



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
2890 WOODBRIDGE AVE.
EDISON, NEW JERSEY 08837

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 APR -7 PM 2:38
REGIONAL HEARING
CLERK

APR 3 2009

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

James Blum, Product Stewardship Manager
Bluestar Silicones USA Corp.
Two Tower Center Boulevard – Suite 1601
East Brunswick, NJ 08816-1100

Re: In the Matter of Bluestar Silicones USA Corp.
Docket No. TSCA-02-2009-9126

Dear Mr. Blum:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region 2.

Please note that the forty-five (45) day period for payment of the civil penalty commenced as of the date this Consent Agreement was signed by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given within the enclosed document under "Terms of Consent Agreement". Further, please ensure that a copy of the payment check is mailed to the EPA staff member listed in that section of the Agreement.

Please contact Michael Bious of my staff at (732) 906-6892, should you have any questions regarding this matter.

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. 2
2009 APR -7 PM 2:38
REGIONAL HEARING
ORDER

-----X
In the Matter of :
 :
Bluestar Silicones USA Corp. : CONSENT AGREEMENT AND
 : FINAL ORDER
Respondent. :
 : Docket No. TSCA-02-2009-9126
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
-----X

PRELIMINARY STATEMENT

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 40 C.F.R. § 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, 2000), 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. § 22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA" or "Complainant"), alleges that Blustar Silicones USA Corp., ("Bluestar" or "Respondent") violated Section 12 of TSCA, 15 U.S.C. § 2611, and the regulations promulgated pursuant to the provisions of this section which are set forth at 40 C.F.R. Part 707, relating to the Section 12(b) Notices of Export. The

Complainant further alleges that Bluestar has thereby violated Section 15 of TSCA, 15 U.S.C. § 2614.

EPA and Bluestar agree that settling this matter by entering into this Consent Agreement and Final Order (hereinafter "CAFO") pursuant to 40 C.F.R. §§ 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

1. Respondent is Bluestar Silicones USA Corp.
2. Respondent owns, operates, and/or controls the facility located at Two Tower Center Boulevard, East Brunswick, New Jersey 08816 (hereinafter "Respondent's facility").
3. On June 19, 2008, Respondent voluntarily disclosed a violation of Section 12 of TSCA to EPA.
4. On August 6, 2007, Respondent exported to Japan the chemical substance, Diacetone Alcohol (CASRN 123-42-2).
5. On or about November 5, 2007, Respondent submitted to EPA a Notification of Export of a TSCA 12(b) substance for the chemical substance, Diacetone Alcohol (CASRN 123-42-2).
6. At the time of the export, described in paragraph 4, above, the chemical substance, Diacetone Alcohol (CASRN 123-42-2), was subject to and is currently subject the TSCA Section 4 Test Rule at 40 C.F.R. §799.5115.
7. EPA alleges that Respondent failed to timely submit the Notice of Export as required by 40 C.F.R. §§ 707.65 and 707.67.

CONCLUSIONS OF LAW

1. Respondent is an "exporter" as that term is defined in 40 C.F.R. §§ 707.3.
2. Section 12(b) of TSCA requires any person who exports or intends to export a chemical substance or mixture to notify EPA of any such exportation to a particular country if data are required under Section 4 of TSCA.
3. Failure to notify EPA in accordance with the regulation at 40 C.F.R. §§707.65 and 707.67 is a violations of TSCA Sections 12(b) and 15, 15 U.S.C. §§ 26011(b) and 2614, and the implementing regulations at 40 C.F.R. Part 707.

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 "Conclusions of Law" section above; (b) neither admits nor denies the specific factual allegations contained in the "Findings of Fact" section, above; and (c) neither admits nor denies the assertions set forth in the "Conclusions of Law" section, above.

3. Respondent shall pay, by cashiers or certified check, a civil penalty in the amount of **Four Thousand Six Hundred Dollars (\$4,600)** 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” section, above, and the allegations contained in the “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 contained in the “Findings of Fact” section, above, and the allegations contained in the “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:

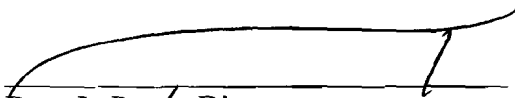
BY: 
Bluestar Silicones USA Corp

NAME: Mark Goldberg
(PLEASE PRINT)

TITLE: General Counsel

DATE: March 9, 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: MAR 20, 2009

In the Matter of Bluestar Silicones USA Corp.
Docket Number TSCA-02-2009-9126

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 Bluestar Silicones USA Corp., bearing Docket Number TSCA-02-2009-9126. 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).

DATE: March 27, 2009



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

Certificate of Service

This is to certify that on the 3rd 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-02-2009-9126 by certified mail, return receipt requested, to:

James Blum, Product Stewardship Manager
Bluestar Silicones USA Corp.
Two Tower Center Boulevard – Suite 1601
East Brunswick, NJ 08816-1100

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.

