

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2016 DEC 20 AM 11:11
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

QUALICO STEEL CO. INC.
TEXAS DIVISION
MIDLOTHIAN, TEXAS

RESPONDENT

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DOCKET NO. EPCRA-06-2017-0501

CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Qualico Steel Co. Inc. (hereinafter "Qualico" or "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 pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c), is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations 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 resolve only those violations which are set forth herein.
5. The Respondent consents to the issuance of this CAFO, to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.
6. The Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.
7. The Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.
8. The Respondent hereby certifies that as of the date of the execution of this CAFO, Respondent has corrected the violations alleged in this CAFO and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

II. STATUTORY AND REGULATORY BACKGROUND

9. 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 ten or more full-time

- employees; (b) that is an establishment with a primary Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) “manufactured, processed, or otherwise used” a toxic chemical listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Subsection 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, or 372.28 during the preceding calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, 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.
10. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30, is 25,000 pounds for any toxic chemical “manufactured or processed,” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year. Alternative reporting thresholds are set forth in 40 C.F.R. §§ 372.27 and 372.28.
11. 40 C.F.R. § 372.10(a)(3)(ii) requires that each person subject to reporting requirements must retain, for a period of three years following the date of required submission, data supporting the determination of whether a threshold under § 372.25 applies for each toxic chemical.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

12. The Respondent is a corporation incorporated under the laws of the State of Alabama, and is authorized to do business in the State of Texas.
13. The Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
14. The Respondent owns and operates the business at 2800 Miller Road, Midlothian, State of Texas 76065.
15. The Qualico Steel Co. Inc. plant identified in Paragraph 14 is a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.
16. The Respondent's facility has ten (10) or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.
17. The Respondent's facility is in NAICS code 332312 (fabricated structural metal manufacturing).
18. During some or all of the calendar years 2010 through 2013, chromium, copper, lead, nickel, manganese, xylene (mixed isomers), and zinc (fume or dust) were "manufactured, processed or otherwise used" as those terms are defined by Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.3, at Respondent's facility.

19. Chromium, copper, lead, nickel, manganese, xylene (mixed isomers), and zinc (fume or dust) are toxic chemicals within the meaning of 40 C.F.R. §§ 372.3 and 372.65.
20. During the calendar years 2010 through 2013, chromium was “manufactured, processed or otherwise used” in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.
21. During the calendar years 2010 through 2013, copper was “manufactured, processed or otherwise used” in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.
22. During the calendar years 2010 through 2013, lead was “manufactured, processed or otherwise used” in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.
23. During the calendar years 2010 through 2013, nickel was “manufactured, processed or otherwise used” in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.
24. During the calendar years 2010 through 2013, manganese was “manufactured, processed or otherwise used” in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.
25. During the calendar year 2013, xylene (mixed isomers) was “manufactured, processed or otherwise used” in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.
26. During the calendar years 2011 through 2013, zinc (fume or dust) was “manufactured, processed or otherwise used” in excess of the applicable threshold

quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.

27. An inspection of Respondent's facility was conducted on October 22, 2014 by a duly authorized representative of the EPA's Region 6 office. Based on information provided by the Respondent, the following violations are alleged.

B. VIOLATIONS

i. Chromium

28. During calendar years 2010 through 2013, Respondent processed chromium in excess of the applicable threshold quantity.

29. Respondent failed to timely submit the required Form R for chromium by July 1 of 2011, 2012, 2013 and 2014, following the years when Respondent processed chromium in excess of the applicable threshold quantity.

30. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for chromium for calendar years 2010 through 2013 to the EPA and to the State of Texas by the applicable due date.

ii. Copper

31. During calendar years 2010 through 2013, Respondent processed copper in excess of the applicable threshold quantity.

32. Respondent failed to timely submit the required Form R for copper by July 1 of 2011, 2012, 2013, and 2014, following the years when Respondent processed copper in excess of the applicable threshold quantity.

33. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for copper for calendar years 2010 through 2013 to the EPA and to the State of Texas by the applicable due date.

iii. Lead

34. During calendar years 2010 through 2013, Respondent processed lead in excess of the applicable threshold quantity.

35. Respondent failed to timely submit the required Form R for lead by July 1 of 2011, 2012, 2013, and 2014, following the years when Respondent processed lead in excess of the applicable threshold quantity.

36. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for lead for calendar years 2010 through 2013 to the EPA and to the State of Texas by the applicable due date.

iv. Nickel

37. During calendar years 2010 and 2011, Respondent processed nickel in excess of the applicable threshold quantity.

38. Respondent failed to timely submit the required Form R for nickel by July 1 of 2011 and 2012, following the years when Respondent processed nickel in excess of the applicable threshold quantity.

39. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete and accurate Form R for

nickel for calendar years 2010 and 2011 to the EPA and to the State of Texas by the applicable due date.

v. Manganese

40. During calendar years 2010 and 2011, Respondent processed manganese in excess of the applicable threshold quantity.
41. Respondent failed to timely submit the required Form R for manganese by July 1 of 2011 and 2012, following the years when Respondent processed manganese in excess of the applicable threshold quantify.
42. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete an accurate Form R for mangancsc for calendar years 2010 and 2011 to the EPA and to the State of Texas by the applicable due date.

vi. Zinc (fume or dust)

43. During calendar year 2011, Respondent processed zinc (fume or dust) in excess of the applicable threshold quantity.
44. Respondent failed to timely submit the required Form R for zinc (fume or dust) July 1, 2012, following the years when Respondent processed zinc (fume or dust) in excess of the applicable threshold quantify.
45. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to timely submit a complete an accurate Form R for zinc (fume or dust) for calendar year 2011 to the EPA and to the State of Texas by the applicable due date.

vii. Manganese

46. During calendar years 2012 and 2013, Respondent processed manganese in excess of the applicable threshold quantity.
47. Respondent submitted the Form R for nickel for 2012 and 2013, but could not provide supporting data to the EPA inspectors at the time of the inspection.
48. Therefore, Respondent violated 40 C.F.R. § 372.10(a)(3)(ii) by failing to maintain records supporting its determination for three years following the required submission date.

viii. Nickel

49. During calendar years 2012 and 2013, Respondent processed nickel in excess of the applicable threshold quantity.
50. Respondent submitted the Form R for nickel for 2012 and 2013, but could not provide supporting data to the EPA inspectors at the time of the inspection.
51. Therefore, Respondent violated 40 C.F.R. § 372.10(a)(3)(i) by failing to maintain records supporting its determination for three years following the required submission date.

ix. Zinc (fume or dust)

52. During calendar years 2012 and 2013, Respondent processed zinc (fume or dust) in excess of the applicable threshold quantity.
53. Respondent submitted the Form R for zinc (fume or dust) for 2012 and 2013, but could not provide supporting data to the EPA inspectors at the time of the inspection.

54. Therefore, Respondent violated 40 C.F.R. § 372.10(a)(3)(ii) by failing to maintain records supporting its determination for three years following the required submission date.

x. Xylene (mixed isomers)

55. During calendar year 2013, Respondent processed xylene (mixed isomers) in excess of the applicable threshold quantity.

56. Respondent submitted the Form R for xylene (mixed isomers) for 2013, but could not provide supporting data to the EPA inspectors at the time of the inspection.

57. Therefore, Respondent violated 40 C.F.R. § 372.10(a)(3)(ii) by failing to maintain records supporting its determination for three years following the required submission date.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

58. For the reasons set forth above, the Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), which authorizes the EPA to assess a civil penalty of up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500) per day for each violation of EPCRA¹. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon

¹ The amount of penalty that can be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$27,500 per day of violation, for violations occurring between January 30, 1997 and March 15, 2004; and \$32,500 per day of violation for violations which occurred between March 15, 2004 and January 12, 2009; and to \$37,500 per day of violation for violations which occurred after January 12, 2009.

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consideration of the nature, circumstances, extent, and gravity of the alleged violation, and with respect to the Respondent, ability to pay, lack of prior EPCRA Section 313 violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, cooperation, institution of corrective actions, litigation risk, and other factors as justice may require, it is **ORDERED** that the Respondent be assessed a civil penalty of **One Hundred Seventy Three Thousand Seventy Six Dollars and no cents** (\$173,076.00), which will settle the violations alleged herein.

59. Within sixty (60) days of the effective date of this CAFO, the Respondent shall pay the fully-assessed civil penalty of \$173,076.00, 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 Service mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal Service 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-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

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For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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 EPCRA-06-2017-0501 shall be clearly typed on the check, or other method of payment, 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:

David Riley
EPCRA 313 Enforcement Officer (6EN-H3)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

and

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 by the EPA and acknowledged in the Region.

60. 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.
61. If the Respondent fails to submit payment within sixty (60) days of the effective date of this Order, the Respondent may be subject to a civil action pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f), to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.
62. 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 sixty (60) days after the effective date of the CAFO and will be recovered by the 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).
63. The EPA will also assess a fifteen dollar (\$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 fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) 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.

64. This document is a “Final Order” as that term is defined in the “Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)”, dated August 10, 1992; Amended, April 12, 2001; for the purpose of demonstrating a history of “prior such violations”.

B. RETENTION OF ENFORCEMENT RIGHTS/TERMINATION

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

66. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

67. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of the 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

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actual or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit the 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.

68. This Consent Agreement and Final Order will terminate automatically upon the payment by the Respondent of the Civil Penalty required under Paragraph 58.

C. COSTS

69. 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.

D. EFFECTIVE DATE

70. This CAFO becomes 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: 11/9/16



Qualico Steel Co. Inc.

FOR THE COMPLAINANT:

Date: 12/14/2016

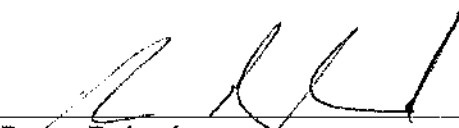


Stacey B. Dwyer, P.E.
Acting Director
Compliance Assurance and
Enforcement Division
U.S. EPA Region 6

V. FINAL ORDER

Pursuant to 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 the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondent's (or its 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 and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 12/20/14



Renea Ryland
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of Dec, 2016, the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

Via electronic mail (PDF) & certified mail – return receipt # 70140150000024545255

Jean M. Flores
Guida, Slavich & Flores, P.C.
Attorney for Qualico Steel Co. Inc.
750 N. St. Paul Street, Suite 200
Dallas, Texas 75201
Tel – 214.692.0009
Fax – 214.692.6610
flores@gsfpc.com



Lori Jackson