



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

SEP 22 2009

REPLY TO THE ATTENTION OF:  
LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0006 0189 9163

Mr. Michael R. Wagner  
101 Joan Drive  
Middlebury, IN 46540

Consent Agreement and Final Order, Docket No. **EPCRA-05-2009-0032**

Dear Mr. Wagner:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 22, 2009, with the Regional Hearing Clerk.

The civil penalty in the amount of \$9,832 is to be paid in the manner described in paragraphs 39 and 40. In the comment or description field of the electronic funds transfer, please state: Middlebury Hardwood Products, Inc., the docket number of this CAFO (above), and the following billing document number BD 2750944E034. Payment is due by October 22, 2009 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Robert Allen for RA".

Robert Allen  
Pesticides and Toxics Compliance Section

Enclosures

RECEIVED  
SEP 22 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

REGIONAL HEARING CLERK  
USEPA  
REGION 5

In the Matter of: )  
)  
Middlebury Hardwood Products, Inc. )  
Middlebury, Indiana )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. EPCRA-05-2009-0032  
  
Proceeding to Assess a Civil Penalty  
Under Section 325(c) of the Emergency  
Planning and Community Right-to-Know  
Act of 1986, 42 U.S.C. § 11045(c)

Consent Agreement and Final Order  
Commencing and Concluding a Proceeding

Preliminary Statement

1. This is an 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 the Director of the Land and Chemicals Division, United States Environmental Protection Agency, (EPA) Region 5.
3. Respondent is Middlebury Hardwood Products, Inc., a corporation doing business in the State of Indiana.
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 the assessment of the civil penalty specified in this CAFO, and to 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. EPA promulgated the Toxic Chemical Release Reporting Community Right-to-Know Rule at 40 C.F.R. Part 372 pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048.

11. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that the requirements of Section 313 and Part 372 apply to any facility that has 10 or more full-time employees, a Standard Industrial Classification (SIC) of 2431 and that manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c) and listed at 40 C.F.R. § 372.65 in an amount that exceeds the threshold for reporting, as set forth in Section 313(f) and in 40 C.F.R. §§ 372.25, 372.27 and 372.28.

12. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 require the owner or operator of a facility subject to the requirements of Section 313 and Part 372 to

complete and submit to the Administrator of EPA and to the state in which the facility is located, no later than July 1, 1988 and each July 1 thereafter, a chemical release form published pursuant to Section 313(g) for each toxic chemical listed under Section 313(c) that was manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold established by Section 313(f).

13. EPA published the Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (1-88) (Form R) at 40 C.F.R. § 372.85 pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g).

14. All persons required to report pursuant to Section 313(b) must use Form R according to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).

15. The Administrator of EPA may prescribe regulations as may be necessary to carry out EPCRA. 42 U.S.C. § 11048.

16. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65, that is processed during the 2004 calendar year is 10,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(b).

17. Toluene was a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 during the 2004 calendar year.

18. Xylene was a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 during the 2004 calendar year.

19. The term "otherwise used" is defined at 40 C.F.R. § 372.3.

20. Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 per day for each violation of

Section 313 of EPCRA, 42 U.S.C. § 11023. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that can be imposed pursuant to each agency's statutes. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 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 that occurred after March 15, 2004 through January 12, 2009, 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**

21. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
22. Respondent is a corporation "incorporated" in the State of Indiana.
23. Respondent owned or operated a facility located at 101 Joan Drive, Middlebury, Indiana during the calendar year 2004.
24. Respondent's facility consists of buildings, equipment and structures and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned by the same person, entity, or corporation.
25. During the calendar year 2004, Respondent employed at its facility the equivalent of at least 10 employees with total paid hours equal to or more than 20,000 hours per calendar year.
26. Respondent's facility is covered by SIC Code 2431.
27. On September 9, 2005, a representative of the EPA inspected Respondent's facility.

### **Toluene and Xylene**

28. During the 2004 calendar year, Respondent's facility processed 16,298 pounds of toluene, CAS No. 108-88-3.

29. During the 2004 calendar year, Respondent's facility processed 14,628 pounds of xylene, CAS No. 1330-20-7.

30. Respondent failed to submit to the Administrator of EPA and to Michigan a Form R for toluene and a Form R for xylene for the 2004 calendar year on or before July 1, 2005.

31. On September 22, 2005, Respondent submitted to the Administrator of EPA Form Rs for toluene and xylene for the 2004 calendar year.

### **Count 1**

32. Complainant incorporates paragraphs 1 through 31 of this Complaint as if set forth in this paragraph.

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

34. Respondent's violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 CFR § 372.30 makes Respondent liable to the United States for a civil penalty under Section 325 of EPCRA, 42 U.S.C. § 11045(c).

### **Count 2**

35. Complainant incorporates paragraphs 1 through 31 of this Complaint as if set forth in this paragraph.

36. Respondent's failure to timely submit to the Administrator of EPA a Form R for

xylene for the 2004 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

37. Respondent's violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 CFR § 372.30 makes Respondent liable to the United States for a civil penalty under Section 325 of EPCRA, 42 U.S.C. § 11045(c).

#### **Civil Penalty**

38. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$9,832. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its cooperation, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered 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) (amended April 12, 2001)*.

39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$9,832 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:

Checks sent by regular U.S. Postal Service mail:

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

Checks sent by express mail:

U.S. Bank  
Government Lockbox 979077 EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

The check must note the case title, the docket number of this CAFO and the billing document number.

40. 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-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Robert Allen (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

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

42. If Respondent does not pay the civil penalty timely, 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.



43. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. 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, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

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

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

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

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

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


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

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

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

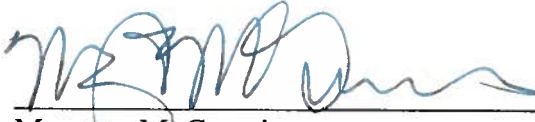
**Middlebury Hardwood Products, Inc.  
Middlebury, Indiana**

8/31/09  
Date

  
\_\_\_\_\_  
Michael R. Wagner  
Chief Financial Officer  
Middlebury Hardwood Products, Inc.  
Middlebury, Indiana

**United States Environmental Protection Agency, Complainant**

September 17, 2009  
Date

  
\_\_\_\_\_  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**Middlebury Hardwood Products, Inc.**  
**Middlebury, Indiana.**  
**Docket No. EPCRA-05-2009-0032**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/18/09  
Date

Walter W. Karolyk  
Bharat Mathur  
Acting Regional Administrator  
United States Environmental Protection Agency  
Region 5

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SEP 22 2009  
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USEPA  
REGION 5

**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 Middlebury Hardwood Products, was filed on September 22, 2009, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed, by Certified Mail, Receipt No. 7001 0320 0006 0189 9163, a copy of the original to the Respondents:

Mr. Michael R. Wagner  
101 Joan Drive  
Middlebury, IN 46540

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Jose de Leon, Counsel for Complainant ORC/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. EPCRA-05-2009-0032

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