

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. EPCRA-05-2024-0022
)	
Gebhart Holdings, Inc.)	Proceeding to Assess a Civil Penalty Under
Huntington, Indiana,)	Section 325(c)(1) of the Emergency Planning
)	and Community Right-to-Know Act of 1986
<u>Respondent.</u>)	

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c)(1), (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), (c)(2), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Manager of Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Gebhart Holdings, Inc., an Indiana corporation doing business in the State of Indiana, which includes Metal Source LLC an Indiana limited liability corporation of which Gebhart Holdings, Inc. is a member.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) or safety data sheet (SDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous substances present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state commissions, local committees, and fire departments in planning for emergencies and makes information on

chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS or SDS.

12. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 C.F.R. § 1910.1200(c).

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and 40 C.F.R. Part 19 authorizes U.S. EPA to assess a civil penalty of up to \$67,544 per day of violation, for violations of EPCRA Section 312 that occurred after November 2, 2015, and for which penalties are assessed on or after January 6, 2023, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

15. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 1605 Riverfork Drive, Huntington, Indiana (facility).

17. Respondent acquired the facility on April 20, 2022.

18. Respondent conducted an environmental audit of the facility on May 3-4, 2022.

19. Respondent disclosed the results of the environmental audit to EPA June 4, 2022.

20. At all times relevant to this CAFO, Respondent was an employer at the facility.

21. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

22. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

23. At all times relevant to this CAFO, the Indiana SERC was the SERC for Indiana under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

24. At all times relevant to this CAFO, the Huntington County LEPC was the LEPC for Huntington County, Indiana under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

25. At all times relevant to this CAFO, the Huntington Fire Department was the fire department with jurisdiction over the facility.

A-614-2 Non-Ferrous Flux

26. A-614-2 non-ferrous flux is classified as a health hazard.

27. A-614-2 non-ferrous flux is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

28. A-614-2 non-ferrous flux has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

29. During at least one period of time in calendar year 2022, a-614-2 non-ferrous flux was present at the facility in an amount equal to or greater than the minimum threshold level.

30. OSHA requires Respondent to prepare, or have available, a MSDS or SDS for a-614-2 non-ferrous flux.

31. Respondent was required to submit to the SERC, LEPC, and fire department, a

completed emergency and hazardous chemical inventory form including a-614-2 non-ferrous flux on or before March 1, 2023, for calendar year 2022.

Molten Aluminum

32. Molten aluminum is classified as a physical or health hazard.

33. Molten aluminum (CAS #7429-90-5) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

34. Molten aluminum (CAS #7429-90-5) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

35. During at least one period of time in calendar year 2022, molten aluminum was present at the facility in an amount equal to or greater than the minimum threshold level.

36. OSHA requires Respondent to prepare, or have available, a MSDS or SDS for molten aluminum.

37. Respondent was required to submit to the SERC, LEPC, and fire department, a completed emergency and hazardous chemical inventory form including molten aluminum on or before March 1, 2023, for calendar year 2022.

Oxygen

38. Oxygen is classified as a physical or health hazard, or a compressed gas.

39. Oxygen (CAS #7782-44-7) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

40. Oxygen (CAS #7782-44-7) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

41. During at least one period of time in calendar year 2022, oxygen was present at the facility in an amount equal to or greater than the minimum threshold level.

42. OSHA requires Respondent to prepare, or have available, a MSDS or SDS for oxygen.

43. Respondent was required to submit to the SERC, LEPC, and fire department, a completed emergency and hazardous chemical inventory form including oxygen on or before March 1, 2023, for calendar year 2022.

Silicon

44. Silicon is classified as a health hazard.

45. Silicon (CAS #7440-21-3) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

46. Silicon (CAS #7440-21-3) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

47. During at least one period of time in calendar year 2022, silicon was present at the facility in an amount equal to or greater than the minimum threshold level.

