



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
EDISON, NEW JERSEY 08837

JUN 15 2010

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

Charles Van Fleet, President
Swan Chemical, Inc.
136 Ridge Road
Lyndhurst, NJ 07071

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2010 JUN 16 AM 11:14
REGIONAL HEARING
CLERK

In the Matter of Swan Chemical, Inc.
Docket No. TSCA-02-2010-9142

Dear Mr. Van Fleet:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the United States Environmental Protection Agency.

Please note that the forty-five (45) day period for the payment of the civil penalty commences as of the date this Final Order is signed by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given in the Consent Agreement (see "Terms of Consent Agreement"). Specifically, please remember to send a copy of your payment check to the Complainant, as detailed in the Consent Agreement.

Sincerely,

Daniel J. Kraft, Acting Chief
Toxic Substances Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
In the Matter of :
 :
Swan Chemical, Inc., : CONSENT AGREEMENT AND
 : FINAL ORDER
Respondent. :
 : Docket No. TSCA-02-2010-9142
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
-----X

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
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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).

Pursuant to 40 C.F.R. § 22.13(b) of 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), where the parties agree to settlement of 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 Order 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 ("EPA" or "Complainant"), alleges that Swan Chemical, Inc. ("Swan" or "Respondent") violated Section 8 of TSCA, 15 U.S.C. §§ 2607, and the regulations promulgated pursuant to the provisions of this section which are set forth at 40 C.F.R. Part 710 Subpart C, Inventory Update Reporting for 2006 and Beyond ("TSCA 2006

IUR”). The Complainant further alleges that Swan has thereby violated Section 15 of TSCA, 15 U.S.C. § 2614.

EPA and Swan agree that settling this matter by entering into this Consent Agreement and Final Order (hereinafter “CAFO”) pursuant to 40 C.F.R. §§ 22.13(b) and 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.

FINDINGS OF FACT

1. Respondent is Swan Chemical, Inc.
2. Respondent owns, operates, and/or controls the facility located at 136 Ridge Road, Lyndhurst, New Jersey 07071 (hereinafter "Respondent's facility").
3. On December 15, 2009, EPA conducted at Respondent’s facility an inspection under the authority of Section 11 of TSCA , 15 U.S.C. §2610.
4. During the course of the inspection EPA found that Respondent failed to report the chemical substance, Benzamide, N,N'-(dithiodi-2,1-phenylene)bis- (CASRN 135-57-9), for the TSCA Section 8 Inventory Update for 2006, as required by 40 C.F.R. §710 Subpart C.
5. EPA alleges that Respondent failed to submit IUR information, as required by 40 C.F.R. § 710 Subpart C, for the chemical substance listed in paragraph 4, above, that were imported at Respondent’s facility.

CONCLUSIONS OF LAW

1. Respondent is a "person" as that term is defined in 40 C.F.R. §§ 704.3 and 710.3.
2. Respondent is an “importer” as that term is defined at 40 C.F.R. §§ 704.3 and 710.3.
3. Respondent is a importer of chemical substances and is subject to the

requirements of Section 8(a) of TSCA and the regulations promulgated pursuant to Section 8 of TSCA set forth at 40 C.F.R. Part 710 Subpart C.

4. Importers of chemical substances are required to report the import of chemical substances using the "Partial Updating of the Inventory Data Base Production and Site Report" (hereinafter "Form U") in accordance with 40 C.F.R. §710 Subpart C.

5. Failure to submit Form U during a required reporting period as required by 40 C.F.R. § 710 Subpart C is a violation of TSCA Sections 8(a) and 15, 15 U.S.C. §§ 2607(a) and 2614.

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 Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits", 40 C.F.R. § 22.18 (64 Federal Register 40138, 40182-83 [July 23, 1999]) (hereinafter "Consolidated Rules"), 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. For the purposes of this Consent Agreement, Respondent: a) admits that EPA has jurisdiction to commence a civil administrative proceeding for the violations alleged in the "Findings of Fact" and "Conclusions of Law" sections, above; b) neither admits nor denies the specific factual allegations contained in this Consent Agreement; c) consents to the assessment of the civil penalty as set forth below; and d) consents to the issuance of the Final Order accompanying this Consent Agreement.

2. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Eighteen Thousand Six Hundred Fifteen Dollars (\$18,615)**, payable 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.

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

Alternatively, payment may be 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

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:

Mr. Michael Bious
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-105
Edison, New Jersey 08837

and

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

Payment must be received at the above address (or account of EPA) on or before **45 calendar**

which payment must be received shall hereinafter be referred to as the “due date”).

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 \$15.00 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.

3. 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 that attach or might have attached as a result of the “Findings of Fact and 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.

4. 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.

5. 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 or allegations

Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions or allegations contained in the "Findings of Fact and 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.

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

7. 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.

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

9. 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: Charles A. Van Fleet
Swan Chemical, Inc.

NAME: Charles A. Van Fleet
(PLEASE PRINT)

TITLE: President

DATE: 5/25/10

COMPLAINANT:

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

DATE: JUNE 1, 2010


Swan Chemical, Inc. .DOCKET# TSCA-02-2010-9142

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement, entered into by the parties in full settlement of EPA's Administrative Action bearing Docket No. TSCA-02-2010-9142, issued in the matter of Swan Chemical, Inc. is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

DATE:

June 8, 2010



Helen Ferrera,
Regional Judicial Officer
U.S. Environmental Protection
Agency - Region2
290 Broadway
New York, NY 10007

Swan Chemical, Inc.. DOCKET# TSCA-02-2010-9142

CERTIFICATE OF SERVICE

JUN 15 2010

This is to certify that on _____, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2010-9142, by certified mail, return receipt requested, to:

Charles Van Fleet, President
Swan Chemical, Inc.
136 Ridge Road
Lyndhurst, NJ 07071

On the same date, I mailed via EPA internal mail to the Region 2 Regional Hearing Clerk at 290 Broadway, New York, New York 10007 the original and one copy of the foregoing Consent Agreement and Final Order.