



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

4APT-PTSB

MAR 26 2009

Certified Mail – Return Receipt Requested

Ms. Julie Ownbey
Arch Wood Protection, Inc.
1955 Lake Park Drive, Suite 100
Smyrna, Georgia 30080

SUBJ: Docket No. TSCA-04-2009-2607(b)
Arch Wood Protection, Inc.

Dear Ms. Ownbey:

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.

As stated in Section 32 of the CAFO, the assessed penalty of \$18,633 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Mr. Mark Bean at (404) 562- 9000.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle".

Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Arch Wood Protection, Inc.)
)
)
Respondent.)
_____)

Docket No. TSCA-04-2009-2607(b)

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EPA REGION IV
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KIMM OLENA

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Arch Wood Protection, Inc.
2. 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

3. Pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for any person to: (1) fail or refuse to comply with any rule or order promulgated pursuant to Sections 4, 5, 8, 12, or 13 of TSCA (15 U.S.C. § 2603, § 2604, § 2607, § 2611, or § 2612); (2) use for commercial purposes a chemical substance or mixture that the person knew or had reason to know was manufactured, imported, processed, or distributed in commerce in violation of TSCA Section 5, 15 U.S.C. § 2604; (3) fail to maintain records, submit reports or information, or permit access to allow copying of records as required by TSCA; and, (4) refuse to permit entry or inspection as authorized by Section 11 of TSCA, 15 U.S.C. § 2610. Any person who violates a provision of Section 15 of TSCA may be assessed a penalty of up to \$27,500 for each such violation, in accordance with Section 16(a) of TSCA and 40 CFR Part 19, as amended. For a violation occurring after March 15, 2004, and on or before January 12, 2009, a penalty of up to \$32,500 may be assessed. For a violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed. Each day a violation continues may constitute a separate violation.
4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.
5. Complainant will file the original non-confidential CAFO with the Regional Hearing Clerk and a copy will be mailed to the Respondent. To determine the confidential business information (CBI) that was deleted (CBI deleted) from this CAFO, Complainant and Respondent should refer to your EPA Confidential Notice of Violation.

6. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Mark Bean
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9000.

III. Specific Allegations

7. Respondent owns and operates a chemical manufacturing facility, Arch Wood Protection, Inc., located at 1579 Koppers Road, Conley, Georgia 30288.
8. Respondent is a person as that term is defined in 40 C.F.R. § 710.33.
9. Respondent is a manufacturer as that term is defined in 40 C.F.R. § 704.3.
10. Pursuant to Section 8(a) of TSCA, 15 U.S.C. § 2607(a), each person who manufactures or processes or proposes to manufacture or process a chemical substance shall maintain such records, and shall submit such reports, as the Administrator may reasonably require.
11. Any person who manufactured (including imported) for commercial purposes 25,000 pounds or more of a chemical substance listed on the Master Inventory File, as that term is defined under 40 CFR § 710.43, is subject to the recurring reporting requirement set forth in 40 C.F.R. § 710.48.
12. The dates for inventory update reporting for 2006 and beyond are set forth in 40 C.F.R. § 710.52.
13. A reportable chemical substance is defined in 40 C.F.R. § 710.43. as a chemical substance listed on the Master Inventory File.

