

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Tonia Bandrowicz 3/29/18
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number EPCRA-01-2018-0018

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Charlie Sipes, President
Atlantic Footcare, Inc.
229 Quaker Highway
North Smithfield, RI 02896

Total Dollar Amount of Receivable \$ 49,375 Due Date: 9/25/18

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ 9,375 on 4/28/18 6th \$ 8,282 on 9/25/18
2nd \$ 8,282 on 5/28/18
3rd \$ 8,282 on 6/27/18
4th \$ 8,282 on 7/27/18
5th \$ 8,282 on 8/26/18

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

_____ Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 Post Office Square, Suite 100
BOSTON, MA 02109-3912

RECEIVED

MAR 29 2018

EPA ORC WS
Office of Regional Hearing Clerk

March 29, 2018

BY HAND

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: Atlantic Footcare, Inc. (N. Smithfield, RI), Docket No. EPCRA-01-2018-0018

Dear Ms. Santiago:

Enclosed for filing is the original of a Consent Agreement and Final Order and Certificate of Service, and one copy of each, relating to the above-referenced matter:

Please file the documents in the usual manner.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tonia Bandrowicz".

Tonia Bandrowicz
Senior Enforcement Counsel
U.S. EPA, Region 1

Enclosures

cc: Charles Sipes, Atlantic Footcare, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing letter to the Regional Hearing Clerk and attached Consent Agreement and Final Order was sent to the following persons in the manner and on the date specified below.

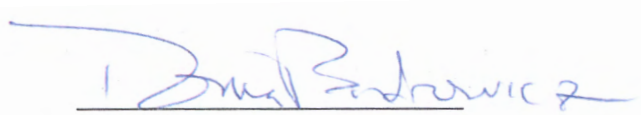
Original and one copy,
hand-delivered:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy, by Certified Mail,
Return Receipt Requested:

Charlie Sipes, President
Atlantic Footcare, Inc.
229 Quaker Highway
North Smithfield, Rhode Island, 02896

Dated: 3 29 18



Tonia Bandrowicz
Senior Enforcement Counsel
U.S. EPA, Region I (OES 04-03)
5 Post Office Square, Suite 100
Boston, MA 02114-2023

3. Therefore, before any hearing, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of EPA and Respondent, it is hereby ordered and agreed as follows:

B. STATUTORY AND REGULATORY AUTHORITY

4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting Community Right-To-Know Rule, 40 C.F.R. Part 372.

5. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), requires owners or operators of a facility subject to the requirements of Section 313(b) to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25. If the owner or operator determines that the alternative reporting threshold specified in 40 C.F.R. § 372.27 applies, the owner or operator may submit an alternative threshold certification statement that contains the information required under 40 C.F.R. § 372.95 (the alternative threshold certification statement is also known as "Form A"). Each Form R or Form A is required to be submitted to the Administrator of EPA and to the state in which the subject facility is located. Forms R and Forms A are hereinafter referred to as "TRI Forms."

6. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification ("SIC") code or North American Industry Classification System ("NAICS") code set forth in 40 C.F.R. § 372.23; and that manufactured, processed, or

otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 in a quantity exceeding the established threshold during a calendar year are required to submit a Form R or Form A for each of these substances for that year.

7. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1) (as amended by the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and the Debt Collection Improvement Act, 31 U.S.C. § 3701), and EPA's Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder at 40 C.F.R. Part 19, authorize the assessment of civil administrative penalties of up to \$37,500 per day for each violation of Section 313 of EPCRA that occurred from January 12, 2009 through November 2, 2015, and civil administrative penalties of up to \$54,789 per day for each violation of Section 313 of EPCRA that occurred after November 2, 2015. Pursuant to Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day a Section 313 violation continues constitutes a separate violation.

C. GENERAL ALLEGATIONS

8. Respondent is a corporation organized under the laws of the State of Rhode Island with a place of business at 229 Quaker Highway, North Smithfield, Rhode Island, and, therefore, a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

9. Respondent is the owner and operator of a "facility," as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3, that manufactures, among other products, insoles made of polyurethane foam and elastomer gels for shoes, and that is located at 229 Quaker Highway, North Smithfield, Rhode Island, 229 (hereinafter, the "Facility").

10. The Facility is a "covered facility" as defined by 40 C.F.R. § 372.22, as it:

- a. has more than 10 "full-time employees," as defined by 40 C.F.R. § 372.3;
- b. is classified in NAICS code 326150 (Urethane and Other Foam Product (except

Polystyrene) Manufacturing) set forth in 40 C.F.R. § 372.23; and

- c. during at least the calendar years 2014, 2015, and 2016, Respondent processed at the Facility toxic chemicals listed under the Diisocyanates Chemical Category set forth in 40 C.F.R. § 372.65(c), in quantities exceeding the established threshold of 25,000 pounds set forth in 40 C.F.R. 372.25.

