

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

** FILED **
28SEP2018 - 01:15PM
U.S.EPA - Region 09

_____))
IN THE MATTER OF:))
))
))
Westco Chemicals, Inc.,))
))
Respondent.))
_____))

Docket No. TSCA-09-2018- 0009

COMPLAINT AND NOTICE
OF OPPORTUNITY FOR
HEARING

PRELIMINARY STATEMENT

This is a civil administrative penalty action initiated pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). Section 16(a) of TSCA authorizes the Administrator of the United States Environmental Protection Agency ("EPA") to issue a civil complaint for each violation of Section 15 of TSCA, 15 U.S.C. § 2614.

Complainant is the Chief of the Waste & Chemical Section, Air, Waste & Toxics Branch, Enforcement Division, EPA Region IX, who has been duly delegated the authority to initiate an enforcement action in this matter. Respondent is Westco Chemicals, Inc., a California corporation located at 12551-61 Saticoy Street South in North Hollywood, California.

This Complaint and Notice of Opportunity for Hearing ("Complaint") serves as notice that Complainant has reason to believe that Respondent violated Section 15 of TSCA by failing to comply with Section 8(a) of TSCA, 15 U.S.C. § 2607, and its implementing regulations promulgated at 40 C.F.R. Part 711.

GENERAL ALLEGATIONS

1. Section 8(a)(1)(A) of TSCA, 15 U.S.C. § 2607(a)(1)(A), provides that the EPA Administrator shall promulgate rules under which each person (other than a small manufacturer or processor) who manufactures or processes 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.

2. 40 C.F.R. Part 710 establishes regulations governing reporting and recordkeeping by certain persons who manufacture, import, or process chemical substances for commercial purposes under TSCA Section 8(a) and applies to the activities associated with the compilation of the TSCA Chemical Substance Inventory ("TSCA Inventory") and the update of information on a subset of the chemical substances included on the TSCA Inventory.

3. 40 C.F.R. Part 711 specifies reporting and recordkeeping procedures under TSCA Section 8(a) for certain manufacturers (including importers) of chemical substances and applies to the activities associated with the periodic update of information on a subset of the chemical substances included on the TSCA Inventory.

4. 40 C.F.R. § 711.8(a) provides that, for the 2016 submission period, any person who manufactured (including imported) for commercial purposes 25,000 lbs (11,340 kilograms [kg]) or more of a chemical substance described in § 711.5 at any single site owned or controlled by that person during calendar years 2012, 2013, 2014 and/or 2015 is subject to reporting.

5. 40 C.F.R. § 711.5 provides that any chemical substance that is in the Master Inventory File at the beginning of a submission period must be reported unless exempt by § 711.6.

6. "Master Inventory File" means EPA's comprehensive list of chemical substances which constitutes the TSCA Inventory compiled under TSCA Section 8(b). 40 C.F.R. § 711.3.

7. "Person" means any natural or judicial person including any individual,

corporation, partnership, or association, any State or political subdivision thereof, or a municipality, any interstate body and any department, agency, or instrumentality of the Federal Government. 40 C.F.R. § 710.3.

8. “Manufacture or import ‘for commercial purposes’” means 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, including test marketing, or for use by the manufacturer, including use for product research and development, or as an intermediate. 40 C.F.R. § 710.3.

9. The “site” for an importer who imports a chemical substance is the U.S. site of the operating unit within the person’s organization that is directly responsible for importing the chemical substance. 40 C.F.R. § 711.3.

10. “Principal reporting year” means the latest complete calendar year preceding the submission period. 40 C.F.R. § 711.3.

11. 40 C.F.R. § 711.20 provides that all information reported to EPA in response to the requirements of this part must be submitted during an applicable submission period. The 2016 CDR submission period is from June 1, 2016 to October 31, 2016.

12. 40 C.F.R. § 711.15 provides that, for the 2016 submission period, any person who must report under this part, as described in § 711.8, must submit the information described in this section for each chemical substance described in § 711.5 that the person manufactured (including imported) for commercial purposes in an amount of 25,000 lbs (11,340 kgs) or more at any one site during calendar years 2012, 2013, 2014, and/or 2015.

