

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	
	:	
Altadis U.S.A. Inc.	:	Docket No. EPCRA-03-2014-0118
2601 Tampa East Blvd	:	
Tampa, FL 33619	:	
	:	
Respondent	:	CONSENT AGREEMENT
	:	
Altadis U.S.A. Inc.	:	
1000 Tresckow Road	:	
McAdoo, PA 18237	:	
	:	
Facility	:	Proceeding under § 325(c) of EPCRA, 42 U.S.C. § 11045(c)
	:	

REGIONAL HEARING CLERK
 EPA REGION III, PHILA. PA

2014 JUN 17 PM 4: 21

RECEIVED

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”), Altadis U.S.A. Inc. (“Respondent”), pursuant to Sections 313 and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. §§ 11023 and 11045(c), the regulations implementing Section 313 of EPCRA, as set forth at 40 C.F.R. Part 372, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively, “CAFO”) simultaneously commence and conclude this proceeding to resolve violations of Section 313 of EPCRA, 42 U.S.C. § 11023, as alleged herein, by Respondent at its facility located at 1000 Tresckow Road, McAdoo, Pennsylvania, 18237.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

3. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
4. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
6. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

Findings of Fact and Conclusions of Law

7. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of the Consolidated Rules, Complainant adopts the following findings of fact and conclusions of law.
8. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372 require, *inter alia*, that the owner or operator of a facility that: 1) has 10 or more employees; 2) has a primary Standard Industrial Classification ("SIC") Code of 20 [2000] through 39 [3999] (as in effect on July 1, 1985), or other SIC or industry code as set forth in 40 C.F.R. Section 372.22(b); and 3) manufactured, processed or otherwise used a toxic chemical or toxic chemical category listed in 40 C.F.R. § 372.65, in excess of the threshold quantities established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form is required; to complete and submit a toxic chemical release form ("Form R") or appropriate alternative threshold report ("Form A"), if applicable, for each such toxic chemical or toxic chemical category to EPA and the state in which the facility is located, by July 1 of the following calendar year.
9. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures, and other stationary items that are located on a single site and that are owned or operated by the same person.
10. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines "person" to include any corporation.
11. Respondent is incorporated in the State of Delaware and is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
12. During calendar year 2010, and at the time of the violations alleged herein, Respondent owned and operated a manufacturing plant located at 1000 Tresckow Road, McAdoo, Pennsylvania, 18237 ("Facility").

13. Respondent's Facility is a "facility" as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.
14. During calendar year 2010, Respondent employed 10 or more full-time employees at the Facility.
15. During calendar year 2010, the Facility had a primary SIC code of 2121.
16. Respondent was required to complete and submit a Form R or Form A, if applicable, for each toxic chemical and toxic chemical category listed in 40 C.F.R. § 372.65 which was manufactured, processed, or otherwise used at the Facility in excess of the threshold quantity set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during any calendar year, to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1 of the following calendar year.

Count I: Polycyclic Aromatic Compounds ("PACs")

17. "Polycyclic Aromatic Compounds" ("PACs") is a "toxic chemical category" as defined in §§ 313(c) and 329(10) of EPCRA, 42 U.S.C. §§ 11023(c) and 11049(10), 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
18. As set forth in Section 313(f)(1)(B) and (2) of EPCRA, 42 U.S.C. § 11023(f)(1)(B) and (2), and 40 C.F.R. § 372.28, the reporting threshold amount for PACs which are manufactured, processed or otherwise used at a facility is 100 pounds.
19. Respondent manufactured, processed or otherwise used more than 100 pounds of PACs at the Facility during the 2010 calendar year.
20. Pursuant to § 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.25, 372.28 and 372.30, Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1 of 2011, a completed Form R for PACs manufactured, processed or otherwise used at the Facility during the 2010 calendar year.
21. Pursuant to 40 C.F.R. §§ 372.27(e), 372.28 and 372.30(a), owners and operators of facilities that manufacture, process or otherwise use more than 100 pounds of PACs during a calendar year are not eligible to file the alternative reporting form ("Form A") set forth in 40 C.F.R. § 372.27 in lieu of the Form R required by 40 C.F.R. § 372.30, by July 1 of the following year.
22. Respondent filed the required Form R for the toxic chemical category PACs manufactured, processed or otherwise used at the Facility during the 2010 calendar year with the Administrator of EPA and the Commonwealth of Pennsylvania on or about August 15, 2013.
23. Respondent's failure to timely file a Form R with the Administrator of EPA and the Commonwealth of Pennsylvania for the toxic chemical category PACs that was

manufactured, processed or otherwise used at the Facility during the 2010 calendar year is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.25, 372.28 and 372.30.

