



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

APR 12 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Jennifer Palmer
Regulatory Manager
Colonial Chemical, Inc.
225 Colonial Drive
South Pittsburg, Tennessee 37380

Re: Colonial Chemical, Inc.
Consent Agreement and Final Order
Docket No. TSCA-04-2018-2502(b)

Dear Ms. Palmer:

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.

Should you have any questions concerning the compliance status in the future, please contact Mr. Gopal Timsina of the EPA Region 4 staff at (404) 562-9017. Thank you for your cooperation in reaching resolution of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Toney", with a long horizontal flourish extending to the right.

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

USE ONLY FOR
OFFICIAL RECORDS
2016 APR 12 AM 9:06
HEARING CLERK

In the Matter of:)
)
Colonial Chemical, Inc.)
)
Respondent.)
_____)

Docket No. TSCA-04-2018-2502(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 Colonial Chemical, 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 the 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 the EPA Region 4 Delegation 12-2-A, dated January 30, 2015. 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 Respondents.

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 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 (2) export notices required by Section 12(b) of TSCA, 15 U.S.C. § 2611(b).
5. Any person who violates a provision of Section 15 of TSCA shall be liable for a civil penalty for each such violation in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19. Each day a violation continues may constitute a separate violation.
6. All Confidential Business Information (CBI) in this CAFO has been redacted. To determine the identity of the chemical substances referenced in this CAFO or the CBI that was deleted (CBI deleted), Complainant and/or Respondent should refer to the show cause letter dated July 10, 2017, sent to the Respondent identifying the potential violations of TSCA and notifying the Respondent of the opportunity to show cause why the EPA should not proceed with an enforcement action.

III. Specific Allegations

7. Respondent operates a chemical importing and manufacturing business located at 225 Colonial Drive, South Pittsburg, Tennessee.
8. Respondent is a manufacturer and an importer as those terms are defined in 40 C.F.R. § § 710.3 and 711.3.
9. On November 17, 2016, Respondent submitted certain records to the EPA regarding Respondent's compliance with TSCA, including manufacturing, import, and export records.

Over-Reporting a Manufactured Chemical in 2016 CDR Report

10. Pursuant to 40 C.F.R. § 711.8(a), any person who manufactured (including imported) for commercial purposes 25,000 lb. (11,340 kg) or more of a chemical substance described in §711.5 at any single site owned or controlled by that person during any calendar year since the last principal reporting year (*e.g.*, for the 2016 submission period, consider calendar years 2012, 2013, 2014, and 2015, given that 2011 was the last principal reporting year) is subject to the Chemical Data Reporting (CDR) requirements under Section 8(a) of TSCA, 15 U.S.C. § 2607(a) and 40 C.F.R. Part 711.
11. Pursuant to 40 C.F.R. 40 § 711.5, any chemical substance that is in the TSCA Master Inventory File at the beginning of a submission period described in 40 C.F.R. § 711.20 must be reported pursuant to the CDR requirements under Section 8(a) of TSCA, 15 U.S.C. § 2607(a) and 40 C.F.R. Part 711, unless the chemical substance is specifically excluded by 40 C.F.R. § 711.6.
12. Respondent's production records indicate that Respondent manufactured 25,000 pounds or more of Chemical B for commercial purposes during calendar year 2015.
13. Chemical B was listed in the TSCA Master Inventory File at the beginning of the 2016 CDR submission period (June 1, 2016, through October 31, 2016) identified at 40 C.F.R. § 711.20 and

is not specifically excluded from some or all of the CDR reporting requirements by 40 C.F.R. § 711.6.

14. Pursuant to the CDR requirements under Section 8(a) of TSCA, 15 U.S.C. § 2607(a) and 40 C.F.R. Part 711, Respondent was required to submit to the EPA a CDR report for Chemical B that Respondent manufactured for commercial purposes in an amount of 25,000 pounds (11,340 kg) or more in calendar year 2015 by no later than the end of the 2016 CDR submission period, October 31, 2016.
15. During 2016 CDR period (June 1, 2016, through October 31, 2016), Respondent submitted to the EPA a 2016 CDR for Chemical B that was manufactured for commercial purpose.
16. Pursuant to 40 C.F.R. § 711.15(b)(3)(iii), the total annual domestic manufactured volume (not including imported volume) and the total annual imported volume must be reported separately. These amounts must be reported to two significant figures of accuracy. A comparison between Respondent's 2015 production records and Respondent's 2016 CDR Report revealed that Chemical B was over reported (not reported to two significant figures of accuracy).
17. As stated in 40 C.F.R. § 711.1(c), Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to submit information required under 40 C.F.R. Part 711.
18. Section 16 of TSCA provides that any person who violates a provision of Section 15 of TSCA is liable to the United States for a civil penalty.

