

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

IN THE MATTER OF:

Appalachian Timber Services, LLC

Respondent

Appalachian Timber Services, LLC
393 Edgar Given Parkway
Sutton, West Virginia 26601

Facility.

:
: Docket No. EPCRA-03-2009-0002
:

: **CONSENT AGREEMENT**
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: Proceeding under EPCRA §§ 313 and 325,
: 42 U.S.C. §§ 11023 and 11045
:

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director, Land and Chemicals Division (formerly known as the Waste and Chemicals Management Division), U.S. Environmental Protection Agency, Region III ("Complainant") and Appalachian Timber Services, LLC (formerly Appalachian Timber Services, Inc.) ("Respondent"), pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22.

Pursuant to Sections 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the *Consolidated Rules*, this Consent Agreement and attached Final Order (collectively "CAFO") resolve Complainant's claims for civil penalties arising from Respondent's violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and regulations promulgated thereunder, as set forth in Paragraph 16 of this Consent Agreement.

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General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest the U.S. Environmental Protection Agency's jurisdiction with respect to the execution or the enforcement of this CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this CAFO or to appeal the Final Order accompanying this Consent Agreement.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent agrees not to deduct for civil taxation purposes the civil penalty to be paid in settlement of this action as specified in this CAFO.
7. Respondent shall bear its own costs and attorney's fees.
8. The provisions of this CAFO shall be binding upon Complainant, Respondent and Respondent's officers, directors, successors and assigns.
9. By signing this Consent Agreement, Respondent certifies that the Facility covered by this CAFO is currently in compliance with all applicable requirements of EPCRA Section 313, 42 U.S.C. § 11023.
10. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, for the specific violations alleged herein and as more fully set forth in Paragraph 16 of this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violations of the federal laws and regulations administered by EPA.
11. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state and local law. Furthermore, EPA reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following entry of this CAFO. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules*.

12. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment.
13. The undersigned representative of Respondent certifies that she or he is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.
14. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed herein.
15. The effective date of this Consent Agreement and the accompanying Final Order is the date upon which the Final Order, after signature by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

EPA's Findings of Fact and Conclusions of Law

16. In accordance with Section 22.18(b)(2) of the *Consolidated Rules*, Complainant adopts the following findings of fact and conclusions of law.

COUNTS I-II

- a. Section 313 of EPCRA, 42 U.S.C. § 11023, requires the owner or operator of a facility that: 1) has 10 or more full-time employees; 2) is in a primary Standard Industrial Classification ("SIC") Code 20 through 39 (as in effect on July 1, 1985) or other SIC or industry code as set forth in 40 C.F.R. § 372.22(b); and 3) manufactured, processed or otherwise used a toxic chemical listed in 40 C.F.R. § 372.65 in excess of the threshold quantity established in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form is required, to complete and submit a toxic chemical release form ("Form R") or alternate threshold report ("Form A") for each toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year.
- b. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures and other stationary items that are located on a single site that are owned or operated by the same person.
- c. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines "person" to include any corporation.

- d. Respondent is a Delaware corporation.
- e. Respondent and its predecessor is, and was at all times relevant to this CAFO, a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. §11049(7).
- f. Respondent owned and operated a “facility”, as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), located at 393 Edgar Given Parkway, Sutton, West Virginia, 26601 (“Facility”), at the time of the violations alleged herein.
- g. Respondent had 10 or more full-time employees at the Facility during the period of violations alleged herein.
- h. Respondent’s Facility had a primary SIC Code of 24 at the time of the violations alleged herein.
- i. Respondent was required to complete and submit a Form R or Form A for each toxic chemical listed in 40 C.F.R. § 372.65 which was manufactured, processed or otherwise used at the Facility in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form was required, to EPA and the State of West Virginia by July 1 of the following calendar year.
- j. “Creosote” is a toxic chemical as defined by 40 C.F.R. § 372.3 and is listed in 40 C.F.R. § 372.65.
- k. As set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical which is processed or manufactured at a facility is 25,000 pounds, except as provided in 40 C.F.R. §§ 372.27 and .28, which are inapplicable to this matter.
- l. Respondent processed more than 25,000 pounds of creosote at its Facility in the 2003, 2004, 2005 and 2006 calendar years.
- m. Respondent failed to submit the required Form R or Form A for the toxic chemical creosote processed at its Facility to the Administrator of EPA and the State of West Virginia by July 1, 2004, July 1, 2005, July 1, 2006, and July 1, 2007, for the 2003, 2004, 2005 and 2006 calendar years, respectively.
- n. Respondent’s failure to submit the required Form Rs or Form As for creosote to the Administrator of EPA and the State of West Virginia by July 1, 2004, July 1, 2005, July 1, 2006, and July 1, 2007, as described in Paragraph 16.m., constitutes four separate violations of Section 313 of EPCRA, 42 U.S.C. § 11023.

- o. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) provides that any person who violates Section 313 of EPCRA, 42 U.S.C. § 11023, shall be liable to the United States for a civil penalty of up to \$25,000 per violation.
- p. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised (64 Fed. Reg. 7121 (February 13, 2004)), violations of Section 313 of EPCRA, 42 U.S.C. § 11023, occurring after January 30, 1997, and before March 16, 2004, are subject to an increased statutory maximum penalty of \$27,500 per violation, and violations occurring after March 15, 2004, are subject to an increased statutory maximum penalty of \$32,500 per violation.

Civil Penalty

- 17. Respondent agrees to pay a civil penalty of Twenty-Three Thousand Dollars (\$23,000) in full satisfaction of all EPA's claims for civil penalties for the violations alleged in Paragraph 16 of the CAFO. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO.
- 18. The aforesaid settlement is based upon a consideration of the factors set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and the Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act ("ERP"), dated August 10, 1992.
- 19. Respondent shall remit the full civil penalty described in Paragraph 17, above, by either cashier's or certified check payable to the "United States Treasury" or electronic wire transfer, automated clearinghouse or other means as specified below:

- a. Check payments sent via regular mail shall be addressed and mailed to:

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

Contact: Natalie Pearson, 314-418-4087

- b. Check payments sent via overnight delivery shall be addressed and sent to:

U.S. Environmental Protection Agency--Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

- c. Electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Customer service: 212-720-5000

- d. Automated clearinghouse (ACH) (or Remittance Express (REX)) payments shall be directed to:

PNC Bank
ABA = 051036706
Transaction Code 22 - Checking
Environmental Protection Agency
Account 310006
CTX Format
808 17th Street, NW
Washington, DC 20074

Contact: Jesse White 301-887-6548

Customer service: 800-762-4224 (ACH/Wire Info, PNC Bank)

- e. Debit or credit payments may be made online at: www.pay.gov
Enter sfo 1.1 in the search field. Open and complete the form.

- f. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment_cin.htm

- g. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO (EPCRA-03-2009-0002). A paper copy of Respondent's payment (whether by check, EFT, ACH or other means) shall be sent simultaneously to:

Janet E. Sharke (3RC30)
Sr. Asst. Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

20. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of the civil penalty not paid within 30 calendar days will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

A late payment penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).


21. Failure by Respondent to comply with the requirements of this CAFO may subject Respondent to additional enforcement action, including, but not limited to, the issuance

of an Administrative Complaint and imposition of penalties, as provided by Section 325 of EPCRA, 42 U.S.C. § 11045, or the accompanying Final Order.

22. Having determined that this Consent Agreement is in accordance with law and that the civil penalty amount was determined after consideration of the factors set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and the Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act, dated August 10, 1992, the parties hereto agree that payment of the civil penalty shall be in full and final satisfaction of EPA's claims for civil penalties arising from Respondent's violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and regulations promulgated thereunder, as set forth in Paragraph 16 of this Consent Agreement.

For Respondent

10/14/08
Date




John B. Reinmann
President
Appalachian Timber Services, LLC



For Complainant

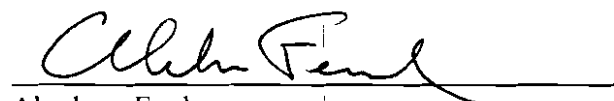
10/27/08
Date



Janet E. Sharke
Sr. Assistant Regional Counsel

After reviewing the Findings of Fact and Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the U.S. Environmental Protection Agency, Region III, hereby recommends that the Regional Administrator or his designee, the Regional Judicial Officer, issue the attached Final Order.

10/31/08
Date



Abraham Ferdas
Director
Land and Chemicals Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

IN THE MATTER OF:

Appalachian Timber Services, LLC

Respondent

Appalachian Timber Services, LLC
393 Edgar Given Parkway
Sutton, West Virginia 26601

Facility.

Docket No. EPCRA-03-2009-0002

FINAL ORDER

Proceeding under EPCRA §§ 313 and 325,
42 U.S.C. §§ 11023 and 11045

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Appalachian Timber Services, LLC (formerly Appalachian Timber Services, Inc.), have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth fully herein.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(c), which authorizes the assessment of a civil penalty for violations of EPCRA, and having determined on the basis of the representation of the parties hereto that the civil penalty agreed to in the Consent Agreement is based upon a consideration of the factors set forth in EPCRA § 325, 42 U.S.C. § 11045, IT IS HEREBY ORDERED that Respondent comply with the terms and conditions of the attached Consent Agreement and pay a civil penalty of Twenty-Three Thousand Dollars (\$23,000.00), as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA, Region III, or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

11/13/08
Date

Renee Sarajian

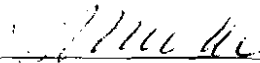
Renee Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order, EPA Docket No. EPCRA-03-2009-0002, were filed today with the Regional Hearing Clerk, EPA, Region III, and that one copy of the Consent Agreement and Final Order was sent via fax and certified mail, return-receipt requested, to:

Mr. John J. Reinmann
President
Appalachian Timber Services, LLC
3939 Roswell Road, NE, Suite 295
Marietta, GA 30062

11/17/08
Date



Janet E. Sharke (3RC30)
Counsel for Complainant
U.S. Environmental Protection Agency, Region III
(215) 814-2689