



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

1 4 NOV 2016

CERTIFIED MAIL RETURN RECEIPT REQUESTED #7009 1680 0002 2748 4239

Mr. James Taylor
President
Falcon Steel
4201 Old Denton Road
Haltom City, TX 76117

**RE: In the Matter of Falcon Steel, Haltom City, Texas: and Kaufman, Texas
EPA Docket #: EPCRA-06-2017-0502**

Dear Mr. Taylor:

Enclosed is a copy of the fully executed Consent Agreement and Final Order (CAFO) for the above referenced facility that has been filed with the EPA Region 6 Regional Hearing Clerk. As set forth in Section IV, of the CAFO, and agreed upon by both parties, Falcon Steel has thirty (30) days from the filing date to submit its payment of **\$120,000.00**. Your payment should be made payable to the Treasurer, United States of America, EPA – Region 6. To ensure proper credit is applied to your case, please specify the docket number, listed above, on your method of payment. In addition, please forward a photocopy of your payment and transmittal letter to the EPA personnel listed in the CAFO. Once our Cincinnati Finance Office acknowledges receipt of your payment, we shall consider this case closed.

If you have any questions regarding this matter, please contact James Murdock at (214) 665-7302 or Morton E. Wakeland, Jr., of my staff, at (214) 665-8116. Your cooperation in the settlement of this case is most appreciated.

Sincerely,

A handwritten signature in black ink that reads "Stacey B. Dwyer".

Stacey B. Dwyer, P.E.
Acting Director
Compliance Assurance and
Enforcement Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2016 NOV 15 PM 1:37
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

FALCON STEEL
HALTOM CITY, TX
KAUFMAN, TX

RESPONDENT

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DOCKET NO. EPCRA-06-2017-0502

CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Falcon Steel – Haltom City, Texas and Kaufman, Texas (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 the Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

5. The Respondent consents to the issuance of this CAFO, to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

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

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

8. The Respondent hereby certifies that as of the date of the execution of this CAFO, Respondent 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) that 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, for the preceding calendar 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. The Respondent is a corporation formed under the laws of the State of Texas, and is authorized to do business in the State of Texas.

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

13. Prior to August 27, 2016, Respondent owned and operated manufacturing facilities located at 4201 Old Denton Road, Haltom City, Texas 76117 and 1200 Rand Road, Kaufman, Texas 75142.

14. Each of the facilities identified in Paragraph 13 is a "facility", as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

15. Each of Respondent's facilities had ten or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3 for calendar years 2010 through 2014.

16. Both of Respondent's facilities have a primary Standard Industrial Classification (SIC) code 3441 [fabricated structural metal] and primary North American Industrial Classification System (NAICS) subsector or industry code 332312 [fabricated structural metal manufacturing] is covered under 40 C.F.R. Part 372 and applies to a facility with these primary codes.

17. During calendar years 2011 through 2014, Respondent's facility in Haltom City, Texas "manufactured, processed, or otherwise used" propylene in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.

18. During calendar years 2013 and 2014, Respondent's facility in Haltom City, Texas "manufactured, processed, or otherwise used" manganese in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.

19. During Calendar years 2013 and 2014, Respondent's facility in Kaufman, Texas "manufactured, processed, or otherwise used" manganese in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.

20. During Calendar year 2012, Respondent's facility in Kaufman, Texas "manufactured, processed, or otherwise used" hydrofluoric acid in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25

21. Propylene, manganese, and hydrofluoric acid are toxic chemicals within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

22. On June 1, 2015, a representative from EPA conducted an on-site inspection of the Haltom City facility and collected information from the Kaufman location.

B. VIOLATIONS

Kaufman Facility

i. Hydrofluoric Acid

23. During calendar year 2012, Respondent "manufactured, processed, or otherwise used" hydrofluoric acid in excess of the applicable threshold quantity.

24. Respondent failed to submit the required Form R for hydrofluoric acid by July 1st of 2013.

25. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for

hydrofluoric acid for calendar year 2012 to EPA and to the State of Texas by the applicable due date.

ii. Manganese 2013

26. During calendar year 2013, Respondent “manufactured, processed, or otherwise used” manganese in excess of the applicable threshold quantity.

27. Respondent failed to submit the required Form R for manganese by July 1st of 2014.

28. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for manganese for calendar year 2013 to EPA and to the State of Texas by the applicable due date.

iii. Manganese 2014

29. During calendar year 2014, Respondent “manufactured, processed, or otherwise used” manganese in excess of the applicable threshold quantity.

30. Respondent failed to submit the required Form R for manganese by July 1st of 2015.

31. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for manganese for calendar year 2014 to EPA and to the State of Texas by the applicable due date.

Haltom City

iv. Propylene 2011

32. During calendar year 2011, Respondent “manufactured, processed, or otherwise used” propylene in excess of the applicable threshold quantity.

33. Respondent failed to submit the required Form R for propylene by July 1st of 2012.

34. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for propylene for calendar year 2011 to EPA and to the State of Texas by the applicable due date.

v. Propylene 2012

35. During calendar year 2012, Respondent “manufactured, processed, or otherwise used” propylene in excess of the applicable threshold quantity.

36. Respondent failed to submit the required Form R for propylene by July 1st of 2013.

37. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for propylene for calendar year 2012 to EPA and to the State of Texas by the applicable due date.

vi. Propylene 2013

38. During calendar year 2013, Respondent “manufactured, processed, or otherwise used” propylene in excess of the applicable threshold quantity.

39. Respondent failed to submit the required Form R for propylene by July 1st of 2014.

40. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for propylene for calendar year 2013 to EPA and to the State of Texas by the applicable due date.

vii. Propylene 2014

41. During calendar year 2014, Respondent “manufactured, processed, or otherwise used” propylene in excess of the applicable threshold quantity.

42. Respondent failed to submit the required Form R for propylene by July 1st of 2015.

43. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for propylene for calendar year 2014 to EPA and to the State of Texas by the applicable due date.

viii. Manganese 2013

44. During calendar year 2013, Respondent “manufactured, processed, or otherwise used” manganese in excess of the applicable threshold quantity.

45. Respondent failed to submit the required Form R for manganese by July 1st of 2014.

46. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for manganese for calendar year 2013 to EPA and to the State of Texas by the applicable due date.

ix. Manganese 2014

47. During calendar year 2014, Respondent “manufactured, processed, or otherwise used” manganese in excess of the applicable threshold quantity.

48. Respondent failed to submit the required Form R for manganese by July 1st of 2015.

49. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for manganese for calendar year 2014 to EPA and to the State of Texas by the applicable due date.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

50. For the reasons set forth above, the 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), which authorizes EPA to assess a civil penalty of up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500) per day for each violation of EPCRA.¹ 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 the Respondent, ability to pay, history of prior EPCRA Section 313 violations, the degree of culpability, economic benefit or savings (if any)

¹ 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, for violations occurring between January 30, 1997 and March 15, 2004, and \$32,500 per day for violations which occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for violations which occurred after January 12, 2009.

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resulting from the violations, and other factors as justice may require, it is **ORDERED** that respondent be assessed a civil penalty of **One hundred twenty thousand dollars and no cents (\$120,000.00)**.

51. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

52. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty 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:

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

In the Matter of Falcon Steel, Haltom City, TX and Kaufman, TX, Docket No. EPCRA 06-2017-0502

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 06-2017-0502 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 the 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 the Respondent's name and address, the case name, and docket number of the CAFO. The 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:

Morton Wakeland
EPCRA 313 Enforcement
Toxics Section (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

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

53. 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.

54. 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.

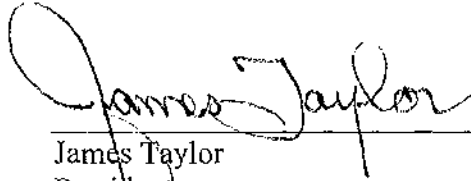
55. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed 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).

56. EPA will also assess a \$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 \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent 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).

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

FOR THE RESPONDENT:

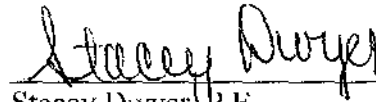
Date: 11/7/16



James Taylor
President
Falcon Steel (Haltom City, Texas & Kaufman,
Texas)

FOR THE COMPLAINANT:

Date: 11/14/2016



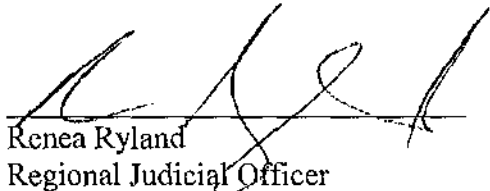
Stacey Dwyer, P.E.
Acting Director
Compliance Assurance and
Enforcement Division
U.S. EPA Region 6

V. FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 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. The 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

11/15/16

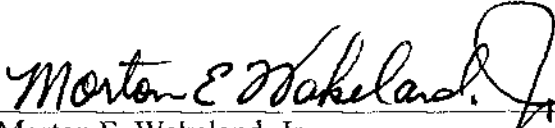

Renea Ryland
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 2016, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) 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 of the CAFO was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED # 7009 1680 0002 2748 4239

Mr. James Taylor
President
Falcon Steel
4201 Old Denton Road
Haltom City, TX 76117


Morton E. Wakeland, Jr.
EPCRA § 313 Enforcement and TRI Program
Coordinator
U.S. EPA Region 6
Dallas, TX 75202