14. Pursuant to 40 C.F.R. § 710.52, the reporting year applicable to the matters addressed in this CAFO was calendar year 2005.
15. Pursuant to 40 C.F.R. § 710.43, the submission period is defined as the period in which information generated during the reporting year is submitted to EPA.
16. Pursuant to 40 C.F.R. § 710.53, the submission period applicable to this matter was between the dates of August 25, 2006, and March 23, 2007, inclusive.
17. [CBI deleted], hereinafter referred to as “Chemical A,” was a reportable chemical substance in that it was listed on the Master Inventory File at the beginning of the applicable reporting year.
18. [CBI deleted], hereinafter referred to as “Chemical B,” was a reportable chemical substance in that it was listed on the Master Inventory File at the beginning of the applicable reporting year.
19. According to six EPA Notices of Arrival of Pesticides and Devices, EPA Form 3540-1 (Rev. 2-00), submitted to EPA by Respondent, entry dates 1-4-05, 1-18-05, 2-17-05, 3-01-05, 12-6-05, and 12-17-05, and each bearing the declaration, “NOT TO BE USED AS A PESTICIDE,” Respondent imported a quantity greater than 25,000 pounds of “Chemical A” in 2005.
20. Respondent is a person subject to recurring reporting as set forth in 40 C.F.R. §710.48.
21. Pursuant to 40 C.F.R. § 710.59, each person who submits written information in response to the requirements set forth in Section 8(a) of TSCA, 15 U.S.C. §2607(a) and 40 C.F.R. 710, Subpart C, must use EPA Form U.

22. On March 20, 2007, Respondent submitted to EPA a completed Form U (2006) Partial Updating of Inventory Data Base Site Report for calendar year 2005, for the facility named in paragraph 7, above.
23. In the Form U submitted by Respondent on March 20, 2007, Respondent reported that it imported [CBI deleted] pounds of "Chemical B" in 2005.
24. In the Form U submitted by Respondent on March 20, 2007, Respondent did not report the import of any quantity of "Chemical A" in 2005.
25. Respondent violated 15 U.S.C § 2614(3)(B) in that it failed to report the import of "Chemical A," a reportable chemical substance, during the applicable submission period.

IV. Consent Agreement

26. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above, but neither admits nor denies the factual allegations set forth above.
27. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
28. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
29. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
30. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws

and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.

31. 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 TSCA.

V. Final Order

32. Respondent is assessed a civil penalty of EIGHTEEN THOUSAND, SIX HUNDRED THIRTY-THREE DOLLARS (\$18,633) which shall be paid within 30 days from the effective date of this CAFO.
33. Respondent shall remit the civil penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check one of the following addresses:

For payment submittal by U.S. Postal Service:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.):

U. S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson (314) 418-4087

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

Payment by wire transfer, in lieu of a cashier's or certified check, if desired, should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

34. At the time of payment, Respondent shall send a separate copy of the check or wire transfer, and a written statement that the payment has been made in accordance with this CAFO, to each of the following persons at the following addresses:

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

Mark Bean
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960;

and,

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

35. For the purposes of state and federal income taxation, 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.

36. Pursuant to 31 U.S.C. § 3717, 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 date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date.
37. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
38. This CAFO shall be binding upon the Respondent, its successors and assigns.
39. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

Remainder of this page intentionally left blank.

VI. Effective Date

40. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: Arch Wood Protection, Inc.
Docket No.: TSCA-04-2009-2607(b)

By: Robert W. Gruber (Signature) Date: 3/9/09

Name: ROBERT W. GRUBER (Typed or Printed)

Title: DIRECTOR, REGULATION & TMA REL (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Carol L. Kemker Date: 3/19/09
Carol L. Kemker, Acting Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 23rd day of March, 2009.

By: Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Insert Respondent, Docket Number: TSCA-04-2009-2607(b), to the addressees listed below.

Julie Ownbey
Arch Wood Protection, Inc.
1955 Lake Park Drive, Suite 100
Smyrna, Georgia 30080

(via Certified Mail, Return Receipt Requested)

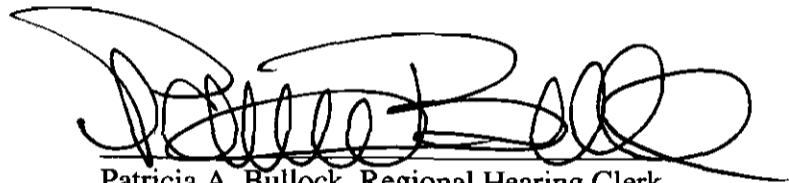
Mark Bean
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

Robert Caplan (or assigned attorney)
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

Date: 3-26-09



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 3/23/09
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Arch Wood Protection Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 18,633
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2009 2607 (5)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |