



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

DEC 15 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Jeryl Olson
Seyfarth Shaw LLP
131 S. Dearborn Street
Suite 2400
Chicago, Illinois 60603

SUBJECT: Tomco2 Equipment Company
Consent Agreement and Final Order
Docket No. EPCRA-04-2011-2007(b)

Dear Ms. Olson:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) matter (Docket No. EPCRA-04-2011-2007(b)) involving Tomco2 Equipment Company. 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 (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. Andrew Porter at (404) 562-9184.

Sincerely,

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

Caron B. Falconer, Chief
EPCRA Enforcement Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
Tomco2 Equipment Company)
)
Respondent.)
_____)

Docket Number: EPCRA-04-2011-2007(b)

2010 DEC 15 PM 4:15
EPA REGION 4
EPCRA-04-2011-2007(b)

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 Tomco2 Equipment Company.

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) 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 Tomco2 Equipment Company a corporation doing business in the State of Georgia.

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 3340 Rosebud Road, Loganville, Georgia.

III. EPA's Allegations of Violations

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) using readily available data, or reasonable estimates of the amounts of toxic chemicals involved 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 NAICS code 332420.

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

13. Manganese and diisocyanates are toxic chemicals listed under EPCRA Section 313(c) and 40 C.F.R. § 372.65.

14. Respondent's facility processed diisocyanates and manganese in excess of the 25,000 pound threshold quantity established under EPCRA section 313(f) and 40 C.F.R. 372.25, during calendar years 2007, 2006, and 2005.

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

16. Respondent failed to use readily available data, or reasonable estimates of the amounts of toxic chemicals involved, for completing a toxic chemical release inventory form for diisocyanates for calendar years 2007, 2006, and 2005.

17. Respondent violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, at its facility for calendar years 2007, 2006 and 2005, for manganese, and diisocyanates and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

18. 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 \$32,500 for each violation of Section 313 that occurred on or after March 15, 2004 and before 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

19. 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.

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

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

22. 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.

23. 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.

24. 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

25. Respondent shall pay a civil penalty of SIXTY THOUSAND DOLLARS (\$60,000), for the violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

26. 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
Attn: 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.

27. 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

Andrew Porter
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

28. 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.

29. 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.

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

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

32. 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

33. 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.

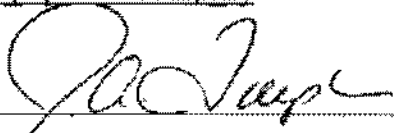
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VI. Effective Date

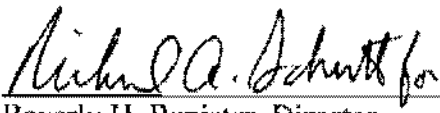
34. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

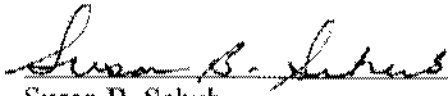
Tomco2 Equipment Company

By:  Date: 12-3-10
Name: J. A. Toepke, President (Typed or Printed)
Title: President (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 11/23/10
Beverly H. Banister, Director
Air, Pesticides & Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 15th day of Dec., 2010.


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

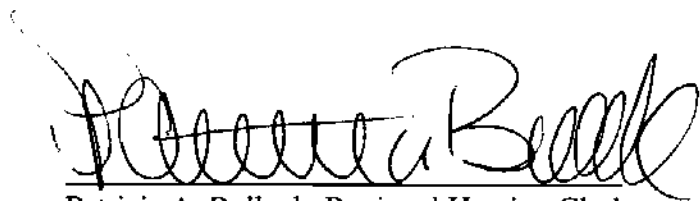
I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of Tomco2 Equipment Company EPCRA-04-2011-2007(b), on the parties listed below in the manner indicated:

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

Jeryl Olson (Certified Mail, Return Receipt Requested)
Seyfarth Shaw LLP
131 S. Dearborn Street, Suite 2400
Chicago, IL 60603

Date: 12-15-10



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 12/13/10
 (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 <u>required</u>
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 <u>not</u> required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Tomco2 Equipment Company
 (Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivables \$ 60,000
 (If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: EPORA 04-2011-2007(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Officer: _____

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 Officer |
|--|--|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be sent

- | | |
|---------------------------|-------------------------------|
| 1. Originating Office | 3. Designated Program Officer |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |