



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

AUG - 9 2017

VIA UPS OVERNIGHT MAIL

Gavin Edwards, Plant Manager  
MEL Chemical, Inc.  
500 Barbertown Breeze Point Road  
Flemington, New Jersey 08822

Re: In the Matter of MEL Chemical, Inc.  
Docket No. TSCA-02-2017-9143

Dear Mr. Edwards:

Enclosed is the Complaint and Notice of Opportunity For Hearing, and supporting documents in the above-referenced proceeding. This Complaint alleges violations of the Toxic Substances Control (TSCA), 15 U.S.C. § 2601 *et seq.*, and regulations promulgated pursuant to TSCA that are codified in 40 C.F.R. Part 711.

Respondent MEL Chemical, Inc. has the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. This is described in greater detail within the document.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint to the Environmental Protection Agency (EPA) Regional Hearing Clerk at the following address:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complain and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, EPA encourages parties against whom it files a Complaint to pursue the possibility of settlement. In light of the extensive negotiations that have already taken place, it is the hope of EPA that the parties will be able quickly to conclude the settlement to which they have previously agreed in principle.

Enclosed is a copy of the "Consolidated Rules of Practice," the rules that govern this proceeding.

If there are any questions, please have your counsel contact Lee Spielmann at 212-637-3222.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "D LaPosta".

Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (w/o enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

2017 AUG -9 2:19:10  
U.S. Environmental  
Protection Agency

In the matter of:  
  
MEL Chemicals, Inc.,  
  
Respondent.  
  
Proceeding Under Section 16(a) of the Toxic  
Substances Control Act, as amended, 15  
U.S.C. § 2615(a).

**COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

Docket No. TSCA-02-2017-9143

**I. COMPLAINT**

Complainant, on behalf of the Administrator of the United States Environmental Protection Agency (“EPA” or “Agency”), by and through her attorneys, hereby alleges as and for her Complaint against Respondent:

**Jurisdiction**

1. This administrative proceeding is commenced pursuant to the provisions of Section 16(a) the Toxic Substances Control Act, as amended (the “Act” or TSCA”), 15 U.S.C. § 2615(a), for the assessment of a civil penalty for Respondent’s failure to have complied with requirements mandated pursuant to TSCA.
2. This tribunal is vested with jurisdiction over this proceeding pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2), and 40 C.F.R. § 22.1(a)(5).
3. This “COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING” (“Complaint”) constitutes the written notice required by Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2)(A), for the assessment of a civil penalty for any violation of Section 15 of TSCA, 15 U.S.C. § 2614.

4. Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance of EPA, Region 2.
5. Complainant has been duly delegated the authority to institute this proceeding.

#### **Applicable Legal Provisions, Generally**

6. Pursuant to 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), states, in part, that “[i]t shall be unlawful for any person to... fail or refuse to...submit reports, notices or other information...as required by this chapter [Chapter 53, 15 U.S.C. §§ 2601 to 2692] or a rule thereunder....”
7. EPA promulgated the rules codified at 40 C.F.R. Part 711, “TSCA Chemical Data Reporting Requirements,” under authority of Section 8(a) of TSCA, 15 U.S.C. § 2607(a).
8. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), any person who violates a provision of, *inter alia*, Section 15 of TSCA, 15 U.S.C. § 2614, shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation.
9. Pursuant to the authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), to \$37,500 for any violation occurring on or after January 12, 2009, and prior to November 2, 2015.
10. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), “[e]ach day a violation of [Section 15 of TSCA, 15 U.S.C. § 2614] continues shall, for purposes of [Section 16(a) of TSCA, 15 U.S.C. § 2615(a)], constitute a separate violation of section 2614 [15 U.S.C. § 2614]....”
11. The term “Master Inventory File” is defined, in part in 40 C.F.R. § 711.3, as “EPA’s comprehensive list of chemical substances which constitutes the TSCA Inventory compiled under TSCA section 8(b) [15 U.S.C. § 2607(b)].”

#### **Respondent’s Identity and Operations, Generally**

12. Respondent is MEL Chemicals, Inc., a wholly owned subsidiary of the Luxfer Group based in the United Kingdom.
13. For all times relevant to the matters alleged below (specifically including the entirety of calendar year 2011), Respondent has been, and is presently, a corporation existing under the laws of the State of New Jersey.
14. For all times relevant to the matters alleged below (specifically including the entirety of calendar year 2011), Respondent has been, and is presently, a “person” within the meaning of 40 C.F.R. § 711.3.

