



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

JUL 28 2009

4APT-PTSB

Certified Mail – Return Receipt Requested

Ethan R. Ware, Esquire
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211

SUBJ: Docket No. TSCA-04-2009-2605(b)
Nation Ford Chemical Company

Dear Mr. Ware:

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 5 of the CAFO, no penalty will be assessed. If you have any questions about this matter or your compliance status in the future, please contact 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 "Jeaneanne M. Gettle".

Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Nation Ford Chemical Company)
)
)
Respondent.)
_____)

Docket No. TSCA-04-2009-2605(b)

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PROTECTION AGENCY
ATLANTA, GEORGIA

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 Nation Ford Chemical Company.
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, § 2604, § 2607, § 2611 or § 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 CFR Part 19, as amended. For a violation occurring after March 15, 2004, 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 non-confidential 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 your EPA Confidential Notice of Violation dated August 21, 2007.

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
Atlanta, Georgia 30303-8960
(404) 562-8988.

III. EPA's Findings of Fact and Violations

7. On July 20, 2006, an authorized agent of 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).
8. Respondent is chemical manufacturer located at 2300 Banks Road in Fort Mill, SC.
9. Respondent is a manufacturer as that term is defined in 40 C.F.R. § 720.3(t).
10. Pursuant to 40 C.F.R. § 720.22(a), any person who intends to manufacture a new chemical substance in the United States for commercial purposes must submit a pre-manufacturing notice unless the substance is excluded under 40 C.F.R. § 720.30.
11. Beginning in 1999, Respondent manufactured a chemical [confidential business information (CBI) deleted], hereinafter referred to as Chemical A, for export only.
12. For a period of time during 2001, Respondent manufactured and distributed Chemical A for commercial purposes in commerce of the United States as well as for export.
13. Between 2002 and 2006, Respondent manufactured Chemical A solely for export. Respondent discontinued the manufacture of Chemical A in December 2006.
14. According to EPA's Certified Statement dated May 25, 2007, Chemical A was not listed on the TSCA Master Inventory File when it was manufactured by Respondent in 2001 for distribution in the United States.

15. In a letter dated October 31, 2007, Respondent asserted that Chemical A was produced incidentally through a neutralization process and, therefore, is exempt from the Premanufacture Notice (PMN) Reporting Requirements pursuant to the exemption found in 40 C.F.R. § 720.30(h)(7). Respondent also has asserted that it did not submit a PMN to the EPA for Chemical A because Respondent believed the production of Chemical A was exempted from the PMN Reporting Requirements pursuant to 40 C.F.R. § 720.30(h)(7).
16. Complainant has concluded that the production of Chemical A was not exempt under 40 C.F.R. § 720.30(h)(7), because Chemical A: (1) was the end product of manufacture that was intentionally marketed as such to Respondent's customers who used it as a chemical intermediary; (2) had commercial value; (3) functioned independently of its precursor; and (4) has at least one primary property that was to function as a chemical intermediate that could be reacted to form one or more distinct chemical substances. Therefore, the production of Chemical A is subject to the PMN Reporting Requirements.
17. Complainant also has determined that Respondent is not eligible for the export exemption under section 12 (a)(1)(A) of TSCA, 7 U.S.C. § 2611(a)(1)(A), because in 2001 Chemical A was distributed in commerce in the United States for commercial purposes and was not manufactured solely for export.
18. Respondent failed to submit the required PMN to the EPA before Respondent manufactured Chemical A during 2001 for commercial purposes in the United States or for export only in the years subsequent to 2001 up to and including 2006.
19. Complainant has further concluded that Respondent was not in compliance with 40 C.F.R. § 720.40(b) because it failed to submit a PMN to the EPA 90 days prior to

manufacturing Chemical A for commercial purposes and distributing the product in the United States or for export only in the years subsequent to 2001 up to and including 2006.

20. Respondent has advised Complainant that it ceased manufacturing Chemical A as of December 2006, and has no present plans to resume manufacturing it.

IV. Consent Agreement

21. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
22. 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.
23. In settlement of this matter, Respondent agrees that if it decides to resume manufacturing Chemical A, it will not do so unless and until a PMN has first been submitted to, and approved by EPA in accordance with the requirements of Section 5 of TSCA and 40 C.F.R. § 720.40, including, but not limited to, the requirement that a PMN be submitted at least 90 days prior to commencement of manufacturing. Respondent further agrees to comply with all relevant requirements and procedures set forth in 40 C.F.R. Part 720 pertaining to PMNs.
24. Based on all the facts and circumstances as set forth herein, and Respondent's agreement herein that it will not resume manufacturing Chemical A unless and until a PMN has been submitted and approved, Complainant has determined that no penalty will be assessed to resolve this matter.
25. 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. Complainant reserves

its rights to initiate further enforcement action and to assess penalties if Respondent resumes manufacturing Chemical A without first having submitted a PMN or otherwise fails to comply with this CAFO or the requirements of TSCA. 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.

26. 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

27. As set forth above, no civil penalty will be assessed to resolve this matter.
28. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
29. This CAFO shall be binding upon the Respondent, its successors and assigns.
30. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to this CAFO.


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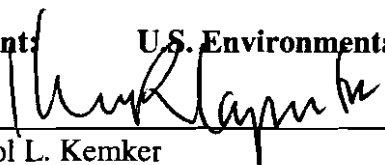
VI. Effective Date

31. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

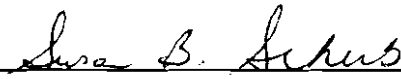
AGREED AND CONSENTED TO:

Respondent: Nation Ford Chemical Company
Docket No.: TSCA-04-2009-2605 (b)

By:  (Signature) Date: 6-11-09
Name: Philip M. Carter (Typed or Printed)
Title: Vice President (Typed or Printed)

Complainant: U.S. Environmental Protection Agency
By:  Date: 7/13/09
Carol L. Kemker
Acting Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 28th day of July, 2009.

By: 
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: Nation Ford Chemical Company, Docket Number: TSCA-04-2009-2605(b), to the addressees listed below.

Ethan R. Ware, Esquire
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211

(via Certified Mail, Return Receipt Requested)

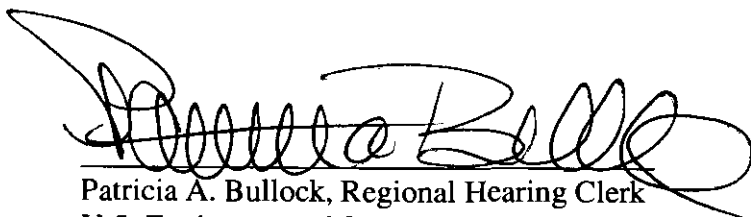
Verne George
Chemical Products and
Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

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

(via EPA's internal mail)

Date: 7-28-09



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

Region 4

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