

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

****FILED****
26 MAY 2021
U.S. EPA - REGION IX

In the Matter of:)
)
Arturo Dondiego d/b/a Smark) Docket No. TSCA-09-2021-0045
Company,)
) CONSENT AGREEMENT
) AND FINAL ORDER PURSUANT TO
) 40 C.F.R.
) §§ 22.13 and 22.18

Respondent)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA") and Arturo Dondiego d/b/a Smark Company ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously initiates and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This is a civil administrative penalty action initiated against Respondent pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for violation of 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.

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2. Complainant is the Manager of the Toxics Section in the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.

3. Respondent is a sole proprietorship whose principal place of business is located at 8636 Otis Street in South Gate, California.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. 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.

5. 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.

6. 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.

7. 40 C.F.R. § 711.8(a) provides that, for the 2016 submission period, any person that is not a "small manufacturer," as defined by 40 C.F.R. § 704.3, 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.

8. Pursuant to 40 C.F.R. § 704.3, however, if the person had total annual sales of less than \$40 million but more than \$4 million during the principle reporting year (calendar year 2015), it is subject to reporting to EPA during the 2016 submission period only if it manufactured (including imported) for commercial purposes 100,000 lbs (45,400 kgs) 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.

9. 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.

10. "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.

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11. "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.

12. "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.

13. 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.

14. "Principal reporting year" means the latest complete calendar year preceding the submission period. 40 C.F.R. § 711.3.

15. 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.

16. 40 C.F.R. § 711.15 provides that, for the 2016 submission period, any person who must report under this part, as described in §§ 704.3 and 711.8, must submit the information described in this section

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for each chemical substance described in § 711.5 that the person manufactured (including imported) for commercial purposes in an amount of 100,000 lbs (45,400 kgs) or more at any one site during calendar years 2012, 2013, 2014, and/or 2015.

17. 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.

18. 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.

19. 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 Acts of 1990 and 2015, 28 U.S.C. § 2461, as amended, authorize civil penalties not to exceed \$41,056 per day for each violation of Section 15 of TSCA, 15 U.S.C. § 2614, that occurred after November 2, 2015 and assessed after December 23, 2020.

C. ALLEGATIONS

20. Respondent is a "person," as that term is defined at 40 C.F.R. § 710.3.

21. At all times relevant to this CAFO, Respondent owned, operated or otherwise controlled a facility located at 8636 Otis Street

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in South Gate, California that imported chemical substances ("the Facility").

22. During calendar years 2013, 2014 and 2015, the Facility was the "site" for Respondent, as that term is defined at 40 C.F.R. § 711.3.

23. At the Facility, Respondent "imported for commercial purposes," as that term is defined at 40 C.F.R. § 710.3, more than 100,000 lbs of Sodium Hydroxide (CAS No. 1310-73-2) during calendar year 2014; of Acetic Acid (CAS No. 64-19-7) during calendar year 2015; and of Sodium Thiosulfate (CAS No 7772-98-7) and Sodium Metabisulfite (CAS No. 7681-57-4) during calendar years 2013, 2014 and 2015.

24. Sodium Hydroxide (CAS No. 1310-73-2), Acetic Acid (CAS No. 64-19-7), (CAS No 7772-98-7) and Sodium Metabisulfite (CAS No. 7681-57-4) are each a chemical substance that was in the Master Inventory File at the beginning of the 2016 submission period and not exempt by § 711.6, as described by 40 C.F.R. § 711.5.

25. During calendar year 2015, Respondent had total annual sales of less than \$40 million but more than \$4 million.

26. Accordingly, pursuant to 40 C.F.R. §§ 704.3, 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 each of the chemical substances, Sodium Hydroxide (CAS No. 1310-73-2), Acetic Acid (CAS No. 64-19-7), Sodium Thiosulfate (CAS No 7772-98-7) and Sodium Metabisulfite (CAS No.

7681-57-4), that it imported for commercial purposes during calendar years 2013, 2014 and/or 2015.

27. Respondent failed to submit a Form U to EPA between June 1, 2016 to October 31, 2016 for each of the chemical substances, Sodium Hydroxide (CAS No. 1310-73-2), Acetic Acid (CAS No. 64-19-7), Sodium Thiosulfate (CAS No 7772-98-7) and Sodium Metabisulfite (CAS No. 7681-57-4), that it imported for commercial purposes during calendar years 2013, 2014 and/or 2015.

