



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

SEP 17 2009

Certified-Return Receipt Requested

Robert A. DeFalco, President and CEO
Ampacet Corporation
660 White Plains Road
Tarrytown, New York 10591

Re: In the Matter of Ampacet Corporation
Docket No. TSCA-02-2009-9243

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2009 SEP 22 AM 9:02
REGIONAL HEARING
CLERK

Dear Mr. DeFalco:

Enclosed is the Complaint and Notice of Opportunity For Hearing, and supporting documents in the above-referenced proceeding. This Complaint alleges violations of the Toxic Substances Control (TSCA) and regulations promulgated pursuant to TSCA.

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint to the Environmental Protection Agency's ("EPA") Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not**


substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

Enclosed are copies of the "Consolidated Rules of Practice," which govern this proceeding. For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings," which may or may not apply to you.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney whose name is listed in the Complaint.

Sincerely yours,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (w/o enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
:
In the Matter of :
:
Ampacet Corporation, :
:
Respondent. :
:
Proceeding under Section 16(a) of the :
Toxic Substances Control Act. :
-----X

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

Docket No. TSCA-02-2009-9243

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 SEP 22 AM 9:02
REGIONAL HEARING
CLERK

COMPLAINT

Complainant, as and for her Complaint against Respondent, hereby alleges upon information and belief:

1. This is a civil administrative action instituted pursuant to Section 16(a), 15 U.S.C. § 2615(a), of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq.

2. The Complainant, the Director, Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2, has been duly delegated the authority to institute this action.

3. This Complaint serves notice of Complainant's preliminary determination that Respondent has violated regulations established under the authority of Section 8 of TSCA, set forth at 40 C.F.R. Parts 710 Subpart C (Update Reporting for 2006 and Beyond) and that Respondent has thereby violated Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

4. Respondent is Ampacet Corporation.

5. Respondent owns, operates and/or controls the facility in and around 660 White Plains Road, Tarrytown, New York 10591 (hereinafter, "Respondent's facility"), that is the subject of this Complaint.

6. Respondent is a "person" within the meaning of 40 C.F.R. §§ 704.3 and 710.3.

7. Respondent is a "manufacturer" as that term is defined at 40 C.F.R. § 704.3 .

8. Respondent is an "importer" as that term is defined at 40 C.F.R. § 704.3 and 710.3.

9. On or about August 13, 2008, duly authorized representatives of the EPA conducted an inspection of and at Respondent's facility pursuant to Section 11 of TSCA, 15 U.S.C. § 2610 (hereinafter "the inspection").

10. The inspection was conducted for the purpose of determining Respondent's compliance with TSCA and the regulations promulgated pursuant to TSCA.

COUNT 1

2006 Inventory Update

11. Paragraphs 1 through 10, above, are incorporated and realleged as if fully set forth herein.

12. Regulations promulgated pursuant to Section 8(a) of TSCA, 15 U.S.C. § 2607(a), and set forth at 40 C.F.R. § 710 require manufacturers and importers of chemical substances (other than those exempted under 40 C.F.R. §710.49) to report to EPA using the "Partial Updating of the Inventory Data Base Production and Site Report" (hereinafter "Form U"). The availability of Form U is described at 40 C.F.R. § 710.59.

13. The regulations at 40 C.F.R. § 710 Subpart C require that persons meeting the criteria described at 40 C.F.R. § 710.48 submit a Form U listing any chemical substance which is in the "Master Inventory File" (as that term is defined in 40 C.F.R. § 710.43) at the beginning of a submission period described at 40 C.F.R. § 710.53, unless the chemical substance has been specifically excluded by 40 C.F.R. § 710.46.

14. Persons subject to 40 C.F.R. § 710.48 must determine whether they must report under this section for each chemical substance they import at an individual site. This determination shall include all subject chemicals imported for commercial purposes at any time during the applicable calendar year described at 40 C.F.R. § 710.48.

15. The 2006 Form U was required to be submitted between August 25, 2006 and March 23, 2007, as specified at 40 C.F.R. § 710.53.

16. The information reported on the 2006 Form U was required to be submitted in accordance with 40 C.F.R. § 710.52.

17. Respondent imported for commercial purposes in excess of 25,000 pounds of each of the following six chemical substances at Respondent's facility during calendar year 2005:

CHEMICAL NAME	CHEMICAL ABSTRACTS REGISTRY NUMBER
CARBON BLACK	1333-86-4
CALCIUM CARBONATE (Limestone)	1317-65-3
TITANIUM DIOXIDE	13463-67-7
LEAD CHROMATE (C.I. Pigment Yellow 34)	1344-37-2
MOLYBDATE ORANGE (C.I. Pigment Red 104)	12656-85-8
IRON OXIDE	1309-37-1

18. The chemical substances listed in paragraph 17, above, are "chemical substances" as that term is defined at 40 C.F.R. § 710.3.