13. 40 C.F.R. § 711.15(a) provides that any person who reports information to EPA must do so using the e-CDRweb reporting tool provided by EPA at the address set forth in § 711.35 and must submit a separate Form U for each site for which the person is required to report.

14. TSCA Section 15(3)(B), 15 U.S.C. § 2614(3)(B), states that it unlawful for any

person to fail or refuse to submit reports, notices or other information required by TSCA or a rule thereunder.

Count 1

15. Paragraphs 1 through 14 are realleged and incorporated herein by reference.
16. Respondent is a "person" as that term is defined at 40 C.F.R. § 710.3.
17. During calendar year 2015, Respondent owned or controlled a facility located at 12551-61 Saticoy Street South in North Hollywood, California that imported chemical substances (the "Facility").
18. During calendar year 2015, the Facility was the "site" for Respondent, as that term is defined at 40 C.F.R. § 711.3.
19. At the Facility during calendar year 2015, Respondent "imported for commercial purposes," as that term is defined at 40 C.F.R. § 710.3, more than 25,000 lbs of Methyl salicylate (CAS No. 119-36-8).
20. Methyl salicylate (CAS No. 119-36-8) is a chemical substance that was in the Master Inventory File at the beginning of the 2016 submission period, as described by 40 C.F.R. § 711.5.
21. Accordingly, pursuant to 40 C.F.R. §§ 711.8, 711.15 and 711.20, between June 1, 2016 and October 31, 2016, Respondent was required to submit a Form U to EPA for the chemical substance, Methyl salicylate (CAS No. 119-36-8) that it imported for commercial purposes during calendar year 2015.
22. Between June 1, 2016 and October 31, 2016, Respondent failed to submit a Form U to EPA for the chemical substance, Methyl salicylate (CAS No. 119-36-8) that it imported for commercial purposes during calendar year 2015.
23. Respondent's failure constitutes a violation of 40 C.F.R. §§ 711.8, 711.15 and 711.20 and TSCA Section 15(3)(B), 15 U.S.C. § 2614(3)(B).

Count 2

24. Paragraphs 1 through 23 are realleged and incorporated herein by reference.

25. At the Facility during calendar year 2015, Respondent “imported for commercial purposes,” as that term is defined at 40 C.F.R. § 710.3, more than 25,000 lbs of Sodium hexametaphosphate (CAS No. 10124-56-8).

26. Sodium hexametaphosphate (CAS No. 10124-56-8) is a chemical substance that was in the Master Inventory File at the beginning of the 2016 submission period, as described by 40 C.F.R. § 711.5.

27. Accordingly, pursuant to 40 C.F.R. §§ 711.8, 711.15 and 711.20, between June 1, 2016 and October 31, 2016, Respondent was required to submit a Form U to EPA for the chemical substance, Sodium hexametaphosphate (CAS No. 10124-56-8) that it imported for commercial purposes during calendar year 2015.

28. Between June 1, 2016 and September 30, 2016, Respondent failed to submit a Form U to EPA for the chemical substance, Sodium hexametaphosphate (CAS No. 10124-56-8) that it imported for commercial purposes during calendar year 2015.

29. Respondent’s failure constitutes a violation of 40 C.F.R. §§ 711.8, 711.15 and 711.20 and TSCA Section 15(3)(B), 15 U.S.C. § 2614(3)(B).

Count 3

30. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

31. At the Facility during calendar year 2015, Respondent “imported for commercial purposes,” as that term is defined at 40 C.F.R. § 710.3, more than 25,000 lbs of Trisodium phosphate (CAS No. 7601-54-9).

32. Trisodium phosphate (CAS No. 7601-54-9) is a chemical substance that was in the Master Inventory File at the beginning of the 2016 submission period, as described by 40 C.F.R. § 711.5.

33. Accordingly, pursuant to 40 C.F.R. §§ 711.8, 711.15 and 711.20, between June 1, 2016 and September 30, 2016, Respondent was required to submit a Form U to EPA for the chemical substances, Trisodium phosphate (CAS No. 7601-54-9) that it imported for commercial purposes during calendar year 2015.

