

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)

Axiall, LLC,)
A Westlake Company)
2801 Post Oak Blvd, Suite 600)
Houston, TX 77056)

Respondent)

Docket Number TSCA-HQ-2020-5006

CIVIL COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

I. COMPLAINT

This Complaint and Notice of Opportunity for Hearing (Complaint) is filed pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Pub. L. No. 114-182, June 22, 2016, 130 Stat 448 (2016 Act), 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 which is enclosed with this Complaint. The Complainant is Gregory Sullivan, Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency (EPA), who has been duly delegated the authority to institute this action.

The Respondent is Axiall, LLC, a Westlake Company (Axiall or Respondent), located at 2801 Post Oak Blvd, Suite 600, Houston, TX 77056.

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As a result of an EPA inspection of an Eagle US 2 LLC facility (an affiliate of Axiall, LLC) on August 30, 2018, and its follow-up actions, Complainant alleges that Respondent has violated Section 12(b) of TSCA, 15 U.S.C. § 2611(b), and the Notice of Export rule requirements at 40 C.F.R. Part 707, Subpart D, thereby violating Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B) as set forth below.

COUNT I

1. Respondent is a corporation located at 2801 Post Oak Blvd, Suite 600, Houston, TX 77056.
2. Respondent is a “person” as defined in 40 C.F.R. § 710.3 and is subject to TSCA and the regulations promulgated thereunder.
3. Respondent is an “exporter” as defined in 40 C.F.R. § 707.63(b).
4. Respondent exported a chemical substance, Trichloroethylene, Chemical Abstracts Service Registry Number 79-01-6, that is subject to a Significant New Use Rule (“SNUR”) found at 40 C.F.R. § 721.10851, promulgated pursuant to Section 5(a)(2) of TSCA, 15 U.S.C. § 2604(a)(2) on six (6) occasions to six (6) countries without prior notification to the Agency as required by Section 12(b) of TSCA, 15 U.S.C. § 2611(b), and 40 C.F.R. § 707.60, and as specified in 40 C.F.R. §§ 707.65 and 707.67.
5. Respondent’s failure to comply with the required export notice requirements of Section 12(b) of TSCA, 15 U.S.C. § 2611(b), and 40 C.F.R. §§ 707.60, 65, and 67 violates Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), and is subject to a civil penalty pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

6. On or about January 30, 2020, Respondent filed Section 12(b) export notifications for the six countries where it previously exported Trichloroethylene and has since implemented a new process for submitting timely Section 12(b) notifications for future exports.

II. CIVIL PENALTY ASSESSMENT

Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty for violations of Section 15 of TSCA, 15 U.S.C. § 2614, in an amount not to exceed \$39,873 for each day of violation.

For purposes of determining the amount of a civil penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to take into account the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. In developing a proposed penalty, Complainant took into account the particular facts and circumstances of this case; the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), the EPA's *Enforcement Response Policy, Reporting and Recordkeeping Rules and Requirements, TSCA Sections 8, 12 and 13* (revised March 31, 1999 and effective June 1, 1999) (hereinafter referred to as the "ERP"). The ERP was developed in accordance with the *Guidelines for Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, 45 Fed. Reg. 59770 (Sep. 10, 1980), which sets forth a general penalty assessment policy for TSCA violations. The ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory factors to cases.

Based upon the facts alleged in this Complaint, and upon the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to pay, effect on

ability to continue to do business, any history of prior such violations of TSCA, the degree of culpability, and such other matters as justice may require, the Complainant proposes that Respondent be assessed a penalty of *FORTY-NINE THOUSEAND DOLLARS* (\$49,000) for the violations alleged in this Complaint.

III. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and consistent with 40 C.F.R. § 22.15, 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. To request a hearing pursuant to 40 C.F.R. § 22.15, Respondent must file a written Answer to the Complaint with the Headquarters Hearing Clerk, within thirty (30) days of service of this Complaint, at the following address:

Headquarters Hearing Clerk (1900L)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

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. Pursuant to 40 C.F.R. § 22.15 of the Consolidated Rules of Practice, Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which Respondent has any knowledge. The Answer should further specify any factual allegations that Respondent claims no knowledge of. The Answer should contain: (1) the circumstances or arguments that are alleged to constitute the grounds of any defense; (2) the facts that Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

If Respondent fails to file a written Answer within thirty (30) days of service of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in Complainant's filing of a Motion for Default Order imposing the penalties herein without further proceedings.

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney of record assigned to represent EPA in this matter:

N. Lindsay Simmons, Attorney-Advisor
Chemical Risk and Reporting Enforcement Branch
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Telephone: 202.564.3223
E-mail: simmons.nicole@epa.gov

IV. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the facts of this case, the amount of the penalty, and the possibility of settlement. An informal settlement conference does not, however, affect Respondent's obligation to file a timely written Answer to the Complaint.

EPA has the authority, where appropriate, to modify the amount of the penalty, once determined, to reflect any settlement reached with Respondent in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement, signed by EPA and Respondent. The terms and conditions specified in the Consent Agreement are binding upon issuance of a Final Order by the Environmental Appeals Board.

Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of this action with the Administrator, the members of the Environmental Appeals Board, the assigned Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the issuance of this Complaint. *See* 40 C.F.R. § 22.8.

V. PAYMENT OF PENALTY

Instead of filing an Answer, requesting a hearing, or requesting an informal settlement conference, Respondent may choose to pay the proposed penalty to resolve this matter pursuant to 40 C.F.R. § 22.18(a). Such payment should be made by sending either a cashier's or certified check with a notation of "Axiall, LLC, a Westlake Company," Penalty Docket No. "TSCA-HQ-2020-5006," payable to the order of the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2020-5006
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of Axiall, LLC, a Westlake Company, Penalty Docket No. "TSCA-HQ-2020-5006" by using the following instructions:

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." A copy of the wire transfer should also be sent to the Cincinnati Finance Center. A copy of the check or other instrument of payment must be sent to the attorney of record assigned to represent EPA in this matter.

U.S. ENVIRONMENTAL PROTECTION AGENCY

TSCA-HQ-2020-5006

In the Matter of: Axiall, LLC, a Westlake Company

By:



Date:

2/25/2020

Gregory Sullivan,
Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

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Handwritten signature or scribble

ATTACHMENT

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.

CERTIFICATION

I hereby certify that the original of the foregoing Complaint and Notice of Opportunity for Hearing, Docket No. TSCA-HQ-2020-5006, has been filed with the Headquarters Hearing Clerk and that a copy was sent certified mail, return receipt requested to:

Ms. Rebecca Moring
Sr. Counsel Environmental
Westlake Chemical Corporation
1000 Abemathy Road, NE, Suite 1200
Atlanta, GA 30328



Tony R. Ellis, Case Development Officer
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency (Mail Code 2249A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460



Date