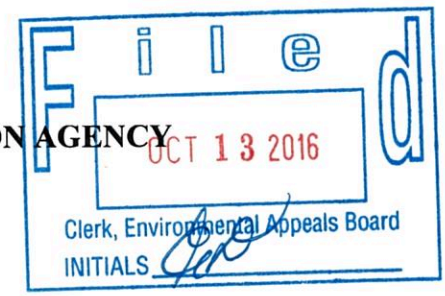
ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:	)	
	)	
Sumitomo Chemical Company, Ltd.	)	Docket No. FIFRA-HQ-2016-5020
	)	
	)	

FINAL ORDER

Before the Environmental Appeals Board ("Board") is the attached Consent Agreement resolving this matter. The parties to this Consent Agreement seek the Board's ratification of the Consent Agreement pursuant to 40 C.F.R. § 22.18(b)(3) and (c). For the reasons that follow, the Board ratifies the Consent Agreement.

Under the Consolidated Rules of Practice that govern these proceedings, parties may settle an administrative enforcement action at any time by recording the terms and conditions of the settlement in a written consent agreement. 40 C.F.R. § 22.18(b)(2). Where EPA Headquarters commences the relevant proceeding, as is the case here, the administrative enforcement action is not disposed of until the Board issues a "final order * * * ratifying the parties' consent agreement." *Id.* § 22.18(b)(3).

The Consolidated Rules also provide that "settlement pursuant to [40 C.F.R. § 22.18(b)] shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law," and the settlement "shall only resolve respondent's liability for Federal civil penalties for the violations and facts alleged in the complaint." *Id.* § 22.18(c).[1] In addition, the Board's final order "shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief." *Id.* § 22.31(a) (effect of final order); *see also id.* § 22.3(a) (defining "[f]inal order" to include "[a] final order issued in accordance with § 22.18"); *id.* § 22.18(b)(3) (requiring, in these circumstances, a final order from the Board ratifying the parties' consent agreement).

In this Consent Agreement, Respondent agrees to pay a $7150 civil penalty for the purposes of settlement. Consent Agreement ¶¶ 30, 36-37. The parties agree that Respondent's "[f]ull payment of the penalty proposed in this [Consent Agreement and Final Order ("CAFO")] shall only resolve Respondent's liability for Federal civil penalties for the violations alleged in

[1] Where, as here, the parties agree to a settlement before the filing of a complaint, the Agency may simultaneously commence and conclude the matter by issuance of a consent agreement. In that instance, the reference in 40 C.F.R. § 22.18(c) to violations and facts alleged "in the complaint" is properly read to refer to the consent agreement resolving the matter. *See* 40 C.F.R. §§ 22.13(b), .18(b)(2).

Section V [(titled "EPA Allegations and Determinations")] of this CAFO." *Id.* ¶ 31. That language does not appear to conform to the text of 40 C.F.R. § 22.18(c). Under that regulatory provision, the initial reference to "[f]ull payment of the penalty proposed" (the phrase used in Paragraph 31 of the Consent Agreement) does not refer to a case settled by a consent agreement under 40 C.F.R. § 22.18(b). A settlement, memorialized in a consent agreement under section 22.18(b), does not "propose" payment of a penalty; rather, a settlement is an agreement between the parties, including (as in this case) agreement on any penalty to be paid. The complete reference – "[f]ull payment of the penalty proposed in a complaint pursuant to paragraph (a)" – instead addresses "quick resolutions" of administrative enforcement actions under 40 C.F.R. § 22.18(a). Under section 22.18(a), a respondent may reach a quick resolution of such an action by "paying the specific penalty *proposed* in the *complaint* * * * *in full*." *Id.* § 22.18(a) (emphases added).

Here, Respondent's only obligation under the CAFO is the payment of the agreed-upon civil penalty (and any interest or late charges). *See* Consent Agreement ¶¶ 30-34; *see also id.* ¶ 45 ("Respondent's obligation under this CAFO shall terminate when Respondent has paid the civil penalty, and any applicable interest or late charges, as specified in Section VII [(titled "Civil Penalty")] of the Consent Agreement in accordance with the Final Order."). The Board therefore concludes that the Consent Agreement (as opposed to the "[f]ull payment of the penalty proposed in th[e] CAFO") resolves only federal civil penalties and is consistent with 40 C.F.R. § 22.18(c). The Board incorporates by reference the attached Consent Agreement into this Final Order and ratifies the Consent Agreement.

In light of the foregoing, however, the Board advises all parties, and particularly EPA counsel, that in settlements under 40 C.F.R. § 22.18(b), language like that in Paragraph 31 of this Consent Agreement should, going forward, be replaced with the following to track the regulatory language of section 22.18(c): "Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties" alleged in the relevant section(s) of the CAFO. And that language – limiting the scope of the settlement to liability for federal civil penalties only – is applicable regardless of whether such a settlement only requires a respondent to pay civil penalties or it also requires a respondent to comply with additional non-penalty conditions or commitments.

Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.[2]

ENVIRONMENTAL APPEALS BOARD

Dated: 10/13/16

Aaron P. Avila
Environmental Appeals Judge

[2] The three-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila, Kathie A. Stein, and Mary Beth Ward.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of *Sumitomo Chemical Company, Ltd.*, Docket No. FIFRA-HQ-2016-5020, were filed and copies of the same were sent to the following persons in the manner indicated:

By First Class Certified Mail, Return Receipt Requested:

John D. Conner, Jr.
1900 K Street, N.W.
Washington, D.C. 20006

By U.S. EPA Interoffice Mail:

Christina E. Cobb
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 2843
Washington, D.C. 20460

Dated: OCT 13 2016

Annette Duncan
Secretary