34. Between June 1, 2016 and October 31, 2016, Respondent failed to submit a Form U to EPA for the chemical substance, Trisodium phosphate (CAS No. 7601-54-9) that it imported for commercial purposes during calendar year 2015.

35. Respondent's failure constitutes a violation of 40 C.F.R. §§ 711.8, 711.15 and 711.20 and TSCA Section 15(3)(B), 15 U.S.C. § 2614(3)(B).

Count 4

36. Paragraphs 1 through 35 are realleged and incorporated herein by reference.

37. At the Facility during calendar year 2015, Respondent "imported for commercial purposes," as that term is defined at 40 C.F.R. § 710.3, more than 25,000 lbs of Sodium metabisulfite (CAS No. 7681-57-4).

38. Sodium metabisulfite (CAS No. 7681-57-4) is a chemical substance that was in the Master Inventory File at the beginning of the 2016 submission period, as described by 40 C.F.R. § 711.5.

39. Accordingly, pursuant to 40 C.F.R. §§ 711.8, 711.15 and 711.20, between June 1, 2016 and October 31, 2016, Respondent was required to submit a Form U to EPA for the chemical substance, Sodium metabisulfite (CAS No. 7681-57-4) that it imported for commercial purposes during calendar year 2015.

40. Between June 1, 2016 and October 31, 2016, Respondent failed to submit a Form U to EPA for the chemical substance, Sodium metabisulfite (CAS No. 7681-57-4) that it imported for commercial purposes during calendar year 2015.

41. Respondent's failure constitutes a violation of 40 C.F.R. §§ 711.8, 711.15 and 711.20 and TSCA Section 15(3)(B), 15 U.S.C. § 2614(3)(B).

Count 5

42. Paragraphs 1 through 41 are realleged and incorporated herein by reference.

43. At the Facility during calendar year 2015, Respondent "imported for commercial purposes," as that term is defined at 40 C.F.R. § 710.3, more than 25,000 lbs of Sodium sulphite

(CAS No. 7757-83-7).

44. Sodium sulphite (CAS No. 7757-83-7) is a chemical substance that was in the Master Inventory File at the beginning of the 2016 submission period, as described by 40 C.F.R. § 711.5.

45. Accordingly, pursuant to 40 C.F.R. §§ 711.8, 711.15 and 711.20, between June 1, 2016 and October 31, 2016, Respondent was required to submit a Form U to EPA for the chemical substance, Sodium sulphite (CAS No. 7757-83-7) that it imported for commercial purposes during calendar year 2015.

46. Between June 1, 2016 and October 31, 2016, Respondent failed to submit a Form U to EPA for the chemical substance, Sodium sulphite (CAS No. 7757-83-7) that it imported for commercial purposes during calendar year 2015.

47. Respondent's failure constitutes a violation of 40 C.F.R. §§ 711.8, 711.15 and 711.20 and TSCA Section 15(3)(B), 15 U.S.C. § 2614(3)(B).

Count 6

48. Paragraphs 1 through 47 are realleged and incorporated herein by reference.

49. At the Facility during calendar year 2015, Respondent "imported for commercial purposes," as that term is defined at 40 C.F.R. § 710.3, more than 25,000 lbs of Sodium tripolyphosphate (CAS No. 7758-29-4).

50. Sodium tripolyphosphate (CAS No. 7758-29-4) is a chemical substance that was in the Master Inventory File at the beginning of the 2016 submission period, as described by 40 C.F.R. § 711.5.

51. Accordingly, pursuant to 40 C.F.R. §§ 711.8, 711.15 and 711.20, between June 1, 2016 and October 31, 2016, Respondent was required to submit a Form U to EPA for the chemical substance, Sodium tripolyphosphate (CAS No. 7758-29-4) that it imported for commercial purposes during calendar year 2015.

52. Between June 1, 2016 and October 31, 2016, Respondent failed to submit a Form U to EPA for the chemical substance, Sodium tripolyphosphate (CAS No. 7758-29-4) that it

imported for commercial purposes during calendar year 2015.

