

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

IN THE MATTER OF)
)
R.E. Carroll, Inc.)
Trenton, NJ)
)
Respondent)
_____)

Docket No. TSCA-HQ-2015-5008

CONSENT AGREEMENT

Complainant United States Environmental Protection Agency (hereinafter "EPA" or the "Agency") and Respondent, R.E. Carroll, Inc. (hereinafter "REC" or the "Respondent") (collectively, the "Parties"), having consented to the entry of this Consent Agreement and proposed Final Order before the taking of any testimony and without adjudication of any issues of law or fact herein, hereby consent to the terms of this Consent Agreement and attached Final Order.

I. PRELIMINARY STATEMENT

1. This civil administrative proceeding for the assessment of penalties pursuant to section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), is being simultaneously commenced and concluded pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(3).
2. To avoid the disruption of orderly business activities and expense of litigation, Respondent, for purposes of this proceeding: (1) admits that EPA has jurisdiction over the subject matter in this Consent Agreement, and (2) consents to the terms of this Consent Agreement and Final Order ("CAFO").
3. The Respondent waives any defenses it might have as to jurisdiction.

II. EPA'S FINDINGS OF FACT AND LAW

4. Respondent, a corporation with its headquarters located at 1570 North Olden Ave., Trenton, NJ 08638, is a "person" as defined in 40 C.F.R. § 720.3(x) and, as such, is subject to TSCA, 15 U.S.C. § 2601 *et seq.* and the regulations promulgated thereunder.
5. The chemical substances at issue in this matter are referred to herein and throughout this Consent Agreement as "Chemical A" and "Chemical B". Chemical A is identified as "Alkanes, C14-C17, chloro", Chemical Abstract Service Registry Number (CASRN) "85535-85-9". Chemical B is identified as "Paraffin waxes and Hydrocarbon waxes, chloro", CASRN "63449-39-8".
6. Respondent manufactures, imports, processes, distributes in commerce, uses, or disposes of Chemical A or mixtures containing Chemical A or in the past has manufactured, imported, processed, distributed in commerce, used, or disposed of Chemical A or mixtures containing Chemical A as those terms are defined in TSCA sections 3(7) and 3(2), 15 U.S.C. §§ 2602(7) and (2), respectively, and 40 C.F.R. §§ 720.3(e) and (q). Respondent is subject to TSCA and regulations promulgated thereunder.

COUNT I – TSCA SECTION 5(a)(1) VIOLATION

7. Any chemical substance which is not included in the chemical substance list (TSCA Inventory) compiled and published under TSCA section 8(b), 15 U.S.C. § 2607(b), is a "new chemical substance" pursuant to TSCA section 3(9), 15 U.S.C. § 2602(9) and 40 C.F.R. § 720.3(v).
8. TSCA section 5(a)(1), 15 U.S.C. § 2604(a)(1) and 40 C.F.R. § 720.22(a)(1) and § 720.40(b), provide that no person may manufacture (including import) a new chemical substance unless such person submits a Premanufacture Notice ("PMN") to EPA at least ninety (90) calendar days before manufacturing that substance.
9. On August 21, 2013, EPA inspectors found that Respondent imported Chemical A on August 14, 2013 prior to submitting a PMN for Chemical A.
10. Chemical A is not included in the chemical substance list (TSCA Inventory) compiled and published under TSCA section 8(b), 15 U.S.C. § 2607(b), and therefore is a "new chemical substance" pursuant to TSCA section 3(9), 15 U.S.C. § 2602(9) and 40 C.F.R. § 720.3(v).
11. EPA alleges that Respondent's failure to submit a PMN at least ninety (90) days before manufacturing (importing) Chemical A as described above constitutes failure to comply with TSCA section 5, 15 U.S.C. § 2604, which is a prohibited act under TSCA sections 15(1)(B), 15(1)(C) and 15(3)(B), 15 U.S.C. §§ 2614(1)(B), (1)(C) and (3)(B) for which penalties may be assessed.

COUNT II – 40 C.F.R. PART 711 VIOLATION

12. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule promulgated thereunder.
13. The Chemical Data Reporting Rule, (CDR), 40 C.F.R. Part 711, is a rule promulgated under authority of TSCA section 8(a), 15 U.S.C. § 2607(a).
14. On August 21, 2013, EPA inspectors found that Respondent improperly reported Chemical B to the CDR, 40 C.F.R. Part 711.
15. EPA alleges that Respondent's failure to report Chemical B in a manner required by the rule described above constitutes a prohibited act under TSCA section 15(3)(B), 15 U.S.C. § 2614(3)(B) for which penalties may be assessed.

COUNT III – TSCA SECTION 13(a)(1)(B) VIOLATION

16. TSCA section 13(a)(1)(B), 15 U.S.C. § 2612(a)(1)(B) provides that it is unlawful to import any chemical substance, mixture, or article containing a chemical substance or mixture offered for such entry if "... it is offered for entry in violation of section 5 or 6, a rule or order under section 5 or 6, or an order issued in a civil action brought under section 5 or 7."
17. On August 21, 2013, EPA inspectors found that Respondent imported Chemical A on August 14, 2013 without submitting or accurately certifying under TSCA section 13, 15 U.S.C. § 2612.
18. EPA alleges that Respondent's failure to submit a proper certification under TSCA section 13 prior to importing Chemical A as described above constitutes failure to comply with TSCA section 13, 15 U.S.C. § 2612, which is a prohibited act under TSCA section 15(3)(B), 15 U.S.C. § 2614 (3)(B).

III. CIVIL PENALTY

19. The proposed penalty in this matter is FORTY-ONE THOUSAND, EIGHT HUNDRED NINETY U.S. DOLLARS (\$41,890.00). The penalty is consistent with the "*TSCA Section 5 Enforcement Response Policy*" (issued August 5, 1988, as amended June 8, 1989 and July 1, 1993) ("TSCA § 5 ERP") and the "*Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13*" (revised March 31, 1999; effective June 1, 1999) ("TSCA § 8, 12, and 13 ERP"). Hereinafter the TSCA § 5 ERP and the TSCA

§ 8, 12, and 13 ERP are referred to collectively as the "TSCA ERPs"). The TSCA ERPs were developed in accordance with the "*Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*", which sets forth a general penalty assessment policy for TSCA violations. 45 Fed. Reg. 59,770 (Sept. 10, 1980). The TSCA ERPs establish a framework for applying the statutory factors to be considered in assessing a civil penalty, *i.e.*: "the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, 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." Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

20. The proposed civil penalty in this case reflects: (1) a determination of the Gravity-based Penalty ("GBP"); and (2) adjustments to the GBP, taking into account the statutory factors.
21. Not more than thirty (30) calendar days after the effective date of the Final Order, respondent shall either:
 - A. Dispatch a cashier's or certified check with a notation of "R.E. Carroll, Inc., Civil Penalty Docket No. TSCA-HQ-2015-5008" payable to the order of the "Treasurer of the United States of America" to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2015-5008
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

OR

- B. Pay by Fedwire transfer with a notation of "R.E. Carroll, Inc., Civil Penalty Docket No. TSCA-HQ-2015-5008" 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."]

22. Concurrently with Paragraph 21A or 21B, Respondent shall forward a copy of the check or documentation of a wire transfer to the following address with a certification that regarding

the violations alleged herein, Respondent is in compliance with sections 5, 13, and 15 of TSCA, 15 U.S.C. §§ 2604, 2612, and 2614.

U.S. Environmental Protection Agency
Office of Civil Enforcement
Waste and Chemical Enforcement Division (2249A)
Attn: Tony R. Ellis (Case Development Officer)
1200 Pennsylvania Ave., NW
Washington, DC 20460
Phone: (202) 564-4167
E-mail: Ellis.Tony@epa.gov

By written notice to Respondent, EPA may change the address and/or person listed above.

23. If Respondent fails to make the payment in a timely manner as required by Paragraph 21A or 21B, then Respondent shall pay a stipulated penalty of ONE THOUSAND U.S. DOLLARS (\$1,000.00) per calendar day for every day the penalty payment is late, unless EPA in writing excuses or mitigates the stipulated penalty. EPA may excuse or mitigate the stipulated penalty if EPA determines that the failure to comply occurred despite Respondent's exercise of good faith and due diligence.

