



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
September 9, 2013

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL 7009 1680 0000 7668 1711
RETURN RECEIPT REQUESTED

Kevin N. McMurray
Frost Brown Todd, LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202

Consent Agreement and Final Order in the Matter of
Peter Cremer North America, LP. Docket No. TSCA-05-2013-0015

Dear Mr. McMurray:

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 September 9, 2013, with the Regional Hearing Clerk.

The civil penalty in the amount of \$98,000 is to be paid in the manner described in paragraphs 52 and 53. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by October 9, 2013 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink that reads "Meghan Dunn".

Meghan Dunn
Pesticides and Toxic Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2013-0015
)	
Peter Cremer North America, LP)	Proceeding to Assess a Civil Penalty
Cincinnati, Ohio,)	Under Section 16(a) of the Toxic Substances
Respondent.)	Control Act, 15 U.S.C. § 2615(a)
)	



Consent Agreement and Final Order

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 Sections 22.13(b) and 22.18(b)(2) and (3) of 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, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Peter Cremer North America, LP, 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) as codified at 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: TSCA Section 8 Inventory Update Rule

9. Section 8(b)(1) of TSCA, 15 U.S.C. § 2607(b)(1), requires the Administrator to compile, keep current, and publish a list of each chemical substance which is manufactured or processed (which includes importation) in the United States. This list is known as the “Master Inventory File” as defined in 40 C.F.R. § 710.23.

10. Section 8(a)(1)(A) of TSCA, 15 U.S.C. § 2607(a)(1)(A), states, in pertinent part, that the Administrator shall promulgate rules under which each person who manufactures or processes (which includes importation) or proposes to manufacture or process a chemical substance shall maintain such records, and shall submit to the Administrator such reports, as the Administrator may reasonably require.

11. Under the authority of Section 8(a) of TSCA, 15 U.S.C. § 2607(a), the Administrator issued the Inventory Reporting Regulations on December 23, 1977 (42 Fed. Reg. 64572). EPA issued the “Partial Updating of TSCA Inventory Data Base” rule (“Inventory Update Rule” or “IUR”) pursuant to Section 8 of TSCA, 15 U.S.C. § 2607, on June 12, 1986 (51 Fed. Reg. 21447). EPA has amended these regulations which are codified at 40 C.F.R. Part 710.

12. The IUR requirements for the reporting year 2006 were amended on January 7, 2003 (68 Fed. Reg. 890). The definitions from 40 C.F.R. Part 710.43 to 710.57, used below, were in effect for the relevant time periods of this CAFO. Some of the definitions were consolidated or removed from the regulations in 2012.

13. The term “chemical substance” is defined at 40 C.F.R. § 710.3 as 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 chemical element or uncombined radical, with certain exceptions that include any food, food additive, drug, cosmetic, or device.

14. The term “reporting year” is defined at 40 C.F.R. §710.43 as the calendar year in which information to be reported to EPA during an IUR submission period is generated, i.e., calendar year 2005 and the calendar year at 5-year intervals thereafter.

15. The term “manufacture or import ‘for commercial purposes’” is defined at 40 C.F.R. § 710.3, in part, as to manufacture, produce, or import with the purpose of obtaining an immediate or eventual commercial advantage, and includes, for example, the manufacture or import of any amount of a chemical substance or mixture for commercial distribution.

16. The term “person” is defined at 40 C.F.R. § 710.3 as any natural or juridicial person including any individual, corporation, partnership, or association, any State or political subdivision thereof, or any municipality, any interstate body and any department, agency, or instrumentality of the federal government.

17. The term “site” is defined at 40 C.F.R. § 710.3 as a contiguous property unit and for the purposes of imported chemical substances, the site is the business address of the importer.

18. 40 C.F.R. § 710.45 requires information to be reported for any chemical substance

which is in the Master Inventory File at the beginning of a submission period, described in Section 710.53 unless that chemical substance is specifically excluded by 40 C.F.R. § 710.46.

