



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAR 09 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Earl W. Phillips, Jr., Esq.
Robinson & Cole, LLP
280 Trumbull Street
Hartford, Connecticut 06103-3597

Re: Meyer Material Company, McHenry, Illinois, Consent Agreement and Final Order, Docket No. EPCRA-05-2011-0014

Dear Mr. Phillips:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on MAR 09 2011.

Please pay the civil penalty in the amount of \$52,500 in the manner prescribed in paragraph 126, and reference your check with the billing document number 2751144E013 and the docket number EPCRA-05-2011-0014.

Your payments are due on APR 08 2011 [within 30 days of filing date].

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 John P. Stekete, Associate Regional Counsel, at (312) 886-0558. Thank you for your assistance in resolving this matter.

Sincerely,

Silvia Palomo, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

In the Matter of:

Meyer Material Company,
McHenry, Illinois,

Respondent.

RECEIVED
MAR 09 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

Docket No. EPCRA-05-2011-0014

Proceeding to Assess a Civil Penalty Under
and Section 325(c)(2) of the Emergency Planning
and Community Right-to-Know Act of 1986

Consent Agreement and Final Order Commencing and Concluding the Proceeding

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325 (c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), 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. 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).
3. The Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (EPA), Region 5.
4. The Respondent is the Meyer Material Company, an Illinois corporation with a main office located at 1819 North Dot Street, McHenry, Illinois.
5. Respondent is owned and operated by the Meyer Material Holding Company, Inc., a Delaware corporation.

6. The Meyer Material Holding Company, Inc. is a member of the Aggregate Group of companies, and is owned and operated by Aggregate Industries Management, Inc., which has a corporate headquarters located at 7529 Standish Place, Rockville, Maryland.

7. At all times relevant to this CAFO, Respondent was an owner or operator of a facility located at 580 South Wolf Road, Des Plaines, Illinois (Facility A).

8. At all times relevant to this CAFO, Respondent was an owner or operator of a facility located at 515 Spring Avenue, Naperville, Illinois (Facility B).

9. At all times relevant to this CAFO, Respondent was an owner or operator of a facility located at 1021 Frances Avenue, Streamwood, Illinois (Facility C).

10. At all times relevant to this CAFO, Respondent was an owner or operator of a facility located at 129 South Railroad Avenue, Wheeling, Illinois (Facility D).

11. At all times relevant to this CAFO, Respondent conducted business in the State of Illinois.

12. 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.

13. 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

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

15. 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.

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

Statutory and Regulatory Background

17. The owner or operator of a facility, which is required by the Occupational Safety and Health Act of 1970 (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), the community emergency coordinator for the local emergency planning committee (LEPC) and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form. i.e. a Tier I or Tier II as described in 40 C.F.R. Part 370. *See* Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations, found at 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.

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

18. The Federal regulations found at 29 C.F.R. § 1910.1200(b)(1) require all employers to provide information to their employees about the hazardous chemicals to which they are exposed, including any chemical which is known to be present in the workplace in such a

manner that employees may be exposed under normal conditions of use or in a foreseeable emergency, by means of a hazard communications program under which MSDSs are prepared and distributed to employees pursuant to 29 C.F.R. § 1910.1200(b)(1).

19. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

20. 29 C.F.R. 1910.2(c) defines the term “employer” as a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

21. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define the term “facility” as all buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned by the same person or by any person which controls, is controlled by, or under common control with, such person.

22. Sections 311(e) and 329(5) of EPCRA, 42 U.S.C. §§ 11021(e) and 11049(5), 40 C.F.R. § 370.2 and 29 C.F.R. § 1910.1200(c) define the term “hazardous chemical” as any chemical which is a physical or health hazard, not including several listed substances.

23. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines the term “person” as including, among other things, a corporation.

