



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

APR 10 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jim Kelly
General Manager
Ledbetter Packing Company
1837 Harbor Avenue
Memphis, TN 38113

RE: Consent Agreement and Final Order
Docket No. EPCRA-04-2007-2022(b)

Dear Mr. Kelly:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the EPCRA matter (Docket No. EPCRA-04-2007-2022(b)) involving Ledbetter Packing Company, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on date of filing.

Penalty payment of \$16,691.00 has been received and the U.S. Environmental Protection Agency, Region 4, Emergency Planning and Community Right-to-Know Act Enforcement Section considers this matter closed.

Also enclosed, please find a copy of the "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 Security and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. If you have any questions with regards to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Mr. Bryce Covington at (404) 562-9192.

Sincerely,

A handwritten signature in black ink, appearing to read "Caron B. Falconer for".

Caron B. Falconer, Chief
EPCRA Enforcement Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
Ledbetter Packing Company, Inc.)
)
Respondent)
_____)

Docket Number: EPCRA-04-2007-2022(b)

RECEIVED
EPA REGION 4
2007 APR 10 PM 12:14
HEARINGS CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 CFR Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Ledbetter Packing Company, Inc., (hereinafter, "Respondent").

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 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 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4. Respondent is a corporation doing business in the State of Tennessee.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

6. Respondent owns and operates a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 1837 Harbor Avenue, Memphis, Tennessee.

8. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 CFR Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, by March 1, 1988, and on or before March 1 annually thereafter, a completed emergency and hazardous chemical inventory form (Tier I or Tier II) as described in 40 CFR Part 370, containing the information required by that part for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds and containing the information required by that part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less.

9. At some time during the calendar years of 2004 and 2005, ammonia was present at the facility in an amount equal to or greater than 500 pounds.

10. Ammonia is an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), for which Respondent is required to prepare or have available an MSDS under OSHA at its facility.

11. Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for ammonia to the SERC, the LEPC, and fire department with jurisdiction over the facility for calendar years 2004 and 2005, by March 1 of the following calendar year for which a report was required.

12. Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facility for calendar years 2004 and 2005, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

13. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 CFR Part 19, EPA may assess a penalty of not more than \$27,500 for each violation of Section 312 that occurred on or after January 30, 1997 and \$32,500 for each violation of Section 312 that occurred on or after March 15, 2004. Each day a violation of Section 312 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by an Administrative Order.

III. Consent Agreement

14. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

15. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

16. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

17. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA.

18. Compliance with the CAFO shall resolve the allegation of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

19. 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 EPCRA.

IV. Final Order

20. Respondent shall pay a civil penalty of SIXTEEN THOUSAND SIX-HUNDRED NINETY-ONE DOLLARS (\$16,691). Payment shall be paid within thirty (30) days of the effective date of this CAFO.

21. Respondent shall pay the penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America," to the following address:

U.S. Environmental Protection Agency
Box 371099M
Pittsburgh, PA 15251

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

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

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Bryce Covington
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, GA 30303

23. 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.

24. 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 the CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

25. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

26. This CAFO shall be binding upon the Respondent, its successors, and assigns.

27. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8451

28. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

V. Effective Date

29. 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:

Ledbetter Packing Company, Inc.,

By: Jim Kelly Date: 3/27/07

Name: Jim Kelly (Typed or Printed)

Title: General Manager (Typed or Printed)

U.S. Environmental Protection Agency

By: Carol H. Kemberger Date: 3/12/07

Beverly H. Banister, Director
Air, Pesticides & Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 9th day of April, 2007.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing
Consent Agreement and Final Order, in the Matter of Ledbetter Packing Company, Inc.,
Docket No. EPCRA-04-2007-2022(b), on the parties listed below in the manner
indicated:

Caron Falconer
U.S. EPA, Region 4
Air, Pesticides, & Toxics
Management Division
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Alan Dion
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

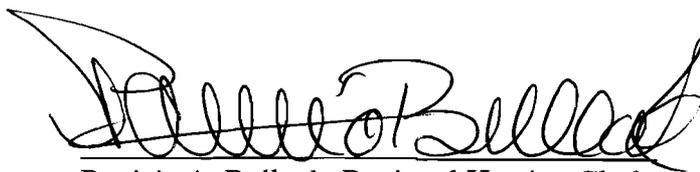
(Via EPA's internal mail)

Mr. Jim Kelly
Ledbetter Packing Company, Inc.
1837 Harbor Avenue
Memphis, TN 38113

(Via Certified Mail - Return Receipt
Requested)

Date: _____

4-10-02



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
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: Saunders Wilson on 4/3/07
(Name) (Date)

in the OEA, OATGL at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Ledbetter Packing Company
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 16,691
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: EPCRA of 2007 - 2022(6)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT 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) |