



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 26 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael Neilson
Assistant General Counsel
Lonza America, Inc.
90 Boroline Road
Allendale, New Jersey 07401

Re: Arch Wood Protection, Inc.
Consent Agreement and Final Order
Docket No. TSCA-04-2014-2510(b)

Dear Mr. Neilson:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Mr. Verne George of the EPA Region 4 staff at (404) 562-8988.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief
Pesticides and Toxic
Substances Branch

Enclosures

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

2014 AUG 26 AM 1:00

RECEIVED
EPA REGION IV

HEARING CLERK

In the Matter of:)
)
Arch Wood Protection, Inc.)
)
Respondent)
_____)

Docket No. TSCA-04-2014-2510(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4. Respondent is Arch Wood Protection, Inc.
2. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the EPA Region 4 Regional Administrator by EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has redelegated this authority to the Director of the Air, Pesticides and Toxics Management Division by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to

commence an enforcement action as the Complainant in this matter and has the authority to sign Consent Agreements memorializing settlements between the EPA and Respondent.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony; the making of any argument; or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for any person to: (1) fail or refuse to comply with any rule promulgated or order issued under Sections 4, 5, or 6 of TSCA, 15 U.S.C. § 2603, § 2604, or § 2605, and any requirement prescribed by Section 5 or 6 of TSCA, 15 U.S.C. § 2604 or § 2605; (2) use for commercial purposes a chemical substance or mixture that the person knew or had reason to know was manufactured, imported, processed, or distributed in commerce in violation of Section 5 or 6 of TSCA, 15 U.S.C. § 2604 or § 2605; (3) fail to maintain records, submit reports or information, or permit access to or allow copying of records including but not limited to records and reports required by Section 8 of TSCA, 15 U.S.C. § 2607, and export notices required by Section 12(b) of TSCA, 15 U.S.C. § 2611(b); and (4) refuse to permit entry or inspection as authorized by Section 11 of TSCA, 15 U.S.C. § 2610.
5. Any person who violates a provision of Section 15 of TSCA shall be liable for a civil penalty in an amount not to exceed \$25,000 for each such violation, in accordance with

Section 16(a) of TSCA. The Debt Collection Improvement Act of 1996 requires the EPA to review and adjust penalties, as necessary, for inflation at least once every four years. As such, pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule, 40 C.F.R. Part 19, the revised maximum penalty for each violation occurring after January 30, 1997, through March 15, 2004, is \$27,500; for each violation occurring after March 15, 2004, through January 12, 2009, the maximum penalty for each violation is \$32,500; and for each violation occurring after January 12, 2009, the maximum penalty for each violation is \$37,500. Each day a violation continues may constitute a separate violation.

III. Specific Allegations

6. Pursuant to 40 C.F.R. § 711.8, for the 2012 submission period, any person who manufactured (including imported) for commercial purposes 25,000 lb (11,340 kg) or more of a chemical substance described in 40 C.F.R. § 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 the requirements of 40 C.F.R. Part 711.
7. Pursuant to 40 C.F.R. § 711.15, any person who is subject to 40 C.F.R. § 711.8 must submit the information described in 40 C.F.R. § 711.15(a) for each chemical substance described in 40 C.F.R. § 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).
8. Pursuant to 40 C.F.R. § 711.20, all information reported to the EPA in response to 40 C.F.R. Part 711 must be submitted during an applicable submission period. The 2012 submission period was from February 1, 2012 to August 13, 2012.

9. Arsenic trioxide is a chemical substance described in 40 C.F.R. § 711.5. Arsenic trioxide was listed on the TSCA Master Inventory File at the beginning of the 2012 submission period.
10. In 2011, Respondent owned or operated a "site" as that term is defined in 40 C.F.R. § 711.3. The site is located at 1579 Koppers Road, Conley, Georgia.
11. In 2011, Respondent imported for commercial purposes 25,000 lbs. (11,340 kg) or more of arsenic trioxide at the site.
12. Respondent did not submit the information described in 40 C.F.R. § 711.15(a) for arsenic trioxide during the 2012 submission period.
13. As stated in 40 C.F.R. § 711.1(c), Section 15(3) of TSCA, 15 U.S.C. § 2614(3), makes it unlawful for any person to fail or refuse to submit information required under 40 C.F.R. Part 711.
14. Respondent violated Section 15(3) of TSCA, 15 U.S.C. § 2614(3), when it did not submit information described in 40 C.F.R. § 711.15(a) for arsenic trioxide to the EPA during the 2012 submission period.

IV. Consent Agreement

15. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
16. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
17. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.

18. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with the TSCA regulations referenced in this CAFO.
19. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
20. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.
21. Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual is authorized to receive service for the EPA in this proceeding:

Verne George
Chemical Products and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562- 8988.

V. Final Order

22. Respondent is assessed a civil penalty of **TWENTY SEVEN THOUSAND, ONE HUNDRED TWELVE DOLLARS (\$27,112)**, which shall be paid within thirty (30) days of the effective date.
23. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America." **The Respondent shall note on the**

face of the check the Respondent's name and the Docket Number associated with this CAFO. The penalty payment shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service (USPS) (excluding USPS overnight mail):

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

Address for payment submittal using USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

Contact Phone Number: (314) 425-1818.

24. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960:

Verne George
Chemical Products and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960: and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960.

25. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
26. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, the EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
27. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
28. This CAFO shall be binding upon the Respondent and its successors and assigns.
29. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to this CAFO.

VI. Effective Date

30. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: Arch Wood Protection, Inc.
Docket No.: TSCA-04-2014-2510(b)

By: Kenton E Gray Date: JUN 23 2014
Name: KENTON E. GRAY
Title: VP FINANCE

Complainant: U.S. Environmental Protection Agency

By: Beverly H. Banister Date: 8-5-14
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 26 day of August, 2014

By: Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Arch Wood Protection, Inc., Docket Number: TSCA-04-2014-2510(b), to the addressees listed below.

Michael R. Neilson (via Certified Mail, Return Receipt Requested)
Assistant General Counsel
Lonza America, Inc.
90 Boroline Road
Allendale, New Jersey 07401

Verne George (via EPA's internal mail)
Chemical Products and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Michi Kono (via EPA's internal mail)
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

By:



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303

Date:

8-26-14

(404) 562-9511