



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

SEP 30 2008

VIA U.S. MAIL AND COURIER

Gordon R. Alphonso
McGuireWoods LLP
1170 Peachtree St., N.E.
Suite 2100
Atlanta, Georgia 30309

Re: Consent Agreement and Final Order in the Matter of Wal-Mart Stores, Inc.
Docket No. CAA-04-2008-1521(b)

Dear Mr. Alphonso:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in this matter. The original CAFO has been filed with the Regional Hearing Clerk as directed in Section 22.05(a) of the Consolidated Rules of Practice, as amended. Please refer to Section IV, Final Order, for the terms and instructions regarding your final payment on the penalty due. Please note that the CAFO requires that payment be made within 30 days of receipt of this executed CAFO.

Also enclosed is a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the Environmental Protection Agency (EPA). If you have any questions with regard to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the Notice.

Should you have any questions, please contact Mr. Floyd Ledbetter at (404) 562-9218.

Sincerely,

Beverly A. Spagg
Chief
Air and EPCRA Enforcement Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)

Wal-Mart Stores, Inc.)
Bentonville, Arkansas)

Respondent.)

) Docket No. CAA-04-2008-1521(b)

2008 SEP 30 PM 1:22
RECEIVED
EPA REGION 4
MEMPHIS, TENN

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action/Jurisdictional Statements

1. This is a civil administrative proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing 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 4, United States Environmental Protection Agency (EPA). Respondent is Wal-Mart Stores, Inc., headquartered in Bentonville, Arkansas (hereinafter, "Respondent").

2. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides, and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. 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. On May 20, 2008, the U.S. Department of Justice (DOJ) granted EPA's request for a waiver of the CAA Section 113(d) 12-month and \$270,000 limitations on EPA's authority to initiate an administrative action against Respondent.

4. 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.

5. Respondent is a "person" as defined in CAA § 302(e), 42 U.S.C. § 7602(e).

6. Section 610(a) of the CAA required EPA to promulgate regulations to identify non-essential products that release Class I or Class II substances and to regulate the sale or distribution of those products in interstate commerce. Section 610(d) of the CAA prohibits the sale, distribution, or offer for sale or distribution of those products in interstate commerce. Pursuant to section 610(a) of the CAA, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart C (Protection of Stratospheric Ozone), which prohibit 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).

7. "Class I substances" are designated in 40 C.F.R. Part 82, Subpart A, Appendix A, and include, but are not limited to, chlorofluorocarbons. "Class II substances" are designated in 40 C.F.R. Part 82, Subpart A, Appendix B, and include, but are not limited to, hydrochlorofluorocarbons. "Ozone Depleting Substance" means any substance that is either a "Class I substance" or "Class II substance" as defined in 40 C.F.R. § 82.104.

8. Pursuant to 40 C.F.R. § 82.64(a), effective February 16, 1993, no person may sell or distribute or offer to sell or distribute in interstate commerce, any product identified as nonessential by 40 C.F.R. § 82.66(a) which contains ODS.

9. Among the non-essential products listed at 40 C.F.R. §§ 82.66 and 82.70 are string confetti (hereinafter "party string products") and other aerosol products containing ODS.

10. Pursuant to 40 C.F.R. § 82.64(d), 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) which contains ODS.

11. 40 C.F.R. § 82.70(a) identifies as nonessential any aerosol product or other pressurized dispenser that contains a Class II substance.

12. In this action, EPA has alleged that Respondent violated section 610 of the CAA and 40 C.F.R. Part 82, Subpart C as set out herein. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$32,500 for each violation of the CAA, 42 U.S.C. § 7413(d), that occurred after March 15, 2004.

II. EPA's Statement of Facts and Allegations of Violations

13. An EPA investigation of a variety of party string products being sold in the United States by various retailers revealed that some of these aerosol products and pressurized dispensers contained Class I and/or Class II substances as a propellant.

14. In November 2005 and January 2006, EPA investigators purchased two cans of the party string product "Glow-in-the-Dark Looney String" from Respondent's Wal-Mart Store in Hanover, Maryland, and had the contents analyzed by an EPA laboratory using infrared absorption (IR) and gas chromatography-mass spectrometry (GC/MS). Analytical results showed that both cans of the Looney String contained R22, a banned Class II substance, as part of the propellant.

15. EPA's Region 4 Air Enforcement Division was assigned to further investigate Respondent's purchase and sale of party string products that may have contained banned ODS.

16. On January 30, 2007, EPA sent a Request for Information to Respondent requesting information and documentation related to the sale and distribution of any party string products that contained ODS from all Wal-Mart stores located in the United States. In its response, Respondent indicated that between approximately August 5, 2005, and January 6, 2007, it purchased approximately 474,874 cans of Halloween Glow String, including cans of "Glow-in-the-Dark Looney String" from a supplier in Taiwan and sold the cans at various stores located in the United States. Respondent further asserted that the product was manufactured in Taiwan and supplied to Wal-Mart, and if it did contain ODS, it would have been in violation of the terms and conditions of the Wal-Mart contract prohibiting the use of unlawful substances in products supplied to it.

