



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

APR 17 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Peter Gray, Esquire
Crowell & Moring LLP
1001 Pennsylvania Avenue Northwest
Washington, DC 20004

Re: Yamaha Jet Boat Manufacturing U.S.A., Inc. – Vonore, Tennessee
Ratified Consent Agreement and Final Order
Docket No. EPCRA-04-2018-2018(b)

Dear Mr. Gray:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22. To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Should you or your client have any questions concerning this matter or Yamaha Jet Boat Manufacturing U.S.A., Inc.'s compliance status in the future, please contact Mr. Brandon Cobb, EPA Region 4's Associate Attorney, at (404) 562-9550.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Toney", with a long horizontal flourish extending to the right.

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV**

IN THE MATTER OF:)
)
Yamaha Jet Boat)
Manufacturing U.S.A., Inc.)
)
Respondent.)
_____)

Docket Number: EPCRA-04-2018-2018(b)

USEPA REGION 4
OFFICE OF REGIONAL
ADMINISTRATOR
2018 APR 17 AM 7:34
HEARING CLERK

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 IV, United States Environmental Protection Agency (EPA). Respondent is Yamaha Jet Boat Manufacturing U.S.A., Inc.

2. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under EPCRA to the Regional Administrators by the EPA's Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region IV, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by the EPA Region IV 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.

3. 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

4. Respondent is Yamaha Jet Boat Manufacturing U.S.A., Inc., a corporation doing business in the State of Tennessee.

5. Respondent is a "person" and owned and operated, at all times relevant to the allegations in Section III, a "facility" as those terms are defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), respectively.

6. Respondent's facility referenced in this CAFO, is located at 2000 Cobra Drive in Vonore, Tennessee.

III. EPA's Allegations of Violations

Alleged Violation of Section 313 of EPCRA

7. 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 EPCRA 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 the 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.

8. As set forth under Section 313(f) of EPCRA, 42 U.S.C. § 11023(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.

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

10. Respondent's facility is classified under SIC code 3089 and NAICS Code 336612.

11. Respondent's facility is classified in a covered SIC code as described at 40 C.F.R. § 372.22 and in a covered NAICS code as described at 40 C.F.R. § 372.23.

12. Styrene, methyl methacrylate, and diisocyanates are toxic chemicals, referenced at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed under 40 C.F.R. § 372.65.

13. Respondent's facility processed the toxic chemicals styrene and methyl methacrylate in excess of the 25,000-pound threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.25, during calendar years 2014 and 2015. Respondent's facility otherwise used the toxic chemical diisocyanates in excess of the 10,000-pound threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.25, during calendar years 2014 and 2015.

14. Respondent failed to submit a Form R for styrene, methyl methacrylate, and diisocyanates to the Administrator of the EPA and to the officials designated by the Governor of the State of Tennessee by July 1 of the reporting year for calendar years 2014 and 2015.

15. The EPA alleges that Respondent violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, at its facility for calendar years 2014 and 2015, and is therefore subject to the assessment of penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

16. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, the EPA may assess a civil penalty for each violation of Section 313. 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.

Alleged Violation of Section 312 of EPCRA

17. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, on or before March 1 annually, a completed emergency and hazardous chemical inventory form (Tier I or Tier II), as described in 40 C.F.R. Part 370, containing the information required by that part for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds and containing the information required by that Part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less.

18. At some time during calendar year 2015, styrene was present at the facility in an amount equal to or greater than 10,000 pounds.

19. Styrene is a "hazardous chemical" as defined by Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), for which Respondent is required to prepare or have available an MSDS under OSHA at its facility.

20. Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for styrene to the SERC, the LEPC, and fire department with jurisdiction over the facility for calendar year 2015, by March 1 of the following year.

21. The EPA alleges that Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facility for calendar year 2015, and is therefore subject to the assessment of civil penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

22. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, the EPA may assess a civil penalty for each violation of Section 312. Each day a violation of Section 312 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.

IV. Consent Agreement

23. 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.

24. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

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

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

27. Compliance with this CAFO shall resolve the allegations of violations contained herein. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA or other applicable laws and regulations.

V. Final Order

28. Respondent shall pay a civil penalty of **ONE HUNDRED SIXTY FOUR THOUSAND, EIGHT HUNDRED FIFTEEN DOLLARS (\$164,815)** for the violations alleged in Section III above. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

29. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," or by electronic transfer to one of the following addresses:

BY MAIL

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

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(513) 487-2091

BY ELECTRONIC TRANSFER

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, New York 10045

Beneficiary: "U.S. Environmental Protection Agency"

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

30. 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

Erika White
U.S. EPA Region 4
Air, Pesticides and Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

31. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Other Provisions

32. Pursuant to 31 U.S.C. § 3717, the 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 effective date of this 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.

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

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

35. 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.

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VII. Effective Date

36. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Yamaha Jet Boat Manufacturing USA, Inc.

By:  (Signed) Date: 2/15/18

Name: Mike Fishback (Typed or Printed)

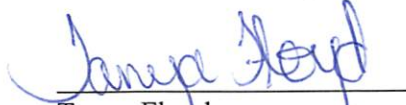
Title: General Manager (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 3/26/2018

Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 16th day of April, 2018.


Tanya Floyd
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 Yamaha Jet Boat Manufacturing USA, Inc., Docket Number: EPCRA-04-2018-2018(b), on the parties listed below in the manner indicated:

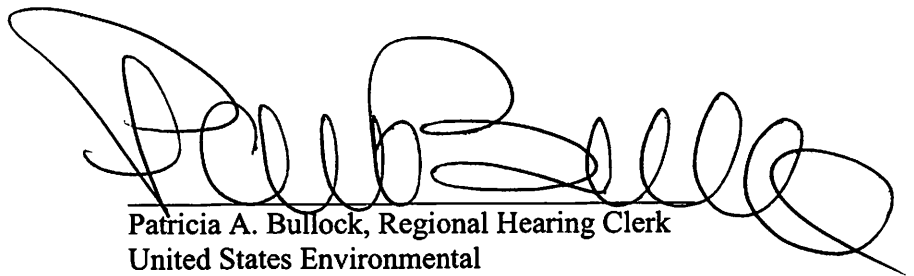
Robert W. Bookman (Via EPA's internal mail)
U.S. EPA Region 4
Chemical Management and Emergency Planning Section
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Atlanta, Georgia 30303

Robert Caplan (Via EPA's internal mail)
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Brandon Cobb (Via EPA's internal mail)
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61 Forsyth Street, S.W
Atlanta, Georgia 30303

Mr. Peter Gray, Esquire (Certified Mail—Return Receipt Requested)
Crowell & Moring LLP
1001 Pennsylvania Avenue Northwest
Washington, DC 20004

Date: 4-17-18



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511