



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
SEP 24 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James Black
Vice President
Century Sun Metal Treating, Inc.
2411 Aero Park Court West
Traverse City, Michigan 49684

Re: Century Sun Metal Treating, Inc., Traverse City, Michigan, Consent Agreement and
Final Order, Docket No. EPCRA-05-2014-0021

Dear Mr. Black:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on September 24, 2014.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$26,093 in the manner prescribed in paragraph 48, and reference your check with the docket number EPCRA-05-2014-0021.

Your payment is due on October 24, 2014.

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 Reginald Pallesen, Associate Regional Counsel, at (312) 886-0555. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

cc: Captain Christopher A. Kelenske, Chairperson (w/ enclosure)
Susan Parker (w/ enclosure)
MI SERC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)
)
Century Sun Metal Treating, Inc.)
Traverse City, Michigan,)
Respondent.)
_____)

Docket No. EPCRA-05-2014-0021
Proceeding to Assess a Civil Penalty Under
Section 325(c)(1) of the Emergency Planning
and Community Right-to-Know Act of 1986

Consent Agreement and Final Order
Preliminary Statement

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) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency, Region 5.

3. Respondent is Century Sun Metal Treating, Inc., a corporation doing business in the State of Michigan.

4. 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).

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 assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

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

Statutory and Regulatory Background

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, by March 1 of each year, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370) to the following: the state emergency response commission (SERC); the community coordinator for the local emergency planning committee (LEPC); and the fire department with jurisdiction over the facility. 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 EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

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), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, an MSDS.

12. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

13. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes 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 \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

14. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 2411 Aero Park Court West, Traverse City, Michigan (facility).

16. At all times relevant to this CAFO, Respondent was an employer at the facility.

17. Respondent’s facility consists 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.

18. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

19. Sulfuric acid is classified as a physical or health hazard.

20. Sulfuric acid (CAS #7664-93-9) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

21. Sulfuric acid (CAS #7664-93-9) is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

22. Sulfuric acid (CAS #7664-93-9) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

23. Anhydrous ammonia is classified as a physical or health hazard.

24. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

25. Anhydrous ammonia (CAS #7664-41-7) is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

26. Anhydrous ammonia (CAS #7664-41-7) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

27. During at least one period of time in calendar year 2013, anhydrous ammonia, quench oil, nitrogen, propylene glycol, salt mixes, and sulfuric acid were present at the facility in amounts equal to or greater than the minimum threshold level.

28. OSHA requires Respondent to prepare, or have available, an MSDS for sulfuric acid.

29. OSHA requires Respondent to prepare, or have available, an MSDS for anhydrous ammonia.

30. OSHA requires Respondent to prepare, or have available, an MSDS for quench oil.

31. OSHA requires Respondent to prepare, or have available, an MSDS for nitrogen.

32. OSHA requires Respondent to prepare, or have available, an MSDS for propylene glycol.

33. OSHA requires Respondent to prepare, or have available, an MSDS for salt mixes.

34. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including, anhydrous ammonia, quench oil, nitrogen, propylene glycol, salt mixes, and sulfuric acid on or before March 1, 2014, for calendar year 2013.

35. At all times relevant to this CAFO, the Citizen-Community Emergency Response Coordinating Council was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

36. At all times relevant to this CAFO, the Grand Traverse County LEPC was the LEPC for Grand Traverse County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

37. At all times relevant to this CAFO, the Traverse City Fire Department was the fire department with jurisdiction over the facility.

Count 1 (EPCRA 312/SERC)

38. Complainant incorporates paragraphs 1 through 37 of this CAFO as if set forth in this paragraph.

39. On June 24, 2014, Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, quench oil, nitrogen, propylene glycol, salt mixes, and sulfuric acid for calendar year 2013.

40. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, quench oil, nitrogen, propylene glycol, salt mixes, and sulfuric acid by March 1, 2014, for calendar year 2013 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 2 (EPCRA 312/LEPC)

41. Complainant incorporates paragraphs 1 through 37 of this CAFO as if set forth in this paragraph.

42. On June 24, 2014, Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, quench oil, nitrogen, propylene glycol, salt mixes, and sulfuric acid for calendar year 2013.

43. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, quench oil, nitrogen, propylene glycol, salt mixes, and sulfuric acid by March 1, 2014, for calendar year 2013 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 3 (EPCRA 312/fire department)

44. Complainant incorporates paragraphs 1 through 37 of this CAFO as if set forth in this paragraph.

45. On June 24, 2014, Respondent submitted to the Traverse City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, quench oil, nitrogen, propylene glycol, salt mixes, and sulfuric acid for calendar year 2013.

46. Each day Respondent failed to submit to the Traverse City Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, quench oil, nitrogen, propylene glycol, salt mixes, and sulfuric acid by March 1, 2014, for

calendar year 2013 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C.

§ 11022(a).

Civil Penalty

47. Complainant has determined that an appropriate civil penalty to settle this action is \$26,093 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, Respondent's agreement to perform a Supplemental Environmental Project, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered 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).

48. Within 30 days after the effective date of this CAFO, Respondent must pay a \$26,093 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified 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

for checks sent by express mail, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note the following: Century Sun metal Treating, Inc., and the docket number of this CAFO.

49. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, and the case docket 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 Blvd.
Chicago, IL 60604

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

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

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

51. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 63, 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.

52. 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

53. Respondent must complete a Supplemental Environmental Project (SEP) designed to protect the environment or public health by assisting the Traverse City Fire Department with the purchase of a Polaris all-terrain vehicle, including a trailer and communication equipment, for wild land medical, fire and rescue.

54. Respondent must complete the SEP as follows:

Within six weeks of the effective date of the CAFO, Respondent will purchase, cause to be outfitted and delivered to the Traverse City Fire Department, a 2014 Polaris Ranger XP 900 EPS Side by Side all-terrain vehicle, a 2015 8.5' X 20' Middlebury Trailers, Inc., cargo trailer with a loading ramp, and the necessary communication equipment as provided in the quote dated August 13, 2014.

55. Respondent must spend at least \$45,426 to assist in the purchase the equipment.

56. Respondent certifies as follows:

I certify that Century Sun Metal Treating, Inc., is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Century Sun Metal Treating, Inc., has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Century Sun Metal Treating, Inc., 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 that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes 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 expired.

57. Respondent must maintain copies of the underlying data for all reports submitted to EPA according to this CAFO. Respondent must provide the documentation of any data to EPA within seven days of EPA's request for the information.

58. Within ten weeks of the effective date of the CAFO, Respondent must submit a SEP completion report to EPA. This report must contain the following information:

- a. Detailed description of the SEP as completed, including a letter from Traverse City Fire Department Fire Chief stating the delivery date of the equipment and a description of the equipment that was delivered;
- 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 environmental and public health benefits resulting from the SEP.

59. 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 49, above.

60. 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.

61. Following receipt of the SEP completion report described in paragraph 59, above, 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 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 will seek stipulated penalties under paragraph 63.

62. If 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 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 will pay stipulated penalties to the United States under paragraph 63, below.

63. 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 paragraph 54, Respondent must pay a penalty of \$45,426.

- b. If Respondent did not complete the SEP satisfactorily, but 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 55, 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 55, Respondent must pay a penalty of \$4,543.
- 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>
\$ 500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

64. EPA’s determinations of whether Respondent completed the SEP satisfactorily and made good faith and timely efforts to complete the SEP will bind Respondent.

65. 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 48, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

66. 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 Respondent for violations of EPCRA Section 312.”

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

68. 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

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

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

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

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

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

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

75. 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.

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

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

Century Sun Metal Treating, Inc., Respondent

9/8/14
Date

James Black
James Black
Vice President
Century Sun Metal Treating, Inc.

U.S. Environmental Protection Agency, Complainant

9-12-14
Date

M. E. HANS MICHAEL E. HANS
ACTING CHIEF
Sharon Jaffess, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

9-15-14
Date

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


In the Matter of: Century Sun Metal Treating, Inc., Traverse City, Michigan

Docket No. EPCRA-05-2014-0021

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.

9-22-2014
Date



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

In the Matter of: Century Sun Metal Treating, Inc., Traverse City, Michigan

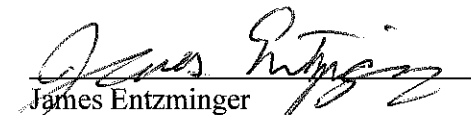
Docket No. EPCRA-05-2014-0021

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:

James Black
Vice President
Century Sun Metal Treating, Inc.
2411 Aero Park Court West
Traverse City, Michigan 49684

on the 24 day of September 2014


James Entzminger
U.S. Environmental Protection Agency
Region 5