



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
2890 WOODBRIDGE AVENUE
EDISON, NEW JERSEY 08837-3679

DEC 21 2011

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 DEC 22 P 1:46
REGIONAL HEARING
CLERK

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Article Number 7011 0470 0002 3745 1194

Mr. Don Nicolai, President
Kuehne Chemical Company, Inc.
86 North Hackensack Avenue
South Kearny, New Jersey 07032

Re: In the Matter of Kuehne Chemical Company, Inc.
Docket No. TSCA-02-2012-9147

Dear Mr. Nicolai:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the U.S. Environmental Protection Agency (EPA), Region 2.

Please note that the forty-five (45) day period for payment of the civil penalty commenced as of the date this Consent Agreement was signed by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given within the enclosed document under "Terms of Consent Agreement". Further, please ensure that a copy of your payment check or documentation of electronic payment is provided to the EPA staff member listed in that section of the Agreement.

Please contact Mr. Chester Norman of my staff at (732) 906-6811 or by electronic mail at norman.chester@epa.gov, should you have any questions regarding this matter.

Sincerely,

John Gorman, Chief
Pesticides and Toxic Substances Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
In the Matter of :
 :
Kuehne Chemical Company, Inc., :
 :
Respondent. :
 :
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
-----X

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
TSCA-02-2012-9147

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 DEC 22 P 1:47
REGIONAL HEARING
CLERK

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). 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 (July 1, 2000) (hereinafter "Consolidated Rules"), provide in 40 C.F.R. § 22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b)(2) and (3). The Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (hereinafter "EPA" or "Complainant"), alleges that Kuehne Chemical Company, Inc. (hereinafter "Respondent") violated Section 8(a) of TSCA,

15 U.S.C. § 2607, and the regulations promulgated pursuant to that Section, set forth at 40 C.F.R. Part 710, relating to the Inventory Update Rule ("IUR") and Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

EPA and Respondent agree that settling this matter by entering into this CAFO pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. § 22.18(b)(2) and (3) is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made. The following constitute Complainant's findings of fact and conclusions of law.

FINDINGS OF FACT

1. Respondent is Kuehne Chemical Company, Inc.
2. Respondent owns, operates, and/or controls the facilities in and around 86 North Hackensack Avenue, South Kearny, New Jersey (hereinafter "Respondent's South Kearny facility") and 1645 River Road, Delaware City, Delaware (hereinafter "Respondent's Delaware City facility").
3. On or about July 9, 2010, duly designated representatives of the EPA conducted an inspection of and at Respondent's South Kearny facility.
4. As a result of the inspection, EPA determined that Respondent had failed to submit a Partial Updating of the TSCA Inventory Database Production and Site Report ("Form U") for certain chemicals manufactured at Respondent's South Kearny facility and Respondent's Delaware City facility during the period August 25, 2005 to March 23, 2007 in accordance with the specifications and requirements of 40 C.F.R. § 710.53.
5. On or about October 6, 2011, Complainant sent to Respondent a "Notice of Opportunity to Show Cause with Respect to Enforcement Action Under The Toxic Substances Control Act ", which alleged that Respondent had violated the IUR reporting requirements at 40 C.F.R. Part 710.

6. Respondent asserts that one of the intended uses of the chemical substances referenced in this Consent Agreement is as a pesticide and thus Respondent believed that they were excluded from TSCA jurisdiction pursuant to 15 U.S.C. 2602(2)(B)(ii) and 40 C.F.R. 710.3, and that Respondent did not report the manufacture of these chemicals pursuant to the IUR reporting requirements at 40 C.F.R. Part 710 based on that good faith belief.

7. Respondent further asserts that it fully cooperated in the EPA's inspection and subsequent review of the compliance issues referenced in this Consent Agreement, and has taken timely steps to address the issues raised in the Consent Agreement.

8. On November 3, 2011, the parties met for an informal settlement conference.

CONCLUSIONS OF LAW

1. Respondent is a "person" within the meaning of 40 C.F.R. § 761.3.
2. Respondent is subject to the requirements of Section 8(a) of TSCA 15 U.S.C. § 2607(a), and the regulations set forth at 40 C.F.R. Part 710, pertaining to Inventory Reporting.
3. Failure to report certain chemicals to EPA using the "Partial Updating of the Inventory Data Base Production and Site Report" ("Form U") on or before March 23, 2007 is a violation of 40 C.F.R. § 710.53, which is a violation of Section 8(a) and Section 15(3)(B) of TSCA, 15 U.S.C. §§ 2607(a) and 2614(3)(B).

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22, it is hereby agreed by

and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter comply with all applicable provisions of TSCA and the regulations promulgated pursuant to it.

2. For the purposes of this Consent Agreement, Respondent (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence a civil administrative proceeding for the violations alleged in the "Conclusions of Law" section, above; (b) neither admits nor denies the specific factual allegations contained in the "Findings of Fact" section, above; and (c) neither admits nor denies the assertions set forth in the "Conclusions of Law" section, above.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **FORTY THREE THOUSAND EIGHT HUNDRED DOLLARS (\$43,800)** to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

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

Alternatively, payment may be made by Electronic Fund Transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account: 68010727
- 4) ABA number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

- 6) Name of Respondent
- 7) Docket Number

Payment must be received at the above address (or account of EPA) on or before **45 calendar days** after the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the "due date"). Promptly after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that such payment has been made to both:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

and

Chester Norman
Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency Region 2
2890 Woodbridge Avenue, MS-105
Edison, NJ 08837

- a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.
- b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, and the regulations promulgated thereunder in 40 C.F.R. Part 710, that attach or might have attached as a result of the "Findings of Fact" section, above, and the allegations contained in the "Conclusions of Law" section, above. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions contained in the "Findings of Fact" section, above, and the allegations contained in the "Conclusions of Law" section, above, or on any allegations arising thereunder. Respondent further waives its right otherwise to contest all such assertions and/or allegations.

7. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

8. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

10. Each party shall bear its own costs and fees in this matter.

11. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

BY: Donald P. Nicola

NAME: DONALD F. NICOLA
(PLEASE PRINT)

TITLE: PRESIDENT

DATE: 12-8-2011

COMPLAINANT:

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency, Region 2
290 Broadway
New York, New York 10007

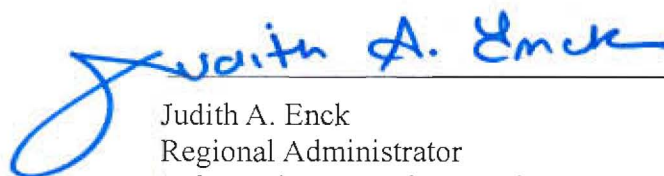
DATE: DECEMBER 15, 2011

In the Matter of Kuehne Chemical Company, Inc.
Docket Number TSCA-02-2012-9147

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Kuehne Chemical Company, Inc., bearing Docket Number TSCA-02-2012-9147. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered into pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under the Toxic Substances Control Act for purposes of Section 15 of TSCA, 15 U.S.C. § 2614(1)(C).

DATE: 12-15-11



Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

In the Matter of Kuehne Chemical Company, Inc.

Docket No. TSCA-02-2012-9147

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addresses below:

Original and One Copy
by Interoffice Mail:

Ms. Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Mr. Don Nicolai, President
Kuehne Chemical Company, Inc.
86 North Hackensack Avenue
South Kearny, New Jersey 07032

Dated: 12/21/2011

Gail Kohn
Gail Kohn