Count II: Benzo(g,h,i)perylene

24. "Benzo(g,h,i)perylene" is a "toxic chemical" as defined in §§ 313(c) and 329(10) of EPCRA, 42 U.S.C. §§ 11023(c) and 11049(10), 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.
25. As set forth in Section 313(f)(1)(B) and (2) of EPCRA, 42 U.S.C. § 11023(f)(1)(B) and (2), and 40 C.F.R. §§ 372.25 and 372.28, the reporting threshold amount for benzo(g,h,i)perylene which is manufactured, processed or otherwise used at a facility is 10 pounds.
26. Respondent manufactured, processed or otherwise used more than 10 pounds of benzo(g,h,i)perylene at the Facility during the 2010 calendar year.
27. Pursuant to § 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.25, 372.28 and 372.30, Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1 of 2011, a completed Form R for benzo(g,h,i)perylene manufactured, processed or otherwise used at the Facility during the 2010 calendar year.
28. Pursuant to 40 C.F.R. §§ 372.27(e), 372.28 and 372.30(a), owners and operators of facilities that manufacture, process or otherwise use more than 10 pounds of benzo(g,h,i)perylene during a calendar year are not eligible to file the alternative reporting form ("Form A") set forth in 40 C.F.R. § 372.27 in lieu of the Form R required by 40 C.F.R. § 372.30, by July 1 of the following year.
29. Respondent filed the required Form R for the toxic chemical benzo(g,h,i)perylene manufactured, processed or otherwise used at the Facility during the 2010 calendar year with the Administrator of EPA and the Commonwealth of Pennsylvania on or about August 15, 2013.
30. Respondent's failure to timely file a Form R with the Administrator of EPA and the Commonwealth of Pennsylvania for the toxic chemical benzo(g,h,i)perylene that was manufactured, processed or otherwise used at the Facility during the 2010 calendar year is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.25, 372.28 and 372.30.

Count III: Nicotine

31. "Nicotine" is a "toxic chemical" as defined in §§ 313(c) and 329(10) of EPCRA, 42 U.S.C. §§ 11023(c) and 11049(10), 40 C.F.R. § 372.3, and is listed in 40 C.F.R. § 372.65.

32. As set forth in Section 313(f)(1)(B) and (2) of EPCRA, 42 U.S.C. § 11023(f)(1)(B) and (2), and 40 C.F.R. § 372.25, the reporting threshold amount for nicotine which is manufactured or processed at a facility is 25,000 pounds.
33. Respondent manufactured or processed more than 25,000 pounds of nicotine at the Facility during the 2010 calendar year.
34. Pursuant to § 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. §§ 372.25, 372.27 and 327.30, Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1 of 2011, a completed Form A or Form R for the nicotine manufactured or processed Facility during the 2010 calendar year.
35. Respondent filed the required Form R for the toxic chemical nicotine that was manufactured or processed at the Facility during the 2010 calendar year with the with the Administrator of EPA and Commonwealth of Pennsylvania on or about August 15, 2013.
36. Respondent never filed a Form A for the toxic chemical nicotine manufactured or processed at the Facility during the 2010 calendar year with the Administrator of EPA and the Commonwealth of Pennsylvania.
37. Respondent's failure to timely file a Form A or Form R with the Administrator of EPA and the Commonwealth of Pennsylvania for the toxic chemical nicotine manufactured or processed at the Facility during the 2010 calendar year is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.25, 372.27 and 327.30.

Civil Penalty

38. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates § 313 of EPCRA, 42 U.S.C. § 11023, shall be liable to the United States for a civil penalty of up to \$25,000 per violation. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised (73 Fed. Reg. 75340-46 (December 11, 2008)), the maximum inflation-adjusted statutory penalty for violations of Section 313 of EPCRA, 42 U.S.C. § 11023, which occurred after January 12, 2009 is increased to \$37,500 per violation.
39. In settlement of EPA's claims for civil monetary penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of FIFTY-FOUR THOUSAND FIVE HUNDRED DOLLARS (\$54,500.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by Respondent and Complainant. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
40. The civil penalty settlement amount set forth above in Paragraph 39, above, is based on a

number of factors, including, but not limited to, the facts and circumstances of this case, the statutory factors set forth in § 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C), and the penalty criteria set forth in EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (August 10, 1992), as amended. Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, the November 16, 2009 memorandum by EPA Waste and Chemical Enforcement Division Director Rosemarie A. Kelley *Adjusted Penalty Policy Matrices Based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule* ("Kelley Memorandum"). The settlement in this proceeding is consistent with the provisions and objectives of § 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

41. Respondent shall pay the civil penalty amount assessed in Paragraph 39, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 42, 43, 44, and 45, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, EPCRA-03-2014-0118.
- b. All checks shall be made payable to "**United States Treasury**".
- c. All payments made by check and sent by regular mail shall be addressed to:

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

Customer service contact: 513-487-2091

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

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

Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: 866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

Enter **sfo 1.1** in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

- j. Payment by Respondent shall reference Respondent's name and address, and the

EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

James Heenehan
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

42. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
43. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the 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).
44. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
45. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

46. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

Certification

47. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Facility referred to in this Consent Agreement is currently in compliance with all applicable requirements of EPCRA Section 313, 42 U.S.C. § 11023.

Other Applicable Laws

48. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

49. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil penalties for the specific violations of Section 313 of EPCRA, 42 U.S.C. § 11023, alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Scope of Settlement

50. The settlement set forth in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations alleged herein. Compliance with the CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

51. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents, and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

Effective Date

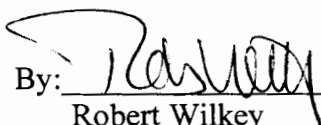
52. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

53. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.


For Respondent:

Date: 5/17/14

By: 
Robert Wilkey
Vice President and General Counsel
Altadis U.S.A. Inc.

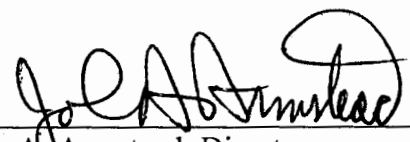
For Complainant:

Date: 5/30/14

By: 
James Heenehan
Senior Assistant Regional Counsel
EPA Region III

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 6.13.14

By: 
John A. Armstead, Director
Land and Chemicals Division