IV. RESERVATION OF RIGHTS AND COVENANT NOT TO SUE

24. Payment of the penalty resolves the civil administrative claims alleged in this Consent Agreement.
25. Respondent is authorized to export Chemical A and Chemical B stocks in its control on the date this CAFO is fully executed, provided the exportation of the chemical substance occurs within ninety (90) calendar days of this execution date and conforms to any applicable federal, state, or local laws, statutes, regulations, and rules.
26. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent waives its right to contest the allegations herein, its right to appeal the Final Order, and its right to request a judicial or administrative hearing on any issue of law or fact set forth in, and resolved by, this Consent Agreement.
27. For the sole purpose of establishing Respondent's compliance history in any future enforcement proceeding that EPA may bring against Respondent within five (5) years of the date of the execution of the Final Order, Respondent agrees not to challenge the violations alleged in this Consent Agreement. Otherwise, Respondent neither admits nor denies the allegations, but consents to the terms and conditions of this CAFO.
28. This settlement is conditioned upon the thoroughness and accuracy of Respondent's representations to EPA in this matter.

29. Compliance with this CAFO shall not be a defense to any subsequent action EPA may commence pursuant to federal law or regulation for violations occurring after the date of this Consent Agreement, or any violations of TSCA not alleged in this Consent Agreement that may have occurred prior to the date that this Consent Agreement is fully executed by both Parties.
30. Nothing in this Consent Agreement or the Final Order is intended to, nor shall be construed to operate in any way to resolve any criminal liability of respondent.

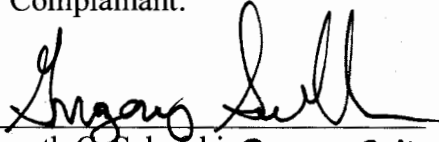
V. OTHER MATTERS

31. This Consent Agreement shall be binding upon the Parties, and their respective officers, directors, employees, successors and assigns. The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to enter into this binding Consent Agreement.
32. This Consent Agreement shall take full effect upon the signing and filing of the Final Order by EPA's Environmental Appeals Board.
33. Respondent's obligations under this Consent Agreement shall end when it has paid in full the scheduled civil penalty, paid any stipulated penalties, and completed the exportation of Chemical A and Chemical B as described in paragraph 25.
34. All of the terms and conditions of this Consent Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Consent Agreement shall be null and void if any term or condition of this Consent Agreement is held invalid or is not executed by all of the signatory parties in identical form, or is not approved in such identical form by EPA's Environmental Appeals Board.
35. The penalty, including any stipulated penalties, specified above represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal, state, or local income taxes.
36. Failure of Respondent to remit the civil penalties provided herein will result in this matter being forwarded to the United States Department of Justice for collection of the amount due, plus stipulated penalties and interest at the statutory judgment rate provided in 28 U.S.C. § 1961.

37. The Parties agree to bear their own costs and attorney's fees.

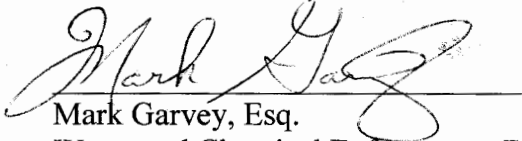
WE HEREBY AGREE TO THIS:

For Complainant:



~~Kenneth C. Schefski~~ Gregory Sullivan
Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

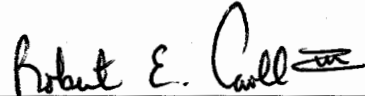
Date: 10/28/15



Mark Garvey, Esq.
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

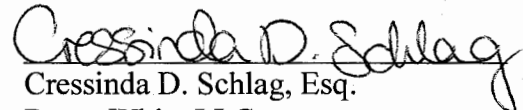
Date: 8/5/15

For Respondent:



(Company Representative)
R.E. Carroll, Inc.
1570 North Olden Avenue
Trenton, NJ 08638

Date: 6/23/2015



Cressinda D. Schlag, Esq.
Burns White LLC
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

Date: 06/29/2015