



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR - 5 2019

REPLY TO THE ATTENTION OF

LC-17J

VIA EMAIL

Mr. Thomas A. Hamilton
Partner
Jones Day
North Point
1901 Lakeside Avenue
Cleveland, Ohio 44114

tahamilton@JonesDay.com

Consent Agreement and Final Order In the Matter of Materion Brush Inc
Docket Number TSCA-05-2019-0009

Mr. Hamilton:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on April 5, 2019 with the Regional Hearing Clerk.

The civil penalty in the amount of \$28,400 is to be paid in the manner described in paragraphs 39 and 40. Please be certain that the docket number is written on both the check and notice of payment letter. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Materion Brush Inc.
Mayfield Heights, Ohio,

Respondent.



Docket No. TSCA-05-2019-0009

Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxic Substances
Control Act, 15 U.S.C. § 2615(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Materion Brush Inc. (Materion), a corporation doing business in the State of Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. The term “chemical substance” is defined to mean “any organic or inorganic substance of a particular molecular identity including any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature and any element or uncombined radical.” 15 U.S.C. § 2602(2)(A) and 40 C.F.R. § 720.3(e).

10. The term “mixture” means, in part, “any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction.” 15 U.S.C. § 2602(8).

11. The term “manufacture” is defined to mean “to import into the customs territory of the United States ..., produce, or manufacture.” 15 U.S.C. § 2602(7) and 40 C.F.R. § 720.3(q).

12. For purposes of Section 5 of TSCA, the terms “manufacture” and “process” mean manufacturing or processing for commercial purposes. 15 U.S.C. § 2604(i).

13. The term “manufacture for a commercial purpose” is defined to mean “to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer or importer, and includes, among other things ‘manufacture’ of any amount of a chemical substance or mixture for commercial distribution, including for test marketing, and for use by the manufacturer, including use for product research and development or as an intermediate.” 40 C.F.R. § 720.3(r).

14. The term “distribute in commerce” means “to sell, or the sale of, the substance mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of, the substance, mixture, or article; or to hold, or the holding of, the substance, mixture, or article after its introduction into commerce.” 15 U.S.C. § 2602(4) and 40 C.F.R. § 720.3(i).

15. The term “new chemical substance” is defined to mean “any chemical substance which is not included in the Inventory.” 15 U.S.C. § 2602(9) and 40 CFR § 720.3(v).

16. Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A), states, in pertinent part, that no person may manufacture a new chemical substance unless such person submits to the Administrator, at least 90 days before such manufacture, a notice of such person’s intention to manufacture such substance.

17. Section 13 of TSCA, 15 U.S.C. § 2612, states that the Secretary of the Treasury shall refuse entry to any chemical substance, mixture or article containing a chemical substance or mixture, offered for entry into customs territory of the United States if it is in violation of the regulations promulgated under TSCA.

18. Section 13(b) of TSCA, 15 U.S.C. § 2612, states, in pertinent part, that the Secretary of the Treasury, after consultation with the Administrator, shall issue rules for the administration of Section 13 of TSCA.

19. 40 C.F.R. § 707.20(b)(2)(i) requires all importers to sign the following statement for each import of chemical substances subject to TSCA: “I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order under TSCA.”

20. 40 C.F.R. § 707.20(b)(2)(ii) requires importers of chemicals not subject to TSCA to certify that compliance with TSCA is not required by signing a statement with the following language: "I certify that all chemicals in this shipment are not subject to TSCA."

21. The TSCA Section 13 rule is implemented to assure chemicals in violation of TSCA are not permitted entry to the United States. The rule requires importers offering chemicals for entry to the United States to demonstrate they are compliant with TSCA by providing the certification statement on the entry document or invoice. 40 C.F.R. § 707.20(c)(1)(i).

22. Section 15(1)(B) of TSCA, 15 U.S.C. § 2614(1)(B), among other things, makes it unlawful for any person to fail to comply with any requirement prescribed by Section 5 of TSCA, 15 U.S.C. § 2604.

23. Section 15(3) of TSCA, 15 U.S.C. § 2614(3), among other things, makes it unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA, or any rule promulgated thereunder.

24. Section 16 of TSCA, 15 U.S.C. § 2615, states that any person who violates a provision of Section 15 of TSCA, 15 U.S.C. § 2614, shall be liable to the United States for a civil penalty.

General Allegations

25. At all times relevant to this Complaint, Respondent was a person, as defined at 40 C.F.R. § 710.3.

26. At all times relevant to this Complaint, Respondent owned or controlled a site at 14710 West Portage River South Road, Elmore, Ohio 43416 (the Elmore facility).

Beryllium Acetate

27. Beryllium acetate, Chemical Abstract Services (CAS) Number 19049-40-2, is a “chemical substance” as defined by Section 3(2)(A) of TSCA, 15 U.S.C. § 2602(3)(A), and 40 C.F.R. § 720.3(v).

