

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )

Sport Wade, Inc. )  
2769 Highway 69 )  
Weldon, Iowa 50264 )

Docket No. CAA-07-2009-0003

Respondent )

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Sport Wade, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d).

2. This Consent Agreement and Final Order (CA/FO) serves as notice that EPA has reason to believe that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirement to implement a risk management program as required by 40 C.F.R. Part 68 and Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this CA/FO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Sport Wade, Inc. The facility located at located at 2769 Highway 69, Weldon, Iowa, is owned by Respondent and stores fertilizer for sale to area farmers.

#### Statutory and Regulatory Requirements

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3) mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

6. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. These regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

7. The regulations at 40 C.F.R. Part 68, set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a risk management plan (RMP) that must be submitted to EPA.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

9. Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), authorizes the United States to commence an action to assess civil penalties of not more than \$25,000 per day for each violation of Section 112(r) of the CAA that occurs before January 30, 1997. Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to commence an action to assess civil penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004.

#### Definitions

10. The regulations at 40 C.F.R. § 68.3 define "stationary source" in part, as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.

11. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

12. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

13. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

#### Alleged Violations

14. EPA alleges that Respondent has violated the CAA and federal regulations, promulgated pursuant to the CAA, as follows:

15. Respondent is, and at all times referred to herein, was a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

16. Respondent’s facility, located at 2769 Highway 69, Weldon, Iowa, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

17. Anhydrous Ammonia is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for chlorine, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

18. On or about March 20, 2007, EPA conducted an inspection of Respondent’s facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

19. Records collected during and following the inspection showed that Respondent has exceeded the threshold quantity for anhydrous ammonia.

20. Respondent is subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

21. Respondent was required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

22. Records collected during the EPA inspection showed that Respondent failed to fully implement a risk management program that included all the requirements of a prevention program as required by 40 C.F.R. Part 68. Specifically, Respondent failed to: (1) provide documentation verifying they had updated their Offsite Consequence Analysis as required by 40 C.F.R. § 68.36; (2) provide verification that they had conducted their five-year update of their

Hazard Review as required by 40 C.F.R. § 68.50; (3) provide the two most current Compliance Audits as required by 40 C.F.R. § 68.58(a-d); and (4) timely submit the five year update of their RMP as required by 40 C.F.R. § 68.190

23. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth above are all violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

#### CONSENT AGREEMENT

24. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

25. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.

26. Respondent neither admits nor denies the factual allegations set forth above.

27. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CA/FO.

28. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

29. This CA/FO addresses all civil and administrative claims for the CAA violations identified above, existing through the effective date of this CA/FO. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or other applicable law.

30. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent's facility is presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

31. The effect of settlement described in paragraph 29 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 30, above, of this CA/FO.

32. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

33. Pursuant to § 113(e) of the CAA, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of Five Hundred dollars (\$500).

34. The penalty specified in paragraph 33, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

35. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in paragraph 33, above, and to the performance of the SEP.

36. In settlement of this matter, Respondent agrees to complete the following SEP, which the parties agree is intended to secure significant environmental and/or public health benefits.

37. Respondent shall complete the SEP as follows in compliance with all federal, state, and local laws and regulations: purchase chemical emergency response equipment for the City's fire department:

| <u>Item</u>                    | <u>Quantity</u> | <u>Cost</u> |
|--------------------------------|-----------------|-------------|
| Aries Monitor                  | 1               | \$980.00    |
| 4 Bolt Monitor Flange          | 1               | \$85.00     |
| Akromatic 1250 Nozzle          | 1               | \$850.00    |
| Chemguard First Class Foam "A" | 5 gallons       | \$72.10     |
| Chemguard Class A Foam         | 5 gallons       | \$65.45     |
| Chemguard AR-AFFF Foam         | 5 gallons       | \$87.00     |

38. The total expenditure for the SEP is estimated to be \$2,139.55 and the SEP shall be completed no later than sixty (60) days after the effective date of this CA/FO, in accordance with the specifications set forth above. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP completion report.

39. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

40. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

41. Within sixty (60) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs;
- (iii) A description of any operating problems encountered and the solutions thereto;
- (iv) A certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO; and

- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).
- (vi) The report shall be submitted via first class mail to:
  - Christine Hoard
  - ARTD/CRIB
  - United States Environmental Protection Agency - Region 7
  - 901 North Fifth Street
  - Kansas City, Kansas 66101.

42. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

43. After receipt of the SEP Completion Report described in paragraph 41, above, EPA will notify Respondent, in writing, regarding:

- (i) any deficiencies in the SEP report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
- (ii) indicate that EPA concludes that the project has been completed satisfactorily; or
- (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 45 herein.

If EPA elects to exercise option (i) above, i.e., if the SEP report is determined to be deficient, but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days from the receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CA/FO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 45 herein.

44. Respondent agrees that failure to submit the SEP Completion Report required by paragraph 41 above, shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to paragraph 45 below.

#### 45. Stipulated Penalties

a) In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in paragraph 37 above, and/or to the extent that actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 38 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty to the United States in the amount of \$2,600.
- (ii) If the SEP is not completed in accordance with paragraph 37, but the Complainant determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- (iii) If the SEP is completed in accordance with paragraph 37, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$200.
- (iv) If the SEP is completed in accordance with paragraph 37, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
- (v) For failure to submit the SEP Completion Report required by paragraph 41 above, Respondent shall pay a stipulated penalty in the amount of \$50 for each day after the due date of the Completion Report stated in paragraph 41 above, until the report is submitted.

b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c) Stipulated penalties for paragraph (v) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 1 of the Final Order portion of this CA/FO below. Interest and late charges shall be paid as stated in paragraph 47 herein.

46. Respondent understands that the failure to pay any portion of the mitigated civil penalty as stated in paragraph 33, or any portion of a stipulated penalty as stated in paragraph 45, in accordance with the provisions of this order may result in commencement of a civil action in

Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

47. Pursuant to 31 U.S.C. §3717, EPA is entitled to assess interest and penalties on debts owed to the United States and charge to cover the costs of processing and handling delinquent claims. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the debt collection, including processing and handling costs and administrative costs. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty becomes due and is not paid, 31 C.F.R. §§ 901.9(c) and (d).

48. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

49. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable federal, state, and local laws, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP undertaken pursuant to this Agreement.

50. The Final Order portion of this CA/FO shall apply to and be binding upon Respondent, and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CA/FO.

#### FINAL ORDER

Pursuant to the provisions of the CAA, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Five Hundred dollars (\$500) within thirty (30) days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

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

This payment shall reference docket number CAA-07-2009-0003.

2. A copy of each check shall be sent to:

Regional Hearing Clerk  
United States Environmental Protection Agency - Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101

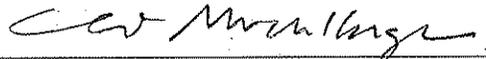
and to:

Chris Muehlberger  
Assistant Regional Counsel  
United States Environmental Protection Agency - Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101.

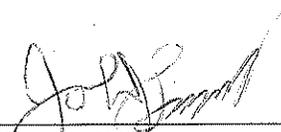
3. Respondent shall complete the SEP in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such a project as specified in the Consent Agreement.

4. This executed CA/FO shall be returned to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

COMPLAINANT:  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

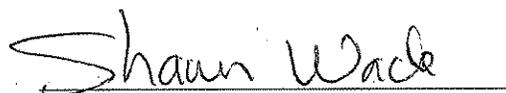
By   
Chris Muehlberger  
Assistant Regional Counsel

Date 12.8.08

By   
Becky Weber  
Director  
Air and Waste Management Division

Date \_\_\_\_\_

RESPONDENT:  
SPORT WADE, INC.

By 

Title V.P.

Date 12/3/08

IT IS SO ORDERED. This Final Order shall become effective immediately.

  
Karina Borromeo  
Regional Judicial Officer

Date August 19, 2009

IN THE MATTER OF Sport Wade, Inc., Respondent  
Docket No. CAA-07-2009-0003

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

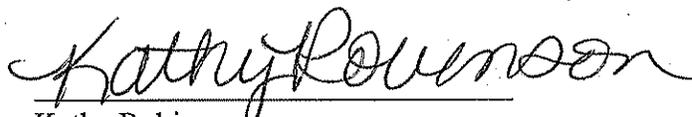
Copy hand delivered to  
Attorney for Complainant:

Chris Muehlberger  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Shawn Wade, Vice President  
Sport Wade, Inc.  
2769 Highway 69  
Weldon, Iowa 50264

Dated: 8/19/09



Kathy Robinson  
Hearing Clerk, Region 7