General Allegations

24. Respondent was, at all times relevant to the CAFO, a corporation and, therefore, was a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

25. Respondent’s facilities A through D, at all times relevant to the CAFO, consisted 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, therefore, each of Respondent's facilities A through D was a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

26. Respondent was, at all times relevant to this CAFO, engaged in businesses at facilities A through D affecting commerce which had employees, therefore, Respondent was an "employer" as that term is defined under 40 C.F.R. 1910.2(c).

27. Portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds are all chemicals which are physical or health hazards and are not exempt from EPCRA under Section 311(e)(1) through (e)(5), 42 U.S.C. § 11021(e)(1) through (e)(5), therefore, they are "hazardous chemicals" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e) and 29 C.F.R. § 1910.1200(c).

28. Respondent's employees were exposed to hazardous chemicals at facilities A through D and, therefore, Respondent was, at all times relevant to this CAFO, required to provide information to Respondent's employees at facilities A through D about the hazardous chemicals to which they were exposed, including any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency, by means of a hazard communications program under which MSDSs are prepared and distributed to employees pursuant to 29 C.F.R. § 1910.1200(b)(1).

29. Portland Cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds have minimum threshold levels of 10,000 pounds, as provided in 40 C.F.R. Part 370.

30. During at least one period of time in calendar year 2005, portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds were present at Facility A in an amount equal to or greater than the minimum threshold level.

31. During at least one period of time in calendar year 2006, portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds were present at the Facility A, Illinois, facility in an amount equal to or greater than the minimum threshold level.

32. During at least one period of time in calendar year 2007, portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds were present at Facility A in an amount equal to or greater than the minimum threshold level.

33. During at least one period of time in calendar year 2005, portland cement, fly ash, calcium chloride, sand/gravel and diesel fuel were present at Facility B in an amount equal to or greater than the minimum threshold level.

34. During at least one period of time in calendar year 2006, portland cement, fly ash, calcium chloride, sand/gravel and diesel fuel were present at the Facility B in an amount equal to or greater than the minimum threshold level.

35. During at least one period of time in calendar year 2007, portland cement, fly ash, calcium chloride, sand/gravel and diesel fuel were present at Facility B in an amount equal to or greater than the minimum threshold level.

36. During at least one period of time in calendar year 2005, portland cement, fly ash, calcium chloride and sand/gravel were present at Facility C in an amount equal to or greater than the minimum threshold level.

37. During at least one period of time in calendar year 2006, portland cement, fly ash, calcium chloride and sand/gravel were present at Facility C in an amount equal to or greater than the minimum threshold level.

38. During at least one period of time in calendar year 2007, portland cement, fly ash, calcium chloride and sand/gravel were present at the Facility C in an amount equal to or greater than the minimum threshold level.

39. During at least one period of time in calendar year 2005, portland cement, fly ash, calcium chloride, sand/gravel and nitrate compounds were present at the Facility D in an amount equal to or greater than the minimum threshold level.

40. During at least one period of time in calendar year 2006, portland cement, fly ash, calcium chloride, sand/gravel and nitrate compounds were present at Facility D in an amount equal to or greater than the minimum threshold level.

41. During at least one period of time in calendar year 2007, portland cement, fly ash, calcium chloride, sand/gravel and nitrate compounds were present at Facility D in an amount equal to or greater than the minimum threshold level.

42. At all times relevant to the CAFO, OSHA required Respondent to prepare, or have available, an MSDS for portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds.

43. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over Facility A, a completed emergency and hazardous chemical inventory form including portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds on or before March 1, 2006, for calendar year 2005.

44. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over Facility A, a completed emergency and hazardous chemical inventory form including portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds on or before March 1, 2007, for calendar year 2006.

45. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over Facility A, a completed emergency and hazardous chemical inventory form including portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds on or before March 1, 2008, for calendar year 2007.

46. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over Facility B, a completed emergency and hazardous chemical inventory form including portland cement, fly ash, calcium chloride, sand/gravel and diesel fuel on or before March 1, 2006, for calendar year 2005.

47. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over Facility B, a completed emergency and hazardous chemical inventory form including portland cement, fly ash, calcium chloride, sand/gravel and diesel fuel on or before March 1, 2007, for calendar year 2006.

48. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over Facility B, a completed emergency and hazardous chemical inventory form including portland cement, fly ash, calcium chloride, sand/gravel and diesel fuel on or before March 1, 2008, for calendar year 2007.

49. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over Facility C, a completed emergency and hazardous chemical inventory form including portland cement, fly ash, calcium chloride, diesel fuel and sand/gravel on or before March 1, 2006, for calendar year 2005.

50. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over Facility C, a completed emergency and hazardous chemical inventory form including portland cement, fly ash, calcium chloride, diesel fuel and sand/gravel

on or before March 1, 2007, for calendar year 2006.

51. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over Facility C, a completed emergency and hazardous chemical inventory form including portland cement, fly ash, calcium chloride, diesel fuel and sand/gravel on or before March 1, 2008, for calendar year 2007.

52. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over Facility D, a completed emergency and hazardous chemical inventory form including portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds on or before March 1, 2006, for calendar year 2005.

53. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over Facility D, a completed emergency and hazardous chemical inventory form including portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds on or before March 1, 2007, for calendar year 2006.

54. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over Facility D, a completed emergency and hazardous chemical inventory form including portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds on or before March 1, 2008, for calendar year 2007.

55. At all times relevant to this CAFO, the Illinois Emergency Management Agency was the SERC for Illinois under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

56. At all times relevant to this CAFO, the Suburban Cook County LEPC was the LEPC for Facilities A, C and D under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

57. At all times relevant to this CAFO, the DuPage County LEPC was the LEPC for Facility B under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

58. At all times relevant to this CAFO, the Des Plaines Fire Department was the fire department with jurisdiction over the Facility A.

59. At all times relevant to this CAFO, the Naperville Fire Department was the fire department with jurisdiction over Facility B.

60. At all times relevant to this CAFO, the Streamwood Fire Department was the fire department with jurisdiction over Facility C.

61. At all times relevant to this CAFO, the Wheeling Fire Prevention Bureau was the fire department with jurisdiction over Facility D.

62. On or about March 6, 2006, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2005 for Facilities A, B, C and D with the Illinois Emergency Management Agency (SERC).

63. On or about March 6, 2006, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2005 for Facilities A, C and D with the Suburban Cook County LEPC.

64. On or about March 6, 2006, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2005 for Facility B with the DuPage County LEPC.

65. On or about March 6, 2006, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2005 for Facility A with the Des Plaines Fire Department.

66. On or about March 6, 2006, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2005 for Facility B with the Naperville Fire Department.

67. On or about March 6, 2006, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2005 for Facility C with the Streamwood Fire Department.

68. On or about March 6, 2006, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2005 for Facility D with the Wheeling Fire Prevention Bureau.

69. On or about April 3, 2007, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2006 for Facilities A, B, C and D with the Illinois Emergency Management Agency (SERC).

70. On or about April 3, 2007, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2006 for Facilities A, C and D with the Suburban Cook County LEPC.

71. On or about April 3, 2007, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2006 for Facility B with the DuPage County LEPC.

72. On or about April 3, 2007, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2006 for Facility A with the Des Plaines Fire Department.

73. On or about April 3, 2007, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2006 for Facility B with the Naperville Fire Department.

74. On or about April 3, 2007, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2006 for Facility C with the Streamwood

Fire Department.

75. On or about April 3, 2007, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2006 for Facility D with the Wheeling Fire Prevention Bureau.

76. On or about March 24, 2008, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2007 for Facilities A, B, C and D with the Illinois Emergency Management Agency (SERC).

77. On or about March 24, 2008, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2007 for Facilities A, C and D with the Suburban Cook County LEPC.

78. On or about March 24, 2008, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2007 for Facility B with the DuPage County LEPC.