19. 40 C.F.R. § 710.48 states that, except as provided in 40 C.F.R. §§ 710.49 and 710.50, any person who manufactured (including imported) for commercial purposes 25,000 lbs or more of a chemical substance described in 40 C.F.R. § 710.45 at any single site owned or controlled by that person at any time during calendar year 2005 or during the calendar year at 5-year intervals thereafter is subject to the reporting requirements of Part 710.

20. 40 C.F.R. § 710.52 states that any person who must report under this subpart must submit the information described in this section to EPA for each chemical substance described in 40 C.F.R. § 710.45 that the person manufactured for commercial purposes (which includes importation) in an amount of 25,000 lbs or more at a single site during calendar year 2005 or during the calendar year at 5-year intervals thereafter.

21. 40 C.F.R. § 710.53 requires that all information reported to EPA in response to the Inventory Update Report requirements be submitted during an applicable submission period. The first submission period was from August 25, 2006 to March 23, 2007. Any person described in 40 C.F.R. § 710.48(a) must report during each submission period for each chemical substance described in 40 C.F.R. § 710.45 that the person manufactured (including imported) during the preceding calendar year (i.e. the “reporting year”).

22. 40 C.F.R. § 710.57 requires each person who is subject to the reporting requirements of the IUR to retain records that document any information reported to EPA for five years beginning on the last day of the submission period.

23. Section 15(3) of TSCA, 15 U.S.C. § 2614(3), among other things, makes it unlawful for any person to fail to establish or maintain records 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.

Statutory and Regulatory Background: TSCA Section 13 Imports

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

26. Section 13(b) of TSCA, 15 U.S.C. § 2612(b), 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.

27. TSCA defines manufacture as “to import into the customs territory of the United States, produce, or manufacture.” 15 U.S.C. § 2602(7).

28. 40 C.F.R. § 707.20(b)(2)(i) requires that all imported chemicals subject to TSCA state the following language: “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.”

29. 40 C.F.R. § 707.20(b)(2)(ii) requires that imported chemicals not subject to regulation by TSCA state the following language: “I certify that all chemicals in this shipment are not subject to TSCA.”

30. 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).

31. 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.

32. 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.

Statutory Background: General

33. Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 per day for each violation of TSCA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that may be assessed pursuant to each agency's statutes. EPA may assess a civil penalty of up to \$32,500 per day for each violation of TSCA that occurred after March 15, 2004 through January 12, 2009 and \$37,500 per day for each violation of TSCA that occurred after January 12, 2009, pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. Part 19.

General Allegations

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

35. During the calendar years 2005 to 2010, Respondent owned or controlled a site at 3117 Southside Avenue, Cincinnati, Ohio, here after referred to as the "PCNA" facility.

36. Respondent submitted Form U Partial Updating of the TSCA Inventory Data Base

Site Report (EPA Form 7740-8 or Form U) to the 2006 IUR for the chemical substances listed below, describing import and manufacture activities at the PCNA facility during calendar year 2005.

Chemical	CAS No.	Amount Manufactured/Imported (lbs)
Hexadecanoic acid	57-10-3	4,409,200
9-octadecenoic acid (9Z)-	112-80-1	2,204,600
Fatty acids, C16-18 and C18-unsatd., Me esters	67762-38-3	35,625
Octadecanoic acid, compd. with N,N-dimethyl-1-octadecanamine (1:1)	14745-75-6	4,227,390
Hexadecanoic acid, compd. with N,N-dimethyl-1-octadecanamine (1:1)	73692-68-9	8,454,781

37. At all times relevant to this Complaint, the chemical substances listed in the above table were listed on the Master Inventory File.

38. Respondent was inspected by EPA on August 11, 2010.

39. Respondent failed to provide records of the 2006 IUR submissions by the PCNA facility at the August 11, 2010 inspection or following a letter from EPA dated October 24, 2011.

40. Respondent is the importer of record for numerous chemical imports during the subject time period. Respondent is the importer of record for at least 52 "chemical substance" imports that gained entry to the customs territory of the United States from March 31, 2007 to July 20, 2010.

