



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
EDISON, NEW JERSEY 08837

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 APR -7 PM 2:40
REGIONAL HEARING
CLERK

APR 2 2009

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

Yasuhiro Nakayama, Corporate Secretary and Treasurer
Toray International, Inc.
461 5th Avenue, 9th Floor
New York, New York 10017

In the Matter of Toray International, Inc.
Docket No. TSCA-02-2009-9226

Dear Mr. Nakayama:

Enclosed is a copy of the Consent Agreement and Final Order in the above referenced proceeding, signed by the Regional Administrator of the United States Environmental Protection Agency.

Please note that the forty five (45) day period for the payment of the civil penalty commences as of the date this Final Order is signed by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given in the Consent Agreement (see "Terms of Consent Agreement"). Specifically, please remember to send a copy of your payment check to the Complainant, as detailed in the Consent Agreement.

Sincerely,

Kenneth S. Stoller, P.E., QEP, DEE
Chief
Pesticides and Toxic Substances Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 APR -1 PM 2:40
REGIONAL HEARINGS

-----X
In the Matter of :
Toray International America, Inc., :
Respondent. :
Proceeding Under Section 16(a) of :
the Toxic Substances Control Act. :
-----X

CONSENT AGREEMENT AND
FINAL ORDER
Docket No. TSCA-02-2009-9226

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a).

Pursuant to Section 22.13(b) of 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 (July 1, 2003), where the parties agree to settlement of 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 order pursuant to 40 C.F.R. Sections 22.18(b)(2) and 22.18(b)(3).

The Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency - Region 2 ("EPA" or "Complainant") alleges that Toray International America, Inc. ("TIAM" or "Respondent") violated Sections 5 and 13 of TSCA, 15 U.S.C. Sections 2604 and 2612, and the regulations promulgated pursuant to those sections which are set forth at 40 C.F.R. Part 720 and 19 C.F.R. Part 12, relating to Premanufacture Notification and TSCA Import Certification. The Complainant further alleges that TIAM has thereby violated Section 15 of TSCA, 15 U.S.C. Section 2614.

EPA and TIAM agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. Sections 22.13 (b) and 22.18(b)(2) and (3) is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Toray International America, Inc.
2. At the time of the alleged violations, Respondent was a "person" within the meaning of 40 C.F.R. §§704.3 and 720.3.
3. At the time of the alleged violations, Respondent "manufactured" (imported) "chemical substances" as those terms are defined in Section 3 of TSCA, 15 U.S.C. § 2602, and at 40 C.F.R. §§704.3 and 720.3.
4. At the time of the alleged violations, Respondent was subject to Sections 5 and 13 of TSCA, and the regulations established under the authority of TSCA set forth at 40 C.F.R. Parts 720 and 19 C.F.R. Part 12.118-12.127.
5. At the time of the alleged violations, Respondent owned, operated and/or controlled the facility in and around 461 Fifth Avenue-9th Floor, New York, New York 10017 (hereinafter "Respondent's facility").
6. On or about April 9, 2008 Respondent voluntarily disclosed possible violations of Section 5 and 13 of TSCA (hereinafter "the disclosure").
7. Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A), and a regulation promulgated pursuant to it and set forth at 40 C.F.R. § 720.22(b)(1), provide that no person may manufacture (import) a new chemical substance, as defined at Section 3(9) of TSCA, 15 U.S.C. § 2602(9), which does not appear on the TSCA Chemical Substance Inventory compiled

pursuant to Section 8(b) of TSCA, 15 U.S.C. § 2607(b), without submitting a notice to the Administrator of the EPA at least ninety days prior to importing such substance, unless the substance is exempt from this notice requirement pursuant to exemptions established under TSCA and EPA's implementing regulations. Such notification is described at 40 C.F.R. Part 720 as the Premanufacture Notification ("PMN").

8. As a result of the disclosure, EPA determined that Respondent imported a product, PAI Resin, that was a "new chemical substance" as that term is defined at 40 C.F.R. §720.3, on several occasions during the time period June 2004 through June 2007.

9. During the time period listed above, the new chemical substances did not appear on the TSCA Chemical Substance Inventory but met the definition of "polymer" under 40 C.F.R. Part 720.250(b) and the requirements specified under 40 C.F.R. Parts 723.250(c), (d) and (e). However, Respondent did not fulfill all reporting and recordkeeping requirement of the polymer exemption until approximately October 2007.

10. Respondent did not submit a PMN to the Administrator of the EPA of its intention to import the new chemical substances at least 90 days prior to any of Respondent's importations of such chemicals or fulfill all requirements of the polymer exemption as described at Paragraph 9, above.

11. Section 15(1)(B) and (C), 15 U.S.C. §§ 2614(1)(B) and (C), provide that it is unlawful for any person to fail or refuse to comply with any requirement prescribed by Section 5 of TSCA, 15 U.S.C. § 2604, or the regulations promulgated thereunder.

