

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 AUG 27 AM 11:17
REGIONAL HEARING
CLERK

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: **CONSENT AGREEMENT**
: **AND**
: **FINAL ORDER**
: **DOCKET NUMBER**
: **EPCRA-02-2008-4107**
: **Respondent.**
: **Proceeding under Section 325(c) of Title III**
: **of the Superfund Amendments and Reauthorization Act:**
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PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §11001 *et seq.* [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA")].

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), issued a Complaint and Notice of Opportunity for Hearing to F.W. Winter Inc. & Co. ("Respondent") on June 25, 2008.

The Complaint alleged two violations of Section 313 of EPCRA, 42 U.S.C. §11023 and regulations pursuant to that Section, 40 C.F.R. Part 372.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. Respondent is F.W. Winter Inc. & Co. (TRIS Facility ID No.: 08102FWWNTDELA W)
2. At all times relevant hereto, Respondent has owned and operated a facility located at Delaware Ave. & Elm St., Camden, New Jersey 08102 (hereinafter, "Respondent's facility").
3. Respondent is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. §11049(7).
4. Respondent is an owner of a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. §11049(4), and by 40 C.F.R. §372.3.
5. Respondent's facility is subject to the requirements of EPCRA, Section 313(b), 42 U.S.C. §11023(b), and 40 C.F.R. §372.22.
6. On or about March 6, 2008, authorized representatives of EPA conducted an inspection at Respondent's Camden, New Jersey facility to determine whether the facility was in compliance with the EPCRA Section 313 Toxic Chemical Release Reporting requirements.
7. Respondent failed to submit, in a timely manner, a complete and correct Form R for chromium compounds for each of the calendar year 2006 to the Administrator and to the State of New Jersey.
8. Respondent failed to submit, in a timely manner, a complete and correct Form R for vanadium compounds for each of the calendar year 2006 to the Administrator and to the State of New Jersey.
9. Respondent's failure to submit, in a timely manner, complete and correct Form R reports for calendar year 2006 constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. §11023, and with 40 C.F.R. Part 372.
10. The parties finished informal settlement discussions over the telephone on July 15, 2008

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 325(c) of EPCRA, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc., 40 C.F.R. §22.18 (hereinafter, "Consolidated Rules"), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

1. Respondent certifies herein that any and all EPA Toxic Chemical Release Inventory Forms submitted for the above-described violations comply with the requirements of Section 313 of EPCRA and the regulations set forth at 40 C.F.R. Part 372.

2. For the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of the Complaint as applied to the facility; and (b) neither admits nor denies the specific factual allegations contained in the Complaint and the Findings of Fact and Conclusions of Law section above.

3. Respondent shall pay by cashier's or certified check, a civil penalty totaling **FOURTEEN THOUSAND THREE HUNDRED FORTY DOLLARS (\$14,340)**. Payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

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

Each check shall be identified with a notation thereon listing the following: **In the Matter of F.W. Winter Inc. & Co.** and shall bear thereon the **Docket Number EPCRA-02-2008-4107**. Payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date"). If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: **F.W. Winter Inc. & Co.**
- 7) Case Number: **EPCRA-02-2008-4107.**

Such EFT must be received on or before 45 calendar days after the Effective Date of this CAFO. Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Ms. Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency -Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866

And

Kenneth S. Stoller, P.E., QEP, DEE, Chief
Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency - Region 2
2890 Woodbridge Avenue, Bldg. 10, MS-105
Edison, New Jersey 08837

- a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice for collection.
- b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations contained in the Complaint. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Respondent has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and to abide by its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

7. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

8. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

10. Each party hereto agrees to bear its own costs and fees in this matter.

11. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

In the Matter of F.W. Winter Inc. & Co.
Docket Number EPCRA-02-2008-4107

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties in full settlement of EPA's Complaint bearing **Docket No. EPCRA-02-2008-4107, issued In the Matter of F.W. Winter Inc. & Co.** is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

DATE: 8-17-2008



for **Alan J. Steinberg**
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

In the Matter of F.W. Winter Inc. & Co.

Docket No. EPCRA-02-2008-4107

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the Foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

Original and One Copy
by Interoffice Mail:

Ms. Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency -Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

William H. Perry, Director of Operations
F.W. Winter Inc. & Co.
Delaware Ave. & Elm Street
Camden, New Jersey 08102

Copy by Mail:

Mr. Clinton R. Brown, CFO & Controller
F.W. Winter Inc. & Co.
Delaware Ave. & Elm Street
Camden, New Jersey 08102

Mr. Andrew Oppermann, EPCRA Program
State of New Jersey Department of Environmental Protection
Division of Environmental Safety and Health
Office of Pollution Prevention and Right To Know
22 S. Clinton Avenue, 3rd Floor
P.O. Box 443
Trenton, New Jersey 08625-0443

Dated: August 25, 2008



Mary Ann Kowalski, MS, MPH
Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency - Region 2
2890 Woodbridge Avenue (MS-105)
Edison, New Jersey 08837-3679