



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 9 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Rodney Washburn
MarChem Southeast, Inc.
2500 Adie Road
Saint Louis, Missouri 63043

SUBJECT: MarChem Southeast, Inc.
Consent Agreement and Final Order
EPCRA-04-2009-2011(b)

Dear Mr. Washburn:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) matter (Docket No. EPCRA-04-2009-2011(b)) involving MarChem Southeast, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing.

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 Environmental Protection Agency (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 Mr. Vinson Poole at (404) 562-9186.

Sincerely,

A handwritten signature in black ink, appearing to read "Caron B. Falconer".

Caron B. Falconer
Chief, EPCRA Enforcement Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
MarChem Southeast, Inc.)
)
Respondent.)
_____)

Docket Number: EPCRA-04-2009-2011 (b)

HELEN S. OLEARY

2009 SEP -9 AM 9:46

RECEIVED
EPA REGION IV

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is MarChem Southeast, Inc.

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.

II. Preliminary Statements

3. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. 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 MarChem Southeast, Inc., a corporation doing business in the State of Georgia.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

6. Respondent owns and operates a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 400 North Main Street, Adairsville, Georgia.

8. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30, require the owner or operator of a facility that (a) has 10 or more full-time employees; (b) is in a Standard Industrial Classification (SIC) major group or industry listed in 40 C.F.R. § 372.23(a) (for which the corresponding North American Industry Classification System subsector and industry codes are listed in 40 C.F.R. §§ 372.23(b) and 372.23(c)); and (c) manufactured, processed, or otherwise used a toxic chemical listed in Section 313(c) and 40 C.F.R. § 372.65, in excess of an applicable threshold quantity established under EPCRA Section 313(f) and set forth in 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory reporting Form R (EPA Form 9350-1) to the Administrator of EPA and to the State in which the facility is located, by July 1 for the preceding calendar year for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in quantities exceeding the established threshold quantity during the preceding calendar year.

9. As set forth at EPCRA Section 313(f) and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds per calendar year. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds.

10. Respondent has 10 or more full-time employees, as defined at 40 C.F.R. § 372.3 at its facility.

11. Respondent's facility is classified under SIC code 3087.

12. Respondent's facility is classified in a covered SIC code as described at 40 C.F.R. § 372.22.

13. Mercury, antimony compounds, diisocyanates and zinc compounds are toxic chemicals listed under EPCRA Section 313(c) and 40 C.F.R. § 372.65.

14. Respondent's facility manufactured or processed a toxic chemical listed under EPCRA Section 313(c) and 40 C.F.R. § 372.65, in excess of the 25,000 pound threshold quantity established under EPCRA Section 313(f) and 40 C.F.R. § 372.25, during calendar years 2004 and 2003.

15. Respondent failed to submit Form Rs for mercury, antimony compounds, diisocyanates and zinc compounds to the Administrator of EPA and to the official designated by the Governor of the State of Georgia by July 1 of the required reporting years.

16. Respondent violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, at its facility for calendar year(s) 2004 and 2003 and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

17. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$27,500 for each violation of Section 313 that occurred on or after January 30, 1999, and not more than \$32,500 for each violation of Section 313 that occurred on or after March 15, 2004, but before January 12, 2009. Each day a violation of Section 313 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by an Administrative Order.

III. Consent Agreement

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

19. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

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

21. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

22. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

23. Compliance with this CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for a violation of any federal or state statute, regulation or permit; to initiate an action for imminent and substantial endangerment; or to pursue criminal enforcement.

24. 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 EPCRA.

IV. Final Order

25. Respondent shall pay a civil penalty of FOURTEEN THOUSAND FOUR HUNDRED FORTY-THREE DOLLARS (\$14,443), for the violations alleged in Section II. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

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

By Mail:

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

Overnight:

U.S. Bank
Attn: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

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

27. 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, S.W.
Atlanta, Georgia 30303

Vinson Poole
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

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

28. Respondent shall undertake and complete within 60 days the approved Emergency Planning and Preparedness Supplemental Environmental Project (SEP) in this matter. Cash donations shall not be used to satisfy the terms and conditions of this CAFO. MarChem Southeast, Inc., shall expend a total of FIFTY FOUR THOUSAND ONE HUNDRED SIXTY ONE DOLLARS (\$54,161) for the purchase and donation of the following equipment to the Bartow County Fire Rescue Service:

- 1 – Scott Supplied Air Cart
- 4 – Scott SKA PAC Respirator
- 4 – Scott 100-foot Breathing Air Hose
- 7 – Bullard Eclipse Thermal Imaging Camera
- 7 – Bullard Eclipse Retractable Lanyards for Camera
- 7 – Bullard Eclipse Battery
- 48 – 5 Gallon FireAde 2000-6 AFFF Foam
- 1 – 30-inch Haligan Pry Bar
- 3 – Akron Pyrolite Foam Educators
- 2 – MSA Altair 4-gas Monitor
- 2 – MSA Galaxy Calibration Unit
- 1 – 34-Liter Calibration Gas Cylinder
- 1 – 58-Liter Calibration Gas Cylinder

The expenditure and donation of the equipment shall be completed within 60 calendar days of the effective date of the CAFO.

29. No later than 90 calendar days after the effective date of the CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Vinson Poole, at the address provided above. The Report shall include the following:

(a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it;

(b) copies of appropriate documentation, including invoices and canceled checks, showing total amounts of FIFTY FOUR THOUSAND ONE HUNDRED SIXTY ONE DOLLARS (\$54,161) or greater, was spent on the purchases and donation of the above equipment and plant modification described in paragraph 28; and

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

30. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

31 Any public statement, oral or written, by Respondent making any 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 U.S. Environmental Protection Agency for violations of Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986."

32. If Respondent fails to timely and fully complete any part of the SEP, including failing to spend the minimum amount of FIFTY FOUR THOUSAND ONE HUNDRED SIXTY ONE DOLLARS (\$54,161), for the SEP, Respondent shall be liable for stipulated penalties of the difference between \$54,161 and the amount actually expended, except as follows below:

(a) if the SEP was fully and timely completed, and Respondent expended at least 90 percent of the minimum amount required, Respondent shall not pay a stipulated penalty; or

(b) if the SEP was not fully and timely completed, but Respondent expended at least 90 percent of the minimum amount required, Respondent shall not pay a stipulated penalty if the Respondent has made a good faith effort to fully and timely complete the SEP.

For purposes of this paragraph, whether Respondent has fully and timely completed the SEP and whether Respondent made a good faith, timely effort to do so shall be in the sole discretion of EPA.

33. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day the report is late.

34. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty. If Respondent believes the demand for payment of any stipulated penalty is erroneous or contrary to law, Respondent may request a meeting with the Director, Air, Pesticides & Toxics Management Division.

35. For Federal Income Tax purposes, MarChem Southeast, Inc., agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

36. 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 the CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 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 will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

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

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

39. 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
Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8451

40. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

THIS SECTION INTENTIONALLY LEFT BLANK

MarChem Southeast, Inc.

By: Gregory J. Divis Date: 8/21/09
Name: GREGORY J. DIVIS (Typed or Printed)
Title: VICE PRESIDENT (Typed or Printed)

U.S. Environmental Protection Agency

By: Kenneth R. Lapierre Date: 8/19/09
Kenneth R. Lapierre, Acting Director
Air, Pesticides & Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 8th day of Sept., 2009.

Susan B. Schub
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
Consent Agreement and Final Order, in the Matter of MarChem Southeast, Inc.,
EPCRA-04-2009-2011(b), on the parties listed below in the manner indicated:

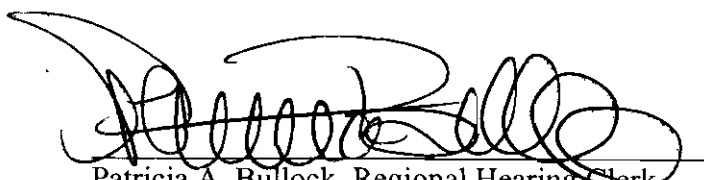
Caron B. Falconer (Via EPA's internal mail)
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Mr. Rodney Washburn (Via Certified Mail - Return Receipt
MarChem Southeast, Inc. Requested)
2500 Adie Road
Saint Louis, Missouri 63043

Date:

9-9-09



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 9/4/09
(Name) (Date)

in the Region 4, ORC, OEA 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: MarChem Southeast Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 14,443
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: EPCKA 04 2009 2011 (b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program 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
2. Regional Hearing Clerk | 3. Designated Program Office
4. Regional Counsel (EAD) |
|--|---|