

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:)
Arkema Inc.) Docket Number TSCA-HQ-2007-5003
Respondent.)
_____)

FINAL ORDER

The United States Environmental Protection Agency as Complainant, and Arkema Inc. as Respondent, the Parties herein, having signed and consented to entry of the attached Consent Agreement incorporated by reference into this Final Order,

NOW, THEREFORE, IT IS ORDERED THAT:

1. Respondent, Arkema Inc., shall comply with all terms of the Consent Agreement;
2. Respondent is assessed a civil penalty of **Fifteen Thousand Eight Hundred Ninety-Five Dollars (\$15,895.00)**; and
3. Respondent shall, in accordance with the payment provisions set forth in the Consent Agreement, make payment via a certified or cashier's check or through a wire transfer as described in the Consent Agreement.

IT IS SO ORDERED.

By: 
Environmental Appeals Board

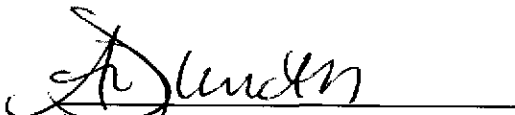
Dated: 8/16/07

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement and Final Order," *Arkema Inc.*,
Docket No. TSCA-HQ-2007-5003, was filed and copies of the same were mailed to the parties as
indicated below:

(Interoffice) James Vinch, Esq.
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (Mail Code 2245A)
Washington, D.C. 20460
(202) 564-4168
Fax: (202) 564-0035

(U.S. Mail) Rebecca Bernstein, Esq.
Arkema Inc.
Headquarters facility
2000 Market Street
Philadelphia, PA 19103-3222
(215) 491-5890



Annette Duncan
Secretary
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Dated: 8/20/07

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

)	
<i>In the Matter of :</i>)	
)	
Arkema Inc.)	Docket Number TSCA-HQ-2007-5003
Houston, TX)	
)	
Respondent)	
)	

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (EPA or Agency) and Respondent, Arkema Inc. (Respondent or the Company)(collectively, the Parties), having consented to the entry of this Consent Agreement before the taking of any testimony and without adjudication of any issues of law or fact, consent to the terms of this Consent Agreement and attached Final Order.

I. PRELIMINARY STATEMENT

1. This civil administrative proceeding for the assessment of penalties pursuant to section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), is being simultaneously commenced and concluded pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).
2. To avoid the disruption of orderly business activities and expense of protracted and costly litigation, Respondent, for purposes of this proceeding: (1) admits that EPA has jurisdiction over the subject matter in this Consent Agreement, and (2) consents to the terms of this Consent Agreement and Final Order.

II. EPA'S FINDINGS OF FACT AND LAW

COUNT I

3. EPA promulgated the Inventory Update Reporting (IUR) regulations (IUR Rule), 40 C.F.R. Part 710, pursuant to section 8(a) of TSCA, 15 U.S.C. § 2607(a).
4. Respondent, a corporation, with an operating facility located at 2231 Haden Road, Houston, Texas 77015, is a "person" as defined by the IUR Rule, 40 C.F.R. § 710.3.
5. Respondent "manufactures" a "chemical substance," as defined by sections 3(2)(A) and 3(7) of TSCA, 15 U.S.C. §§ 2602(2)(A) and (7), and the IUR Rule, 40 C.F.R. § 710.3.
6. Respondent is subject to TSCA and regulations promulgated thereunder.
7. Pursuant to the IUR Rule, 40 C.F.R. § 710.28(b), unless an exclusion applies, "[a]ny person who manufactured for commercial purposes 10,000 pounds (4,540 kilograms) or more of a chemical substance [which is in the TSCA Master Inventory File] . . . at any single site owned or controlled by that person at any time during the person's latest complete corporate fiscal year before August 25, 1990, or before August 25 at four-year intervals thereafter" is subject to recurring IUR reporting during the applicable reporting period.
8. A person subject to IUR reporting is required to file a Partial Updating of TSCA Inventory Data Base Production and Site Report (Form U) with EPA.
9. The deadline for Form U submissions for the 2002 IUR period was December 23, 2002, 40 C.F.R. § 710.33(b).
10. During Respondent's latest complete corporate fiscal year prior to August 25, 2002, Respondent manufactured for commercial purposes 10,000 pounds (4,540 kilograms) or more of

the chemical substance, carbon disulfide (Chemical Abstracts Service Registration Number (CASRN) 75-15-0).

11. Carbon disulfide is included in the TSCA Master Inventory File, and is not excluded from reporting under the IUR Rule, 40 C.F.R. § 710.26.

12. Pursuant to 40 C.F.R. §§ 710.33(b) a rule promulgated under TSCA section 8(a), Respondent was required to file a Form U by December 23, 2002.

13. Respondent filed a Form U by December 23, 2002.

14. On April 18, 2006 by telephone, and on April 19, 2006 by an inspection letter of notification, EPA notified Respondent that the Agency would conduct an inspection to determine compliance with TSCA.

15. On or about April 20, 2006, Respondent filed an amended 2002 Form U to include CASRN # 75-15-0.

16. On April 25, 2006, an authorized representative of EPA conducted an inspection of Respondent's place of business at 2231 Haden Road, Houston, Texas, 77015, pursuant to section 11 of TSCA, 15 U.S.C. § 2610.

17. In a letter to EPA dated May 9, 2006, Respondent stated that "in preparation for the April 25, 2006 inspection at this site, we became aware that one additional substance, carbon disulfide (CASRN 75-15-0) should have been included on Arkema's 2002 Inventory Update Report for the site."

18. EPA alleges that Respondent's failure to submit a Form U for CASRN # 75-15-0 by December 23, 2002 constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.33(b), for a chemical subject to a rule promulgated under TSCA section 8(a).

19. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614 (3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.

20. A violation of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. 2615(a).

III. CIVIL PENALTY

21. The proposed penalty in this matter is consistent with the *Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13* (revised March 31, 1999; effective June 1, 1999)(*TSCA ERP*). The *TSCA ERP* 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. 45 Fed. Reg. 59770 (Sept. 10, 1980). The *TSCA ERP*, though not a regulation, establishes a framework for applying the statutory factors to be considered in assessing a civil penalty, *i.e.*: "the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require." Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

22. The proposed civil penalty in this case reflects: (1) a determination of the Gravity-Based Penalty (GBP), in accordance with the statutory factors nature, circumstances, extent and gravity;

and (2) adjustments to the GBP, taking into account the statutory factors ability to pay, effect on ability to continue business, prior violations, culpability, and such other matters as justice may require.

IV. TERMS OF SETTLEMENT

23. This settlement resolves only the civil administrative claims alleged in this Consent Agreement for Respondent's facility located at 2231 Haden Road, Houston, Texas 77015.

24. Respondent waives its right to request an administrative hearing pursuant to section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A) and waives its right to file a petition for judicial review of the Final Order assessing the civil penalty pursuant to section 16(a)(3) of TSCA, 15 U.S.C. § 2615(a)(3).

25. For the sole purpose of establishing Respondent's compliance history in any future enforcement proceeding that EPA may bring against Respondent within five (5) years of the date of the execution of the Final Order, this Consent Agreement and Final Order shall be considered by EPA to be a "prior violation" under the ERP or any of EPA's other TSCA Enforcement Response Policies, and shall also be considered to be a prior violation under the "Incentives for Self Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 Fed. Reg. 19,618 (April 11, 2000).

26. The occurrence of any violation is in dispute and the entry of the Consent Agreement and Final Order shall not constitute an admission by Respondent of any violation alleged in this Consent Agreement of any statute or regulation; however, Respondent consents to the terms and conditions of this Consent Agreement and Final Order.

27. By executing this Consent Agreement, Respondent certifies that solely regarding the violations set forth and alleged herein, Respondent is in compliance with section 8 and 15 of TSCA; 15 U.S.C. §§ 2607 and 2614.

28. Respondent represents and warrants that the facts it has certified and referenced in this Consent Agreement are true.

29. The effect of this settlement (provided in paragraph 23) is conditioned upon the thoroughness and accuracy of the representations in Respondent's Form U submission and the certification referenced in paragraph 27.

30. Respondent agrees to pay a civil penalty in the sum of **Fifteen Thousand Eight Hundred Ninety-Five Dollars (\$15,895.00)** in accordance with the following terms:

- A. Not more than thirty (30) calendar days after the effective date of the Final Order, Respondent shall either submit a cashier's or certified check with a notation of "Arkema Inc., Civil Penalty Docket No. TSCA-HQ-2007-5003," payable to the order of the "Treasurer, United States of America," to:

EPA-Washington
(Hearing Clerk)
Docket No. TSCA-HQ-2007-5003
P.O. Box 360277
Pittsburgh, PA 15251-6277

or pay by wire transfer with a notation of "Arkema Inc., Civil Penalty Docket No. TSCA-HQ-2007-5003" by using the following instructions:

Name of Beneficiary: EPA
Number of Account for deposit: 68010099
The Bank Holding Acct: Treas_NYC
The ABA routing Number: 021030004

B. Respondent shall forward a copy of the check or documentation of a wire transfer

to: Tony R. Ellis, Case Development Officer
Waste and Chemical Enforcement Division (2245A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (Room No. 5041-A)
Washington, D.C. 20460
(202) 564-4167
Fax (202) 564-0035

C. If Respondent fails to make the payment in a timely manner as required by paragraph 30.A., then Respondent shall pay a stipulated penalty of **One Thousand Dollars (\$1,000.00)** per calendar day for every day the penalty payment is late, unless EPA in writing excuses or mitigates the stipulated penalty. EPA may excuse or mitigate the stipulated penalty if EPA determines that the failure to comply occurred despite Respondent's exercise of good faith and due diligence.

V. OTHER MATTERS

31. This Consent Agreement shall be binding upon the Parties and their successors and assigns.

The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to enter into this binding Consent Agreement.

32. This Consent Agreement shall take full effect upon the signing and filing of the Final Order by EPA's Environmental Appeals Board.

33. Respondent's obligations under this Consent Agreement shall end, and the Consent Agreement and Final Order shall automatically terminate, when it has paid in full the scheduled

civil penalty, paid any stipulated penalties set forth herein, and submitted the documentation required by the Consent Agreement and Final Order.

34. All of the terms and conditions of this Consent Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Consent Agreement shall be null and void if any term or condition of this Consent Agreement is held invalid or is not executed by all of the signatory parties in identical form, or is not approved in such identical form by EPA's Environmental Appeals Board.

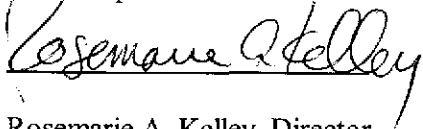
35. The penalty, including any stipulated penalties, specified above represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.

36. Failure of Respondent to remit the civil penalties provided herein within ten (10) days of the date specified in paragraph 30.A. will result in this matter being forwarded to the United States Department of Justice for collection of the amount due, plus stipulated penalties and interest at the statutory judgment rate provided in 28 U.S.C. § 1961.

37. The Parties agree to bear their own costs.

WE HEREBY AGREE TO THIS:


For Complainant:



Rosemarie A. Kelley, Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

6/18/07
Date

For Respondent:


VP Manufacturing & Regulatory
(Representative of Arkema Inc.)

06/08/2007
Date