



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

~~JUN 18~~ 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Powell G. Ogletree
Adam and Reese LLP
111 East Capitol Street
Suite 350
Jackson, Mississippi 39211

SUBJECT: DeSoto Treated Materials, Inc.
Consent Agreement and Final Order
Docket No. CERCLA-04-2009-2034(b)

Dear Mr. Ogletree:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) matter (Docket No. CERCLA-04-2009-2034(b)) involving DeSoto Treated Materials, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing.

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 Environmental Protection Agency (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. Lawrence Fincher at (404) 562-9190.

Sincerely,

A handwritten signature in black ink that reads "Caron B. Falconer".

Caron B. Falconer
Chief, EPCRA Enforcement Section

Enclosures

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)
)
DeSoto Treated Materials, Inc.)
)
Respondent.)
_____)

Docket Number: CERCLA-04-2009-2034(b)

HEARING CLEAR
2009 JUN 18 PM 3:48
EPA REGION 4

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is DeSoto Treated Materials, 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. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA to the Regional Administrators by EPA Delegation 14-31 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 14-31 dated March 8, 1999, and updated August 6, 2004. Pursuant to these delegations, 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, DeSoto Treated Materials, Inc., is doing business in the State of Mississippi.

5. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
6. Respondent has a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
7. Respondent's facility is located at 941 South Magnolia Drive, Wiggins, Mississippi.
8. Respondent is an "owner or operator" of the facility as that term is defined by Section 101 (20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).
9. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended. This list is codified at 40 C.F.R. Part 302.
10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel, as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the reportable quantity (RQ), to immediately notify the National Response Center (NRC).
11. Respondent was in charge of the facility during the relevant period described below.
12. Chromic acid is a hazardous substance as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of ten (10) pounds, as specified in 40 C.F.R. § 302.4.
13. On September 8, 2008, Respondent had a release of chromic acid above the RQ at the facility.
14. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of chromic acid in an amount equal to or greater than its RQ at Respondent's facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

15. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$32,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred on or after March 15, 2004. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by an Administrative Order.

III. Consent Agreement

16. 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.

17. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

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

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

20. Compliance with the CAFO shall resolve the allegations 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.

21. 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 CERCLA.

IV. Final Order

22. Respondent shall pay a civil penalty of FOUR THOUSAND THIRTY ONE DOLLARS (\$4,031) for the CERCLA violation which shall be paid within thirty (30) days of the effective date of this CAFO.

23. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to the following address:

By Mail:
U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000

Overnight:
U.S. Bank
Attention: Natalie Pearson
(314) 418-4087
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

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

24. 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, Georgia 30303

Lawrence Fincher
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

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

25. 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.

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

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

28. 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, Georgia 30303
(404) 562-8451

29. 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

30. 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:

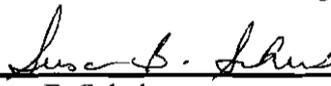
DeSoto Treated Materials, Inc.

By:  (Signature) Date: May 22, 2009
Name: A. Wynn Alexander (Typed or Printed)
Title: President (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 5/19/2009
Carol L. Kemker, Acting Director
Air, Pesticides & Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 18th day of June, 2009.


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 DeSoto Treated Materials,

Inc., Docket No. CERCLA 04-2009-2034(b), on the parties listed below in the manner

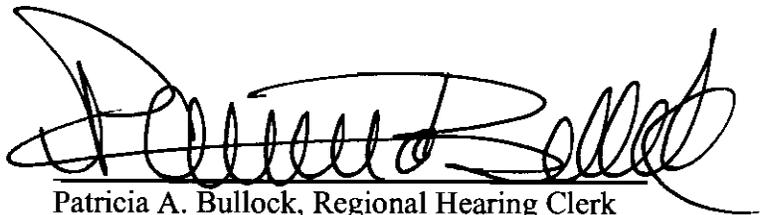
indicated:

Caron B. Falconer (Via EPA's internal mail)
U.S. EPA, Region 4
Air, Pesticides and Toxics Management Division
61 Forsyth Street
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Mr. Powell G. Ogletree (Certified Mail - Return Receipt Requested)
Adam and Reese LLP
111 East Capitol Street
Suite 350
Jackson, MS 39211

Date: 6-18-09



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: Saundi Wilson on 6/15/09
(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: DeSoto Treated Materials, Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 4031
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CERCLA 04-2009-2034 (b)

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) |