



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

NOV 30 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jim Shillito
Water-Way Inc.
751 County Road 989
Iuka, Mississippi 38852

SUBJECT: Water-Way Inc.
Consent Agreement and Final Order
Docket No. EPCRA-04-2012-2001(b)

Dear Mr. Shillito:

Enclosed please find an executed copy of the Consent Agreement and Final Order that resolves the Emergency Planning and Community Right-to-Know Act of 1986 matter (Docket No. EPCRA-04-2012-2001(b)) involving Water-Way, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. 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 any environmental enforcement actions taken by the Environmental Protection Agency. 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 Ms. Erika White at (404) 562-9195.

Sincerely,

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

Carol B. Falconer, Chief
EPCRA Enforcement Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
Water-Way Inc.)
)
Respondent.)
_____)

Docket Number: EPCRA-04-2012-2001

HEARINGS CLERK

2011 NOV 30 AM 7:41

RECEIVED
EPA REGION IV

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 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 Water-Way 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(h) and 22.18(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 Water-Way Inc., a corporation doing business in the State of Mississippi.

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 751 County Road 989 Iuka, Mississippi.

III. EPA’s Allegation of Violation

Violation of EPCRA Section 313

8. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30, require the owner or operator of a facility that (a) has 10 or more full-time employees; (b) is in a Standard Industrial Classification (SIC) major group or industry listed in 40 C.F.R. § 372.23(a) for which the corresponding North American Industry Classification System (NAICS) subsector and industry codes are listed in 40 C.F.R. §§ 372.23(b) and 372.23(c); and (c) manufactured, processed, or otherwise used a toxic chemical listed in Section 313(c) and 40 C.F.R. § 372.65, in excess of an applicable threshold quantity established under EPCRA Section 313(f) and set forth in 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory reporting Form R (EPA Form 9350-1) to the Administrator of EPA and to the State in which the facility is located, by July 1 for the preceding calendar year for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in quantities exceeding the established threshold quantity during the preceding calendar year.

9. As set forth at EPCRA Section 313(f) and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds per calendar year. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds.

10. Respondent has 10 or more full-time employees, as defined at 40 C.F.R. § 372.3 at its facility.

11. Respondent’s facility is classified under SIC code 3713 and the NAICS code 336211.

12. Respondent’s facility is classified in a covered SIC code as described at 40 C.F.R. § 372.22 and in a covered NAICS code as described at 40 C.F.R. § 372.23.

13. Styrene is a toxic chemical listed under EPCRA Section 313(c) and 40 C.F.R. § 372.65.

14. Respondent’s facility otherwise used styrene in excess of the 10,000 pound threshold quantity during calendar year 2009.

15. Respondent failed to submit a Form R or a Form A for styrene to the Administrator of EPA and to the official designated by the Governor of the State of Mississippi by July 1 of the required reporting year.

16. EPA alleges that Respondent violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, at its facility for calendar year 2009, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

17. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 for each violation of Section 313 that occurred after January 12, 2009. Each day a violation of Section 313 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.

IV. Consent Agreement

18. 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.

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

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

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

22. Compliance with this 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 a violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

23. 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.

V. Final Order

24. Respondent shall pay a civil penalty of ONE THOUSAND EIGHT HUNDRED NINETY DOLLARS (\$1,890), for the violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

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

By Mail:

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

By Overnight:

U.S. Bank
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.

26. 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

Erika White
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

27. For the purposes of state and federal income taxes, 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.

28. 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 effective date of this 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.

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

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

31. The following individual is authorized to receive service for EPA in this proceeding:

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

32. 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.


THIS SECTION INTENTIONALLY LEFT BLANK

VI. Effective Date

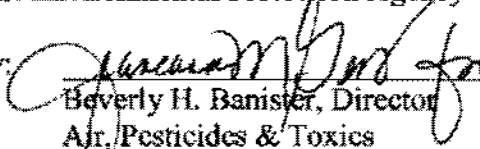
33. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

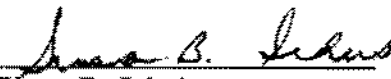
Water-Way Inc.

By:  Date: 11/10/11
Mr. Jim Shillito
General Manager

U.S. Environmental Protection Agency

By:  Date: 10/17/11
Beverly H. Banister, Director
Air, Pesticides & Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 28th day of Nov. 2011.


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

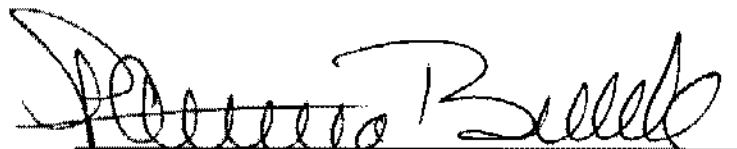
I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order: In the Matter of Water-Way Inc., Docket Number EPCRA-04-2012-2001(b), on the parties listed below in the manner indicated:

Caron B. Falconer (Via EPA's internal mail)
U.S. EPA, Region 4
Air, Pesticides & 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. Jim Shillito (Via Certified Mail - Return Receipt Requested)
Water-Way Inc.
751 County Road 989
Iuka, MS 38852

Date: 11-30-11


Belinda Johnson, Acting Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511