



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

DEC 01 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Barry N. Voorn
Registered Agent for
Ozinga Bros., Inc.
19001 Old Lagrange Road, Suite 300
Mokena, Illinois 60448

Re: Ozinga Bros., Inc., Orland Park, Illinois, Consent Agreement and Final Order
Docket No. EPCRA-05-2012-0003

Dear Mr. Voorn:

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 DEC - 1 2011.

Please pay the civil penalty in the amount of \$27,000 in the manner prescribed in paragraph 42, and reference your check with the billing document number 2751244E004 and the docket number EPCRA-05-2012-0003.

Your payments are due on DEC 31 2011.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert S. Guenther, Associate Regional Counsel, at (312) 886-0566. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

OZINGA BROS., INC.,)
ORLAND PARK, ILLINOIS,)

RESPONDENT.)

) Docket No.: EPCRA-05-2012-0003

) Proceeding to Assess a Civil Penalty
) Under Section 325(c)(1) of the Emergency
) Planning and Community Right-to-Know
) Act, 42 U.S.C. § 11045(c)(1)

CONSENT AGREEMENT AND FINAL ORDER

1. This is an administrative action commenced and concluded under section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), and sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. part 22.

2. Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Ozinga Bros., Inc., a corporation organized under the laws of the State of Illinois, and its subsidiaries, as relevant to this document, Ozinga Ready Mix Concrete, Inc., Ozinga Illinois RMC, Inc., Ozinga Chicago RMC, Inc., and Ozinga South Suburban RMC, Inc.

4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

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

6. Respondent consents to the terms of this CAFO and to the civil penalty assessed herein.

STATUTORY AND REGULATORY BACKGROUND

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

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

JURISDICTION AND WAIVER OF THE RIGHT TO A HEARING

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

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and

hazards available to the public. A delay in reporting could result in harm to human health and the environment.

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

12. 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 per day of violation of EPCRA section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. part 19 increased these statutory maximum penalties to \$32,500 per day of violation for violations that occurred after March 15, 2004, through January 12, 2009.

ALLEGATIONS OF FACT AND LIABILITY

13. Respondent is a "person" as that term is defined under section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

14. At all times relevant to this CAFO, Respondent was an owner or operator of a facility located at 2255 South Lumber Street, Chicago, Illinois (South Lumber Street facility).

15. At all times relevant to this CAFO, Respondent was an owner or operator of a facility located at 1818 East 103rd Street, Chicago, Illinois (East 103rd Street facility).

16. At all times relevant to this CAFO, Respondent was an owner or operator of a facility located at 18825 Old LaGrange Road, Mokena, Illinois (Mokena facility).

17. At all times relevant to this CAFO, Respondent was an employer at the South Lumber Street, East 103rd Street and Mokena facilities.

18. Respondent's South Lumber Street, East 103rd Street and Mokena facilities each consist of buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites, and owned or operated by the same person.

19. Respondent's South Lumber Street, East 103rd Street and Mokena facilities are each "facilities" as that term is defined under section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. Diesel fuel (CAS #68476-34-6) has a flash point of 120-180 °F, thus meeting the "hazardous" definition under OSHA.

21. Diesel fuel is a "hazardous chemical" within the meaning of section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 10.1200(c).

22. Diesel fuel has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. § 370.10(a)(2)(i).

23. During at least one period of time in each of calendar years 2006 and 2007, diesel fuel was present at each of the South Lumber Street, East 103rd Street and Mokena facilities in an amount equal to or greater than the minimum threshold level.

24. OSHA requires Respondent to prepare, or have available, a MSDS for diesel fuel at each of its South Lumber Street, East 103rd Street and Mokena facilities.

25. On or before March 1, 2007, Respondent was required to submit to the appropriate SERC, LEPC and fire department with jurisdiction a completed emergency and hazardous chemical inventory form including diesel fuel for calendar year 2006.

26. On or before March 1, 2008, Respondent was required to submit to the appropriate SERC, LEPC and fire department with jurisdiction a completed emergency and hazardous chemical inventory form including diesel fuel for calendar year 2007.

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

28. At all times relevant to this CAFO, the Cook County Local Emergency Planning Committee (CCLEPC) was the LEPC for facilities in Cook County, Illinois, under section 301(c) of EPCRA, 42 U.S.C. § 11001(c), including Respondent's South Lumber Street and East 103rd Street facilities.

29. At all times relevant to this CAFO, the Will County Emergency Management Agency (WCEMA) was the LEPC for Mokena, Illinois, under section 301(c) of EPCRA, 42 U.S.C. § 11001(c), including Respondent's Mokena facility.

30. At all times relevant to this CAFO, the Chicago Fire Department (CFD) was the fire department with jurisdiction over facilities in Chicago, Illinois, including Respondent's South Lumber Street and East 103rd Street facilities.

31. At all times relevant to this CAFO, the Mokena Fire Department (MFD) was the fire department with jurisdiction over facilities in Mokena, Illinois, including Respondent's Mokena facility.

32. By March 1, 2007, Respondent had not submitted to IEMA, CCLEPC and the CFD completed Emergency and Hazardous Chemical Inventory Forms including diesel fuel stored at its South Lumber Street facility during calendar year 2006.

33. By March 1, 2008, Respondent had not submitted to IEMA, CCLEPC and the CFD completed Emergency and Hazardous Chemical Inventory Forms including diesel fuel stored at its South Lumber Street facility during calendar year 2007.

