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

AUG 14 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John B. King, Esq.
Breazeale, Sachse & Wilson, L.L.P.
One American Place, Suite 2300
301 Main Street
Baton Rouge, Louisiana 70821

Re: Arc Terminals Holdings LLC (Arc Terminals) – Blakeley and Chickasaw Facilities
Ratified Consent Agreement and Final Order
Docket No. EPCRA-04-2018-2021(b)

Dear Mr. King:

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 or your client have any questions concerning this matter or Arc Terminals' compliance status in the future, please contact Ms. Lynda Crum, U.S. Environmental Protection Agency Region 4's Associate Attorney, at (404) 562-9524.

Sincerely,

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:	)	
	)	
Arc Terminals Holdings LLC	)	**Docket Number**: EPCRA-04-2018-2021(b)
	)	
Respondent.	)	
_____	)	

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 4, United States Environmental Protection Agency. Respondent is Arc Terminals Holdings LLC (Arc Terminals).

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 Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by the 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.

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 Arc Terminals, a corporation doing business in the State of Alabama.

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 "A" is located at 1437 Cochran Causeway North in Mobile, Alabama (a/k/a the Blakely facility). Respondent's facility "B" is located at 500 Viaduct Road in Chickasaw, Alabama.

III. EPA's Allegations of Violations

Violations of Section 311 of EPCRA

7. Section 311 of EPCRA, 42 U.S.C § 11021, and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of any facility which is required to prepare or have available a Material Safety Data Sheet (MSDS) or a Safety Data Sheet (SDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit an MSDS or SDS for each such chemical, or a list of such chemicals as provided in Section 311(a)(2), to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, within three (3) months after the owner or operator of a facility first becomes subject to OSHA's requirements for hazardous chemicals. In 2012, the applicable OSHA regulation at 29 C.F.R. § 1910.1200(g) was revised to change the name of Material Data Safety Sheet (MSDS) to Safety Data Sheet (SDS). The pertinent EPCRA regulation found at 40 C.F.R. § 370.30(a)(1) requires that either an MSDS or SDS be submitted, or that a list of chemicals be submitted to the LEPC, SERC and fire department.

8. At some time during calendar year 2015, sulfuric acid was present at facility A and facility B in an amount equal to or greater than 500 pounds.

9. Sulfuric acid is a "hazardous chemical" as defined under Section 329(5) of EPCRA, 42 U.S.C. § 11049(5) and 40 C.F.R. § 355.61 for which Respondent is required to prepare or have available an MSDS or SDS under OSHA at its facility.

10. Respondent failed to submit to the LEPC, SERC and fire department an MSDS or SDS or list, for a hazardous chemical subject to the reporting requirements of Section 311 of EPCRA and 40 C.F.R. Part 370 within 3 months after facility A and facility B first became subject to the reporting requirements of 40 C.F.R. § 370.30 in calendar year 2015. Therefore, the EPA alleges that Respondent violated the reporting requirements of Section 311 of EPCRA at facility A and facility B during calendar year 2015 and is subject to the assessment of civil penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

11. 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 311. Each day a violation of Section 311 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.

Violations of Section 312 of EPCRA

12. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available an MSDS or SDS for hazardous chemicals under OSHA and regulations promulgated under that Act shall submit to the LEPC, SERC, and the fire department with jurisdiction over the facility, on or before March 1 annually, a completed emergency and hazardous chemical inventory form (Tier I or Tier II), as described in 40 C.F.R. 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.

13. At some time during calendar years 2015, sulfuric acid was present at facility A and facility B in an amount equal to or greater than 500 pounds.

14. Sulfuric acid is a "hazardous chemical" as defined under Section 329(5) of EPCRA, 42 U.S.C. § 11049(5) and 40 C.F.R. § 355.61, and is an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 355.61, for which Respondent is required to prepare or have available an MSDS or SDS under OSHA at its facility. Sulfuric acid is also listed as an extremely hazardous substance in 40 C.F.R. Part 355, Appendices A and B.

15. Respondent failed to submit a completed emergency and hazardous chemical inventory form (Tier II) for sulfuric acid to the SERC, the LEPC, and fire department with jurisdiction over facility A and facility B for calendar year 2015, by March 1 of the following year.

16. The EPA alleges that Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facilities for calendar year 2015 and is, therefore, subject to the assessment of civil penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

17. 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 312. 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 an Administrative Order.

IV. Consent Agreement

18. 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.

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

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

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

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, CERCLA or other applicable laws and regulations.

23. 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 interest and that this CAFO is consistent with the applicable requirements of EPCRA.

V. Final Order

24. Respondent shall pay a civil penalty of **FORTY-FOUR THOUSAND, TEN DOLLARS ($44,010)** for the violations alleged in Section III above. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

25. 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.

26. 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

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

27. 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. Other Provisions

28. 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.

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

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

31. 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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VII. Effective Date

32. 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:

Arc Terminals Holdings LLC

By: _____ (Signed) Date: July 18, 2018

Name: John B King (Typed or Printed)

Title: Counsel (Typed or Printed)

U.S. Environmental Protection Agency

By: Carol L. Kemker for Date: 8/3/18
Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 14th day of August, 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 Arc Terminals Holdings LLC., Docket Number: EPCRA- 04-2018-2021(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

John B. King, Esq. (Certified Mail—Return Receipt Requested)
Breazeale, Sachse & Wilson, L.L.P.
One American Place, Suite 2300
301 Main Street
Baton Rouge, Louisiana 70821

Date: 8-14-18

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