



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 22 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jackie W. Morris
Quality & Environmental Manager
Bender Shipbuilding & Repair Company, Inc.
265 South Water Street
P.O. Box 42
Mobile, AL 36601

SUBJ: Bender Shipbuilding & Repair Company, Inc.
Consent Agreement and Final Order
Docket No. EPCRA-04-2007-2026(b)

Dear Mr. Morris:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) matter (Docket No. EPCRA-04-2007-2026(b)) involving Bender Shipbuilding & Repair Company, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the Environmental Protection Agency (EPA). If you have any questions with regards to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Mr. Charles Combs at (404) 562-9179.

Sincerely,

A handwritten signature in black ink, appearing to read "Caron B. Falconer".

Caron B. Falconer, Chief
EPCRA Enforcement Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
Bender Shipbuilding and)
Repair Company, Inc.)
)
Respondent.)
_____)

Docket Number: EPCRA-04-2007-2026 (b)

HEARING CLERK

2007 MAY 22 AM 9:00

RECEIVED
EPA REGION IV

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 CFR Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Bender Shipbuilding and Repair Company, Inc.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has re-delegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4 Respondent is Bender Shipbuilding and Repair Company, Inc., a corporation doing business in the State of Alabama.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

6. Respondent owns and operates a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 265 South Water Street, Mobile, Alabama.

8. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 CFR §§ 372.22 and 372.30, require the owner or operator of a facility that (a) has 10 or more full-time employees; (b) is in a covered Standard Industrial Classification (SIC) code, which is defined as follows: major group codes 10 (except 1011, 1081, 1094), 12 (except 1241), 20-39, 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C, 42 U.S.C. § 6921 et seq.), 5169, 5171, and 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); and (c) that manufactured, processed, or otherwise used a toxic chemical listed under Section 313(c) and in 40 CFR § 372.65, in excess of an applicable threshold quantity established under EPCRA Section 313(f) and set forth in 40 CFR § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory reporting Form R (EPA Form 9350-1) to the Administrator of EPA and to the State in which the 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 the preceding calendar year.

9. As set forth at EPCRA Section 313(f) and 40 CFR § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds per calendar year. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds.

10. Respondent has 10 or more full-time employees, as defined at 40 CFR § 372.3 at its facility.

11. Respondent's facility is classified in a covered SIC code as described at 40 CFR § 372.22.

12. Respondent's facility processed or otherwise used a toxic chemical listed under category of EPCRA Section 313(c) and 40 CFR § 372.65, in excess of the 25,000 pound threshold quantity established under EPCRA Section 313(f) and 40 CFR § 372.25, during calendar year(s) 2002, 2003, and 2004.

13. Respondent failed to submit Form R reports for Xylene and N-Butyl alcohol to the Administrator of EPA and to the official designated by the Governor of the State of Alabama by July 1 of the reporting year.

14. Respondent violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, at its facility for calendar year(s) 2002, 2003, and 2004, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

15. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 CFR Part 19, EPA may assess a penalty of not more than \$27,500, for each violation of Section 313 that occurred after January 30, 1997, and \$32,500 after March 15, 2004. Each day a violation of Section 313 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by an Administrative Order.

16. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 CFR Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, by March 1, 1988, and on or before March 1 annually thereafter, a completed emergency and hazardous chemical inventory form (Tier I or Tier II) as described in 40 CFR Part 370, containing the information required by that part for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds and containing the information required by that part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less.

17. At some time during the calendar year(s) of 2002, 2003, and 2004, Oxygen was present at the facility in an amount equal to or greater than 10,000 pounds.

18. Oxygen is a hazardous chemical as defined under Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), for which Respondent is required to prepare or have available an MSDS under OSHA at its facility.

19. Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for Oxygen to the SERC, the LEPC, and fire department with jurisdiction over the facility for calendar year(s) 2002, 2003, and 2004, by March 1 of the year following the calendar year for which a report was required.

20. Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facility for calendar year(s) 2002, 2003, and 2004, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

21. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 CFR Part 19, EPA may assess a penalty of not more than \$27,500 for each violation of Section 312 that occurred on or after January 30, 1997, and \$32,500 after March 15, 2004. Each day a violation of Section 312 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by Administrative Order.

III. Consent Agreement

22. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

23. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

24. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

25. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

26. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

27. Compliance with this CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for a violation of any federal or state statute, regulation or permit; to initiate an action for imminent and substantial endangerment; or to pursue criminal enforcement.

28. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public's interest and that this CAFO is consistent with the applicable requirements of EPCRA.

IV. Final Order

29. Respondent shall pay a civil penalty of TWENTY-ONE THOUSAND THREE HUNDRED SEVENTY-SIX DOLLARS (\$21,376) for violations alleged in Section II. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

30. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to the following address:

U.S. Environmental Protection Agency
 Box 371099M
 Pittsburgh, PA 15651

The check shall reference on its face the name and the Docket Number of the CAFO.