28. Respondent's failures to submit a Form U for each of the chemical substances, Sodium Hydroxide (CAS No. 1310-73-2), Acetic Acid (CAS No. 64-19-7), Sodium Thiosulfate (CAS No 7772-98-7) and Sodium Metabisulfite (CAS No. 7681-57-4), constitutes 4 violations of 40 C.F.R. §§ 704.3, 711.8, 711.15 and 711.20 and Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

D. RESPONDENT'S ADMISSIONS

29. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C of this CAFO;

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and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

30. Respondent agrees to the assessment of a penalty in the amount of NINETY-THREE THOUSAND, EIGHT HUNDRED AND THIRTEEN DOLLARS (\$93,813) plus interest, paid in four (4) quarterly installments over a twelve-month period, as final settlement of the civil claims against Respondent arising under TSCA, as alleged in Section I.C of this CAFO.

31. Respondent shall pay each installment of the assessed penalty in accordance with the payment schedule attached to this CAFO as Attachment A. Payment of each installment (including the name and docket number of this case) shall be made payable to Treasurer, United States of America, paid by one of the methods listed below:

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

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

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Physical location of US Treasury Facility
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

On-Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sfo 1.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

Concurrent with payment of each installment of the penalty, Respondent shall send a PDF copy of the notification that the installment payment has been made by one of the methods listed above, including proof of the date payment was made, to the following email addresses:

- a) Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
r9HearingClerk@epa.gov
- b) Rose Galer
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX
galer.rose@epa.gov

32. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

33. If Respondent fails to pay in full any installment of the assessed civil administrative penalty specified in Paragraph 30 in accordance with the schedule in Attachment A, then the entire remaining balance of the assessed penalty shall immediately become due and

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payable. Respondent also shall pay to EPA a stipulated penalty of \$500 per day for each day that payment is late, in addition to the assessed penalty. Stipulated penalties shall accrue until the assessed penalty and all accrued stipulated penalties are paid and shall become due and payable upon written request by EPA. In addition, failure to pay in full the assessed penalty in accordance with Attachment A may lead to any or all of the following actions:

- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
- b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify

Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay in full the assessed penalty in accordance with Attachment A. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in

addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. RESPONDENT'S CERTIFICATION

34. In executing this CAFO, Respondent certifies that it is now in compliance with TSCA Section 8(a) and federal regulations promulgated to implement Section 8(a) at 40 C.F.R. Part 711.

G. RETENTION OF RIGHTS

35. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

36. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

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H. ATTORNEYS' FEES AND COSTS

37. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE DATE

38. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

39. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

40. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

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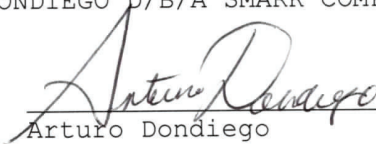
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FOR RESPONDENT, ARTURO DONDEIGO D/B/A SMARK COMPANY

5-12-21

DATE



Arturo Dondiego
President
SMARK COMPANY

FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX:

5/17/2021

DATE

MATTHEW SALAZAR

Digitally signed by MATTHEW
SALAZAR

Date: 2021.05.17 16:26:32 -07'00'

Matt Salazar, P.E.
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION IX

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II. FINAL ORDER

Complainant and Respondent, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2021-0045) be entered, and that Respondent shall pay a civil administrative penalty in the amount of NINETY-THREE THOUSAND, EIGHT HUNDRED AND THIRTEEN DOLLARS (\$93,813) plus interest in accordance with Attachment A and comply with the terms and conditions set forth in the Consent Agreement. This Consent Agreement and Final Order shall become effective upon filing.

**STEVEN
JAWGIEL**

Digitally signed by
STEVEN JAWGIEL
Date: 2021.05.26
10:10:01 -07'00'

DATE

STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency,
Region IX

ATTACHMENT A

Principal	Payment Due	Interest Payment	Principal and Interest	Installment Payment
\$ 93,813.00	30 days after CAFO effective date	\$ --	\$ 23,453.25	\$ 23,560.74
\$ 70,359.75	110 days after 1 st payment	\$ 214.99	\$ 23,668.24	\$ 23,560.74
\$ 46,906.50	110 days after 2 nd payment	\$ 143.33	\$ 23,596.58	\$ 23,560.74
\$ 23,453.25	110 days after 3 rd Payment	\$ 71.66	\$ 23,524.91	\$ 23,560.74
Totals	360	\$ 429.98	\$ 94,242.98	\$ 94,242.98

Respondent shall pay the installment payment amount by the date when each payment is due, as indicated in the highlighted columns.

CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of Smark Company (TSCA-09-2021-0045), has been filed with the Regional Hearing Clerk, and a copy was served on the Respondent and on the Complainant as indicated below:

**FOR RESPONDENT
(via Email)**

Eugene F. McMenamin, Esq.,
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.,
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Michael Garcia,
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**FOR COMPLAINANT
(via Email)**

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