79. On or about March 24, 2008, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2007 for Facility A with the Des Plaines Fire Department.

80. On or about March 24, 2008, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2007 for Facility B with the Naperville Fire Department.

81. On or about March 24, 2008, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2007 for Facility C with the Streamwood Fire Department.

82. On or about March 24, 2008, Respondent filed an incomplete emergency and hazardous chemical inventory form for calendar year 2007 for Facility D with the Wheeling Fire Prevention Bureau.

83. On June 25, 2008, U.S. EPA notified Respondent that on July 7 and 9, 2008 representatives of U.S. EPA intended to conduct EPCRA compliance inspections of Respondent's Facilities A, B, C and D.

84. On June 26, 2008, U.S. EPA sent a certified letter to Respondent confirming the July 7 and 9, 2008 compliance inspections and noting that Respondent agreed to these compliance inspections.

85. On July 2, 2008, Respondent filed a revised emergency and hazardous chemical inventory form for calendar year 2007 for Facilities A, B, C and D with the Illinois Emergency Management Agency (SERC).

86. On July 2, 2008, Respondent filed a revised emergency and hazardous chemical inventory form for calendar year 2007 for Facilities A, C and D with the Suburban Cook County LEPC.

87. On July 2, 2008, Respondent filed a revised emergency and hazardous chemical inventory form for calendar year 2007 for Facility B with the DuPage County LEPC.

88. On July 2, 2008, Respondent filed a revised emergency and hazardous chemical inventory form for calendar year 2007 for Facility A with the Des Plaines Fire Department.

89. On July 2, 2008, Respondent filed a revised emergency and hazardous chemical inventory form for calendar year 2007 for Facility B with the Naperville Fire Department.

90. On July 2, 2008, Respondent filed a revised emergency and hazardous chemical inventory form for calendar year 2007 for Facility C with the Streamwood Fire Department.

91. On July 2, 2008, Respondent filed a revised emergency and hazardous chemical inventory form for calendar year 2007 for Facility D with the Wheeling Fire Prevention Bureau.

92. On July 7, 2008, representatives of U.S. EPA conducted an EPCRA compliance inspection of Respondent's Facilities A, C and D.

93. On July 9, 2008, representatives of U.S. EPA conducted an EPCRA compliance inspection of Respondent's Facility B.

94. During the July 7, 2008 EPCRA compliance inspection, U.S. EPA determined that the hazardous chemicals portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds were present at Facility A in an amount equal to or greater than the minimum threshold level during calendar years 2005, 2006 and 2007.

95. During the July 7, 2008 EPCRA compliance inspection, U.S. EPA determined that the hazardous chemicals portland cement, fly ash, calcium chloride and sand/gravel were present at Facility C in an amount equal to or greater than the minimum threshold level during calendar years 2005, 2006 and 2007

96. During the July 7, 2008 EPCRA compliance inspection, U.S. EPA determined that the hazardous chemicals portland cement, fly ash, calcium chloride, sand/gravel and nitrate compounds were present at Facility D in an amount equal to or greater than the minimum threshold level during calendar years 2005, 2006 and 2007.

97. During the July 9, 2008 EPCRA compliance inspection, U.S. EPA determined that the hazardous chemicals portland cement, fly ash, calcium chloride, sand/gravel and diesel fuel were present at Facility B in an amount equal to or greater than the minimum threshold level during calendar years 2005, 2006 and 2007.

(Facility A – Past Year – 2005 & 2006)

98. Respondent submitted to the SERC, LEPC and fire department an incomplete Emergency and Hazardous Chemical Inventory Form for Facility A including only diesel fuel on March 6, 2006, for calendar year 2005. a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

99. Respondent submitted to the SERC, LEPC and fire department an incomplete Emergency and Hazardous Chemical Inventory Form for Facility A including only diesel fuel on April 3, 2007, for calendar year 2006.

