



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

AUG 13 2007

4APT-AEEB

Federal Express

Ms. LeAnn M. Johnson-Koch
DLA Piper Rudnick Gray Cary US LLP
Ergon Technical Coatings, Inc.
1200 Nineteenth St, N.W., Suite 700
Washington, DC 20036-2430

RE: Consent Agreement and Final Order
Docket No. CAA-04-2006-1507(b)

Dear Ms. Johnson-Koch:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in this matter. The original CAFO has been filed with the Regional Hearing Clerk as directed in Section 22.05(a) of the Consolidated Rules of Practice, as amended. Please refer to Section IV., Final Order for the terms and instructions regarding your final payment on the penalty due.

Also, enclosed is 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 Securities 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 Notice.

Should you have any questions, please do not hesitate to contact Mr. Floyd Ledbetter at (404) 562-9218.

Sincerely,

A handwritten signature in black ink that reads "Beverly A. Spagg".

Beverly A. Spagg, Chief
Air & EPCRA Enforcement Branch
Air, Pesticides and Toxics
Management Division

cc: Paul W. Young, Jr., P.E., CSP, CHMM
V.P. Ergon - Environmental Health and Safety w/ enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

In the Matter of:)
Ergon, Inc.)
2829 Lakeland Drive)
Jackson, Mississippi 39232-7611)
)
Respondent.)
_____)

Docket No. CAA-04-2007-1507(b)

2007 AUG 13 PM 1:15
HEARING CLERK
EPA REGION 4

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action and Jurisdictional Statements

1. This is an administrative action for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), published in 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 Ergon, Inc., doing business at 2829 Lakeland Drive, Jackson, Mississippi, and its affiliates including Crafcoc, Inc. and Ergon Technical Coatings, Inc., a/k/a/ Ertech (collectively referred to as "Respondent").

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.

3. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A dated March 25, 1992, last updated on August 4, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides, and Toxics Management Division, by EPA Region 4 Delegation 7-6-A, dated November 15, 1993, last updated on February 12, 2004. 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 who is in the business of manufacturing and/or distribution of architectural coatings and is therefore subject to the requirements of 40 C.F.R. Part 59, Subpart D.

5. Respondent is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

6. Respondent is a "manufacturer" and/or "importer" of architectural coating as defined at 40 C.F.R. § 59.401.

7. Respondent's corporate headquarters is located at: 2829 Lakeland Drive Jackson, Mississippi.

II. Legal Requirements – Overview of Applicable Portions of the Clean Air Act

8. The federal regulations describe reporting requirements for manufacturers and/or importers of architectural coatings. The reporting requirements include a mandate that each manufacturer and importer of any architectural coating shall submit an initial notification report no later than September 13, 1999, or within 180 days after the date that the first architectural coating is manufactured or imported, whichever is later. See 40 C.F.R. §§ 59.400, 59.408 (b).

9. The federal regulations describe labeling requirements for manufacturers and/or importers of architectural coatings. The labeling requirements include a mandate that each manufacturer and importer of any architectural coating shall label each container when distributed or sold no later than September 13, 1999, or within 180 days after the date that the first architectural coating is manufactured or imported, whichever is later. See 40 C.F.R. § 59.405.

10. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413 (d), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$25,000 for each violation of Section 183(e) of the CAA, 42 U.S.C. § 7671h(c), that occurred prior to January 31, 1997, and not more than \$27,500 for each violation that occurred on or after January 31, 1997, and not more than \$32,500 for each violation that occurred after March 15, 2004.

III. Factual Allegations

11. Upon information and belief, Respondent failed to comply with the initial notification requirements from September 1999 (the point at which EPA regulations first required notification) until March 23, 2007. In accordance with 40 C.F.R. § 59.408, notice was due to EPA by Respondent on or about September 13, 1999, but at least 180 days prior to the March 23, 2007, submittal. Therefore, EPA alleges that Respondent violated the initial notification requirements of the federal regulations.

