

1 SYLVIA QUAST
2 Regional Counsel

3 BRIAN P. RIEDEL
4 Assistant Regional Counsel
5 U.S. Environmental Protection Agency, Region 9
6 75 Hawthorne Street (ORC-2)
7 San Francisco, CA 94105
8 (415) 972-3924
9 riedel.brian@epa.gov

** FILED **
09MAY2016 - 08:31AM
U.S.EPA - Region 09

8 UNITED STATES
9 ENVIRONMENTAL PROTECTION AGENCY
10 REGION 9

11 In the Matter of:

12 **Materia, Inc.**

13 **Respondent.**

Docket No. TSCA-09-2016- 0013

14 **CONSENT AGREEMENT AND FINAL
15 ORDER PURSUANT TO 40 C.F.R.
16 §§ 22.13 AND 22.18**

17 **CONSENT AGREEMENT**

18 The United States Environmental Protection Agency ("EPA"), Region 9, and Materia,
19 Inc. ("Respondent") agree to settle this matter and consent to the entry of this Consent
20 Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) ("CAFO").

21 **I. AUTHORITY, JURISDICTION AND PARTIES**

22 1. This civil administrative action is brought pursuant to Section 16(a) of the Toxic
23 Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for the assessment of a penalty against
24 Respondent for its alleged failures to timely submit Notices of Commencement in violation of
25 Sections 8(b) and 15 of TSCA, 15 U.S.C. §§ 2607(b) and 2614, and federal regulations
26 promulgated to implement Section 8(b) at 40 C.F.R. § 720.102.

27 2. Complainant is the Director of the Enforcement Division, EPA, Region 9, who has been
28 duly delegated the authority to bring and settle this action under TSCA.

IN THE MATTER OF: MATERIA, INC., CAFO - 1

1 3. Respondent, a Delaware corporation located in Pasadena, California, is a research
2 company that works with chemical substances and catalyst technology.

3 **II. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

4 4. Section 5(a)(1) of TSCA, 15 U.S.C. § 2604(a)(1), and 40 C.F.R. Part 720, require
5 chemical manufacturers and importers to submit to EPA a section 5(a) notice (“PMN Notice”)
6 to EPA at least 90 days prior to manufacturing or importing a new chemical substance in the
7 United States.

8 5. Pursuant to Section 8(b) of TSCA, 15 U.S.C. § 2607(b), the Administrator shall compile,
9 keep current, and publish a list (“TSCA Inventory”) of each chemical substance that is
10 manufactured or processed in the United States. This list shall at least include each chemical
11 substance that any person reports, under Sections 5 or 8(a) of TSCA, is manufactured or
12 processed in the United States. Section 8(b) of TSCA, 15 U.S.C. § 2607(b), provides that when
13 a PMN Notice is submitted for a chemical substance, such chemical substance shall be added to
14 the TSCA Inventory at the earliest date (as defined by the Administrator) after being
15 manufactured or processed.

16 6. Pursuant to 40 C.F.R. § 720.102, any person that commences the manufacture or
17 importation of a new chemical substance for a nonexempt commercial purpose for which that
18 person had previously submitted to EPA a PMN Notice, must submit a notice of commencement
19 (EPA Form 7710-56)(“NOC”) of manufacture or import no later than 30 days after the first day
20 of manufacture or import.

21 7. Pursuant to Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any
22 person to fail or refuse to submit notices or other information required by TSCA or a rule
23 thereunder.
24

1 8. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), and the Civil Monetary Inflation
2 Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation
3 Adjustment Act of 1990, Pub. L 101-410, authorize civil penalties not to exceed \$37,500 per day
4 for each violation of Section 15 of TSCA that occurred after January 12, 2009.
5

6 **III. ALLEGED VIOLATIONS**

7 9. Respondent is a corporation and therefore a “person” as defined by 40 C.F.R. § 720.3(x).

8 10. On April 25, 2011, Respondent submitted PMN Notices (section 5(a) notices) to EPA for
9 three new chemical substances identified as PMN No. P-11-0344, PMN No. P-11-0345, and
10 PMN No. P-11-0346.
11

12 FIRST CLAIM

13 11. Paragraphs 1 through 10 are realleged and incorporated herein by reference.

14 12. On December 12, 2011, Respondent first manufactured the new chemical substance
15 identified as PMN No. P-11-0344.
16

17 13. Pursuant to 40 C.F.R. § 720.102, Respondent was required to submit an NOC to EPA for
18 the new chemical substance identified as PMN No. P-11-0344 within 30 days of the first day of
19 manufacture, or by January 11, 2012.

20 14. Respondent failed to submit an NOC to EPA for the new chemical substance identified as
21 PMN No. P-11-0344 by January 11, 2012, in violation of Sections 8(b) and 15(3)(B) of TSCA,
22 15 U.S.C. §§ 2607(b) and 2614(3)(B), and 40 C.F.R. § 720.102.
23

24 SECOND CLAIM

25 15. Paragraphs 1 through 10 are realleged and incorporated herein by reference.