53. Respondent's failure constitutes a violation of 40 C.F.R. §§ 711.8, 711.15 and 711.20 and TSCA Section 15(3)(B), 15 U.S.C. § 2614(3)(B).

PROPOSED CIVIL PENALTY

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation Adjustment Act of 2015, Pub. L. 101-410, authorize the Administrator of the United States Environmental Protection Agency ("EPA") to assess a civil penalty not to exceed \$38,892 per day for each violation of Section 15 of TSCA, 15 U.S.C. § 2614 that occurred after November 2, 2015.

Based upon the nature, circumstances, extent, and gravity of the violations alleged above and, with respect to the violator, ability to pay, effect on ability to continue to do business, and history of prior such violations, the degree of culpability, and other factors as justice may require, and as set forth in Section 16(a)(2)(B) of TSCA, Complainant requests that the Administrator assess against Respondent a civil penalty of up to \$38,892 for each violation in this Complaint.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R.

Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

You must file a written Answer within thirty (30) days of receiving this Complaint to avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and to avoid having the above penalty assessed without further proceedings. If you choose to file an Answer, you are required by the Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint to which you have any knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny any of the allegations in this Complaint will constitute an admission of the undenied allegation.

The Answer shall also state the circumstances and arguments, if any, which are alleged to constitute the grounds of defense, and shall specifically request an administrative hearing, if desired. If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing.

The Answer must be filed with:

**Regional Hearing Clerk
USEPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105**

In addition, please send a copy of the Answer and all other documents filed in this action to:

**Carol Bussey
Assistant Regional Counsel
Office of Regional Counsel (ORC-2)
USEPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105**

Ms. Bussey is the attorney assigned to represent EPA in this matter. Her telephone number is (415) 972-3950.

You are further informed that the Consolidated Rules of Practice prohibit any **ex parte** (unilateral) discussion of the merits of any action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

INFORMAL SETTLEMENT CONFERENCE

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with EPA through Ms. Bussey, the EPA attorney assigned to this case, regarding the facts of this case, the amount of the proposed penalty, and the possibility of settlement. **An informal settlement conference does not, however, affect your obligation to file an Answer to this Complaint.**

ALTERNATIVE DISPUTE RESOLUTION

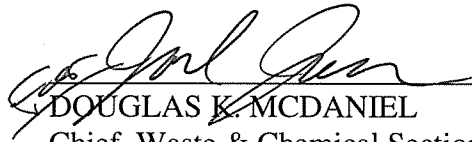
The parties also may engage in any process within the scope of the Alternative Dispute Resolution Act, 5 U.S.C. § 581 et seq., which may facilitate voluntary settlement efforts. Dispute resolution using alternative means of dispute resolution does not divest the Presiding Officer of jurisdiction nor does it automatically stay the proceeding.

CONSENT AGREEMENT AND FINAL ORDER

EPA has the authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference or through alternative dispute resolution. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by the parties would be binding as to all terms and conditions specified therein for the parties signing the Consent Agreement when the

Regional Judicial Officer signs the Final Order.

DATE: 9/28/18



DOUGLAS K. MCDANIEL
Chief, Waste & Chemical Section
Air, Waste & Toxics Branch, Enforcement Division
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing was filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX and that a true and correct copy of (1) the Complaint and Notice of Opportunity for Hearing; (2) the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R Part 22; (3) the Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13; and (4) the Civil Monetary Penalty Inflation Adjustment Rule were sent by United States Certified Mail, Return Receipt Requested, to:

Alan Zwillinger
President & CEO
Westco Chemical, Inc.
12551-61 Saticoy Street South
North Hollywood, CA 91605

CERTIFIED MAIL NUMBER 7015 0640 0001 1121 9752

Leonard D. Lerner, Esq.
Lerner & Weiss, APC
21600 Oxnard Street #1130
Woodland Hills, CA 91367

CERTIFIED MAIL NUMBER 7015 0640 0001 1121 9745

Date: 9/28/2018

By: Jana Kennedy
Enforcement Division
U.S. Environmental Protection
Agency, Region IX