12. Upon information and belief, Respondent failed to comply with the labeling requirements from September 1999 (the point at which EPA regulations first required labeling), until the current date. In accordance with 40 C.F.R. § 59.405, each container was to be properly labeled when distributed or sold. Therefore, Respondent violated and is still violating the labeling requirements of the federal

regulations.

13. On March 23, 2007, in response to an information request sent by EPA pursuant to 42 U.S.C. § 7414, Respondent provided EPA with initial notification and all reports due up to that date.

IV. Consent Agreement

14. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in paragraphs 1 through 13 above, but Respondent neither admits nor denies the factual allegations set out above.

15. As provided in 40 C.F.R. § 22.18(b)(2), Respondent waives any right to contest the allegations listed above and its right to appeal the proposed final order accompanying this consent agreement.

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

17. Respondent agrees to meet the requirements of 40 CFR § 59.405 Container Labeling Requirements within 90 Days of the filing date of this Order.

18. Respondent certifies, upon information and belief, that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of the CAA architectural coatings rule with respect to the allegations of violations contained herein, except for the provisions in paragraph 17 above.

19. Compliance with this CAFO shall resolve the allegations of violations contained herein and known to the EPA at this time, and EPA hereby releases Respondent from all liability regarding the violations described herein. This CAFO shall not otherwise affect any liability of Respondent, if any, 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 for allegations of violations not contained in this CAFO.

20. 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 the CAA.

Return of signed agreement by respondent should be sent in its entirety to Floyd Ledbetter who is authorized to receive service relating to this proceeding on behalf of Complainant:

Floyd Ledbetter
Air and EPCRA Enforcement Branch - 12th floor
which is to be paid within thirty (30) days of the effective date of this CAFO.

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

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

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
Atlanta, Georgia 30303

Floyd Ledbetter
Air Enforcement - 12th floor
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

25. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for the civil penalty payment made pursuant to Paragraph 22 of this CAFO.

26. 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 this CAFO, if the penalty is not paid by the date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 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 of 6 percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

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

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

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

FOR COMPLAINANT:

Beverly H. Banister, Director
Air Pesticides and Toxics
Management Division
U.S. Environmental Protection
Agency, Region 4

FOR RESPONDENT:

Paul W. Young, Jr., P.E., CSP, CHMM
Vice President – Environment, Health
and Safety
Ergon, Inc.

Signature:

Beverly H. Banister

Paul W. Young, Jr.

Date: 8/6/07

Date: July 26, 2007

APPROVED AND SO ORDERED this 13th day of August, 2007.

Susan B. Schub

Susan B. Schub
Regional Judicial Officer
EPA, Region 4

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 Ergon Technical Coatings, Inc. (Ertech) Docket No. CAA-04-2006-1520(b), on the parties listed below in the manner indicated:

(Via EPA's internal mail)

U.S. EPA, Region 4
Air, Pesticides, and Toxics
Management Division
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Vera Kornylak
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth St., SW
Atlanta, GA 30303

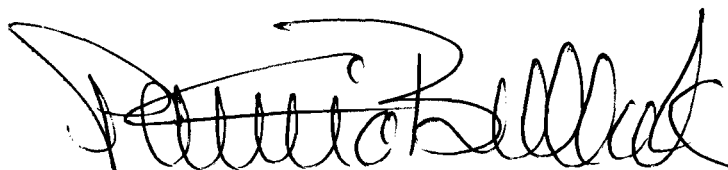
Paul W. Young, Jr., P.E., CSP, CHMM
Vice President – Environment, Health and Safety
Ergon, Inc.
2829 Lakeland Dr.
Jackson, MS 39232-7611

(Via Certified Mail - Return Receipt
Requested)

LeAnn M. Johnson-Koch
DLA Piper Rudnick Gray Cary US LLP
For Ergon Technical Coatings, Inc.
1200 Nineteenth St NW Suite 700
Washington, DC 20036-2430

(Via Certified Mail - Return Receipt
Requested)

Date: 8-13-07



Patricia A. Bullock
Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303

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 8/7/07
(Name) (Date)

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

- | | |
|---|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USA O 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: ERGON Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 20,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA 04 2007 1507(b)

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) |