11. Based on the foregoing, the requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, including the reporting requirements in 40 C.F.R. § 372.30, apply to the Facility.

12. On August 2, 2017, a duly authorized representative of EPA conducted a compliance evaluation inspection at the Facility (the “EPA inspection”) to determine its compliance with EPCRA reporting requirements.

Count 1: Failure to Timely File TRI Form in the Diisocyanates Chemical Category in 40 C.F.R. § 372.65(c) for Reporting Year 2014

13. The foregoing paragraphs 1 through 12 are incorporated by reference as if fully set forth herein.

14. During the calendar year 2014, Respondent “processed,” as that term is defined by 40 C.F.R. § 372.3, toxic chemicals within the Diisocyanate Chemical Category listed in 40 C.F.R. § 372.65(c), in quantities exceeding the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25(a), as calculated in accordance with 40 C.F.R. § 372.25(d). Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical category on or before July 1, 2015, as required by 40 C.F.R. § 372.65.

15. Respondent failed to submit the required TRI form to the Administrator of EPA on or before July 1, 2015.

16. Respondent’s failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 2: Failure to Timely File TRI Form in the Diisocyanates Chemical Category in 40 C.F.R. § 372.65(c) for Reporting Year 2015

17. The foregoing paragraphs 1 through 16 are incorporated by reference as if fully set forth herein.

18. During the calendar year 2015, Respondent “processed,” as that term is defined by 40 C.F.R. § 372.3, toxic chemicals within the Diisocyanate Chemical Category listed in 40 C.F.R. § 372.65(c), in quantities exceeding the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25(a). Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical category on or before July 1, 2016, as required by 40 C.F.R. § 372.65.

19. Respondent failed to submit the required TRI form to the Administrator of EPA on or before July 1, 2016.

20. Respondent’s failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 3: Failure to Timely File TRI Form for the Diisocyanates Chemical Category in 40 C.F.R. § 372.65(c) for Reporting Year 2016

21. The foregoing paragraphs 1 through 20 are incorporated by reference as if fully set forth herein.

22. During the calendar year 2016, Respondent “processed,” as that term is defined by 40 C.F.R. § 372.3, toxic chemicals within the Diisocyanate Chemical Category listed in 40 C.F.R. § 372.65(c), in quantities exceeding the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25(a). Respondent was therefore required to submit to the Administrator of EPA a TRI Form for this chemical category on or before July 1, 2017, as required by 40 C.F.R. § 372.65.

23. Respondent failed to submit the required TRI form to the Administrator of EPA on or before July 1, 2017.

24. Respondent's failure to timely submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

D. TERMS OF SETTLEMENT

25. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits the jurisdictional allegation in this Consent Agreement, and that EPA has jurisdiction over the subject matter alleged herein;
- b. neither admits nor denies the specific factual allegations stated above;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the conditions specified in this Consent Agreement;
- e. waives any right to contest the allegations in Consent Agreement; and
- f. waives its rights to appeal the Final Order accompanying this Consent Agreement.

26. For the purpose of this proceeding, Respondent further:

- a. certifies that it has corrected the alleged violations cited in this CAFO and will operate the Facility in compliance with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder at 40 C.F.R. Part 372;
- b. agrees that this Consent Agreement states a claim upon which relief may be granted against Respondent;
- c. acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

- d. waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Agreement and Final Order;
- e. consents to personal jurisdiction in any action to enforce this Consent Agreement and Final Order, in the United States District Court for the District of Massachusetts, and
- f. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with this Consent Agreement and Final Order and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

27. This Consent Agreement shall be binding on Respondent and any successors, and assigns, or other entities or persons otherwise bound by law.

28. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and agrees that this Consent Agreement does not contain any confidential business information or personally identifiable information.

29. By signing this Consent Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

30. By signing this Consent Agreement, Respondent certifies, to the best of its knowledge, that the information it has supplied concerning this matter was at the time of

submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

Penalty Payment

31. In light of the above, and taking into account the relevant factors for penalties enumerated in Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and such other matters as justice may require, including Respondent's financial ability to pay a penalty, EPA has determined that it is fair and proper that Respondent pay a total civil penalty of \$ 49,375 to resolve the violations alleged herein.

