



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 11 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Larry Bible
H.B. Fuller Construction Products, Inc.
Facility Manager
1702 Kimberly Park Drive
Dalton, Georgia 30720

Re: H.B. Fuller Construction Products, Inc.
Consent Agreement and Final Order
Docket No. EPCRA-04-2018-2013(b)

Dear Mr. Bible:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Should you have any questions concerning this matter or H. B. Fuller Construction Products, Inc.'s compliance status in the future, please contact Jordan Noles of the U.S. Environmental Protection Agency staff at (404) 562-9105.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. G. Toney", written over the word "Sincerely,".

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV**

IN THE MATTER OF:)
)
H.B. Fuller Construction)
Products Inc.)
)
Respondent.)
_____)

Docket Number: EPCRA-04-2018-2013(b)

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 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region IV, United States Environmental Protection Agency EPA. Respondent is H. B. Fuller Construction Products, Inc.

2. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under EPCRA to the Regional Administrators by the EPA's Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region IV, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by the EPA Region IV 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.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 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 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent is H. B. Fuller Construction Products, Inc., a corporation doing business in the State of Georgia.

5. Respondent is a "person" and owned and operated, at all times relevant to the allegations in Section III, a "facility" as those terms are defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), respectively.

6. Respondent's facility is located at 1702 Kimberly Park Drive in Dalton, Georgia.

III. EPA's Allegations of Violations

Violation of Section 313 of EPCRA

7. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 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 Standard Industrial Classification (SIC) major group or industry listed in 40 C.F.R. § 372.23(a) (for which the corresponding North American Industry Classification System subsector and industry codes are listed in 40 C.F.R. §§ 372.23(b) and 372.23(c)); and (c) manufactured, processed, or otherwise used a toxic chemical listed in EPCRA Section 313(c) and 40 C.F.R. § 372.65, in excess of an applicable threshold quantity established under EPCRA Section 313(f) and set forth in 40 C.F.R. § 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 the 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.

8. As set forth under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 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.

9. Respondent has 10 or more full-time employees, as defined at 40 C.F.R. § 372.3, at its facility.

10. Respondent's facility is classified under SIC code 2891 and NAICS Code 325520.

11. Respondent's facility is classified in a covered SIC code as described at 40 C.F.R. § 372.22 and in a covered NAICS code as described at 40 C.F.R. § 372.23.

12. Zinc compounds and lead compounds are toxic chemicals, referenced at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed under 40 C.F.R. § 372.65 and 40 C.F.R. § 372.28, respectively.

13. Respondent's facility processed the toxic chemicals zinc compounds and lead compounds in excess of the 25,000-pound threshold quantity and 100-pound threshold quantity, respectively, established under Section 313(f) of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.25 and 372.28, respectively, during calendar year 2014.

14. Respondent failed to submit a Form R for zinc compounds and lead to the Administrator of the EPA and to the officials designated by the Governor of the State of Georgia by July 1 of the reporting year for calendar year 2014.

15. Respondent violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, at its facility for calendar year 2014, and is therefore subject to the assessment of penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

16. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, the EPA may assess a civil penalty for each violation of Section 313. 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.

IV. Consent Agreement

17. 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.

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

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

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

21. Respondent has agreed to undertake and complete a Supplemental Environmental Project (SEP) in accordance with Section VI of this CAFO.

22. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA or other applicable laws and regulations.

V. Final Order

23. Respondent shall pay a civil penalty of **EIGHT THOUSAND, NINE HUNDRED FORTY-NINE DOLLARS (\$8,949)** for the violations alleged in Section III above. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

24. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," or by electronic transfer to one of the following addresses:

BY MAIL

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

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(513) 487-2091

BY ELECTRONIC TRANSFER

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: "U.S. Environmental Protection Agency"

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

25. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Jordan Noles
U.S. EPA Region 4
Air, Pesticides and Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

26. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

27. Respondent shall complete a SEP in the category of a Pollution Reduction project designed to reduce pollution by employing recycling, treatment, containment or disposal techniques at its facility (hereinafter referred to as the SEP):

- a. Respondent must install a dust collector.

- b. Respondent's total expenditure for installation of a dust collector shall not be less than **THIRTY-THREE THOUSAND FIVE HUNDRED FIFTY-SIX DOLLARS (\$33,556)**.
- c. Respondent must complete the installation of the pollution reduction equipment within 180 days of the effective date of this CAFO.
- d. Respondent has represented in the SEP Proposal that installation and operation of a dust collector is expected to result in an estimated reduction of 750 pounds of zinc oxide per year.

28. This CAFO shall not be construed to constitute the EPA's endorsement of any product, equipment, technology or service purchased and donated by Respondent in connection with the SEP.

29. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is **\$33,556**;
- b. That, as of the effective date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law, regulation, permit, order or agreement and is not required to perform or develop the SEP by agreement, grant or as injunctive relief awarded in any other action in any forum;
- c. That the SEP is not a project the Respondent was planning or intending to construct, perform or implement other than in settlement of the claim resolved in this CAFO;
- d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action of any kind;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That for federal income tax purposes, Respondent agrees it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
- g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and

30. Respondent agrees that any public statement, oral or written, in print film or other media made by Respondent making any reference to the SEP under this CAFO from the effective date of this CAFO 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 Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).”

31. Respondent shall complete and submit a SEP Completion Report for the SEP under this CAFO as follows:

a. The SEP Completion Report shall include the following:

- i. An affidavit from an authorized company official, certifying that the SEP has been completed or explaining in detail any failure to complete, and
- ii. Copies of appropriate documentation, including invoices and receipts, showing that Respondent’s total expenditure for the SEP was no less than the minimum total expenditure required above.

b. The SEP Completion Report shall be submitted to the EPA within sixty (60) days of the effective date of this CAFO to the following:

Jordan Noles
U.S. EPA Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

32. Upon request, Respondent shall send EPA any additional documentation requested by the EPA.

33. Within 6 months after the completion of the SEP, Respondent shall submit an emissions Reduction Report documenting the reduction in zinc oxide emissions as a result of performing the SEP. The report shall include summaries of testing, sampling and monitoring results of zinc oxide emissions that are expected to be reduced by the dust collector, and shall compare pre-installation results to post-installation results. Failure of Respondent to satisfactorily demonstrate substantial achievement of estimated pollution reduction stated in paragraph 27, section (d) shall be considered a failure to completely and fully complete the SEP, and Respondent shall be required to pay a stipulated penalty pursuant to paragraph 34, section (c), irrespective of the amount of money the Respondent has spent.

34. Respondent agrees that in order to receive credit for the SEP, Respondent must fully and timely complete the SEP in accordance with and as indicated in this CAFO. In the event that Respondent fails to comply with any of the terms or provisions of the CAFO relating to the performance of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. If Respondent fails to spend the minimum amount of **THIRTY-THREE THOUSAND FIVE HUNDRED FIFTY-SIX DOLLARS (\$33,556)**, Respondent shall pay to the United States, a stipulated penalty of the difference between the minimum amount noted above and the actual SEP expenditure.

- b. If Respondent fails to timely submit the SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of **\$100** for each calendar day that the report is late.
- c. If Respondent fails to achieve expected reductions in zinc oxide emissions as specified in paragraph 27, section d, Respondent shall pay to the United States a stipulated penalty in the amount of **TWENTY-SIX THOUSAND EIGHT HUNDRED FORTY-FIVE DOLLARS (\$26,845)**.
- d. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

35. The determination as to whether Respondent has fully and timely completed the SEP shall be in the sole discretion of the EPA.

36. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from the EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth in the written demand from the EPA.

VII. Other Provisions

37. Pursuant to 31 U.S.C. § 3717, the 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 effective date of this 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.

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

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

40. 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.

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VIII. Effective Date

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

AGREED AND CONSENTED TO:

H. B. Fuller Construction Products, Inc.

By: L. Bible (Signed) Date: 3-12-2018

Name: LARRY R. BIBLE (Typed or Printed)

Title: PLANT MANAGER (Typed or Printed)

U.S. Environmental Protection Agency

By: Carol H. Remberger Date: 6/26/18
Beverly H. Banister

Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 10th day of September, 2018.

Tanya Floyd
Tanya Floyd
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 H. B. Fuller Construction Products, Inc., Docket Number: EPCRA- 04-2018-2013(b), on the parties listed below in the manner indicated:

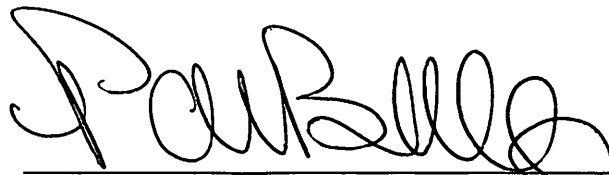
Robert W. Bookman (Via EPA's internal mail)
U.S. EPA Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W/
Atlanta, Georgia 30303

Robert Caplan (Via EPA's internal mail)
Senior Attorney
U.S. EPA Region 4
Office of Regional Counsel
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Brandon Cobb (Via EPA's internal mail)
Attorney
U.S. EPA Region 4
Office of Regional Counsel
61 Forsyth Street, S.W
Atlanta, Georgia 30303

Mr. Larry Bible (Certified Mail—Return Receipt Requested)
Facility Manager
H.B, Fuller Construction Products, Inc.
1702 Kimberly Park Drive
Dalton, Georgia 30720

Date: 9-11-18



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