26 16. On December 12, 2011, Respondent first manufactured the new chemical substance
27 identified as PMN No. P-11-0345.
28

1 17. Pursuant to 40 C.F.R. § 720.102, Respondent was required to submit an NOC to EPA for
2 the new chemical substance identified as PMN No. P-11-0345 within 30 days of the first day of
3 manufacture, or by January 11, 2012.

4
5 18. Respondent failed to submit an NOC to EPA for the new chemical substance identified as
6 PMN No. P-11-0345 by January 11, 2012, in violation of Sections 8(b) and 15(3)(B) of TSCA,
7 15 U.S.C. §§ 2607(b) and 2614(3)(B), and 40 C.F.R. § 720.102.

8 THIRD CLAIM

9 19. Paragraphs 1 through 10 are realleged and incorporated herein by reference.

10
11 20. On December 28, 2011, Respondent first manufactured the new chemical substance
12 identified as PMN No. P-11-0346.

13 21. Pursuant to 40 C.F.R. § 720.102, Respondent was required to submit an NOC to EPA for
14 the new chemical substance identified as PMN No. P-11-0346 within 30 days of the first day of
15 manufacture, or by January 27, 2012.

16
17 22. Respondent failed to submit an NOC to EPA for the new chemical substance identified as
18 PMN No. P-11-0346 by January 27, 2012, in violation of Sections 8(b) and 15(3)(B) of TSCA,
19 15 U.S.C. §§ 2607(b) and 2614(3)(B), and 40 C.F.R. § 720.102.

20 **IV. RESPONDENT'S ADMISSIONS**

21 23. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
22 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
23 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section III
24 of this CAFO; (iii) consents to the terms of this CAFO, including the assessment of the civil
25 administrative penalty under Section V of this CAFO; (iv) waives any right to contest the
26 allegations contained in Section III of this CAFO; and (v) waives the right to appeal the proposed
27
28

1 Final Order contained in this CAFO.

2 **V. CIVIL ADMINISTRATIVE PENALTY**

3 24. Respondent agrees to the assessment of a penalty in the amount of TWENTY-ONE
4 THOUSAND, SIX HUNDRED AND SEVENTY-FIVE DOLLARS (\$21,675) as final
5 settlement of the civil claims against Respondent arising under TSCA as alleged in Section III of
6 this CAFO.
7

8 25. Respondent shall pay the assessed penalty no later than thirty (30) days after the effective
9 date of the CAFO. The assessed penalty shall be paid by certified or cashier's check, payable to
10 "Treasurer, United States of America," or paid by one of the other methods listed below and sent
11 as follows:
12

13 Regular Mail:

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

19 Wire Transfers:

20 Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the
21 following information:
22 Federal Reserve Bank of New York
23 ABA = 021030004
24 Account = 68010727
25 SWIFT address = FRNYUS33
26 33 Liberty Street
27 New York, NY 10045
28 Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

1 ACH (also known as REX or remittance express):

2 Automated Clearinghouse (ACH) for receiving US currency

3 PNC Bank

4 808 17th Street, NW

5 Washington, DC 20074

6 ABA = 051036706

7 Transaction Code 22 – checking

8 Environmental Protection Agency

9 Account 31006

10 CTX Format

11 On Line Payment:

12 This payment option can be accessed from the information below:

13 www.pay.gov

14 Enter “sfo1.1” in the search field

15 Open form and complete required fields

16 If clarification regarding a particular method of payment remittance is needed, contact the EPA
17 Cincinnati Finance Center at 513-487-2091.

18 Concurrently, a copy of the check or notification that the payment has been made by one of the
19 other methods listed above, including proof of the date payment was made, shall be sent with
20 a transmittal letter indicating Respondent’s name, the case title, and the docket number to the
21 following addressees:

22 Regional Hearing Clerk

23 Office of Regional Counsel (ORC-1)

24 U.S. Environmental Protection Agency, Region 9

25 75 Hawthorne Street

26 San Francisco, California 94105

27 Christopher Rollins

28 Waste & Chemical Section (ENF-2-2)

Enforcement Division

U.S. Environmental Protection Agency, Region 9

75 Hawthorne Street

San Francisco, CA 94105

26. Payment of the above civil administrative penalty shall not be used by Respondent or any
other person as a tax deduction from Respondent’s federal, state, or local taxes.

27. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph

1 24 by the deadline specified in Paragraph 25, then Respondent shall pay to EPA a stipulated
2 penalty of \$500 per day in addition to the assessed penalty. Stipulated penalties shall accrue
3 until such time as the assessed penalty and all accrued stipulated penalties are paid and shall
4 become due and payable upon written request by EPA. In addition, failure to pay the civil
5 administrative penalty by the deadline specified in Paragraph 25 may lead to any or all of the
6 following actions:

7
8 a. The debt being referred to a credit reporting agency, a collection agency, or to the Department
9 of Justice for filing of a collection action in the appropriate United States District Court. 40
10 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and
11 appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

12
13 b. The debt being collected by administrative offset (i.e., the withholding of money payable by
14 the United States to, or held by the United States for, a person to satisfy the debt the person
15 owes the Government), which includes, but is not limited to, referral to the Internal Revenue
16 Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

17
18 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or
19 disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or
20 funds. 40 C.F.R. § 13.17.

21
22 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties
23 charges, and administrative costs will be assessed against the outstanding amount that
24 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the
25 deadline specified in Paragraph 25. Interest will be assessed at an annual rate that is equal to the
26 rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan
27 account rate) as prescribed and published by the Secretary of the Treasury in the Federal
28

1 Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).
2 Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).
3 Administrative costs for handling and collecting Respondent's overdue debt will be based on
4 either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R.
5 § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the
6 Department of Justice, the Internal Revenue Service), that department or agency may
7 assess its own administrative costs, in addition to EPA's administrative costs, for handling and
8 collecting Respondent's overdue debt.
9

10 **VI. RESPONDENT'S CERTIFICATION**

11
12 28. In executing this CAFO, Respondent certifies that it is now fully in compliance with
13 TSCA Section 8(b) and federal regulations promulgated to implement Section 8(b) at 40 C.F.R.
14 § 720.102.

15 **VII. RETENTION OF RIGHTS**

16
17 29. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability
18 for federal civil penalties for the violations and facts specifically alleged in Section III of this
19 CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability
20 for violations of any provision of any federal, state, or local law, statute, regulation, rule,
21 ordinance, or permit not specifically alleged in Section III of this CAFO; or (ii) any criminal
22 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
23 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to
24 address any violation of this CAFO or any violation not specifically alleged in Section III of this
25 CAFO.
26

27 30. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to
28

1 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
2 permits.

3 **VIII. ATTORNEYS' FEES AND COSTS**

4 31. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
5 proceeding.
6

7 **IX. EFFECTIVE DATE**

8 32. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective
9 on the date that the final order contained in this CAFO, having been approved and issued by
10 either the Regional Judicial Officer or Regional Administrator, is filed.
11

12 **X. BINDING EFFECT**

13 33. The undersigned representative of Complainant and the undersigned representative of
14 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
15 of this CAFO and to bind the party he or she represents to this CAFO.
16

17 34. The provisions of this CAFO shall apply to and be binding upon Respondent and its
18 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
19 and assigns.
20

21 //

22 //

23

24

25

26

27

28

1 FOR RESPONDENT, MATERIA, INC.:

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11/14/2016

DATE

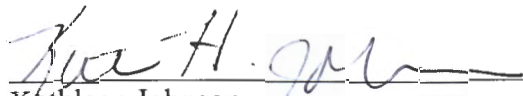


Mark S. Trimmer
Executive Vice President
Materia, Inc.

FOR COMPLAINANT:

4/20/16

DATE



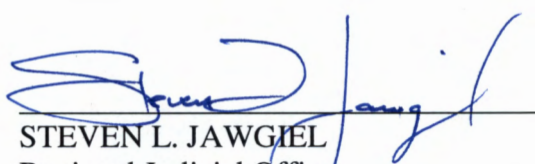
Kathleen Johnson
Director, Enforcement Division
U.S. Environmental Protection Agency,
Region 9

1 **FINAL ORDER**

2 Complainant and Respondent, having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2016-0013) be
4 entered, and that Respondent shall pay a civil administrative penalty in the amount of TWENTY-
5 ONE THOUSAND, SIX HUNDRED SEVENTY-FIVE DOLLARS (\$21,675) and comply with
6 the terms and conditions set forth in the Consent Agreement. This Consent Agreement and Final
7 Order shall become effective upon filing.
8

9
10 May 6, 2016
11 DATE

12 
13 STEVEN L. JAWGIEL
14 Regional Judicial Officer
15 U.S. Environmental Protection Agency,
16 Region 9
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of **Materia, Inc. (Docket #: TSCA-09-2016-00 13)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

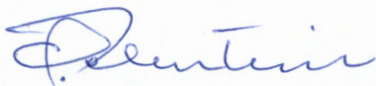
A copy was mailed via CERTIFIED MAIL to:

Mr. Mark S. Trimmer
Executive Vice President
Materia, Inc.
60 N. San Gabriel Blvd.
Pasadena, California 91109

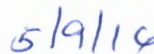
CERTIFIED MAIL NUMBER: 7010 1670 0000 7048 0265

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Brian Riedel, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



For: _____
Regional Hearing Clerk
U.S. EPA, Region IX



Date