(Facility A – SERC, LEPC & Fire Department – 2007)

100. Respondent submitted to the SERC a revised Emergency and Hazardous Chemical Inventory Form for Facility A including portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds on July 2, 2008, for calendar year 2007.

101. Respondent submitted to the LEPC a revised Emergency and Hazardous Chemical Inventory Form for Facility A including portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds on July 2, 2008, for calendar year 2007.

102. Respondent submitted to the Des Plaines Fire Department a revised Emergency and Hazardous Chemical Inventory Form for Facility A including portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds on July 2, 2008, for calendar year 2007.

(Facility B – Past Year – 2005 & 2006)

103. Respondent submitted to the SERC, LEPC and fire department for Facility B an incomplete Emergency and Hazardous Chemical Inventory Form including only diesel fuel on March 6, 2006, for calendar year 2005.

104. Respondent submitted to the SERC, LEPC and fire department an incomplete

Emergency and Hazardous Chemical Inventory Form for Facility B including only diesel fuel on March 26, 2007, for calendar year 2006.

(Facility B – SERC, LEPC & Fire Department – 2007)

105. Respondent submitted to the SERC a revised Emergency and Hazardous Chemical Inventory Form for Facility B including portland cement, fly ash, calcium chloride, sand/gravel and diesel fuel on July 2, 2008, for calendar year 2007.

106. Respondent submitted to the LEPC a revised Emergency and Hazardous Chemical Inventory Form for Facility B including portland cement, fly ash, calcium chloride, sand/gravel and diesel fuel on July 2, 2008, for calendar year 2007.

107. Respondent submitted to the Naperville Fire Department a revised Emergency and Hazardous Chemical Inventory Form for the Facility B including portland cement, fly ash, calcium chloride, sand/gravel and diesel fuel on July 2, 2008, for calendar year 2007.

(Facility C – Past Year – 2005 & 2006)

108. Respondent submitted to the SERC, LEPC and fire department for Facility C an incomplete Emergency and Hazardous Chemical Inventory Form including only diesel fuel on March 6, 2006 for calendar year 2005.

109. Respondent submitted to the SERC, LEPC and fire department an incomplete Emergency and Hazardous Chemical Inventory Form for Facility C including only diesel fuel on March 26, 2007 for calendar year 2006.

(Facility C – SERC, LEPC & Fire Department – 2007)

110. Respondent submitted to the SERC a revised Emergency and Hazardous Chemical Inventory Form for Facility C including portland cement, fly ash, calcium chloride, sand/gravel and diesel fuel on July 2, 2008, for calendar year 2007.

111. Respondent submitted to the LEPC a revised Emergency and Hazardous Chemical Inventory Form for Facility C including portland cement, fly ash, calcium chloride, sand/gravel and diesel fuel on July 2, 2008, for calendar year 2007.

112. Respondent submitted to the Streamwood Fire Department a revised Emergency and Hazardous Chemical Inventory Form for Facility C including portland cement, fly ash, calcium chloride, sand/gravel and diesel fuel on July 2, 2008, for calendar year 2007.

(Facility D – Past Year – 2005 & 2006)

113. Respondent submitted to the SERC, LEPC and fire department for Facility D an incomplete Emergency and Hazardous Chemical Inventory Form including only diesel fuel on March 6, 2006 for calendar year 2005.

114. Respondent submitted to the SERC, LEPC and fire department an incomplete Emergency and Hazardous Chemical Inventory Form for Facility D including only diesel fuel on March 26, 2007 for calendar year 2006.

(Facility D – SERC, LEPC & Fire Department – 2007)

115. Respondent submitted to the SERC a revised Emergency and Hazardous Chemical Inventory Form for Facility D including portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds on July 2, 2008, for calendar year 2007.

116. Respondent submitted to the LEPC a revised Emergency and Hazardous Chemical Inventory Form for Facility D including portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds on July 2, 2008, for calendar year 2007.

