



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUL 12 2019

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Gail A. Taylor  
Interim CFO  
Original Footwear Manufacturing, Inc.  
5968 Commerce Boulevard  
Morristown, Tennessee 37814

Re: Original Footwear Manufacturing, Inc. – Morristown, TN  
Consent Agreement and Final Order  
Docket No. EPCRA-04-2019-2019(b)

Dear Ms. Taylor:

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 have any questions concerning this matter or Original Footwear Manufacturing, Inc.'s compliance status in the future, please contact Eddie Chow of the EPA staff at (404) 562-8989.

Sincerely,

A handwritten signature in blue ink, appearing to read "César A. Zapata".

César A. Zapata  
Acting Chief  
Air Enforcement Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF: )  
 )  
Original Footwear Manufacturing, Inc. )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket Number: EPCRA-04-2019-2019(b)

2019 JUL 12 AM 7:14  
RECEIVED  
OFFICE OF COMPLIANCE

**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.

2. Complainant is the Administrator of the United States Environmental Protection Agency (EPA). On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division, Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 325 of EPCRA, 42 U.S.C. § 11045. Respondent is Original Footwear Manufacturing, Inc.

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) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

**II. Preliminary Statements**

4. Respondent is Original Footwear Manufacturing, Inc., a corporation that owns and operates a facility 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 is located at 5968 Commerce Boulevard, Morristown, Tennessee 37814.

### **III. EPA's Allegations of Violations**

#### **Violations of Section 312 of EPCRA**

7. 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) or Safety Data Sheet (SDS) 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. In 2012, the applicable OSHA regulation at 29 C.F.R. § 1910.1200(g) was revised to change the name of Material Data Safety Sheet (MSDS) to Safety Data Sheet (SDS). The pertinent EPCRA regulation found at 40 C.F.R. § 370.30(a) requires that either an MSDS or SDS be submitted, or that a list of chemicals be submitted to the LEPC, SERC and fire department.

8. At some time during calendar years 2015, 2016, and 2017, sulfuric acid and other hazardous chemicals were present at the facility in amounts equal to or greater than 500 and 10,000 pounds respectively.

9. Sulfuric acid and other hazardous chemicals are "hazardous chemicals" as defined under Section 329(5) of EPCRA, 42 U.S.C. § 11049(5) and 40 C.F.R. § 355.61, for which Respondent is required to prepare or have available an MSDS or SDS under OSHA at its facility.

10. Respondent failed to submit a complete Emergency and Hazardous Chemical Inventory Form for the sulfuric acid and the other hazardous chemicals to the SERC, LEPC, and fire department with jurisdiction over the facility for calendar years 2015, 2016, and 2017 by March 1 of the following years.

11. The EPA alleges that Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facility for calendar years 2015, 2016, and 2017 and is therefore subject to the assessment of civil penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

12. 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 for each violation of Section 312 of EPCRA, 42 U.S.C. § 11022. 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 administrative order.

### **Violations of Section 313 of EPCRA**

13. 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 (NAICS) 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) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65, in excess of an applicable threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(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.

14. As set forth at EPCRA 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. Notwithstanding 40 C.F.R. § 372.25 or 40 C.F.R. § 372.27, lower reporting thresholds for chemicals of special concern are set forth in 40 C.F.R. § 372.28.

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

16. Respondent's facility is classified under NAICS code 316210.

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

18. Methylenebis(phenylisocyanate) (MDI) is a toxic chemical listed under EPCRA Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed under 40 C.F.R. § 372.65.

19. Respondent's facility processed MDI 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 2016 and 2017.

20. Respondent violated the reporting requirements of Section 313 of EPCRA at its facility by failing to submit the required Form R for MDI for calendar years 2016 and 2017 by July 1 of the following years and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

21. 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

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.

#### **IV. Consent Agreement**

22. 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.

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

24. Respondent consents to any conditions specified in this CAFO.

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 at the facility.

27. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO.

28. Nothing herein shall 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**

29. Respondent shall pay a civil penalty of **FORTY-NINE THOUSAND, SIX HUNDRED TWENTY-FIVE DOLLARS (\$49,625)**, for the violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

30. 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  
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  
(314) 425-1819

**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

\*Note: Foreign banks **must** use a United States bank to send a wire transfer to the U.S. EPA.

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

31. 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

Eddie Chow  
U.S. EPA, Region 4  
Air Enforcement Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

32. 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**

33. 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.

34. Except as stated in Paragraph 33, Complainant and Respondent shall bear their own costs and attorney fees in this matter.

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

36. 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**

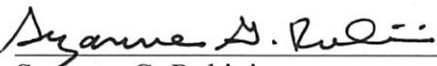
37. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:


Original Footwear Manufacturing, Inc.

By:  Date: 6/14/2014  
Name: Kevin D. Cole (Typed or Printed)  
Title: President (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 7/2/2019  
Suzanne G. Rubini  
Acting Director  
Enforcement and Compliance Assurance Division

APPROVED AND SO ORDERED this 14<sup>th</sup> day of July, 2019

  
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 Original Footwear Manufacturing, Inc., Docket Number: EPCRA-04-2019-2019(b), on the parties listed below in the manner indicated:

Todd Russo  
Section Chief  
U.S. EPA Region 4  
Air Enforcement Branch

(Via EPA's internal mail)

Valerie Nowell  
Chief  
U.S. EPA Region 4  
Air & EPCRA Law Office


(Via EPA's internal mail)

Gail A. Taylor  
Interim CFO  
Original Footwear Manufacturing, Inc.  
5968 Commerce Boulevard  
Morristown, Tennessee 37814

(Certified Mail—Return Receipt Requested)

Date:

7-2-19



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