15. For a period that includes the entirety of calendar year 2011, Respondent has owned and controlled, and at present owns and controls, a facility, the address of which is 500 Barbertown Point Breeze Road in Flemington, New Jersey ("Respondent's facility").
16. At Respondent's facility, Respondent "manufactures" (as that term is defined in Section 3(7) of TSCA, 15 U.S.C. § 2602(7), and 40 C.F.R. § 711.3), "chemical substances (as that term is defined in Section 3(2) of TSCA, 15 U.S.C. § 2602(2)).
17. During each of calendar years 2011 and 2012, Respondent, together with its parent company (as noted in paragraph 12, above), enjoyed total annual sales of more than \$40 million.
18. For the period including the 2011 and 2012 calendar years, Respondent was not a "small manufacturer" (as that term is defined in 40 C.F.R. § 704.3).
19. On November 20, 2013, duly designated representatives conducted an inspection of and at Respondent's facility to ascertain Respondent's compliance in its operations there with the provisions of TSCA and/or regulations EPA has promulgated under authority of TSCA.
20. The November 2013 inspection was conducted pursuant to Section 11 of TSCA, 15 U.S.C. § 2610.

**COUNT 1: FAILURE TIMELY TO FILE 40 CFR PART 711 REPORT**

21. Complainant repeats and reallages each allegation contained in paragraphs "1" through "20" with the same force and effect as if fully set forth herein.
22. Forty C.F.R. § 711.5, setting forth for which chemical substances information must be reported under 40 C.F.R. Part 711, provides: "Any chemical substance that is in the Master Inventory File at the beginning of a submission period described by § 711.20, unless the chemical substance is specifically excluded by § 711.6."
23. Pursuant to 40 C.F.R. § 711.8(a)(1), "For the 2012 submission period, any person who manufactured (including imported) for commercial purposes 25,000 lb (11,340 kilograms (kg)) or more of a chemical substance described in § 711.5 at any single site owned or controlled by that person during the principal reporting year (i.e., calendar year 2011) is subject to reporting."
24. Pursuant to 40 C.F.R. § 711.15, "For the 2012 submission period, any person who must report under this part, as described in § 711.8, must submit the information described in this section for each chemical substance described in § 711.5 that the person manufactured (including imported) for commercial purposes in an amount of 25,000 lb (11,340 kg) or more at any one site during the principal reporting year (i.e., calendar year 2011)."
25. In part, 40 C.F.R. § 711.20 provides, "All information reported to EPA in response to the requirements of this part must be submitted during an applicable submissions period."

26. The 2012 CDR [Chemical Data Reporting] submission period is from February 1, 2012 to August 13, 2012.”

27. During calendar year 2011, Respondent manufactured at Respondent’s facility each of the 15 chemical substances listed below in quantities greater than 25,000 pounds (11,340 kilogram[s]), with each chemical substance below identified with its Chemical Abstract Services Registry Number:

- (a) 1313-97-9;
- (b) 4229-34-9;
- (c) 15667-84-2;
- (d) 1314-23-4;
- (e) 7699-43-6;
- (f) 537-01-9;
- (g) 1306-38-3;
- (h) 14475-63-9;
- (i) 13746-89-9;
- (j) 23570-56-1;
- (k) 68309-95-5;
- (l) 40861-29-8;
- (m) 1312-81-8;
- (n) 1314-36-9; and
- (o) 1113-81-8

28. Each of the aforementioned (paragraph 26, above) chemical substances was manufactured for commercial purposes.

29. Each of the aforementioned (paragraph 26, above) chemical substances was listed on the Master Inventory File on February 1, 2012.

30. None of the aforementioned (paragraph 26, above) chemical substances was excluded from the 40 C.F.R. Part 711 Chemical Data Reporting requirements by 40 C.F.R. § 711.6.

31. For its 2011 calendar year manufacture of each of the aforementioned (paragraph 26, above) chemical substances, Respondent was required, pursuant to 40 C.F.R. §§ 711.15 and 711.20, to submit to EPA a completed Chemical Data Reporting information form (Form U) during the period running from February 1, 2012 to August 13, 2012.

32. Respondent failed to submit a completed Chemical Data Reporting information form (Form U) during the period running from February 1, 2012 to August 13, 2012 for its 2011 calendar year manufacture of each of the aforementioned (paragraph 26, above) chemical substances.

