



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

APR 29 2010

CERTIFIED MAIL –
RETURNED RECEIPT REQUESTED

Pamela A. Baker, Esq.
McNair Law Firm, P.A.
The Towers at 1301 Gervais
1301 Gervais Street, 11th Floor
Columbia, South Carolina 29201

Re: Apexical, Inc.
Docket No. TSCA-04-2010-2710(b)

Dear Ms. Baker:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section five of the CAFO, a civil penalty of \$18,569.00 is assessed. This penalty will be paid in four quarterly payments of \$4,671.30, including interest (\$116.20) within one year from the effective date. Please ensure that the face of Apexical's cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Mr. Verne George at (404) 562- 8988.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document

puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeanne M. Gettle', with a long, sweeping horizontal flourish extending to the right.

Jeanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Apexical, Inc.)
)
)
Respondent.)
_____)

Docket No. TSCA-04-2010-2710(b)

2010 APR 29 PM 12:41
HEARING ROOM
EPA REGION 4

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Apexical, Inc. (hereinafter, "Respondent").
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. Pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for any person to:
(1) fail or refuse to comply with any rule or order promulgated pursuant to Sections 4, 5, 8, 12 or 13 of TSCA (15 U.S.C. § 2603, 15 U.S.C. § 2604, 15 U.S.C. § 2607, 15 U.S.C. § 2611 or 15 U.S.C. § 2612); (2) use for commercial purposes a chemical substance or mixture that the person knew or had reason to know was manufactured, imported, processed, or distributed in commerce in violation of TSCA Section 5, 15 U.S.C. § 2604; (3) fail to maintain records, submit reports or information, or permit access to or allow copying of records as required by TSCA; and (4) refuse to permit entry or inspection as authorized by Section 11 of TSCA, 15 U.S.C. § 2610. Any person who violates a provision of Section 15 of TSCA may be assessed a penalty of up to \$27,500 for each such violation, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. For a violation occurring after March 15, 2004, through January 9, 2009, a penalty of up to \$32,500 may be assessed. Each day a violation continues may constitute a separate violation.
4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.
5. Complainant will file the original CAFO with the Regional Hearing Clerk and a copy will be mailed to the Respondent. To determine the confidential business information (CBI) that was deleted (CBI deleted) from this CAFO, Complainant or Respondent should refer to the show cause letter issued by EPA, dated October 20, 2009.

6. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Verne George
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-8971

III. Specific Allegations

7. Respondent owns and operates a chemical processing facility located at 1905 New Cut Road, Spartanburg, South Carolina.
8. Respondent is a processor as the term is defined in 40 C.F.R. § 704.3.
9. On May 14, 2008, an authorized agent of the EPA Region 4 conducted an inspection at Respondent's place of business pursuant to Section 11(a) of TSCA, 15 U.S.C. § 2610(a).
10. In 2006, Respondent exported to Canada and China a shipment of [confidential business information (CBI) deleted] hereinafter referred to as Product A.
11. Product A contained [CBI deleted] hereinafter referred to as Chemical A.
12. Pursuant to Section 12(b) of TSCA, 15 U.S.C. § 2611(b), Chemical A was subject to the export notification regulations promulgated at 40 C.F.R. § 707, Subpart D.
13. At the time of the inspection, there were no records on file indicating that Respondent had submitted an export notice to the EPA for the two separate shipments of Chemical A that were exported to Canada and China.
14. Respondent violated Section 15 of TSCA, 15 U.S.C. § 2614, by failing to comply with Section 12(b) of TSCA, 15 U.S.C. § 2611(b), and the regulations promulgated at 40 C.F.R. § 707, Subpart D.

17. Pursuant to 40 C.F.R. § 707.60(f), failure to comply with TSCA Section 12(b) is considered a violation of TSCA Section 15(3), and will subject exporter to the penalty, enforcement, and seizure provisions of TSCA Sections 16 and 17, 15 U.S.C. §§ 2615 and 2616.

IV. Consent Agreement

18. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above, but neither admits nor denies the factual allegations set forth above.
19. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
20. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
21. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with Section 12(b) of TSCA, 15 U.S.C. § 2611(b), and 40 C.F.R. § 707, Subpart D, as referenced in this CAFO.
22. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities,

including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.

23. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.

V. Final Order

24. Respondent is assessed a civil penalty of ***Eighteen Thousand, Five Hundred Sixty Nine Dollars*** (\$18,569.00). Four payments will be made to complete payment of the entire civil penalty including interest. The first payment is due within thirty (30) days of the effective date of this CAFO and subsequent payments will be due in ninety (90) day intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **Eighteen Thousand, Six Hundred Eighty Five Dollars and Twenty Cents** (\$18,685.20).

25. Respondent shall make payments in accordance with the following schedule.

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1.	30 days of filing of CAFO	\$4,671.30
2.	120 days of filing of CAFO	\$4,671.30
3.	210 days of filing of CAFO	\$4,671.30
4.	300 days of filing of CAFO	\$4,671.30

Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

**Each check shall reference on its face the name of the
Respondent and Docket Number of this CAFO.**

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.):

U. S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson (314) 418-4087

27. Respondent shall send a separate copy of the check and a written statement that the payment has been made in accordance with this CAFO, to each of the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960;

Verne George
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960;

and

Saundi Wilson
Office of Environmental Accountability

U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960.

28. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
29. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
31. This CAFO shall be binding upon the Respondent, its successors and assigns.
32. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

The remainder of this page is intentionally left blank.

Respondent: Apexical, Inc.
Docket No.: TSCA-04-2010-2710(b)

By: Jeffrey Chamberlain (Signature) Date: 3/29/10
Name: Jeffrey Chamberlain (Typed or Printed)
Title: Vice-President (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Kenneth R. Lapiere (Signature) Date: 4/21/2010
Kenneth R. Lapiere Acting Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 29th day of April, 2010.

By: Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Apexical, Inc.,
Docket Number: TSCA-04-2010-2710(b), to the addressees listed below.

Pamela A. Baker
McNair Law Firm, P.A.
The Towers at 1301 Gervais
1301 Gervais Street 11th Floor
Columbia, South Carolina 29201

(via Certified Mail, Return Receipt Requested)

Verne George
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

(via EPA's internal mail)

Robert Caplan, Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303-8960

(via EPA's internal mail)

Date:

4-29-10



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency,

Region 4

Atlanta Federal Center
61 Forsyth St., S.W.
Atlanta, GA 30303-8960
(404) 562-9511

Apexical, Inc.

9

Docket No. TSCA-04-2010-2710(b)

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 4/27/10
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Apexical Inc.
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 18569-
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA Off 2010-2710(6)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | | |
|--|-----------------------------|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) | 3. Designated Program Office |
|--|-----------------------------|------------------------------|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |