

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

APEX TOOL GROUP LLC.
SPRINGDALE, ARKANSAS

RESPONDENT

§
§
§ DOCKET NO. EPCRA-06-2015-0500
§ UNOPPOSED MOTION TO
§ WITHDRAW PART OF COMPLAINT
§

Pursuant to the authority set forth at 40 C.F.R. § 22.16(a), Complainant, United States Environmental Protection Agency ("EPA"), Region VI, moves the presiding Administrative Law Judge for leave to withdraw a portion of the Complaint and Notice Of Opportunity For Hearing ("Complaint") in this matter, as provided in 40 C.F.R. § 22.14(d). Complainant's reasons for requesting withdrawal of parts of the Complaint are set forth below.

1. The Complaint in this action was filed on December 15, 2015. The Complaint contains 29 counts for failure to submit timely, complete and correct Toxic Chemical Release Inventory Reporting Forms ("Form R"s) for calendar years 2009-2013 for nickel compounds, nitric acid, copper, manganese, lead, and chromium, as required by Section 313 of EPCRA, 42 U.S.C. §11023, and federal regulations promulgated to implement Section 313, for its facility located in Springdale, Arkansas. The civil penalty calculated for the alleged violations was \$591,310.

2. Respondent filed an Answer in this action on January 14, 2016.

3. After Respondent filed the Answer, Respondent provided Complainant information that established it was not required to submit Form Rs for copper, manganese, and chromium during the relevant time period. Respondent also provided information that established it was only required to submit a Form R for one year of the relevant time period for nitric acid.

4. Based on the new information provided by Respondent, Complainant motions for leave to withdraw counts 1-5 (Chromium), 6-10 (Copper), 16-20 (Manganese), and 22-24 (Nitric Acid for calendar years 2010-2012).

5. Based on the new information, the parties have reached agreement upon a penalty that will resolve the remaining violations. The parties anticipate filing a Consent Agreement and Final Order soon.

6. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties provide at 40 C.F.R. § 22.14(d) that the Complainant may, after the Respondent has filed an Answer, withdraw all or part of a Complaint without prejudice upon motion granted by the presiding officer.

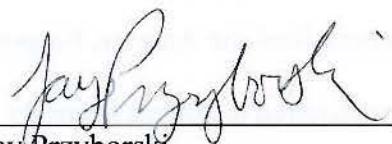
7. Complainant believes that withdrawing the counts described above serves the public interest in the efficient and complete prosecution of Respondent for its EPCRA violations and will serve the ends of justice. Moreover, Respondent will not be prejudiced if Complainant is permitted to amend the Complaint at this time.

8. EPA has consulted with Respondent's counsel and Respondent's counsel does not oppose this motion.

9. For the reasons set forth herein, Complainant requests that the Administrative Law Judge grant Complainant's request to withdraw the counts listed above in paragraph 4.

Respectfully Submitted,

Dated: March 21, 2016



Jay Przyborski
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6