

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**EXPEDITED SETTLEMENT AGREEMENT**

**DOCKET NO: EPCRA-04-2020-0608(b)**

**This Expedited Settlement Agreement is issued to:**

**North American Construction Services, Ltd.  
5000 Commerce Avenue  
Birmingham, Alabama 35210**

**for alleged violations of Section 312 of the Emergency Planning and Community Right-To-Know Act (EPCRA)**

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This Expedited Settlement Agreement (ESA) is being entered into by the United States Environmental Protection Agency, Region 4, Director of the Enforcement and Compliance Assurance Division (Complainant), and by North American Construction Services, Ltd., (Respondent), pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and pursuant to 40 C.F.R. § 22.13(b).

**ALLEGED VIOLATIONS**

Based on an information request letter sent to the Respondent's facility located at 5000 Commerce Avenue, Birmingham, Alabama, on September 11, 2019, the EPA alleges that the Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, when it did not timely submit 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 Black Beauty Blasting Media, Castable Refractory, and Steel to the State Emergency Response Commission, the Local Emergency Planning Committee and the fire department with jurisdiction over the facility, for calendar year 2017 on or before March 1 of the following year.

**SETTLEMENT**

In consideration of factors including the nature, circumstances, extent, and gravity of the violations, Respondent's prior history of violations, and any other matters as justice may require, the parties enter into the ESA in order to settle the violations cited above for the total penalty amount of **\$5,000**.

This settlement is subject to the following terms and conditions: the Respondent by signing below admits the jurisdictional allegations contained herein, neither admits nor denies the specific factual allegations contained herein, and consents to the assessment of the penalty as stated above; Respondent waives its right to appeal this ESA and Final Order or otherwise contest the allegations contained in this ESA; and each party to this action shall bear its own costs and fees, if any.

Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that as of the date of its execution of this ESA, it is in compliance with all relevant requirements of EPCRA Section 312 at the facility.

Within thirty (30) days of receiving a copy of the fully executed ESA, Respondent shall pay a civil penalty in the amount of **\$5,000**. Respondent's payment shall be made by sending a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of **\$5,000**, in payment of the full penalty amount to one of the following addresses or via wire transfer:

For payment sent via electronic transfer

For payment by wire transfer, in lieu of a cashier's check or certified check, if desired, should be directed to the Federal Reserve Bank of New York using the following information:

ABA: 021030004

Account: 68010727

SWIFT address: FRNYUS33

33 Liberty Street

New York, New York 10045

Beneficiary: "U.S. Environmental Protection Agency";

**The wire transfer instructions shall reference the Respondent's name and Docket Number of this ESA.**

For payment sent via Standard Delivery

U.S. Environmental Protection Agency

Cincinnati Finance Center Box 979077

St. Louis, Missouri 63197-9000; or

For payment sent for Signed Receipt Confirmation (FedEx, DHL, UPS, USPS Certified, Registered, etc.)

U.S. Environmental Protection Agency

Cincinnati Finance Center Box 979077

1005 Convention Plaza

SL-MO-C2-GL

St. Louis, Missouri 63101

Delivery Location Phone Number: 314- 425-1819

**The Respondent's name and the Docket Number of this ESA must be included on the check.** The Docket Number is located at the top left corner of the first page of this ESA. 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 ESA to:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
R4\_Regional\_Hearing\_Clerk@epa.gov, and

Tony Spann  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
Spann.tony@epa.gov

The penalty specified in this ESA shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of State or Federal taxes.

Respondent's full compliance with this ESA shall only resolve Respondent's liability for Federal civil penalties for the violations alleged in this ESA. The EPA does not waive any other enforcement action for any other violations of EPCRA or any other statute.

This ESA is binding on the parties signing below. This ESA is effective upon filing with the Regional Hearing Clerk.

In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

**The Remainder of this Page Intentionally Left Blank**

FOR RESPONDENT:

Mindy M. T. Toth

Date: 04/16/2021

Name (print): Mindy M.T. Toth

Title (print): VP of HR & ASE

North American Construction Services, Ltd.

FOR COMPLAINANT:

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Carol L. Kemker  
Director  
Enforcement and Compliance Assurance Division

**FINAL ORDER**

I hereby ratify the ESA and incorporate it herein by reference. It is so ORDERED.

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Tanya Floyd  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

I certify that the foregoing Expedited Settlement Agreement and Final Order in the Matter of North American Construction Services, Ltd., Docket No. EPCRA-04-2020-0608(b), were filed and copies of the same were emailed to the parties as indicated below.

**Via email to all parties at the following email addresses:**

**To Respondent:** Ms. Mindy Toth, Vice President of Human Resources and HSE  
Fives North American Combustion Inc.  
Email: Mindy.toth@fivesgroup.com  
4455 East 71<sup>st</sup> Street  
Cleveland, Ohio 44105-5600  
Phone number: (216) 373-8340

**To EPA:** Tony Spann, Case Development Officer  
Spann.tony@epa.gov  
Phone number: (404) 562-8971

Marirose Pratt, Associate Regional Counsel  
Pratt.Marirose@epa.gov  
Phone Number: (404) 562-9023

U.S EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

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Shannon L. Richardson, Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960