



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

May 15, 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7667 7967

Mr. Herbert Estreicher
Keller and Heckman LLP
1001 G. Street N.W., Suite 500 West
Washington, D.C. 20001

Consent Agreement and Final Order in the Matter of : Elevance Renewable Sciences, Inc.
Docket No. TSCA-05-2012-0015

Dear Mr. Estreicher:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on May 15, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,130 is to be paid in the manner described in paragraphs 25 and 26. Please be certain that the number **BD# 2751247X016** and the docket number are written on both the transmittal letter and on the check. Payment is due by June 14, 2012, (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

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)	Docket No.
)	TSCA-05-2012-0015
Elevance Renewable Sciences, Inc.)	Proceeding to Assess a Civil
Bolingbrook, Illinois,)	Penalty Under Section 16(a) of the
)	Toxic Substances Control Act,
Respondent.)	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 Elevance Renewable Sciences, Inc., a corporation doing business in the State of Illinois.

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. Section 5(a) of TSCA, 15 U.S.C. § 2604(a), states, in relevant 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 or manufacture to process such substance.

10. Section 8(b) of TSCA, 15 U.S.C. § 2607(b), states, in part, that the Administrator shall compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States. The list shall at least include each chemical substance which any person reports under Section 5 of TSCA, 15 U.S.C. § 2604, is manufactured or processed in the United States.

11. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), states that it is unlawful for any person to fail to comply with any rule promulgated or order issued under Section 5 of TSCA, 15 U.S.C. § 2604.

12. On May 13, 1983, EPA promulgated regulations at 40 C.F.R. Part 720, titled Pre-manufacture Notification, establishing, inter alia, procedures for the reporting of new chemical substances by manufacturers under Section 5 of TSCA, 15 U.S.C. § 2604.

13. 40 C.F.R. § 720.102(a) requires that any person who commences the manufacture of a new chemical substance for a nonexempt commercial purpose for which that person previously

submitted a Section 5(a) notice under 40 C.F.R. Part 720 must submit a notice of commencement of manufacture or import.

14. 40 C.F.R. § 720.102(b) requires, in relevant part, that notices of commencement be submitted to EPA on, or not later than 30 calendar days after, the first day of manufacture.

15. Under 15 U.S.C. § 2614 and 40 C.F.R. § 720.120, any person who fails to submit a notice of commencement violates Section 15 of TSCA, 15 U.S.C. § 2614, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 720.120(f).

16. The Administrator of EPA may assess a civil penalty of up to \$25,000 for each violation of Section 8(b) of TSCA that occurred after July 28, 1997 through January 12, 2009. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$37,500 per day for each violation of Section 8 of TSCA that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

17. Respondent is a “person” as that term is defined at 40 C.F.R. § 720.3(x).

18. Respondent manufactured a new chemical substance for a nonexempt commercial purpose on January 29, 2011.

19. Respondent manufactured two new chemical substances for a nonexempt commercial purpose on February 15, 2011.

20. For each chemical substance referenced in paragraphs 18 and 19 above, Respondent had submitted a pre-manufacturing notice under Section 5(a) of TSCA, 15 U.S.C. § 2607(a),

numbered P-10-0547, P-10-0548 and P-10-0549.

21. For each chemical substance referenced in paragraphs 18 and 19 above, Respondent submitted a notice of commencement on March 30, 2011.

22. Each time Respondent failed to submit a notice of commencement for a new chemical substance within 30 days of manufacture, Respondent violated Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), and, therefore, is subject to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

23. In correspondence dated March 28, April 7 and November 28, 2011, Respondent voluntarily self-disclosed the facts surrounding its three violations of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), as described in paragraph 22 above.

Civil Penalty

24. 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 \$2,130. 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, and the degree of culpability. Complainant also considered EPA's Amended TSCA Section 5 Enforcement Response Policy (1989) and Incentives for Self-Policing, Discovery, Disclosure, Correction and Prevention of Violations (May 11, 2000 Audit Policy).

25. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,130 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must state "Elevance Renewable Sciences, Inc.," the docket number of this CAFO and the billing document number.

26. Respondent must send a notice of payment that states Respondent's name, complete address, the case docket number and the billing document 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-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

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

28. 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.

29. 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

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

31. 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.

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

33. Respondent certifies that it is complying with Section 8(b) of TSCA, 15 U.S.C. § 2607(b) and 40 C.F.R Part 720, Subpart F.

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

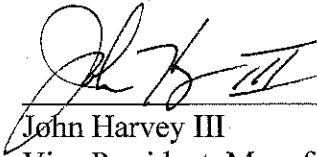
35. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

36. Each party agrees to bear its own costs and attorney's fees in this action.

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

Elevance Renewable Sciences, Inc., Respondent

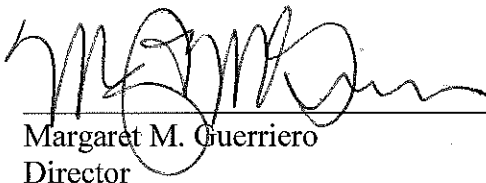
4/11/12
Date



John Harvey III
Vice President, Manufacturing

United States Environmental Protection Agency, Complainant

5/7/12
Date



Margaret M. Guerriero
Director
Land and Chemicals Division


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Elevance Renewable Sciences, Inc.
Docket No. TSCA-05-2012-0015

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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.

5-9-12
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Elevance Renewable Science, Inc., was filed on May 15, 2012, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipts No.7009 1680 0000 7667 7967, to:

Mr. Herbert Estreicher
Keller and Heckman LLP
1001 G. Street N.W., Suite 500 West
Washington, D.C. 20001

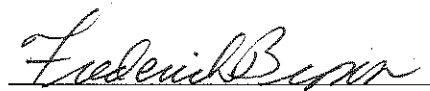
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U.S. ENVIRONMENTAL
PROTECTION AGENCY

and forwarded intra-Agency copies to:

John Breslin, Regional Judicial Officer, ORC/C-14J
Tamara Carnovsky, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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