19. The chemical substances listed in paragraph 17, above, were listed in the Master Inventory File at the beginning of the relevant submission period described under 40 C.F.R. § 710.53, and are reportable under 40 C.F.R. § 710.45.

20. The chemical substances listed in paragraph 17, above, were not specifically excluded from the reporting requirement pursuant to 40 C.F.R. § 710.46 during the relevant reporting period.

21. Respondent is subject to the reporting requirements as described at 40 C.F.R. § 710.48.

22. Respondent did not submit a Form U that included the chemical substances listed in paragraph 17, above, during the period August 25, 2006 to March 23, 2007.

23. Respondent's failure to submit a Form U including information on the chemical substances listed in paragraph 17, above, by March 23, 2007, as alleged in paragraph 22, above, constitutes multiple violations of 40 C.F.R. § 710.53. The failure to report on each chemical substance listed in paragraph 17, above, by March 23, 2007 constitutes a separate violation. Each violation is a failure or refusal to comply with 40 C.F.R. § 710.53, which is a violation of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 16 of TSCA, 15 U.S.C. § 2615, which authorizes the assessment of a civil penalty of up to \$32,500¹ per day

¹ See Civil Monetary Penalty Inflation Adjustment Rule published on February 13, 2004, in the Federal Register (69 FR 7121) -- 40 CFR Part 19, for increase from \$27,500 to \$32,500 for violations after March 15, 2004 until January 12, 2009 in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 ("DCIA").

for each violation of TSCA and the regulations promulgated pursuant thereto.

For purposes of determining the amount of any penalty to be assessed, Section 16 requires EPA to take into account the nature, circumstances, extent and gravity of the violations. As to the violator, Section 16 requires EPA to take into account its ability to pay, the effect of the penalty on its ability to continue to do business, its history of prior such violations, its degree of culpability, as well as such other matters as justice may require.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time, with specific reference to EPA's "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act," which was published on September 10, 1980 in the Federal Register (45 Fed. Reg. 59,770), and to EPA's TSCA Sections 8, 12, and 13 Enforcement Response Policy (March 31, 1999), copies of which are available upon request or on the Internet at http://www.epa.gov/compliance/resources/policies/civil/tsca/erp8_12r.pdf. These policies provide rational, consistent and equitable calculation methodologies for applying the statutory penalty factors enumerated above to particular cases.

Complainant proposes, subject to receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalties for the violations alleged in the Complaint:

Inventory Update-2006-Failure to Report

Circumstance Level - 1	
Extent Category - Significant	
Gravity Based Penalty per violation	\$ 21,922
Proposed Penalty for 6 Violations (Count 1)	\$131,532

In accordance with Agency policies regarding modifications to the relevant penalty policies, the total gravity-based penalty amount is rounded to the nearest unit of 100 dollars.

Total Proposed Penalty: \$131,500

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits", and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint and Notice of Opportunity for Hearing" (hereinafter referred to as the "Complaint").

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint within 30 days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). See generally Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the

applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

If Respondent fails to request a hearing, such failure may operate to preclude Respondent from obtaining judicial review of an adverse EPA final order. See 15 U.S.C. § 2615(a)(3), which states, in part: "Any person who requested in accordance with paragraph (2)(A) [15 U.S.C. § 2615(a)(2)(A)] a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business".

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within 30 days after the initial decision is served". 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "... 5 days shall be added to the time allowed by these [rules] for the filing of a responsive document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the

time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to the EPA attorney listed below:

Naomi Shapiro, Assistant Regional Counsel
Office of Regional Counsel
Waste and Toxic Substances Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1366
(212) 637-3221

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may resolve this proceeding by paying the specific penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk, Region 2 (at the New York address noted above) 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

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

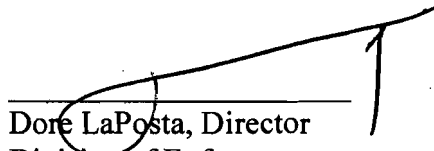
The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. A copy of the check or other instrument of payment should also be provided to the EPA attorney identified previously.

Pursuant to 40 C.F.R. § 22.18(a)(3), upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of

Respondent's right both to contest the allegations made in the Complaint and to appeal said final order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

Dated: SEPTEMBER 17, 2009

COMPLAINANT:



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

TO: Robert A. DeFalco, President and CEO
Ampacet Corporation
660 White Plains Road
Tarrytown, New York 10591

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing Docket No. TSCA-02-2009-9243, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22 (2008), by certified mail, return receipt requested, to:

Robert A. DeFalco, President and CEO
Ampacet Corporation
660 White Plains Road
Tarrytown, New York 10591

I hand-carried the original and a copy of the foregoing Complaint to the Office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: SEP 18 2009
New York, New York

Smildred N. Bay