



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP. 19 2017

REPLY TO THE ATTENTION OF:

ELECTRONIC SERVICE
VIA EMAIL

Mr. Scott Palm
Facility Manager
Archway Marketing Services, Inc.
19850 South Diamond Lake Road
Rogers, Minnesota 55374
Scott_palm@archway.com

Re: Archway Marketing Services, Inc., Rogers, Minnesota, Consent Agreement and Final Order, Docket No. EPCRA-05-2017-0026

Dear Mr. Palm:

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 September 19, 2017.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$37,916 in the manner prescribed in paragraph 31, and reference your check with the docket number EPCRA-05-2017-0026.

Your payment is due on October 19, 2017.

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 Robert S. Guenther, Associate Regional Counsel, at (312) 886-0566. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

cc: Steve Tomlyanovich (w/ enclosure)
Division of Homeland Security
and Emergency Management
444 Cedar Street, Suite 223
St. Paul, Minnesota 55101

Francis X. Lyons (w/ enclosure)
Partner
Schiff Hardin, LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
flyons@schiffhardin.com (electronic via email)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

ARCHWAY MARKETING
SERVICES, INC.,
ROGERS, MINNESOTA,

Respondent.



Docket No. EPCRA-05-2017-0026

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

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. Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Archway Marketing Services, Inc., a Delaware corporation, doing business in the State of Minnesota.
4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

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 to the terms of the CAFO.

Jurisdiction and Waiver of the 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 prepare and submit to the state emergency response commission, community emergency coordinator for the local emergency planning committee and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier 1 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, MSDS.

12. Under section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1910.1200(c).

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. 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 for each EPCRA section 312 violation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 129 Stat. 599 (Nov. 2, 2015), amending 28 U.S.C. § 2461 note, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$53,907 per day of violation for each violation that occurred after November 2, 2015 and is assessed on or after August 1, 2016 and to \$54,789 per day of violation that occurred after November 2, 2015 and is assessed on or after January 15, 2017.

Allegations of Fact and Liability

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

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 19850 South Diamond Lake Road in Rogers, Minnesota (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 (CAS # 7664-93-9) is an "extremely hazardous substance" according to section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

20. Sulfuric acid has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. part 370.

21. Lead (CAS # 7439-92-1) is classified as a health hazard by its MSDS and is a "hazardous chemical" according to section 311(e) of EPCRA, 42 U.S.C. § 11021(e).

22. Lead has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. part 370.

23. OSHA requires Respondent to prepare, or have available, an MSDS for each of sulfuric acid and lead.

24. At all times relevant to this CAFO, the Minnesota Division of Homeland Security and Emergency Management was the SERC for the State of Minnesota under section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

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

26. During at least one period of time in calendar year 2015, sulfuric acid and lead were present at the facility in amount equal to or greater than the minimum threshold levels found at 40 C.F.R. part 370.

27. Respondent was required to submit to the SERC and local fire department a completed emergency and hazardous chemical inventory form including sulfuric acid and lead on or before March 1, 2016, for calendar year 2015.

28. Respondent submitted to the Minnesota SERC and Rogers Fire Department completed Emergency and Hazardous Chemical Inventory Forms including sulfuric acid and lead on September 29, 2016.

29. Each day Respondent failed to submit to the SERC and local fire department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2016, constitutes a separate violation of section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

30. Complainant has determined that an appropriate civil penalty to settle this action is \$37,916 for the violations alleged in this CAFO. 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).

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$37,916 civil penalty for the violations alleged in this CAFO. 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

The check must note the case caption and the docket numbers of this CAFO.

32. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address and the case docket 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 60604-3511

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

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

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

34. 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. Respondent

agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

35. 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

36. Consistent with the Consolidated Rules, 40 C.F.R. §22.5(b)(2), the parties consent to service of this filed CAFO by e-mail at the following valid e-mail addresses:

guenther.robert@epa.gov (for Complainant), and FLyons@schiffhardin.com (for Respondent).

The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

38. 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.

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

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

41. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

43. 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.

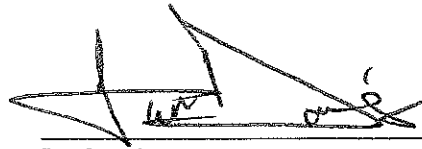
44. Each party agrees to bear its own costs and attorney's fees in this action.

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

Archway Marketing Services, Inc., Respondent

4/13/2017

Date



Ian Davis
Chief Executive Officer

4/13/17

Date

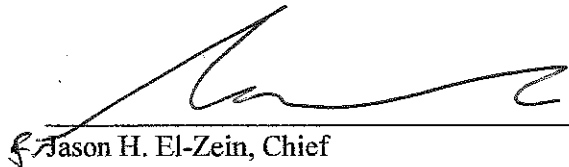


Ryan J. Damask
Chief Financial Officer

U.S. Environmental Protection Agency, Complainant

9/15/17

Date



Jason H. El-Zein, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

9/15/2017

Date



Margaret Guerriero, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Archway Marketing Services, Inc.
Docket No. EPCRA-05-2017-0026

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.

September 18, 2017
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

In the Matter of: Archway Marketing Services, Inc., Rogers, Minnesota
Docket No. EPCRA-05-2017-0026

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on September 19, 2017 in the following manner to the addressees:

Copy by E-mail to

Attorney for Respondent: Francis X. Lyons
FLyons@schiffhardin.com

Mr. Scott Palm
Facility Manager
Archway Marketing Services, Inc.
19850 South Diamond Lake Road
Rogers, Minnesota 55374
Scott_palm@archway.com
(763) 428-6694

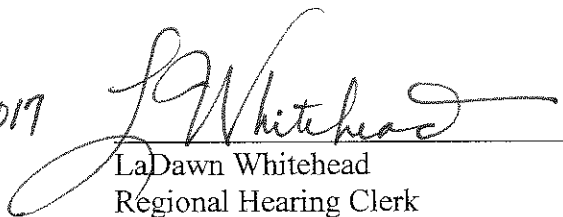
Copy by E-mail to

Attorney for Complainant: Robert Guenther
guenther.robert@epa.gov

Copy by E-mail to

Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: September 19, 2017



LaDawn Whitehead
Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 5