Failure to Submit Export Notifications to the EPA

19. Pursuant to 40 C.F.R. § 721.20, persons who intend to export a chemical substance identified in 40 C.F.R. Part 721, Subpart E, or in any proposed rule which would amend Subpart E, are subject to the export notification provisions of Section 12(b) of TSCA, 15 U.S.C. § 2611, and the regulations that interpret TSCA Section 12(b), promulgated at 40 C.F.R. Part 707.

20. Pursuant to Section 12(b) of TSCA, 15 U.S.C. § 2611, as also noted in 40 C.F.R. § 707.60(a), any person who exports or intends to export a chemical substance or mixture must notify the EPA of such exportation to a particular country if any of the following actions have been taken pursuant to TSCA with respect to that chemical substance or mixture: (1) data are required under section 4 or 5(b); (2) an order has been issued under section 5; (3) a rule has been proposed or promulgated under section 5; or (4) an action is pending, or relief has been granted under section 5 or 7.
21. A review of Respondent's export records from 2013 to 2016 showed that Respondent exported Chemical C to [CBI deleted].
22. On [CBI deleted], the EPA promulgated a final significant new use rule (SNUR) pursuant to TSCA section 5 for Chemical C. The effective date of Chemical C's SNUR was [CBI deleted]. Chemical C's SNUR is referenced at 40 CFR Part 721, Subpart E, and exporters were required to submit notice of exports if they exported or intended to export Chemical C to a foreign country.
23. Pursuant to 40 C.F.R. § 707.65(a)(3), the Respondent was required to submit export notices to the EPA for Chemical C, postmarked within seven days of forming the intent to export or on the date of export, whichever was earlier.
24. Respondent failed to postmark export notices to the EPA for Chemical C within seven days of forming the intent to export or on the date of export, whichever was earlier, and failed to timely submit the export notices for Chemical C.
25. By not postmarking and timely submitting export notices to the EPA for Chemical C, Respondent failed to comply with 40 C.F.R. § 707.60(a).
26. Pursuant to 40 C.F.R. § 707.60(f), failure to comply with TSCA Section 12(b) as set forth in Part 707 will be considered a violation of TSCA Section 15(3), 15 U.S.C. § 2614(3), and will subject

the exporter to the penalty, enforcement, and seizure provisions of TSCA Sections 16 and 17, 15 U.S.C. §§ 2615 and 2616.

IV. Consent Agreement

27. 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.
28. 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.
29. 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.
30. 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.
31. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA or other applicable laws and regulations.
32. 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.

V. Final Order

33. Respondent is assessed a civil penalty of **THIRTY ONE THOUSAND, EIGHT HUNDRED SEVENTY-FIVE (\$31,875)** which shall be paid within thirty (30) days of the effective date.

34. Respondent shall remit the penalty payment by either the electronic methods below, or 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 standard delivery:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, Missouri 63197-9000

Address for signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc.):

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
Delivery Contact Phone Number: (314) 425-1819

Electronic Payment: Any electronic payment method as indicated in the EPA's electronic payment options web site found at:
<https://www.epa.gov/financial/makepayment#electronic>

35. At the time of payment, Respondent shall send a separate copy of the check or evidence of electronic payment 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; and

Gopal Timsina
Chemical Management and Emergency Planning Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

36. 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.
37. 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.
38. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
39. This CAFO shall be binding upon the Respondent and its successors and assigns.
40. 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.

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VI. Effective Date

41. 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: Colonial Chemical, Inc.

Docket No.: TSCA-04-2018-2502(b)

By: Colonial Chemical, Inc. Date: 2/21/2018

Name: Jennifer Palmer *J.P.*

Title: Regulatory Affairs Manager

Complainant: U.S. Environmental Protection Agency

By: Carol G. Kember for Date: 3/13/18
Beverly H. Banister

Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 1st day of April, 2018.

By: Tanya Floyd
Tanya Floyd
Regional Judicial Officer

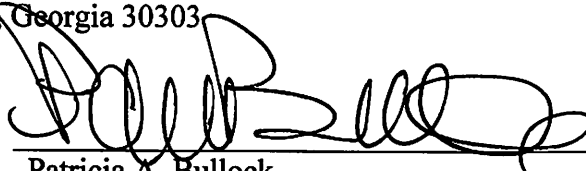
CERTIFICATE OF SERVICE

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 Colonial Chemical, Inc. Docket Number: TSCA-04-2018-2502(b), to the addressees listed below.

Ms. Jennifer Palmer (via Certified Mail, Return Receipt Requested)
Regulatory Manager
Colonial Chemical, Inc.
225 Colonial Drive
South Pittsburg, Tennessee 37380

Gopal Timsina (via EPA's internal mail)
Chemical Management and Emergency
Planning Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)
Senior Attorney
Office of Regional Counsel
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 Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511

Date: 4-12-18