

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

In the Matter of:)
Oldcastle Building Products, Inc.)
375 Northridge Rd., Suite 350)
Atlanta, Georgia 30350)
Respondent.)

Docket No. CAA-04-2007-1510(b)

HEARING CLERK

2007 JUL 19 PM 4:33

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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 Oldcastle Building Products, Inc., d/b/a Oldcastle Products and Distribution (Oldcastle P&D) located at 375 Northridge Road, Suite 350, Atlanta, Georgia, and various other locations.

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, EPA 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 whose business includes the manufacture 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 coatings as defined at 40 C.F.R. § 59.401.

7. Respondent's corporate headquarters is located at: 375 Northridge Road, Atlanta, Georgia.

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

8. The federal regulations implementing Section 183 of the CAA 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. 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

10. Upon information and belief, Oldcastle P&D failed to comply with the initial notification requirements from September 13, 1999, (the point at which the federal regulations first required notification) until May 15, 2006. In accordance with 40 C.F.R. § 59.408(b), notice was due to EPA by Oldcastle P&D on or about September 13, 1999, or at least 180 days prior to the May 15, 2006, submittal. Therefore, Oldcastle P&D violated the initial notification requirements of the federal regulations.

11. Upon information and belief, Oldcastle P&D failed to comply with the reporting requirements for § 59.408(d) and § 59.403(d) for the exceedance fee requirements beginning on March 1, 2003, until the May 15, 2006, submittal. Therefore, Oldcastle P&D violated the reporting requirements established in these regulations.

12. Upon information and belief, Oldcastle P&D failed to comply with the reporting requirements for § 59.408(e) for the tonnage exemption requirements beginning on March 1, 2000, until the May 15, 2006, submittal. Therefore, Oldcastle P&D violated these reporting requirements of these regulations.

13. On May 15, 2006, in response to an information request sent by EPA pursuant to 42 U.S.C. § 7414, Oldcastle P&D provided EPA with initial notification and all reports due up to that date.

14. Upon information and belief, Oldcastle P&D failed to comply with the labeling requirements for § 59.405(a) for the container labeling requirements from some point after September, 13 1999, until the submittal of May 16, 2006. Therefore, Oldcastle P&D violated the labeling requirements of these regulations.

IV. Consent Agreement

15. For the purposes of this CAFO, Respondent admits to the jurisdictional allegations set out above, but Respondent neither admits nor denies the factual allegations set out above.

16. 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.

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

18. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of the CAA except as set out herein.

19. Respondent agrees to correct all incorrect labels for all products under their control within ninety (90) days of the effective date of this CAFO.

20. Compliance with paragraph 19 of this CAFO shall be accomplished by certification by a corporate officer that paragraph 19 has been accomplished and submitted to Mr. Floyd Ledbetter, EPA Region 4 AEEB, 61 Forsyth St., S.W., Atlanta, Georgia 30303, by certified mail on or before 105 days of the effective date of this CAFO.

21. 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 therefore. 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.

22. 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
U.S. EPA - Region 4
61 Forsyth Street,
Atlanta, Georgia 30303

23. Respondent shall pay the following exceedance fees from calendar year 2002 (\$499.15) and from calendar year 2003 (\$2,082.92), totaling \$2,582.07, by check made payable to EPA at the following address:

U. S. Environmental Protection Agency,
AIM Exceedance Fees
Post Office Box 371293M
Pittsburgh, PA 15251

V. Final Order

24. Respondent shall pay a civil penalty of **THIRTY NINE THOUSAND FIVE HUNDRED AND EIGHT DOLLARS (\$39,508.00)** which is to be paid within thirty (30) days of the effective date of this CAFO.

25. 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
Box 371099M
Pittsburgh, PA 15251

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

26. 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

27. 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 24 of this CAFO.

28. 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 six 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.

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

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


31. 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.

V. Effective Date


32. 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:


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

FOR RESPONDENT:



Michael O'Driscoll, CFO
Oldcastle Building Products, Inc.

Please Print:

Michael O'Driscoll
Name

Chief Financial Officer
Title

APPROVED AND SO ORDERED this 19th day of July, 2007.


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 Oldcastle Building Products Inc. Docket No. CAA-04-2007-1510(b), on the parties listed below in the manner indicated:

Mr. 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)

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

(Via EPA's internal mail)

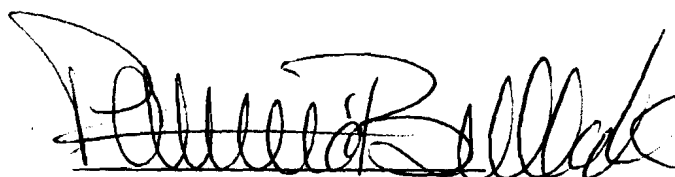
Ms. Susan H. Richardson
Kilpatrick Stockton LLP
1100 Peachtree St., Suite 2800
Atlanta, GA 30309-6555

(Via Federal Express)

Mr. Brian Colbert
Oldcastle, Inc.
375 Northridge Rd., Suite 250
Atlanta, GA 30350

(Via Certified Mail - Return Receipt)

Date: 7-19-07



Patricia A. Bullock
Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(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 9/17/07
(Name) (Date)

in the DEH OATGL 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 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: Oldcastle Building Products Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 39,508
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA 04 2007 1510(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) |