facility including Portland cement, slag, diesel fuel, calcium chloride, and propane by March 1, 2008, for calendar year 2007

constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 7 (Bellefontaine Facility – Past Year – 2008)**

94. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth in this paragraph.

95. As of January 31, 2011, Respondent had not submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Bellefontaine Facility including Portland cement, slag, diesel fuel, calcium chloride, and propane for calendar year 2008.

96. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Bellefontaine Facility including Portland cement, slag, diesel fuel, calcium chloride, and propane by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 8 (Bellefontaine Facility – SERC – 2009)**

97. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth in this paragraph.

98. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Bellefontaine Facility including Portland cement, slag, diesel fuel, calcium chloride, and propane on February 1, 2011, for calendar year 2009.

99. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Bellefontaine Facility including Portland cement, slag, diesel fuel, calcium chloride, and propane by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 9 (Bellefontaine Facility – LEPC – 2009)**

100. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth

in this paragraph.

101. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form for the Bellefontaine Facility including Portland cement, slag, diesel fuel, calcium chloride, and propane on February 1, 2011, for calendar year 2009.

102. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form for the Bellefontaine Facility including Portland cement, slag, diesel fuel, calcium chloride, and propane by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 10 (Bellefontaine Facility – Fire Department – 2009)**

103. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth in this paragraph.

104. Respondent submitted to the West Liberty Fire Department a completed Emergency and Hazardous Chemical Inventory Form for the Bellefontaine Facility including Portland cement, slag, diesel fuel, calcium chloride, and propane on February 1, 2011, for calendar year 2009.

105. Each day Respondent failed to submit to the West Liberty Fire Department a completed Emergency and Hazardous Chemical Inventory Form for the Bellefontaine Facility including Portland cement, slag, diesel fuel, calcium chloride, and propane by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 11 (Marysville Facility – Past Year – 2007)**

106. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth in this paragraph.

107. As of January 31, 2011, Respondent had not submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Marysville Facility including Portland cement, slag, diesel fuel, and calcium chloride for calendar year 2007.

108. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Marysville Facility including Portland cement, slag, diesel fuel, and calcium chloride by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 12 (Marysville Facility – Past Year – 2008)**

109. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth in this paragraph.

110. As of January 31, 2011, Respondent had not submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Marysville Facility including Portland cement, slag, diesel fuel, and calcium chloride for calendar year 2008.

111. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Marysville Facility including Portland cement, slag, diesel fuel, and calcium chloride by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 13 (Marysville Facility – SERC – 2009)**

112. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth in this paragraph.

113. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Marysville Facility including Portland cement, slag, diesel fuel, and calcium chloride on February 1, 2011, for calendar year 2009.



114. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Marysville Facility including Portland cement, slag, diesel fuel, and calcium chloride by March 1, 2010, for calendar year 2009. constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 14 (Marysville Facility – LEPC – 2009)**

115. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth in this paragraph.

116. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form for the Marysville Facility including Portland cement, slag, diesel fuel, and calcium chloride on February 1, 2011, for calendar year 2009.

117. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form for the Marysville Facility including Portland cement, slag, diesel fuel, and calcium chloride by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 15 (Marysville Facility – Fire Department – 2009)**

118. Complainant incorporates paragraphs 1 through 75 of this Complaint as if set forth in this paragraph.

119. Respondent submitted to the Allen Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form for the Marysville Facility including Portland cement, slag, diesel fuel, and calcium chloride on February 1, 2011, for calendar year 2009.

120. Each day Respondent failed to submit to the Allen Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form for the Marysville Facility

including Portland cement; slag, diesel fuel, and calcium chloride by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

### CIVIL PENALTY

121. Complainant has determined that an appropriate civil penalty to settle this action is \$40,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and Respondent's agreement to spend at least \$97,000 performing a supplemental environmental project, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

122. Within 30 days after the effective date of this CAFO, Respondent must pay a \$40,000 civil penalty for the EPCRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," by first-class mail to:

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

If the cashier's or certified check is sent by express mail, then it should be payable to "Treasurer, United States of America," and sent to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The check must note the following: Ohio Ready-Mix, Inc. and the docket number of this CAFO.

123. A transmittal letter, stating Respondent's name, the case title and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Ginger Jager, (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Robert H. Smith, (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

124. This civil penalty is not deductible for federal tax purposes.

125. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

126. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount

overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

### **SUPPLEMENTAL ENVIRONMENTAL PROJECT**

127. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by purchasing emergency response equipment for local fire departments.

