



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 03 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Chris Drees
President
Attwood Corporation
1016 North Monroe Street
Lowell, Michigan 49331

Re: Attwood Corporation, Lowell, Michigan, Consent Agreement and Final Order
Docket No. EPCRA-05-2013-0002

Dear Mr. Drees:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on October 3, 2012.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$37,206 in the manner prescribed in paragraph 49, and reference your check with the billing document number 2751344E002 and the docket number EPCRA-05-2013-0002

Your payments are due on November 2, 2012.

Please feel free to contact James Entzminger, at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Puja Lakhani, Associate Regional Counsel, at (312) 353-3190. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Captain Thomas Sands, Chairperson (w/ enclosure)
Susan Parker (w/ enclosure)
MI SERC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Attwood Corporation
Lowell Michigan,

Respondent.



Docket No. EPCRA-05-2013-0002

Proceeding to Assess a Civil Penalty Under
Section 325(c)(1) of the Emergency Planning
and Community Right-to-Know Act of 1986

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Attwood Corporation, a Delaware corporation doing business in the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, an MSDS.

12. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous chemicals.

13. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$32,500 per day of violation that occurred after March 15, 2004 through January 12, 2009 and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

14. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 1016 North Monroe Street, Lowell, Michigan (facility).

16. At all times relevant to this CAFO, Respondent was an employer at the facility.

17. Respondent’s facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

18. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

19. Sulfuric acid is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

20. Sulfuric acid (CAS #7664-93-9) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

21. Sulfuric acid (CAS #7664-93-9) is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

22. Sulfuric acid (CAS #7664-93-9) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

23. During at least one period of time in calendar year 2007, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

24. During at least one period of time in calendar year 2008, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

25. During at least one period of time in calendar year 2009, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

26. OSHA requires Respondent to prepare, or have available, an MSDS for sulfuric acid.

27. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid on or before March 1, 2008, for calendar year 2007.

28. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid on or before March 1, 2009, for calendar year 2008.

29. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid on or before March 1, 2010, for calendar year 2009.

30. At all times relevant to this CAFO, the Citizen-Community Emergency Response Coordinating Council was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

31. At all times relevant to this CAFO, the Kent County, Michigan LEPC was the LEPC for Kent County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

32. At all times relevant to this CAFO, the Lowell Fire Department was the fire department with jurisdiction over the facility.

Count 1

33. Complainant incorporates paragraphs 1 through 32 of this CAFO as if set forth in this paragraph.

34. Respondent submitted to the SERC, the LEPC, and the Lowell Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid on February 25, 2011, for calendar year 2007.

35. Each day Respondent failed to submit to the SERC, the LEPC, and the Lowell Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 2

36. Complainant incorporates paragraphs 1 through 32 of this CAFO as if set forth in this paragraph.

37. Respondent submitted to the SERC, the LEPC, and the Lowell Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid on February 25, 2011, for calendar year 2008.

38. Each day Respondent failed to submit to the SERC, the LEPC, and the Lowell Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 3

39. Complainant incorporates paragraphs 1 through 32 of this CAFO as if set forth in this paragraph.

40. Respondent submitted to the SERC, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid on February 25, 2011, for calendar year 2009.

41. Each day Respondent failed to submit to the SERC, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 4

42. Complainant incorporates paragraphs 1 through 32 of this CAFO as if set forth in this paragraph.

43. Respondent submitted to the LEPC, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid on February 25, 2011, for calendar year 2009.

44. Each day Respondent failed to submit to the LEPC, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 5

45. Complainant incorporates paragraphs 1 through 32 of this CAFO as if set forth in this paragraph.

46. Respondent submitted to the Lowell Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid on February 25, 2011, for calendar year 2009.

47. Each day Respondent failed to submit to the Lowell Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

48. Complainant has determined that an appropriate civil penalty to settle this action is \$37,206 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

49. Within 30 days after the effective date of this CAFO, Respondent must pay a \$37,206 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

for checks sent by express mail by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
U.S. EPA Fines and Penalties
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Attwood Corporation, the docket number of this CAFO and the billing document number 2751344E002.

50. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

James Entzminger (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Puja Lakhani (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

51. This civil penalty is not deductible for federal tax purposes.

52. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

53. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

54. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

55. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

56. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

57. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state and local laws and regulations.

58. This CAFO is a “final order” for purposes of U.S. EPA’s EPCRA Enforcement Response Policy.

59. The terms of this CAFO bind Respondent and its successors and assigns.

60. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

61. Each party agrees to bear its own costs and attorney’s fees in this action.

62. This CAFO constitutes the entire agreement between the parties.

Attwood Corporation, Respondent

9/25/12

Date



Chris Drees
President
Attwood Corporation

U.S. Environmental Protection Agency, Complainant

10-1-12
Date

made for SJ
Sharon Jaffess, Chief
Enforcement and Compliance Assurance Branch
Superfund Division
U.S. Environmental Protection Agency
Region 5

10-1-12
Date


Richard C Karl
Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Attwood Corporation, Lowell, Michigan
Docket No. EPCRA-05-2013-0002

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10-2-2012
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

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PROTECTION AGENCY

In the Matter of: Attwood Corporation, Lowell, Michigan
Docket No. EPCRA-05-2013-0002

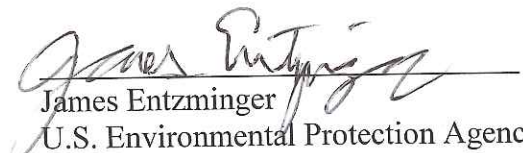
Certificate of Service

I, James Entzminger, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Chris Drees, President
Attwood Corporation
1016 North Monroe Street
Lowell, Michigan 49331

John W. Watson, Partner
Baker & McKenzie LLP
300 East Randolph Street, Suite 5000
Chicago, Illinois 60601

on the 3 day of October, 2012


James Entzminger
U.S. Environmental Protection Agency
Region 5

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