31. Respondent shall undertake and complete, in accordance with the approved SEP in this matter, the following Emergency Planning and Preparedness project within 60 days of the effective date of this CAFO: Expend a total of EIGHTY-TWO THOUSAND EIGHT HUNDRED FIFTY-SEVEN DOLLARS (\$82,857) for the purchase and donation of the following equipment to the Mobile Fire – Rescue Department located in Mobile, Alabama:

- 1 2007 Zodiac Pro 20 Man Pack Rib boat –
27'11"long
- 1 250 hp Yamaha outboard motor or equivalent
- 1 Binnacle control with wiring, instruments, etc.
- 1 Stainless steel propeller
- 1 Console and console seat
- 1 Remote control spotlight – ARC
- 1 VHF Radio, std. horizon dual w. GPS depth & chart
plotter
- 1 VHF Antenna w. ratchet mount
- 1 Custom towing bracket
- 1 200 Ft of towing line and bridle
- 4 ½" x 40' Docking lines
- 2 ½" x 20' Docking lines
- 1 Fortress anchor
- 1 Anchor chain
- 2 S/S Shackles
- 1 ½" x 200' Anchor line w. thimble
- 1 US Coast Guard kit
- 1 US Coast Guard 46CFR Medical kit
- 1 Hailer horn
- 12 Type I US Coast Guard Life preservers @ \$65.82
- 1 Extra pump – Honda, gasoline-powered, 4320 gph
Freight
Outrigging
Fuel for sea trial and training
Sea trial, training and orientation

32. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

33. No later than 90 calendar days after the effective date of the CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Mr. Charles Combs at the address provided above. The Report shall include the following:

(a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it;

(b) copies of appropriate documentation, including invoices and canceled checks, showing total amounts of EIGHTY-TWO THOUSAND EIGHT HUNDRED FIFTY-SEVEN DOLLARS (\$82,857), or greater, was spent on the purchases and donation of the equipment described in paragraph 31.

34. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

35. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Sections 313 and 312 of the Emergency Planning and Community Right-to-Know Act of 1986."

36. If Respondent fails to timely and fully complete any part of the SEP, including failing to spend the minimum amount of: EIGHTY-TWO THOUSAND EIGHT HUNDRED FIFTY-SEVEN DOLLARS (\$82,857), for the SEP, Respondent shall be liable for stipulated penalties of the difference between \$82,857 and the amount actually expended, except as follows below:

(a) if the SEP was fully and timely completed, and Respondent expended at least 90 percent of the minimum amount required, Respondent shall not pay a stipulated penalty; or

(b) if the SEP was not fully and timely completed, but Respondent expended at least 90 percent of the minimum amount required, Respondent shall not pay a stipulated penalty if the Respondent has made a good faith effort to fully and timely complete the SEPs.

For purposes of this paragraph, whether Respondent has fully and timely completed the SEP and whether Respondent made a good faith, timely effort to do so shall be in the sole discretion of EPA.

37. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day the report is late.

38. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty. If Respondent believes the demand for payment of any stipulated penalty is erroneous or contrary to law, Respondent may request a meeting with the Director, Air, Pesticides & Toxics Management Division.

39. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of the CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

40. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

41. This CAFO shall be binding upon the Respondent, its successors, and assigns.

42. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8451

43. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

V. Effective Date

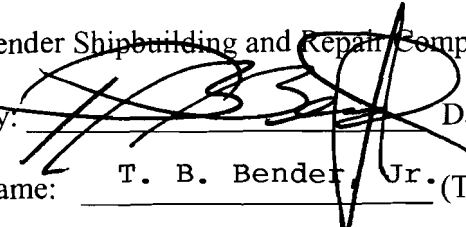
44. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

V. Effective Date

45. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

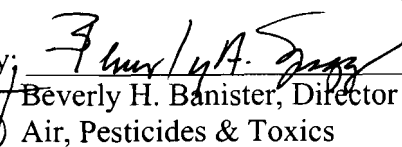
Bender Shipbuilding and Repair Company, Inc.

By:  Date: 5/11/07

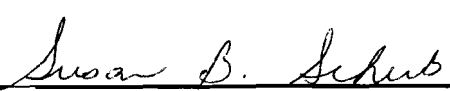
Name: T. B. Bender, Jr. (Typed or Printed)

Title: President (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 4/27/07
Beverly H. Banister, Director
Air, Pesticides & Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 22nd day of May, 2007.



Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of Bender Shipbuilding and Repair Company, Inc. EPCRA-04-2007-2026(b), on the parties listed below in the manner indicated:

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Alan Dion
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Mr. Jackie Morris
Bender Shipbuilding and Repair Company, Inc.
Environmental Manager
265 South Water Street
Mobile, AL 36603

(Via Certified Mail - Return Receipt Requested)

Date:

5-22-07



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 5/21/07
(Name) (Date)

in the DEA, OATGL at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Bender Shipbuilding & Repair Co., Inc.
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 21,376
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: EPCRA 04 2007 2026(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |