

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2015 JUN 13 11 11 AM '15
EPA REGION 6 OFFICE
DALLAS TEXAS

IN THE MATTER OF:)
SUMCO PHOENIX CORPORATION) DOCKET NO. CAA-06-2015-3507
RESPONDENT)
_____)

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Superfund Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and SUMCO Phoenix Corporation (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 is brought by EPA pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations contained herein; however, the Respondent neither admits nor denies the specific factual allegations or conclusions of law 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 only resolve the Respondent's liability for civil penalties for those violations which are set forth herein.

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

6. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it.

7. This CAFO shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, successors and assigns.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

8. SUMCO Phoenix Corporation (Respondent) is a Delaware corporation authorized to do business in the State of New Mexico.

9. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency of the United States and any officer, agent, or employee thereof."

10. The Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

11. The Respondent operates a silicon wafer manufacturing facility located at 9401 San Mateo Boulevard, N.E., Albuquerque, New Mexico 87113.

12. "Stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3 as meaning:

any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

13. The Respondent's facility identified in Paragraph 11 is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

14. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 11.

15. Hydrogen chloride (anhydrous) [hydrochloric acid] is a "regulated substance", as set forth in 40 C.F.R. § 68.130.

16. "Process" is defined in 40 C.F.R. § 68.3 as meaning

any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of activities. For the purpose of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

17. The Respondent has a HCl tube trailer and gas supply system process at the stationary source identified in Paragraph 11.

18. The Respondent has exceeded the threshold quantity for hydrogen chloride (anhydrous) [hydrochloric acid] at the HCl tube trailer and gas supply system.

19. "Covered process" is defined in 40 C.F.R. § 68.3 as meaning "a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115."

20. The process identified in Paragraphs 17 and 18 is a "covered process" as that that term is defined by 40 C.F.R. § 68.3.

21. The covered process identified in Paragraphs 17, 18, and 20 is subject to the “Program 3” requirements of the RMP regulations and must, among other things, comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D.

22. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d), authorizes EPA to bring an administrative action for penalties that exceed \$320,000¹ and/or the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

23. EPA and the U.S. Department of Justice have jointly determined that the Complainant can administratively assess a civil penalty even though the alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

24. On or about March 13, 2014, a representative of EPA conducted an inspection of the Respondent’s facility.

B. VIOLATIONS

Count One – Failure to Establish System to Promptly Address Process Hazard Analysis Team’s Findings and Recommendations

25. 40 C.F.R. § 68.67(e) provides that the owner or operator shall establish a system to promptly address the [process hazard analysis] team’s findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are taken; complete actions as soon as possible; develop a written

¹ The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$220,000 for violations occurring between January 30, 1997 and March 15, 2004, to \$270,000 for violations occurring between March 15, 2004 and January 12, 2009, to \$295,000 for violations occurring between January 12, 2009 and December 6, 2013, and to \$320,000 for violations occurring after December 6, 2013.

schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

26. As of the March 13, 2014 EPA inspection, the Respondent failed to establish a system to promptly address the 2012 process hazard analysis team's findings and recommendations.

27. Therefore, the Respondent violated 40 C.F.R. § 68.67(c) by failing to establish a system to promptly address the 2012 process hazard analysis team's findings and recommendations.

Count Two – Failure to Update Process Hazard Analysis Every Five Years

28. 40 C.F.R. § 68.67(f) provide that at least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in 40 C.F.R. § 68.67(d), to assure that the process hazard analysis is consistent with the current process.

29. The Respondent updated the process hazard analysis for the HCl tube trailer and gas supply system in 2003.

30. The Respondent failed to update the process hazard analysis for the HCl tube trailer and gas supply system until 2012.

31. Therefore, the Respondent violated 40 C.F.R. § 68.67(f) by failing to update the process hazard analysis for the HCl tube trailer and gas supply system until 2012.

Count Three – Failure to Document Training

32. 40 C.F.R. § 68.71(c) provides that the owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by 40 C.F.R. § 68.71. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means to verify that the employee understood the training.

33. As of the March 13, 2014 EPA inspection, the Respondent failed to prepare records which contains the means to verify that its employees understood the training they received.

34. Therefore, the Respondent violated 40 C.F.R. § 68.71(c) by failing to prepare records which contains the means to verify that its employees understood the training they received.

Count Four – Failure to Conduct Certain Mechanical Integrity Inspections

35. 40 C.F.R. § 68.73(a) provides that the requirements of 40 C.F.R. § 68.73(b) – (f) applies to controls (including monitoring devices and sensors, alarms, and interlocks).

36. 40 C.F.R. § 68.73(d) provides that inspections and tests shall be conducted on process equipment. Inspections and testing procedures shall follow recognized and generally accepted good engineering practices. The frequency of inspections and tests shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

37. As of the March 13, 2014 EPA inspection, the Respondent had failed to calibrate and test certain chemical detectors consistent with the applicable manufacturers' recommendations and good engineering practices.

38. Therefore, the Respondent violated 40 C.F.R. § 68.73(d) by failing to timely calibrate and test certain chemical detectors consistent with applicable manufacturers' recommendations and good engineering practices.

Count Five – Failure to Conduct Compliance Audit Every Three Years

39. 40 C.F.R. § 68.79(a) provides that the owner or operator shall certify that they have evaluated compliance with the provisions of 40 C.F.R. Part 68, Subpart D at least every three years to verify that procedures and practices developed under 40 C.F.R. Part 68, Subpart D are adequate and are being followed.

40. The Respondent conducted a compliance audit in 2006.

41. As of the March 13, 2014 EPA inspection, the Respondent failed to conduct a compliance audit since 2006.

42. Therefore, the Respondent violated 40 C.F.R. § 68.79(a) by failing to conduct two compliance audits since 2006.

Count Six – Failure to Obtain and Evaluate Information Regarding the Contract Owner or Operator's Safety Performance and Programs

43. 40 C.F.R. § 68.87(b)(1) provides that the owner or operator, when selecting a contractor, shall obtain and evaluate information regarding the contract owner or operator's safety performance and programs.

44. As of the March 13, 2014 EPA inspection, the Respondent failed to obtain and evaluate information regarding its contractor's/contractors' safety performance and programs.

45. Therefore, the Respondent violated 40 C.F.R. § 68.87(b)(1) by failing to obtain and evaluate information regarding its contractor's/contractors' safety performance and programs.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

46. For the reasons set forth above, the Respondent has agreed to pay a civil penalty of **Seventy-Two Thousand, Two Hundred Fifty Dollars (\$72,250)**.

47. 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 mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal 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-G1
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 No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket Number CAA-06-2015-3507 shall be clearly typed on the respective checks 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:

Elizabeth Rogers
RMP Enforcement Officer
Superfund Prevention and Response Branch (6SF-PC)
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 in the Region.

48. 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.

49. 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).

50. 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). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

51. The Respondent shall implement a Hydrogen Chloride (HCl) Tube Trailer Storage Supplemental Environmental Project (SEP), as set forth below:

A. The Respondent shall construct a new building for the HCl trailers. The concrete pad for the trailers shall be sufficient to support three fully loaded HCl trailers. The building shall be equipped with gas detectors and sprinklers inside the building. The building shall be able to be monitored from inside the manufacturing facility.

B. The Respondent shall complete installation and begin operation of the HCl Tube Trailer Storage SEP no later than August 15, 2015.

52. The Respondent is responsible for the satisfactory completion of the SEPs. The total expenditure for the SEPs described in Paragraph 51 shall be no less than \$340,000. Eligible SEP costs do not include inventory on hand, overhead, additional employee time and salary, administrative expenses, legal fees, and oversight of a contractor. The Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

53. The Respondent hereby certifies that, as the date of this CAFO, the Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is the Respondent required to perform or develop the SEP by any other agreement, grant, or as injunctive relief in this or any other case. The Respondent further certifies that the SEP was not a project that the Respondent was planning or intending to construct, perform, or implement other than in settlement of this action. Finally, the Respondent certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for this SEP.

54. The Respondent's signatory to this CAFO, by signing the CAFO, makes the following additional certification:

The Respondent 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 EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purpose 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 yet expired.

