



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8910 5713

William Bartley, President
BTW, Inc.
11551 Eagle St. NW
Coon Rapids, Minnesota 55448

Consent Agreement and Final Order, Docket No. EPCRA-05-2007-0014

Dear Mr. Bartley:

I have enclosed an original signed copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on April 16, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$13,763 is to be paid in the manner prescribed in paragraph 24 and 25. Please be certain that the number **BD** 2750744E012 and the docket number are written on both the transmittal letter and on the check. The payment is due by May 16, 2007.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terry Bonace".

Terry Bonace
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Thomas Krueger, ORC/C-14J (w/Encl.)
Eric Volck, USEPA Cincinnati Finance/NWD (w/Encl)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	
)	Docket No. EPCRA-05-2007-0014
BTW, Inc.)	
Coon Rapids, Minnesota)	Proceeding to Assess a Civil Penalty
)	Under Section 325(c) of the Emergency
)	Planning and Community Right-to-Know
Respondent.)	Act of 1986, 42 U.S.C. § 11045(c)
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CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is a civil administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), 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 Chief of the Pesticides and Toxics Branch, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is BTW, Inc., a corporation doing business in the State of Minnesota.
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 and agrees to comply with the assessment of the civil penalty specified in this CAFO, and the terms of this 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.

9. Respondent certifies that it is complying with Section 313 of EPCRA, 42 U.S.C. § 11023.

Statutory and Regulatory Background

10. 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 has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed, or otherwise used a toxic chemical in an amount in excess of an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. § 372.25 or 372.27, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of U.S. EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed, or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of U.S. EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461

(1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that can be imposed pursuant to each agency's statutes. The U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 of EPCRA that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 of EPCRA that occurred after March 15, 2004, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

12. Respondent is a "person" as that term is defined at Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

13. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 11551 Eagle Street, NW, Coon Rapids, Minnesota. (facility).

14. At all times relevant to this CAFO, Respondent had "10 or more full-time employees," as defined at 40 C.F.R. § 372.3, and was an employer at the facility.

15. 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.

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

17. The facility has a SIC code of 3679, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

Count 1

18. During calendar year 2004, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, lead not contained in stainless steel, brass or bronze alloy, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 1,218 pounds which is greater than 100 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

19. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Minnesota a Form R for lead for calendar year 2004 by July 1, 2005.

20. Respondent did not submit to the Administrator of U.S. EPA and to the State of Minnesota a Form R for lead for calendar year 2004 by July 1, 2005.

21. Respondent submitted Form R for lead to the Administrator of U.S. EPA and to the State of Minnesota on January 6, 2006 for calendar year 2004.

22. Respondent's failure to submit timely a Form R for lead to the Administrator of U.S. EPA and to the State of Minnesota for calendar year 2004 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Civil Penalty

23. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$13,763. In determining the penalty amount, 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 Section 313 of the Emergency*

Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (August 10, 1992).

24. Within 30 days after the effective date of this CAFO, Respondent must pay a \$13,763 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

The check must note the following: the case name (BTW, Inc)., the docket number of this CAFO and the billing document number.

25. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Terence Bonace (DT-8J)
Pesticides and Toxics Enforcement Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Thomas Krueger (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

26. This civil penalty is not deductible for federal tax purposes.

27. If Respondent does not pay the civil penalty timely, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

28. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a six percent per year penalty on any principal amount ninety days past due.

General Provisions

29. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

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

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

32. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 313 of EPCRA.

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

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

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

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

In the Matter of BTW, Inc.
Docket No. **EPCRA-05-2007-0014**

For Respondent BTW, Inc.:

By: WT Barley

Date: 3/22/2007

For Complainant:

For By: Anthony J. Restaino
Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

Date: 4/5/07

By: Margaret M. Guerriero
Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division

Date: 4/10/07

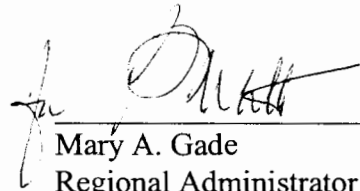
7 APR 11 2007
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

IV. ORDER

It is ordered as agreed to by the parties and as stated in the Consent Agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This Final Order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

4/12/07

Date



Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

10 APR 2007 11:52 AM
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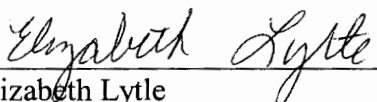
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving BTW, Inc., was filed on April 16, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8910 5713, a copy of the original to the Respondents:

William Bartley, President
BTW, Inc.
11551 Eagle St. NW
Coon Rapids, Minnesota 55448

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Thomas Krueger, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD (w/Encl.)



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **EPCRA-05-2007-0014**

APR 16 2007
REGIONAL HEARING CLERK
EPA REGION 5