

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

Filed July 22, 2021 @ 3:12 pm
USEPA – Region II
Regional Hearing Clerk

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In the Matter of :
ACuPowder International, LLC, :
Respondent :
Proceeding under the Toxic Substances :
Control Act, 15 USC §§ 2601-2697 et seq. :
as amended :
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CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
TSCA-02-2021-9141

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (hereinafter “Consolidated Rules”), provide in 40 C.F.R. § 22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 2 (hereinafter "EPA" or “Complainant”), alleges that ACuPowder International, LLC (hereinafter “Respondent”), violated Section 8(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2607(a), and the regulations promulgated pursuant to that Section, set forth at 40 C.F.R. Part 711, relating to requirements for Chemical Data Reporting (“CDR”) and Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

EPA and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. §§ 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This Consent Agreement and Final Order is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made. The following constitute Complainant's findings of fact and conclusions of law.

FINDINGS OF FACT

1. Respondent is ACuPowder International, LLC
2. Respondent owns, operates, and/or controls a facility located at 901 Lehigh Avenue, Union, NJ 07083 ("Respondent's facility").
3. Pursuant to 40 C.F.R. § 711.15(b)(3)(iii), Respondent was required to report, for each reportable chemical substance, the total annual volume in pounds to two significant figures of accuracy.
4. On September 7, 2016, Respondent filed a timely CDR Form U (EPA Form 7740-8) in accordance with 40 C.F.R. § 711.35.
5. On September 1, 2020, EPA requested via electronic mail certain information regarding Respondent's compliance with sections 4, 5, 8, 12, and 13 of TSCA.
6. Through emails dated September 21 and 29, 2020, and January 14 and 28, 2021, Respondent submitted to EPA certain information regarding the manufacturing, including importation, of chemical substances subject to TSCA.
7. As a result of EPA's review of the information described in paragraph 6, above, EPA determined that the domestic manufacturing volume included in Respondent's CDR filing described in paragraph 4, above, of 19,424,958 lbs. of copper (CASRN 7440-50-8) for the 2015 calendar year was not accurate to two significant figures of accuracy.
8. On March 2, 2021, Respondent amended the manufacturing volumes of copper (CASRN 7440-50-8) in the CDR filing described in paragraph 4, above.
9. By electronic mail dated April 22, 2021, Complainant sent to Respondent a Notice of Potential Violation and Opportunity to Confer (NOPVOC), which alleged that Respondent had violated the CDR regulations at 40 C.F.R. Part 711.

10. On May 4, 2021, Complainant and Respondent met for an informal virtual video conference which included a settlement discussion.

CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the facility which is the subject of this Consent Agreement and Final Order, is subject to the regulations and requirements pertaining to the reporting requirements promulgated pursuant to Section 8(a) of TSCA, 15 U.S.C. § 2607(a), and set forth at 40 C.F.R. Part 711.

2. Respondent is a "person" as that term is defined in 40 C.F.R. § 710.3.

3. Respondent is a "manufacturer" as that term is defined at 40 C.F.R. § 711.3.

4. Respondent's facility is a "site" as that term is defined at 40 C.F.R. § 711.3.

5. The submission period for the 2016 CDR was June 1 through October 31, 2016.

6. Copper (CASRN 7440-50-8) was a "reportable chemical substance" as that term is defined at 40 C.F.R. § 711.3

7. Pursuant to 40 C.F.R. § 711.5, copper (CASRN 7440-50-8) is a chemical substance for which information must be reported.

8. Pursuant to 40 C.F.R. § 711.15(b)(3)(iii), for each reportable chemical substance, the total annual volume in pounds must be reported to two significant figures of accuracy.

9. Respondent's failure to timely report its manufacture (including import) of copper (CASRN 7440-50-8) to an accuracy of two significant figures is a violation of 40 C.F.R. § 711.15(b)(3)(iii), which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e) and 2614(1)(C).

10. Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1) for the violation described in paragraph 9, above.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the Consolidated Rules at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms.

1. Respondent shall hereinafter comply with all applicable provisions of TSCA and the regulations promulgated pursuant to it.

2. For the purposes of this Consent Agreement, Respondent (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence a civil administrative proceeding for the violations alleged in the “Conclusions of Law” section, above; (b) neither admits nor denies the specific factual allegations contained in the “Findings of Fact” section, above; and (c) neither admits nor denies the assertions set forth in the “Conclusions of Law” section, above.