41. Respondent did not provide the positive TSCA import certification on the entry documents or invoices of the chemical imports referenced in paragraph 40 subject to TSCA in accordance with 40 C.F.R. § 707.20(b)(2)(i), nor did Respondent provide the negative TSCA certification on the entry documents or invoices of chemical imports referenced in paragraph 40

not subject to TSCA in accordance with 40 C.F.R. § 707.20(b)(2)(ii).

Count 1

42. Complainant incorporates by reference the allegations contained in paragraphs 1 through 41 of this Complaint.

43. Respondent submitted the Form U Partial Updating of the TSCA Inventory Data Base Site Report (EPA Form 7740-8 or Form U) for reporting year 2005 to EPA during the 2006 IUR reporting period.

44. Respondent failed to provide records during the EPA inspection or after the subsequent letter from EPA that documented the chemicals and amounts manufactured, including those imported, that were reported to EPA as described in paragraphs 36 and 39, above.

45. Respondent's failure to maintain records in accordance with the 5 year recordkeeping requirement of the 2006 IUR reporting period constitutes a violation of 40 C.F.R. § 710.57 and Section 15(3) of TSCA, 15 U.S.C. § 2614(3).

Count 2

46. Complainant incorporates by reference the allegations contained in paragraphs 1 through 45 of this Complaint.

47. Respondent imported, on at least 52 occasions, chemical substances through U.S. Customs and Border Protection that gained entry to U.S. territory between March 31, 2007 and July 20, 2010.

48. The chemical imports described in paragraph 40 are classified as "chemical substances" as defined in 40 C.F.R. § 710.3.

49. Respondent did not provide U.S. Customs and Border Protection with either a positive or negative TSCA import certification of the chemical substances at the time of entry to U.S. territory.

50. Respondent's failure to provide an import certification at the time of entry of the chemical substances to U.S. territory constitutes at least 52 violations of 40 C.F.R. § 707.20 and Section 15(3) of TSCA, 15 U.S.C. § 2614(3).

Civil Penalty

51. 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 \$16,500 for Count 1 and \$81,500 for Count 2 for a total penalty of \$98,000. 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, and other matters as justice may require.

52. Within 30 days after the effective date of this CAFO, Respondent must pay a \$98,000 civil penalty for the TSCA violations by one of the following methods listed below:
For checks sent by regular U.S. Postal Service mail: 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 note "Peter Cremer North America, LP," and the docket number of this CAFO.

For checks sent by express mail: 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 note “Peter Cremer North America, LP,” and the docket number of this CAFO.

For electronic funds transfer: By electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state “Peter Cremer North America, LP,” and the docket number of this CAFO.

For ACH payment: ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state Peter Cremer North America, LP, and the docket number of this CAFO.

53. 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

Meghan Dunn (LC-8J) and
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

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

55. If Respondent does not pay as set forth in paragraph 52, above, the entire unpaid balance of the civil penalty shall become due and owing, upon written notice by EPA to Respondent of the delinquency. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

56. 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

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

58. 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 other violations of law.

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

60. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for Sections 8, 12, and 13 of TSCA.

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

62. 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.

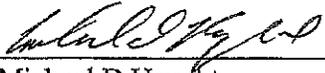
63. Each party agrees to bear its own costs and attorneys fees in this action.

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

FOR:

Peter Cremer North America, LP, Respondent

8/13/2013
Date

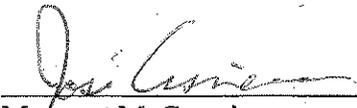


Michael D Haught
Chief Financial Officer
Peter Cremer North America, LP

FOR:

United States Environmental Protection Agency, Complainant

8/30/13
Date



50 Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Peter Cremer North America, LP
Docket No.
TSCA-05-2013-0015

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.

9-4-13
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



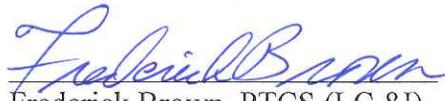
CERTIFICATE OF SERVICE

This is to certify that a copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Peter Cremer North America, LP, was filed on September 9, 2013, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Blvd. Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7668 1711 to:

Kevin N. McMurray
Frost Brown Todd, LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Richard Nagle, 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

Docket No. TSCA-05-2013-0015