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

SEP Completion Report

56. The Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after completion of the SEP. The SEP Completion Report shall contain the following information:

- A. A detailed description of the SEP as implemented;
- B. A description of any operating or logistical problems encountered and the solutions thereto;
- C. Itemized final costs with copies of receipts for all expenditures;
- D. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
- E. A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of this SEP.

57. The Respondent agrees that failure to timely submit the final SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 62.F.

58. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

59. The Respondent shall submit the following certification in the SEP Completion Report, signed by a responsible corporate official:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

60. After receipt of the SEP Completion Report described in Paragraph 56 above, EPA will notify the Respondent, in writing, regarding: (a) any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (b) indicate that EPA concludes that the project has been completed satisfactorily; or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 62 below.

61. If EPA elects to exercise option (a) in Paragraph 60 above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself. EPA shall permit the Respondent the opportunity to object in writing to the notification of deficiency given pursuant to Paragraph 60 within ten (10) days of receipt of such notification. EPA and the Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon the Respondent. The Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event the SEP is not completed as reasonably contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 62 herein.

Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-On Amount

62. In the event that the Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in Paragraph 51 of this CAFO and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 52 above, the Respondent shall be liable for stipulated penalties according to the provisions set forth below:

A. Except as provided in subparagraph (B) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, the Respondent shall pay a stipulated penalty to the United States in the amount of \$216,750 (100% of the amount the penalty was mitigated).

B. If the SEP is not completed in accordance with Paragraphs 51 - 52, but EPA determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, the Respondent shall not be liable for any stipulated penalty.

C. If the SEP is completed in accordance with Paragraphs 51 - 52, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, the Respondent shall pay a stipulated penalty to the United States in the amount of \$108,375 [50% of the amount the penalty was mitigated penalty (\$216,750)].

D. If the SEP is completed in accordance with Paragraphs 51 - 52 and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, the Respondent shall not be liable for any stipulated penalty.

E. If the Respondent fails to timely complete the SEP for any reason, the Respondent shall pay stipulated penalties as follows:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 1,000
16th through 30th day	\$ 1,500
31st day and beyond	\$ 2,500

F. For failure to submit the SEP Completion Report required by Paragraph 56 above, the Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due, until the report is submitted.

63. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

64. Stipulated penalties for Paragraphs 62.E and 62.F above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

65. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 47 herein. Interest and late charges shall be paid as stated in Paragraphs 49 - 50 herein.

C. NOTIFICATION

66. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication:

Complainant:

Elizabeth Rogers
RMP Enforcement Officer
Superfund Prevention and Response Branch (6SF-PC)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent:

Don "Quatro" Baker IV
EHS Manager
SUMCO Phoenix Corporation
SUMCO Albuquerque
9401 San Mateo Boulevard, NE
Albuquerque, NM 87113

D. MODIFICATION

67. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and the Respondent, and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

E. RETENTION OF ENFORCEMENT RIGHTS

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

69. Nothing in this CAFO shall relieve the Respondent of the duty to comply with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

70. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

71. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the EPA or

United States to obtain penalties or injunctive relief under the Clean Air Act or under other federal or state laws, regulations, or permit conditions.

72. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to this Facility, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

73. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the Clean Air Act or with any other provisions of federal, State, or local laws, regulations, or permits.

F. COSTS

74. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

G. TERMINATION

75. At such time as the Respondent believes it is in compliance with all of the requirements of this CAFO, it may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

H. EFFECTIVE DATE

76. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

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

FOR THE RESPONDENT:

Date: _____

4/2/15



SUMCO Phoenix Corporation

FOR THE COMPLAINANT:

Date: 4/22/15



Carl Edlund, P.E.
Director
Superfund Division
EPA – Region 6

FINAL ORDER

Pursuant to the Section 113 of the CAA, 42 U.S.C. § 7413, 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 relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondent's (or their 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 as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 4/23/15 _____



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of April, 2015, 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, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by certified mail, return receipt requested 7007 3020 0002 5102 1868:

Don "Quatro" Baker IV
EHS Manager
SUMCO Phoenix Corporation
SUMCO Albuquerque
9401 San Mateo Boulevard, NE
Albuquerque, NM 87113