17. Respondent's distribution and sale of the party string product containing a banned ODS, was a violation of Section 610 of the CAA and the regulations found at 40 C.F.R. Part 82.

18. EPA acknowledges that upon being notified by EPA about the violation, Respondent took action to investigate the causes of the violation, to come into compliance, and to ensure that the violation does not recur. Additionally, EPA acknowledges that Respondent has fully cooperated with EPA during the investigation and has negotiated this CAFO in good faith.

III. Consent Agreement

19. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above, but neither admits nor denies the factual allegations herein. Neither this CAFO nor any part thereof, nor any entry into or performance under this CAFO shall constitute or be construed as an admission or acknowledgement of liability in this proceeding or any subsequent legal action.

20. As provided in 40 C.F.R. § 22.18(b)(2), Respondent waives any right to contest the allegations listed above and its right to appeal the proposed Final Order accompanying this Consent Agreement.

21. Nothing in this CAFO shall be construed to create any rights in, or grant any cause of action to, any person not a party to this CAFO. Except as otherwise provided herein, Complainant and Respondent each expressly reserves any and all rights, defenses, claims,

demands, and causes of action, which it may have with respect to any matter, transaction, or occurrence relating in any way to the facts alleged in the CAFO against any person not a party hereto.

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

23. Respondent certifies that to the best of its knowledge and the information available to it, after reasonable inquiry, it is in compliance with all relevant requirements of the CAA regarding the sale or distribution of party string products. As used herein, reasonable inquiry means:

After receipt by Respondent of the Section 114 Request for Information up through the effective date of this CAFO, Respondent identified all party string products it sold and determined based on technical analytical data and other information provided by product suppliers that no party string products contained banned substances, except the product described in paragraph 16, for which Respondent could not make such a determination. Based on analytical test data provided to it by EPA, Respondent began to investigate the product's overseas manufacturer and supplier to obtain analytical data regarding whether the product contained banned substances. Respondent confirmed via internal database searches and store visits that it did not have any of the product remaining in stores or distribution centers. Respondent repeated the process of confirming via internal database searches at least twice during its investigation. At no point did Respondent determine that it had any record of any party string product containing ODS currently in its possession.

24. Compliance with this CAFO will resolve all claims alleged herein and any potential claims related to party string products sold or offered for sale by Respondent through the effective date of this CAFO, provided, however, that if cans of party strings products known or suspected to contain ODS are discovered, they have been removed from Respondent's warehouses and stores and destroyed by the effective date of this CAFO. However, if cans containing ODS are sold or offered for sale after the effective date of this CAFO, Respondent may be subject to additional enforcement action. This CAFO shall not otherwise affect any liability of Respondent, if any, to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement for allegations of violations not contained in this CAFO.

25. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

IV. Final Order

26. Respondent shall pay a civil penalty of \$199,000, which is to be paid within thirty (30) days after the effective date of this CAFO.

27. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to the following address:

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

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

28. 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

Mr. Floyd Ledbetter, P.E.
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Ms. Saundi Wilson (OEA)
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

29. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for the civil penalty payment made pursuant to paragraph 22.

30. Pursuant to 31 U.S.C. § 3717, 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 date of entry 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 of up to six percent per year compounded annually may be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

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

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

33. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Mr. Floyd Ledbetter, P.E.
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9218

34. 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.

Remainder of this page is intentionally left blank.

V. Effective Date

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

AGREED AND CONSENTED TO:


Wal-Mart Stores, Inc.

By: _____ Date: 9-26-08
Title: SVP General Manager
Wal-Mart Stores, Inc.

U.S. Environmental Protection Agency

E. _____ Date: 9-30-08
Beverly H. Banister, Director
Air, Pesticides and Toxics Management Division,
Region 4

APPROVED AND SO ORDERED this 30th day of September, 2008.

Susan B. Schub
Regional Judicial Officer 

Approved as to legal terms only
by _____
WAL-MART LEGAL DEPT.
Date: 9/25/08

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Wal-Mart Stores, Inc., Docket No. CAA-04-2008-1521(b), on the parties listed below in the manner indicated:

Mr. Gordon Alphonso
McGuire Woods LLP
1170 Peachtree Street, N.E.
Suite 2100
Atlanta, GA 30309

(Via U.S. Mail and Courier)

Mr. Robert Caplan
Associate Regional Counsel
U.S. EPA Region 4
61 Forsyth Street
Atlanta, GA 30303

(Via EPA internal mail)

Mr. Floyd Ledbetter, P.E.
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(Via EPA internal mail)

Date: 9-30-08

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