128. Respondent must complete the SEP by purchasing emergency response equipment including multigas detector kits, thermal imaging cameras, vehicle kits, lighting systems, fire hoses, mobile repeaters, emergency response clothing, receivers, and clear command (amp only) for the West Liberty, Bellefontaine, Huntsville, and Richland Township Fire Departments.

129. Respondent must spend at least \$97,000 to purchase the equipment.

130. Respondent must complete the SEP by December 6, 2013.

131. Respondent certifies as follows:

I certify that Ohio Ready Mix, Inc. is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify Ohio Ready Mix, Inc. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Ohio Ready Mix, Inc. is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal

financial assistance transaction proposal submitted to U.S. EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

132. U.S. EPA may inspect the facilities at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

133. Respondent must submit a SEP completion report to U.S. EPA by January 6, 2014.

This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

134. Respondent must submit all notices and reports required by this CAFO by first class mail to Robert H. Smith at his address specified in paragraph 123, above.

135. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility

of fines and imprisonment for knowing violations.

136. Following receipt of the SEP completion report described in paragraph 133, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 138.

137. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, then Respondent will pay stipulated penalties to the United States under paragraph 138, below.

138. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, then Respondent must pay a penalty of \$97,000.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 129, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 129, Respondent must pay a penalty of \$20,000.

- d. If Respondent did not submit timely the SEP completion report required by paragraph 133, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Violation</u> |
|--------------------------------------|----------------------------|
| \$500                                | 1st through 14th day       |
| \$1,000                              | 15th through 30th day      |
| \$1,500                              | 31st day and beyond        |

139. U.S. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

140. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 122-123, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

141. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of Section 312 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11022."

142. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or

minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

143. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

#### **General Provisions**

144. This CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

145. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

146. Respondent certifies that it is complying with Section 312 of EPCRA, 42 U.S.C. § 11022.

147. This CAFO does not affect Respondent's responsibility to comply with EPCRA and CERCLA and other applicable federal, state, and local laws and regulations.

148. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.



149. The terms of this CAFO bind Respondent and its successors and assigns.

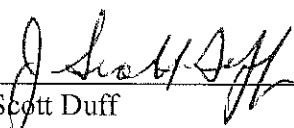
150. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

151. Each party agrees to bear its own costs and attorney's fees in this action.

152. This CAFO constitutes the entire agreement between the parties.

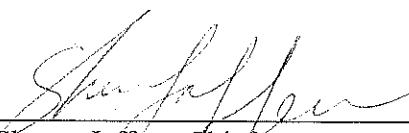
**Ohio Ready Mix, Inc., Respondent**

8/2/2013  
Date

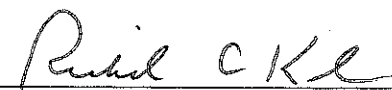
  
\_\_\_\_\_  
J. Scott Duff  
President  
Ohio Ready-Mix, Inc.

**U.S. Environmental Protection Agency, Complainant**

8/22/13  
Date

  
\_\_\_\_\_  
Sharon Jaffess, Chief  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5

8-27-13  
Date

  
\_\_\_\_\_  
Richard C. Karl, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

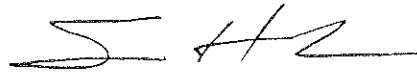
In the Matter of: Ohio Ready Mix, Inc.  
Docket No. [ ] EPCRA-05-2013-0024

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

8-27-13

Date



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Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5



In the Matter of: Oho Ready-Mix, Inc.

Docket No. EPCRA-05-2013-0024

Certificate of Service

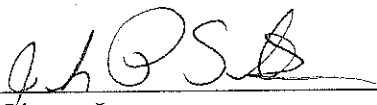
I, Ginger Jager, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed copies of the CAFO by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's attorney by placing it in the custody of the United States Postal Service addressed as follows:

J. Scott Duff  
President  
Ohio Ready-Mix, Inc.  
9016 State Route 117, P.O. Box 305  
Huntsville, OH 43324

Kevin P. Braig  
Dinsmore & Shohl LLP  
191 West Nationwide Boulevard, Suite 300  
Columbus, OH 43215



on the 29<sup>th</sup> day of August, 2013

  
~~Ginger Jager~~  
U.S. Environmental Protection Agency  
Region 5