12. Respondent's importations of the new chemical substances without having submitted a PMN to the Administrator of the EPA at least ninety days prior to importing such

substances for commercial purposes, or fulfilling all requirements of the polymer exemption, constitute failures or refusals to comply with Section 5(a)(1) of TSCA, 15 U.S.C. § 2604(a)(1), and 40 C.F.R. § 720.22(b)(1), which are violations of Sections 15(1)(B) and (C) of TSCA, 15 U.S.C. §§ 2614(1)(B) and (C). Each such import for commercial purposes constitutes a separate and distinct violation of Sections 15(1)(B) and (C) of TSCA, 15 U.S.C. §§ 2614(1)(B) and C.

13. Section 13 of TSCA, 15 U.S.C. § 2612, and the regulations promulgated pursuant to it and set forth at 19 C.F.R. §§ 12.118-12.127, require that the importer of a chemical substance, imported in bulk or as a part of a mixture, certify to the District Director of the United States Customs Service, at the port of entry, that the chemical substance(s) in each shipment comply with all applicable rules or orders under TSCA and that the importer is not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder, or that the chemical substance(s) in each shipment are not subject to TSCA. The importer or his authorized agent must sign the required certification statement on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice.

14. Respondent did not properly certify the shipments of Respondent's product, PAI Resin, during the time period June 2004 through June 2007 to the District Director of Customs at the port of entry, as is required by 19 C.F.R. § 12.121(a).

15. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), provides that it is unlawful for any person to fail or refuse to comply with any reporting requirement prescribed by Section 13 of TSCA, 15 U.S.C. § 2612.

16. Respondent's failures or refusals to properly certify chemical shipments to the District Director of Customs at the port of entry, constitute failures or refusals to comply with 19

C.F.R. § 12.121, which are violations of Section 15 of TSCA, 15 U.S.C. § 2614.

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, 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 "Findings of Fact and Conclusions of Law" section above; (b) neither admits nor denies the specific factual allegations contained in the "Findings of Fact and Conclusions of Law" section, above; and (c) neither admits nor denies the assertions set forth in the "Findings of Fact and Conclusions of Law" section, above.
3. Respondent shall pay, by cashiers or certified check, a civil penalty in the amount of **\$34,900 (Thirty Four Thousand Nine Hundred Dollars)** to the "Treasurer of the United States of America". 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

Alternatively, payment may be by Electronic Fund 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
- 7) Docket Number

Promptly after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that such payment has been made to both:

Mr. Michael Bious
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-105
Edison, New Jersey 08837

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

Payment must be received at the above address (or account of EPA) on or before **45 calendar**

days after 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 \$15.00 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. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, and the regulations promulgated thereunder 40 C.F.R. Part 761, that attach or might have attached as a result of the “Findings of Fact and Conclusions of Law” section, above. 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 or allegations contained in the "Findings of Fact and Conclusions of Law" section, above, or on any allegations arising thereunder. Respondent further waives its right otherwise to contest all such assertions and/or allegations.

7. Respondent waives any right it may have pursuant to 40 C.F.R. 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

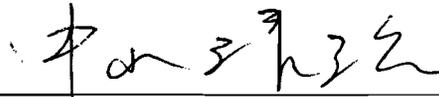
8. This Consent Agreement does not waive, extinguish, or otherwise effect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

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

11. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

BY: 
Toray International America, Inc.

NAME: Yasuhiro Nakayama
(PLEASE PRINT)

TITLE: Corporate Secretary

DATE: 3 / 3 / 2009

COMPLAINANT:

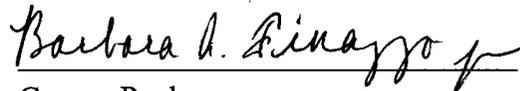

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, NY 10007

DATE: MARCH 20, 2009

In the Matter of Toray International America, Inc.
Docket Number TSCA-02-2009-9226

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2 concurs in the foregoing Consent Agreement in the case of In the Matter of Toray America International, Inc., bearing Docket Number TSCA-02-2009-9226. 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)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 6 of the Toxic Substances Control Act, 15 U.S.C. § 2605 for purposes of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).



George Pavlou
Acting Regional Administrator
U.S. Environmental Protection
Agency -Region 2
290 Broadway
New York, New York 10007-1866

DATE: March 27, 2009

Certificate of Service

This is to certify that on the 2nd day of April, 2009, I have served a true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing, bearing Docket Number TSCA-02-2009-9226 by certified mail, return receipt requested, to:

Yasuhiro Nakayama, Corporate Secretary and Treasurer
Toray International, Inc.
461 5th Avenue, 9th Floor
New York, New York 10017

On the same date, I mailed via EPA internal mail to the Region 2, Regional Hearing Clerk at 290 Broadway, New York, New York 10007 the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing.

A handwritten signature in cursive script, reading "John de Souza", is written over a solid horizontal line.