



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

MAY 22 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ken Kesler
Operations Manager
Marianna Industries, Inc.
11222 I Street
Omaha, NE 68137

SUBJ: Expedited Settlement Agreement
Marianna Industries, Inc.
Docket No. CAA-04-2007-8014(b)

Dear Mr. Kesler:

Enclosed please find an executed copy of the Expedited Settlement Agreement (ESA) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2007-8014(b)) involving Marianna Industries, Inc. The ESA was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective on today's date. Penalty payment of \$420 has been received, and the United States Environmental Protection Agency, Region 4, Emergency Planning and Community Right-to-Know Act Enforcement Section, considers this matter closed.

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 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 Victor Weeks at (404) 562-9189.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Falconer for".

Caron B. Falconer, Chief
EPCRA Enforcement Section

Enclosures (2)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

**EXPEDITED SETTLEMENT
AGREEMENT**

DOCKET NO: CAA-04-2007-8014(b)

This ESA is issued to:

**Marianna Industries, Inc.
11222 I Street
Omaha, Nebraska 68137**

for violating Section 112(r)(7) of the Clean Air Act.

This Expedited Settlement Agreement (ESA) is being entered into by the United States Environmental Protection Agency (EPA), Region 4, the Director of the Air, Pesticides and Toxics Management Division (Complainant), and by Marianna Industries, Inc. (Respondent), pursuant to Section 113(a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a)(3) and (d), and by 40 CFR § 22.13(b).

ALLEGED VIOLATIONS

Based on a compliance monitoring inspection conducted on June 22, 2006, at the Respondent's Marianna of Memphis, Inc., facility located at 1178 Pope Street, Memphis, Tennessee, EPA alleges that the Respondent violated the Act's Chemical Accident Prevention Program when:

Respondent did not provide evidence that it has updated and revalidated the process hazard analysis at least every five years as required by 40 CFR § 68.67(f); and

Respondent did not provide evidence that it had, at least every three years, evaluated its compliance with the prevention program requirements and certified that its procedures and practices are adequate and are being followed as required by 40 CFR § 68.79(a).

SETTLEMENT

In consideration of Respondent's size, its full compliance history, its good faith effort to comply, and other factors as justice may require, and upon consideration of the entire record the parties enter into the ESA in order to settle the violations cited above, for the total penalty amount of **\$420**.

RECEIVED
EPA REGION IV
2007 MAY 22 PM 2:38
HEARING CLERK

This settlement is subject to the following terms and conditions: the Respondent by signing below admits the jurisdictional allegations contained herein, neither admits nor denies the specific factual allegations contained herein, and consents to the assessment of the penalty as stated above; Respondent waives its rights to a hearing afforded by Section 113(d)(2)(A) of the Act, 42 U.S.C § 7413(d)(2)(A), and to contest the allegations contained in this ESA; and each party to this action shall bear its own costs and fees, if any.

Respondent has corrected the alleged violations listed in this ESA. Respondent shall pay a civil penalty of **\$420**. **Please note that payment should not be made until after Respondent receives a copy of the fully executed ESA.** Within fifteen (15) days after receiving a copy of the fully executed ESA, the Respondent shall send a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of **\$420**, in payment of the full penalty amount to the following address:

Mellon Client Service Center
ATTN: Shift Supervisor, Room 0690
Lockbox 371099M
500 Ross Street
Pittsburgh, Pennsylvania 15262-0001

The Respondent's name and the Docket Number of this ESA must be included on the check. The Docket Number is located at the top left corner of the first page of this ESA.

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 ESA to:

Saundi Wilson
U. S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, Georgia 30303, and

Victor L. Weeks
U. S. EPA Region 4
EPCRA Enforcement Section
61 Forsyth Street
Atlanta, Georgia 30303

Upon Respondent's payment of the penalty, EPA will take no further civil action against Respondent for the alleged violations of the Act referenced in this ESA. EPA does not waive any other enforcement action for any other violations of the Act or any other statute.

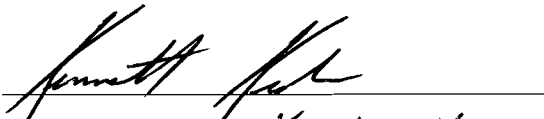
The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U. S. EPA - Region 4
61 Forsyth St., S. W.
Atlanta, Georgia 30303
(404) 562-8451

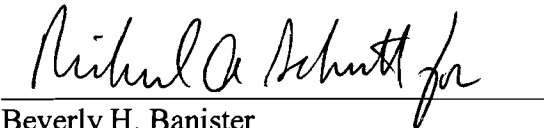
This ESA is binding on the parties signing below.

This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT:

 Date: 4/20/07
Name (print): KENNETH KESLER
Title (print): OPERATIONS MANAGER
Marianna Industries, Inc.

FOR COMPLAINANT:

 Date: 4/4/07
Beverly H. Banister
Director
Air, Pesticides & Toxics
Management Division
Region 4

I hereby ratify the ESA and incorporate it herein by reference. It is so ORDERED.

 Date: May 22, 2007
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 Expedited Settlement Agreement, in the matter of Marianna Industries, Inc., CAA-04-2007-8014(b), on the parties listed below in the manner indicated:

Caron B. Falconer
U. S. EPA - Region 4
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

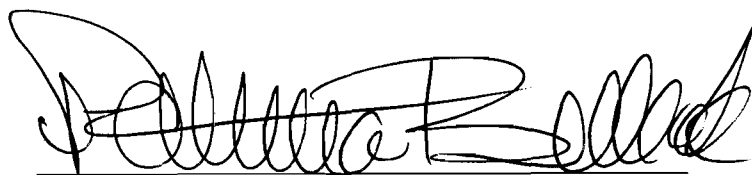
Alan Dion
U. S. EPA - Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Mr. Ken Kesler
Operations Manager
Marianna Industries, Inc.
11222 I Street
Omaha, NE 68137

(Via Certified Mail -
Return Receipt Requested)

Date: 5-22-07



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection Agency
Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 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 5/18/07
(Name) (Date)

in the DEA, OATGL at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Marianna Industries
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 420
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA 04 2007 7014(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) |