

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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IN THE MATTER OF	:	
<b>Target Corporation</b>	:	<b>CONSENT AGREEMENT</b>
Minneapolis, MN	:	<b>AND</b>
Respondent	:	<b>FINAL ORDER</b>
	:	CAA-02-2007-1211
In a proceeding under Section 113(d)	:	
of the Clean Air Act 42 U.S.C. § 7413(d)	:	
-----X	:	

**Preliminary Statement**

The United States Environmental Protection Agency (EPA) issues this Consent Agreement and the attached Final Order (CAFO) under the authority of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 et seq., at 42 U.S.C. § 7413(d), Section 113(d) and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22. The Complainant in this matter is the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2, who is duly delegated authority to issue Complaints and Consent Agreements on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

On January 17, 2007, the U.S. Department of Justice (DOJ) granted EPA's December 6, 2006 request for a waiver of the CAA Section 113(d) 12-month limitation on EPA's authority to initiate an administrative action against Target Corporation (Target or Respondent). Pursuant to 40 C.F.R. § 22.13(b), EPA commences this administrative action and simultaneously resolves it, with the agreement of Target, by filing this Consent Agreement, effective upon issuance of the attached Final Order.

Section 610(a) of the Act requires the EPA Administrator to promulgate regulations to identify nonessential products that release Class I or Class II substances and regulate the sale or distribution of those products in interstate commerce. Section 610(d) of the Act prohibits the sale, distribution or offer for sale or distribution of those products in interstate commerce. On December 30, 1993, EPA promulgated Subpart C of the Protection of Stratospheric Ozone regulations, 40 C.F.R. Part 82, Subpart C.

In this action, EPA finds that Respondent violated Section 610 of the Act and 40 C.F.R. Part 82, Subpart C, and resolves those violations with the attached Final Order.

For purposes of this proceeding, and to avoid the expense of protracted litigation, Respondent: (1) admits that EPA has jurisdiction over the subject matter as alleged herein; (2) neither admits nor denies specific factual allegations contained in the Findings of Fact and Law in this Consent Agreement; (3) consents to the terms of agreement set forth in this Consent Agreement; and (4) consents to the issuance of the Final Order attached.

**Findings of Fact and Conclusions of Law**

1. Section 302(e) of the Act defines the term "person" as an individual, corporation, partnership, association, state municipality, political subdivision of a State, and any agency, department or instrumentality of the United States and any officer, agent or employee thereof.
2. Respondent Target is incorporated under the laws of the State of Minnesota.
3. Target owns/operates approximately 1,400 general consumer merchandise stores located throughout the United States.
4. Pursuant to Section 610 of the Act, EPA promulgated 40 C.F.R. Part 82, Subpart C, a regulation that prohibits the sale or distribution in interstate commerce of non-essential products containing Class I or Class II substances commonly known as ozone-depleting substances (ODS).
5. Class I substances are defined in 40 C.F.R. Part 82, Subpart A, Appendix A.
6. Class II substances are defined in 40 C.F.R. Part 82, Subpart A, Appendix B.
7. Pursuant to 40 C.F.R. § 82.64, effective February 16, 1993, no person may sell or distribute or offer to sell or distribute, in interstate commerce, any of the products identified as nonessential by 40 C.F.R. § 82.66(a).
8. 40 C.F.R. § 82.66(a) identifies string confetti propelled by a Class I substance as a non-essential product.
9. Pursuant to 40 C.F.R. § 82.64(d), except as permitted in 40 C.F.R. § 82.65, effective January 1, 1994, no person may sell or distribute or offer for sale or

distribution, in interstate commerce, any product identified as nonessential by 40 C.F.R. §§ 82.70(a) or (c).

10. 40 C.F. R. § 82.70(a) identifies as nonessential any aerosol product or other pressurized dispenser that contains a Class II substance.

11. An EPA investigation of a variety of string confetti products revealed that some of these aerosol products and pressurized dispensers utilized Class I substances and/or Class II substances as a propellant.

12. Pursuant to Section 114 of the Act, EPA sent an information request letter (114 Request Letter) to Target seeking information concerning Target's sale or distribution of string confetti products containing Class II substances.

13. In its March 27, 2005 response to the 114 Request Letter, Respondent indicated that it purchased for resale, from an overseas supplier, 887,730 cans of string confetti product sold as Horrible Spooky String.

14. In its March 27, 2005 response to the 114 Request Letter, Respondent indicated that after it had received the 114 Request Letter, it removed all Horrible Spooky String from its shelves and implemented a "hard lock" on its cash registers at the point of sale, thereby preventing sale of this product at Target store locations.