3. Respondent shall pay, by cashier’s or certified check, a civil penalty in the amount of **SEVENTEEN THOUSAND NINE HUNDRED THIRTY FIVE DOLLARS (\$17,935)** to the "Treasurer of the United States of America".

If Respondent chooses to pay by check, the check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

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

If Respondent chooses to pay by Electronic Funds Transfer (EFT) directed to the Federal Reserve Bank of New York, Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment;
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045;
- 3) Account: 68010727;
- 4) ABA number: 021030004;
- 5) Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”;
- 6) Name of Respondent; and
- 7) Docket Number.

If Respondent chooses to make on-line payments, Respondent shall go to www.pay.gov and enter “SFO 1.1” in the search field on the tool bar on the Home Page; select “Continue” under “EPA Miscellaneous Payments – Cincinnati Finance Center;” open the form and complete the required fields.

Payment must be received at the above address (or account of EPA) on or before **30 calendar days** from the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the “due date”).

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. Full payment of the penalty described in paragraph 3, above, shall fully and finally resolve Respondent’s liability for federal civil penalties for only the violation(s) and fact(s) described in the “Findings of Fact” and “Conclusions of Law” sections, above. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions contained in the “Findings of Fact” section, above, and the allegations contained in the “Conclusions of Law” section, above, or on any allegations arising thereunder.

7. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be

considered a violation of this Consent Agreement and Final Order and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order. Respondent further waives any right it may have to appeal this Consent Agreement and the accompanying Final Order.

8. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

10. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA at Respondent's facility.

11. Each party shall bear its own costs and fees in this matter.

12. Except as the parties may otherwise agree in writing, all documentation and information required to be submitted to EPA in accordance with the terms and conditions of this Consent Agreement shall be sent by electronic mail (unless not technically feasible given document type or size, then in hard copy) to:

Jesse A. Miller, Ph.D., Physical Scientist
U.S. Environmental Protection Agency, Region 2
Pesticides and Toxic Substances Compliance Branch
2890 Woodbridge Avenue, MS-105
Edison, NJ 08837
miller.jessea@epa.gov

Unless the above-named EPA contact is later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent by electronic mail at the following address:

Mr. Westley Riscili, Environmental Health & Safety Coordinator
ACuPowder International, LLC
901 Lehigh Avenue
Union, NJ 07083
westley.riscili@kymerainternational.com

In cases where electronic mail is not feasible given document type or size, such correspondence will

be mailed to Respondent.

13. Complainant shall provide to Respondent a copy of the fully executed CAFO. Respondent consents to service of this CAFO by electronic mail and consents to service upon it by an employee of EPA other than the Regional Hearing Clerk.

14. EPA and Respondent agree that the parties may use electronic signatures for this matter.

RESPONDENT:

BY: *Michael O'Laughlin*
Michael O'Laughlin (Jul 20, 2021 15:58 EDT)
 ACuPowder International, LLC

NAME: Michael O'Laughlin
 (PLEASE PRINT)

TITLE: Chief Operating Officer

DATE: 07-20-2021

COMPLAINANT:

Anderson, Kate Digitally signed by Anderson, Kate
Date: 2021.07.21 15:05:08 -04'00'

for Dore LaPosta, Director
 Enforcement and Compliance
 Assurance Division
 U.S. Environmental Protection
 Agency, Region 2
 290 Broadway
 New York, New York 10007

DATE: 7-21-2021

In the Matter of ACuPowder International, LLC.
Docket Number TSCA-02-2021-9141

FINAL ORDER

The Regional Judicial Office of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of ACuPowder International, LLC, bearing Docket Number TSCA-02-2021-9141. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2 (40 C.F.R. § 22.31(b)).

DATE: **July 22, 2021**

HELEN
FERRARA

Digitally signed by HELEN FERRARA
Date: 2021.07.22 10:27:05 -04'00'

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

In the Matter of ACuPowder International, LLC
Docket Number TSCA-02-2021-9141

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

By E-mail:

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866
maples.karen@epa.gov

By E-mail:

Mr. Michael O'Laughlin, Chief Operating Officer
ACuPowder International, LLC
901 Lehigh Avenue
Union, NJ 07083
michael.olaughlin@kymerainternational.com

Dated: _____

JESSE
MILLER

Digitally signed by JESSE
MILLER
Date: 2021.07.22
11:18:30 -04'00'

Pesticides and Toxic Substances Compliance Branch
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-225)
Edison, New Jersey 08837-3679