28. At all times relevant to this Complaint, beryllium acetate, CAS number 19049-40-2, was not listed on the TSCA Inventory.

29. At all times relevant to this Complaint, beryllium acetate, CAS number 19049-40-2, was a “new chemical substance,” as defined by Section 3(9) of TSCA, 15 U.S.C. § 2602(9), and 40 CFR § 720.3(v).

30. Respondent “manufactured for a commercial purpose” beryllium acetate, CAS Number 19049-40-2, at the Elmore facility on seven dates in calendar year 2015, as that term is defined by 40 C.F.R. § 720.3(r).

31. Respondent did not submit a notice to EPA under Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(5), of Respondent’s intent to manufacture beryllium acetate.

32. Respondent’s failure to submit the notice in accordance with Section 5 of TSCA, 15 U.S.C. § 2604, for Respondent’s seven days of manufacture constitutes seven separate violations of Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

Copper Alloy Scrap

33. Respondent is the importer of record for nine shipments of copper alloy scrap that entered into the customs territory of the United States in calendar years 2016 and 2017.

34. Copper alloy scrap is a mixture as that term is defined by Section 3(7) of TSCA, 15 U.S.C. § 2602(7).

35. The importation of copper alloy scrap subjects the importer to the TSCA Section 13 import certification requirements at 19 C.F.R. § 12.121 and 40 C.F.R. § 707.20(b)(2).

36. Respondent did not provide either the positive or negative TSCA certification to U.S. Customs and Border Protection for the nine shipments of copper alloy scrap in calendar years 2016 and 2017 pursuant to 40 C.F.R. § 707.20(b)(2).

37. Respondent's failure to provide an import certification at the time of importation of the chemical substances which comprise the copper alloy scrap mixture on eight occasions constitutes eight separate violations of 40 C.F.R. § 707.20 and Section 15(3) of TSCA, 15 U.S.C. § 2614(3).

Civil Penalty

38. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$28,400. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability. Complainant also considered EPA's Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13 and the Amended TSCA Section 5 Enforcement Response Policy.

39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$28,400 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must state Materion Brush Inc. and the docket number of this CAFO.

40. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Claudia Niess (LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Deborah Carlson (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

41. This civil penalty is not deductible for federal tax purposes.

42. If Respondent does not pay timely the civil penalty, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

43. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In

addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

44. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: carlson.deborahA@epa.gov (for Complainant), and tahamilton@JonesDay.com (for Respondent).

45. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

46. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

47. This CAFO does not affect Respondent's responsibility to comply with TSCA and other applicable federal, state and local laws.

48. Respondent certifies that it is complying with Section 5(a)(1) of TSCA, 15 U.S.C. §2604(a)(1) and 40 C.F.R. §707.20(b)(2) at the Elmore facility.

49. The terms of this CAFO bind Respondent, and its successors and assigns.

50. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

51. Each party agrees to bear its own costs and attorneys' fees in this action.

52. This CAFO constitutes the entire agreement between the parties.

**Consent Agreement and Final Order
In re: Materion Brush Inc., Respondent
Docket No. TSCA-05-2019-0009**

Materion Brush Inc., Respondent

3/19/19
Date

Randall K Willis
Randall K. Willis
Senior Site Leader
Materion Brush Inc.

Consent Agreement and Final Order
In re: Materion Brush Inc., Respondent
Docket No. TSCA-05-2019-0009

United States Environmental Protection Agency, Complainant

4/3/19
Date

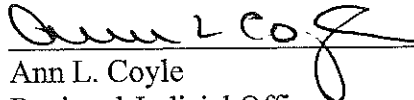
Tinka G. Hyde
Tinka G. Hyde
Director
Land and Chemicals Division

In the Matter of:
Materion Brush Inc., Respondent
Docket No. TSCA-05-2019-0009

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

April 4, 2019
Date



Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Materion Brush Inc.
Docket Number: TSCA-05-2019-0009

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, docket number TSCA-05-2019-0009, which was filed on April 5, 2019, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant:

Ms. Deborah Carlson
carlson.deborahA@epa.gov

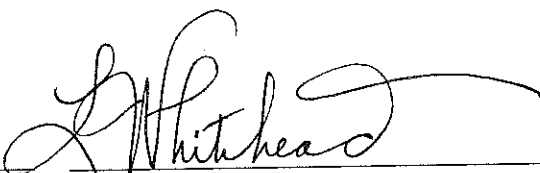
Copy by E-mail to Respondent:

Mr. Thomas Hamilton
tahamilton@JonesDay.com

Copy by E-mail to
Regional Judicial Officer:

Ms. Ann Coyle
coyle.ann@epa.gov

Dated: April 5, 2019



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5