48. OSHA requires Respondent to prepare, or have available, a MSDS or SDS for silicon.

49. Respondent was required to submit to the SERC, LEPC, and fire department, a completed emergency and hazardous chemical inventory form including silicon on or before March 1, 2023, for calendar year 2022.

Sodium Aluminum Fluoride

50. Sodium aluminum fluoride is classified as a health hazard.

51. Sodium aluminum fluoride (CAS #15096-52-3) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

52. Sodium aluminum fluoride (CAS #15096-52-3) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

53. During at least one period of time in calendar year 2022, sodium aluminum fluoride was present at the facility in an amount equal to or greater than the minimum threshold level.

54. OSHA requires Respondent to prepare, or have available, a MSDS or SDS for sodium aluminum fluoride.

55. Respondent was required to submit to the SERC, LEPC, and fire department, a completed emergency and hazardous chemical inventory form including sodium aluminum fluoride on or before March 1, 2023, for calendar year 2022.

56. Respondent submitted to the SERC, LEPC, and Huntington Fire Department a completed Emergency and Hazardous Chemical Inventory Form including a-614-2 non-ferrous flux, molten aluminum, oxygen, silicon, and sodium aluminum fluoride on April 13, 2023, for calendar year 2022.

57. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including a-614-2 non-ferrous flux, molten aluminum, oxygen, silicon, and sodium aluminum fluoride by March 1, 2023, for calendar year 2022 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

58. Each day Respondent failed to submit to the LEPC a completed emergency and hazardous chemical inventory form including a-614-2 non-ferrous flux, molten aluminum, oxygen, silicon, and sodium aluminum fluoride by March 1, 2023, for calendar year 2022 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

59. Each day Respondent failed to submit to the Huntington Fire Department a completed emergency and hazardous chemical inventory form including a-614-2 non-ferrous

flux, molten aluminum, oxygen, silicon, and sodium aluminum fluoride by March 1, 2023, for calendar year 2022 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

60. Complainant has determined that the combined appropriate civil penalty to settle this action is \$11,319 for the EPCRA violations. In determining the penalty amounts, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

61. Respondent agrees to pay \$11,319 for the EPCRA violations ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk.

62. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:

<https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

63. When making a payment, Respondent shall:

- a. Identify every EPCRA payment with Respondent's name and the docket number of this Agreement, EPCRA-05-2024-0022.

- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk
R5regionalclerk@epa.gov

James Entzminger
Entzminger.james@epa.gov

Eaton Weiler
Weiler.eaton@epa.gov

and

U.S. Environmental Protection
Agency Cincinnati Finance
Center
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number, and Respondent’s name.”

64. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalties per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalties, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalties are paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalties as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS large corporate underpayment rate, any lower rate would fail to provide Respondents adequate incentive for timely payment.

- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalties in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalties as well as any accrued interest, penalties, and other charges are paid in full.
- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalties, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

65. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalties, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

66. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

67. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

General Provisions

68. The parties' consent to service of this CAFO by email at the following valid email addresses: weiler.eaton@epa.gov (for Complainant) and aromig@psrb.com and hough@gebhartholdings.com(for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

69. Full payment of the penalty and compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

70. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

71. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

72. This CAFO does not affect Respondent's responsibility to comply with EPCRA, and other applicable federal, state, and local laws and regulations.

73. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

74. The terms of this CAFO bind Respondent and its successors and assigns.

75. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.


76. Each party agrees to bear its own costs and attorney's fees in this action.

77. This CAFO constitutes the entire agreement between the parties.

**In the Matter of: Gebhart Holdings, Inc., Huntington, Indiana
Docket No. EPCRA-05-2024-0022**

Gebhart Holdings, Inc., Respondent

8-26-2024
Date



Mike Hough
Chief Compliance Officer
Gebhart Holdings, Inc.

U.S. Environmental Protection Agency, Complainant

Date

Jason El-Zein, Manager
Emergency Response Branch 1
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

Date

Douglas Ballotti
Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5