33. Each of Respondent’s aforementioned (paragraph 31, above) failures constitutes an unlawful act pursuant to, and thus a violation of, Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

34. For each of Respondent's aforementioned (paragraph 31, above) failures, Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, as amended, 15 U.S.C. § 2615(a)(1).

## **II. PROPOSED CIVIL PENALTY**

Complainant proposes, in accordance with 40 C.F.R. §§ 22.14(a)(4)(ii) and 22.19(a)(4) and under authority of Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), as amended, to assess Respondent a penalty in an amount of up to \$37,500 for Respondent's failure timely (*i.e.* during the period from February 1, 2012 to August 13, 2012) to submit to EPA the Chemical Data Reporting information for each of the 15 chemical substances identified in paragraph 26, above, with the precise amount to be provided subsequently in the course of this proceeding.

For purposes of determining the amount of a civil penalty to be assessed, TSCA Section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B), requires EPA to take into account the nature, circumstances, extent and gravity of the violations alleged, as well as a respondent's ability to pay, effect on its ability to continue to do business, any history of prior such violations, the degree of culpability and such other matters as justice might require. In doing so, EPA will look at the particular facts and circumstances of this proceeding, the statutory factors and the precatory guidance provided by EPA's Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13 (revised March 31, 1999 and effective June 1, 1999). This guidance was developed in accordance with the Guidelines for Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy, which sets forth a general penalty assessment policy for TSCA violations and is found at 45 *Fed. Reg.* 59,770 (September 10, 1980). The applicable guidance policy provides a rational, consistent and equitable calculation methodology for applying the TSCA statutory factors to the facts and circumstances of a particular case. As provided for in 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not herein providing a specific penalty demand but will, in accordance with 40 C.F.R. § 22.19(a)(4), "include in its prehearing information exchange all factual information [Complainant] considers relevant to the assessment of a penalty" and subsequent thereto, Complainant "shall file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in [TSCA]."

## **III. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this administrative litigation have been set forth in the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS." These rules are codified at 40 C.F.R. Part 22. A copy of these rules accompanies service of this Complaint.

## **A. Answering the Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 calendar days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7. The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866**

(NOTE: any documents that are filed after the Answer has been filed should be filed as specified in "D" below.)

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

## **B. Opportunity To Request A Hearing**

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent requests a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the



provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

### **C. Failure To Answer**

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely (*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 calendar days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

### **D. Filing of Documents Filed After the Answer**

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk, acting for the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service, address to:

Headquarters Hearing Clerk  
Office of Administrative Law Judges  
U.S Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900R  
Washington, DC 20460

If filing by UPS, FedEx, DHL or other Courier, or personal delivery, address to:

Headquarters Hearing Clerk  
Office of Administrative Law Judges  
Ronald Reagan Building, Rm M1200  
1300 Pennsylvania Avenue, N.W.  
Washington, DC 20460

## **E. Exhaustion Of Administrative Remedies**

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives the right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the Agency's Environmental Appeals Board ("EAB"), Respondent must do so "[w]ithin 30 days after the initial decision is served upon the parties." 40 C.F.R. §22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is affected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

## **IV. INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, and/or (2) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Lee A. Spielmann  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 16th floor  
New York, N.Y. 10007-1866  
212-637-3222  
spielmann.lee@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's request for a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure.

A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives the right to contest the allegations in the Complaint and waives the right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

**V. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

If, instead of filing an Answer, Respondent wishes wants to pay the total amount of the proposed penalty within 30 calendar days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Dated:     AUG - 9    , 2017

**COMPLAINANT:**



\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
Environmental Protection Agency, Region 2  
290 Broadway, 21<sup>st</sup> floor  
New York, New York 10007-1866

**To:** Gavin M. Edwards, Plant Manager  
MEL Chemicals, Inc.  
500 Barbertown Point Breeze Road  
Flemington, New Jersey 08822

**cc:** Debra Rosen, Esq.  
Archer & Greiner, P.C.  
One Centennial Square  
33 East Euclid Avenue  
Haddonfield, New Jersey 08033

CERTIFICATE OF SERVICE

This is to certify that on the day of August 9, 2017, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number TSCA-02-2017-9143, with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by UPS OVERNIGHT MAIL, to the following addressee listed below. I also on said date hand carried the original and a copy of the Complaint to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> floor, New York, New York 10007-1866.

Gavin Edwards, Plant Manager  
MEL Chemicals, Inc.  
500 Barbertown Point Breeze Road  
Flemington, New Jersey 08822

Dated: August 9, 2017

  
Yolanda Majette, Secretary