34. Each day Respondent failed to submit to IEMA, CCLEPC and the CFD by March 1 of the following year completed Emergency and Hazardous Chemical Inventory Forms

for diesel fuel stored at its South Lumber Street facility during each of calendar years 2006 and 2007 constitutes a separate violation of section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

35. By March 1, 2007, Respondent had not submitted to IEMA, CCLEPC and the CFD completed Emergency and Hazardous Chemical Inventory Forms including diesel fuel stored at its East 103rd Street facility during calendar year 2006.

36. By March 1, 2008, Respondent had not submitted to IEMA, CCLEPC and the CFD completed Emergency and Hazardous Chemical Inventory Forms including diesel fuel stored at its East 103rd Street facility during calendar year 2007.

37. Each day Respondent failed to submit to IEMA, CCLEPC and the CFD by March 1 of the following year completed Emergency and Hazardous Chemical Inventory Forms for diesel fuel stored at its East 103rd Street facility during each of calendar years 2006 and 2007 constitutes a separate violation of section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

38. By March 1, 2007, Respondent had not submitted to IEMA, WCEMA and the MFD completed Emergency and Hazardous Chemical Inventory Forms including diesel fuel stored at its Mokena facility during calendar year 2006.

39. By March 1, 2008, Respondent had not submitted to IEMA, WCEMA and the MFD completed Emergency and Hazardous Chemical Inventory Forms including diesel fuel stored at its Mokena facility during calendar year 2007.

40. Each day Respondent failed to submit to IEMA, WCEMA and the MFD by March 1 of the following year completed Emergency and Hazardous Chemical Inventory Forms for diesel fuel stored at its Mokena facility during each of calendar years 2006 and 2007 constitutes a separate violation of section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

CIVIL PENALTY

41. Complainant has determined that an appropriate civil penalty to settle this action is \$27,000. In determining the penalty amount, Complainant considered Respondent's willingness to implement the supplemental environmental project described below, as well as the nature, circumstances, extent, and gravity of the violations, and with respect to this Respondent, its ability to pay, history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

42. Within 30 days after the effective date of this CAFO, Respondent must pay a \$27,000 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's, certified or business check, payable to "Treasurer, United States of America," to:

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

The check must note the following: *In the Matter of Ozinga Bros.*, the docket number of this CAFO, and the billing document number **2751244E004**

43. A transmittal letter must accompany the payment, stating Respondent's name, the case name, Respondent's complete address, the case docket number, and the billing document number. Respondent must send a copy of the check and transmittal letter to:

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

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

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

44. This civil penalty is not deductible for federal tax purposes.
45. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 59 below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
46. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

47. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by reducing diesel engine emissions in the Chicagoland area.

48. At its South Lumber Street facility, Respondent must complete the SEP as follows: Respondent will decommission an existing diesel concrete mixer truck and replace it with a new concrete mixer truck powered by compressed natural gas.

49. Respondent must spend \$81,000 to purchase the new compressed natural gas concrete mixer truck and place it into active service on any date prior to 90 days from the filing date of this CAFO.

50. Respondent must continuously use or operate the new compressed natural gas concrete mixer truck for 2 years following its acquisition and placement into active service.

51. Respondent certifies that it is not required to perform or develop the SEP 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.

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

53. In the 15th month following the filing of this CAFO, Respondent must submit to U.S. EPA a report on the implementation of the SEP, identifying the date the compressed natural gas delivery truck was placed into service.

54. Respondent must submit a SEP completion report to U.S. EPA during the 27th month following the filing of this CAFO. This report must contain the following information:

- a. Detailed description of the SEP as completed including verification that the diesel-fueled delivery truck was removed from service for at least two years;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of the compressed natural gas truck purchased;
- 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).

55. Respondent must submit all notices and reports required by this CAFO by first class mail to James Entzminger of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 43, above.

56. 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.

57. Following receipt of the SEP completion report described in paragraph 54, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 59.

58. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any reasonable requirements U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 59, below.

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

a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraphs 49 and 50, Respondent must pay a penalty of \$81,000.

b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 49, Respondent will not be liable for any stipulated penalty under subparagraph a, above.

c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 49, Respondent must pay a penalty of \$8,100.

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

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$100	1 st through 14 th day
\$200	15 th through 30 th day
\$500	31 st day and forward

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

61. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 42-46, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

62. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Ozinga Bros., Inc."

63. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct the \$81,000 expenditure incurred in performing the SEP, and any amounts spent in excess of that will be handled in compliance with all applicable tax law and regulations.

GENERAL PROVISIONS

64. In consideration of the penalty and SEP required herein, this CAFO releases, waives and discharges only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

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

66. Respondent certifies that it is complying with section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

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

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

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

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

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

Ozinga Bros., Inc., Respondent

November 11, 2011
Date

BY: Barry N. Voorn
Barry Voorn
Vice-President, Secretary and General Counsel

U.S. Environmental Protection Agency, Complainant

11-28-11
Date

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

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In the Matter of:
Ozinga Bros, Inc.
Orland Park, Illinois
Docket No.: EPCRA-05-2012-0003

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, will 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.

11-29-11

Date



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

In the Matter of:
Ozinga Bros, Inc.
Orland Park, Illinois
Docket No. EPCRA-05-2012-0003

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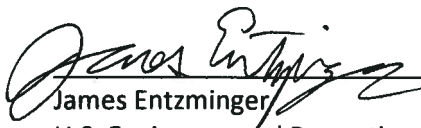
Certificate of Service

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

Barry N. Voorn
Registered Agent for
Ozinga Bros., Inc.
19001 Old Lagrange Road, Suite 300
Mokena, Illinois 60448

Richard S. Porter, Attorney
Hinshaw & Culbertson LLP
100 Park Avenue
Post Office Box 1389
Rockford, Illinois 61105-1389

on the 1 day of December 2011


James Entzminger
U.S. Environmental Protection Agency
Region 5