117. Respondent submitted to the Wheeling Fire Department a revised Emergency and Hazardous Chemical Inventory Form for Facility D including portland cement, fly ash, calcium chloride, sand/gravel, diesel fuel and nitrate compounds on July 2, 2008, for calendar year 2007.

118. Each day Respondent failed to timely and properly submit, to the SERC, LEPC and the Fire Departments listed above, a complete and accurate Emergency and Hazardous Chemical Inventory Form for Facilities A, B, C and D by March 1st, for the prior calendar year, constituted a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

119. On April 22, 2010 EPA issued to Respondent a Notice of Intent (NOI) to file and administrative complaint against the Meyer Material Company, McHenry, Illinois.

120. The parties met on June 2, 2010 to discuss the NOI and Respondent provided a written response to EPA on June 14, 2010.

121. The parties subsequently discussed settlement of this matter on numerous occasions prior to reaching the agreement set forth in the CAFO.

Proposed EPCRA Penalty

122. 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, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$32,500 per day of violation for violations that occurred from March 15, 2004 through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

123. Based upon an evaluation of the facts alleged in this CAFO, and after considering the nature, circumstances, extent and gravity of the violations; the violator's ability to pay; prior history of violations; degree of culpability; economic benefit or saving resulting from the violations; Complainant, using 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* (September 30, 1999)

calculated an adjusted proposed civil penalty against Respondent of Three Hundred and Fifty Two Thousand and Eighty Dollars and No Cents (\$352,080) for the EPCRA violations alleged in the CAFO.

124. In addition, EPA has reduced the proposed civil penalty by twenty percent (20%) for Respondent's cooperation and good faith in the matter; by ten percent (10%) for other factors that justice may require; and by ten percent (10%) for quick settlement in the matter, resulting in an adjusted proposed civil penalty of Two Hundred and Ten Thousand Dollars and No Cents (\$210,000) for the EPCRA violations alleged in the CAFO.

125. In addition, due to the fact that Respondent has agreed to perform three Supplemental Environmental Projects (SEPs) at a cost of at least One Hundred and Sixty Nine Thousand, Seven Hundred and Forty Three Dollars and No Cents (\$169,743), Complainant has agreed to further mitigate the \$210,000 adjusted proposed civil penalty by One Hundred and Fifty Seven Thousand, Five Hundred Dollars and No Cents (\$157,500), resulting in a final settlement penalty of Fifty Two Thousand, Five Hundred Dollars and No Cents (\$52,500).

126. Within thirty (30) days after the effective date of this CAFO, Respondent must pay the \$52,500 civil penalty for the above-listed EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

[for checks sent by express mail]

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

[The check must note the case title, i.e. In the Matter of Meyer Material
Company, McHenry, Illinois, the docket number of this CAFO and the billing
document number.]

or by electronic funds transfer, payable to the “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

[In the comment or description field of the electronic funds transfer, state the case
title, i.e. In the Matter of Meyer Material Company, McHenry, Illinois, the docket
number of this CAFO and the billing document number.]

127. In the case of payment by check, a transmittal letter, stating Respondent’s name,
the case title, Respondent’s complete address, the case docket number and the billing document
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 Boulevard
Chicago, Illinois 60604

and

Ginger Jager (SC-6J)
Superfund Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

and

John P. Steketee (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

129. If Respondent does not pay the civil penalty timely, or any stipulated penalties due under paragraph 145, below, 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.

130. 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, Respondent must pay a 6 percent (6%) per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

131. Respondent must complete three SEPs designed to protect the environment or public health by reducing pollution to the environment.

132. At its Des Plaines, Illinois facility, Respondent must complete a SEP as follows:

Respondent shall install, by no later than June 30, 2011, a RexCon RA280 dust collection system to address on site fugitive dust emissions at an estimated cost of \$98,237.

133. At its North Chicago Yard #21, Illinois facility, Respondent must complete a SEP as follows:

Respondent shall install, by no later than June 30, 2011, a RexCon RA200 dust collection system to address on site fugitive dust emissions at an estimated cost of \$65,535.

134. At its Des Plaines, and Naperville, Illinois facilities, Respondent must complete a SEP as follows:

Respondent shall install, by no later than June 30, 2011, a roof over the fuel containment area at each facility to address potential rainwater run-off contamination at an estimated cost of \$19,211.

135. Respondent must spend at least \$169,743 to purchase and install the above listed equipment.

136. Respondent shall install and operate all the equipment or structures listed in paragraphs 132, 133 and 134, on or before June 30, 2011

137. Respondent certifies that it is not required to perform or develop the above-listed SEPs by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

138. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

139. Respondent must maintain copies of the underlying invoices, receipts and billing records for all reports submitted to EPA pursuant to this CAFO. Respondent must provide the documentation of such costs within ten (10) days of EPA's request for the information.

140. Respondent must submit a SEP completion report to EPA by July 31, 2011. 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).

141. Respondent must submit all notices and reports required by this CAFO by first class mail to Ms. Ginger Jager of EPA's Superfund Division.

142. 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.

143. Following receipt of the SEP completion report described in paragraph 140, above, EPA shall notify Respondent in writing either that:

- a. Respondent has satisfactorily completed the SEP and the SEP report; or
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA intends to seek stipulated penalties under paragraph 145, below.

144. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have forty-five (45) days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent agrees to pay stipulated penalties to the United States as set forth in paragraph 145, below.

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

- a. If Respondent has spent less than the amount set forth in paragraph 135, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 135.
- b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$15,000, in addition to any penalty required under subparagraph a, above.
- c. If Respondent halts or abandons work on the SEP, the Respondent must pay a stipulated penalty of \$25,000, in addition to the penalty required under subparagraph a, above. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 136 for implementing the SEP, fails to submit timely the SEP completion report [if

appropriate] or fails to submit timely any other report or information required in paragraph 140, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$500	1 st through 14 th day
\$1,500	15 th through 30 th day
\$2,500	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

146. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

147. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 126, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

148. Any public statement that Respondent makes referring to the SEP must include the following language, "The Meyer Material Company undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against the Meyer Material Company for violations of EPCRA."

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

- a. Respondent must notify EPA in writing within ten 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 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 EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, 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.

150. Nothing in this CAFO is intended to, nor will be construed to, constitute EPA approval of the equipment or technology installed by the Respondent in connection with the SEP under the terms of this CAFO.

151. 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

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

153. This CAFO does not 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.

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

155. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for Section 312 of EPCRA.

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


157. Each person signing this 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.

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

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

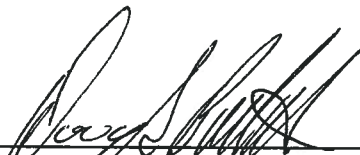
Meyer Material Company, McHenry, Illinois, Respondent

2-15-2011
Date


Norm Jagger, President
Meyer Material Company
580 South Wolf Road
Des Plaines, Illinois 60016

United States Environmental Protection Agency, Complainant

3/7/2011
Date



Richard C. Karl, Director
Superfund Division
Douglas E. Ballotti, Acting Director

In the Matter of Meyer Material Company, McHenry, Illinois
Docket No. EPCRA-05-2011-0014

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.

3-7-11
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency

RECEIVED
MAR 09 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY
FEB 24 2011
OFFICE OF REGIONAL
COUNSEL

**In the Matter of:
Meyer Material Company, McHenry, Illinois
Docket No. EPCRA-05-2011-0014**

Certificate of Service


I, Ginger Jager, certify that I hand delivered the original of the Consent Agreement and Final Order to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Meyer Material Company's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Earl W. Phillips, Jr., Esq.
Robinson & Cole, LLP
280 Trumbull Street
Hartford, CT 06103-3597

RECEIVED
MAR 09 2011

REGIONAL HEARING CLERK
USEPA
REGION 5

on the 9 day of March 2011


James Entzminger
U.S. Environmental Protection Agency
Region 5