32. Respondent certifies that the statement and accompanying document provided to EPA on March 5, 2018, regarding Respondent's financial ability to pay a penalty, are true, accurate, and complete based upon personal knowledge of the undersigned or his personal inquiry of the person or persons directly responsible for gathering the information, and the undersigned is aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

33. In accordance with 40 C.F.R. § 13.18 and EPA's *Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Action* (June 2015), EPA has determined that an alternative payment mechanism is in the best interest of the United States and will allow the repayment of the civil penalty cited in paragraph 31 in installments, as specified in paragraph 34.

34. Respondent shall pay the penalty of \$49,375 in monthly installments over 6 months from the effective date of this CAFO. The first payment of \$8,375.00 shall be made

within 30 days of the effective date of this CAFO. The second and subsequent payments shall each total \$8,282.00 (an amount that includes \$82.00 in interest at a rate of 4% per annum). The second payment of \$8,282 shall be made within 60 days of the effective date, the third payment of \$8,282 shall be made within 90 days of the effective date, the fourth payment of \$8,282 shall be made within 120 days of the effective date, the fifth payment of \$8,282 shall be made within 150 days of the effective date, and the sixth payment of \$8,282 shall be made within 180 days of the effective date. If the due date for any payment falls on a weekend or federal holiday, then the due date is the next business day.

35. Respondent may accelerate its payments described in the payment schedule in paragraph 34, and thereby reduce its interest payments. If Respondent chooses to accelerate its payments, Respondent will notify EPA in writing of the decision to do so in advance and inform EPA of a proposed date for each accelerated payment. Based on the date of each proposed accelerated payment, EPA will inform Respondent of the revised payment amount, including interest calculated as described in paragraph 34 above.

36. Respondent shall make each payment due under this CAFO by company, bank, cashier's, or certified check, or by wire transfer, and shall include the case name and docket number (*In re Atlantic Footcare, Inc.*, Docket No. EPCRA-01-2018-0018) on the face of the check or wire transfer confirmation. Checks must be made payable to "Treasurer, United States of America." The payments shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

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

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal

Reserve Bank in New York City using the following information:

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

In addition, within 24 hours of each payment, Respondent shall forward notice of payment of the civil penalty, as well as copies of the payment check or payment receipt, by first class mail or other delivery service to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code ORC 04-6)
Boston, MA 02109-3912

with a copy by electronic mail to:

Chris Rascher, Environmental Engineer
U.S. Environmental Protection Agency, Region 1
rascher.chris@epa.gov;

and

Tonia Bandrowicz, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
bandrowicz.toni@epa.gov.

37. If Respondent fails to make any of the payments required under this CAFO by the required due dates, all remaining installments shall become immediately due and payable as of

the missed payment date. Interest on such unpaid penalty amounts shall accrue from the missed payment date until the total amount due has been received by the United States. Respondent shall be liable for such amounts regardless of whether EPA has notified Respondent of its failure to pay or made demand for payment. All payments to the United States under this paragraph shall be made by company, bank, cashier's, or certified check, or by wire transfer, as described in paragraph 36.

38. Collection of Unpaid EPCRA Penalty: 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. In the event that any portion of the civil penalty amount relating to the alleged EPCRA violations is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees. In addition, a penalty charge of six percent per year, compounded annually, will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due in accordance with 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

39. All penalties, interest, and other charges assessed under this CAFO shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments

made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

40. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.

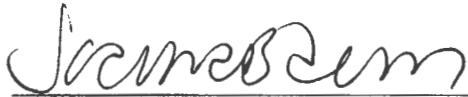
41. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA for the violations specifically alleged in this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

42. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent is in violation of this CAFO or continues to be in violation of the statutes and regulations upon which the allegations in this CAFO are based, or for Respondent's violation of any other applicable provision of federal, state, or local law.

43. Each party shall bear its own costs and fees in this proceeding including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

44. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed with the Regional Hearing Clerk.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



Joanna Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Date: 3/23/18

FOR RESPONDENT ATLANTIC FOOTCARE, INC.:



Date: 3/8/18

PRINT NAME: Charles Sips
TITLE: President

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)

Atlantic Footcare, Inc.)

229 Quaker Highway)
North Smithfield, Rhode Island 02896)

Proceeding under Section 325(c) of)
the Emergency Planning and Community)
Right-to-Know Act, 42 U.S.C. § 11045(c))

**CONSENT AGREEMENT
AND FINAL ORDER**


) Docket No. EPCRA-01-2018-0018

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) and (c) of EPA’s Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

As described in paragraph 34 of the Consent Agreement, the Respondent, Atlantic Footcare, Inc., is ordered to pay the civil penalty amount (\$49,375) in installment payments. In accordance with 40 C.F.R. § 13.18, the Parties have represented that the installment payment method are based on the Respondent’s ability to pay.

The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.



LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1tb

3/27/18
Date: _____