



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

JUN 15 2008

4APT-AEEB  
VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Don H. Ware, Jr.  
General Manager & Owner  
Clemons Concrete Coatings  
505 Cave Road  
Nashville, TN 37210

RE: Consent Agreement and Final Order  
Docket No. CAA-04-2008-1514(b)

Dear Mr. Ware:

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 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

Enclosure

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

RECEIVED  
EPA REGION 4  
2008 JUN 26 PM 2:09

In the Matter of: )  
Clemons Concrete Coatings )  
505 Cave Road )  
Nashville, Tennessee 37210 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. CAA-04-2008-1514(b)

**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, United States Environmental Protection Agency (EPA), Region 4. Respondent is Clemons Concrete Coatings.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) 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. Consistent with Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the requisite joint determination was made by EPA and the United States Department of Justice.

5. Respondent is a corporation a part of whose business is the manufacture and/or distribution of architectural coatings and is therefore subject to the requirements of 40 C.F.R. Part 59, Subpart D.

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

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

8. Respondent’s corporate headquarters is located at: 505 Cave Road, Nashville, Tennessee 37210.

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

9. 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).

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 \$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, Clemons Concrete Coatings failed to comply with the initial notification requirements from September 1999 (the point at which EPA regulations first required notification) until October 1, 2007. Therefore, Clemons Concrete Coatings violated the initial notification requirements of the federal regulations at 40 C.F.R. § 59.408.

12. On October 1, 2007, in response to an information request sent by EPA pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, Clemons Concrete Coatings provided EPA with the initial notification.

## IV. Consent Agreement

13. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in paragraphs 1 through 10 above, but Respondent neither admits nor denies the factual allegations set out above.

14. 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.

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

16. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of the CAA.

17. 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 therefor. EPA does not know of any violations not herein addressed and resolved. 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.

18. 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 - 12<sup>th</sup> floor  
U.S. EPA - Region 4  
61 Forsyth Street,  
Atlanta, Georgia 30303

V. Final Order

19. Respondent shall pay a civil penalty of \$10,964.00 which is to be paid within thirty (30) days of the effective date of this CAFO.

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

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

**The check shall reference on its face the name and the Docket Number of the CAFO.**

21. 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 - 12<sup>th</sup> 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

22. 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 19 of this CAFO.

23. 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.

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

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

26. 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.

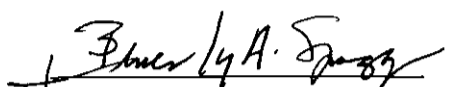
VI. Effective Date

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

**AGREED AND CONSENTED TO:**

FOR COMPLAINANT:

FOR RESPONDENT:

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

Don Ware, president  
Print Name & Title

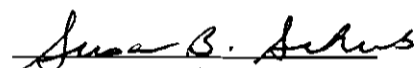
Don Ware  
Signature

Clemons Concrete Coatings

Date: 6/3/08

Date: 6/17/08

APPROVED AND SO ORDERED this 25<sup>th</sup> day of June, 2008.

  
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: Sto Corporation, Docket No. CAA-04-2008-1514(b), on the parties listed below in the manner indicated.

Floyd Ledbetter  
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

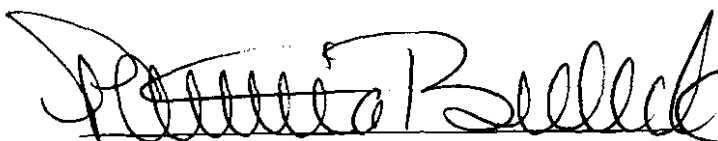
(Via EPA's internal mail)

(Respondent)

(Via Certified Mail, Return Receipt  
Requested)

Don H. Ware, Jr.  
General Manager and Owner  
Clemons Concrete Coatings  
505 Cave Road  
Nashville, TN 37210

Date: 6-26-08



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 J Wilson on 6/23/08  
(Name) (Date)

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

- |  |  |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree<br>USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement<br>FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree<br>DOJ COLLECTS      | <input type="checkbox"/> Oversight Billing - Cost Package required:<br>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: Clemons Concrete Coatings  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 10,964  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA 04 2008 1514(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<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)<br>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<br>2. Regional Hearing Clerk | 3. Designated Program Office<br>4. Regional Counsel (EAD) |
|--|---|