15. In its March 27, 2005 response to the 114 Request Letter, Respondent indicated that it sold 102,214 cans of Horrible Spooky String and had 785,516 cans on-hand or unaccounted for at the time it ceased selling the product.

16. On July 21 2006, EPA issued Target Administrative Compliance Order CAA-HQ-2006-001 (Order).

17. The Order acknowledged Target's actions precluding the sale of Horrible Spooky String.

18. The Order required Target to perform the following tasks:

- a. find and destroy all remaining cans of Horrible Spooky String at a designated facility by August 15, 2006;
- b. implement protocols and procedures designed to prevent the import or offer of any confetti string product containing ODS that is not legal for sale, distribution or use in the United States; and
- c. certify that tasks (a) and (b) had been accomplished.

19. Target certified compliance with the Order on October 13, 2006 and submitted the certification to EPA.

20. In concurrence with the Findings of Fact stated above, EPA finds that Respondent is a "person" as defined by Section 302(e) of the Act.

21. In concurrence with the Findings of Fact stated above, EPA finds that Respondent is subject to the requirements of Section 610 of the Act, and 40 C.F.R. Part 82, Subpart C.

22. In concurrence with the Findings of Fact stated above, EPA finds that Respondents purchase, for resale and sale and distribution, of Horrible Spooky String violated Section 610(d) of the Act and 40 C.F.R. § 82.64(d), a provision of 40 C.F.R. Part 82, Subpart C.

23. In concurrence with the Findings of Fact stated above, EPA finds that Respondent's violations of Section 610(d) and 40 C.F.R. § 82.64(d) are violations of the Act and of 40 C.F.R. Part 82, Subpart C, a regulation promulgated pursuant to the Act.

Consent Agreement

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

24. Respondent shall pay a civil penalty, pursuant to Section 113(d) of the Act, in the amount of One Hundred Twenty Thousand Dollars (\$120,000) either by cashiers' or certified check, within thirty (30) days from the date of issuance of the attached Final Order (Due Date). Respondent shall (1) clearly type or write the docket number (CAA-02-2007-1211) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America;" and (3) send the check to:

U.S. Environmental Protection Agency  
Region 2 Hearing Clerk  
P.O. Box 360188M  
Pittsburgh, Pennsylvania 15251

Respondent shall send notice of payment to the following individuals:

Kenneth Eng, Air Compliance Branch Chief  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 21st Floor  
New York, New York 10007

and

Flaire Hope Mills, Air Branch Chief  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 16th Floor  
New York, New York 10007

25. If Respondent fails to make full and complete payment of the \$120,000 penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

i. Interest. If Respondent fails to make payment, or makes partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.

ii. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.

iii. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

26. This Consent Agreement is being entered into voluntarily and knowingly in

full settlement of Respondent's alleged violations of the Act set forth herein.

27. Respondent has read the Consent Agreement, finds it reasonable and consents to terms and issuance as a Final Order.

28. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and other environmental laws, nor shall this CAFO affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

29. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement or the attached Final Order and explicitly waives its right to appeal the attached Final Order.

30. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

31. Each party to this CAFO shall bear its own costs and attorneys fees in the action resolved by this Consent Agreement.


32. This CAFO shall be binding on Respondent and its successors and assignees.

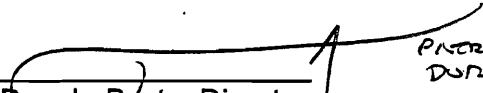


33. Each of the undersigned representative(s) to this CAFO certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and bind that party to it.

For Respondent:

For Complainant:

  
Annette Miller  
Senior Vice President  
Target Sourcing Services

  
Dore LaPosta, Director  
Division of Enforcement &  
Compliance Assistance  
United States Environmental Protection  
Agency, Region 2

*PATRICK  
DUPREK FOR DL*

Date 5-10-07

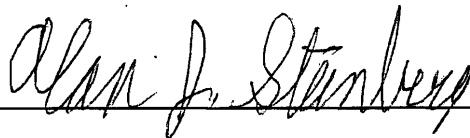
Date MAY 24, 2007

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement resolving the CAA matter: Target Corporation, CAA-02-2007-1211. The Consent Agreement in this matter is hereby approved and issued, as a Final Order, effective immediately.

DATE: \_\_\_\_\_

6-20-07



Alan J. Steinberg  
Regional Administrator  
U.S. Environmental Protection  
Agency - Region 2