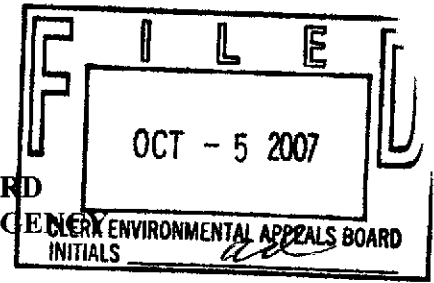


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In the Matter of: )

MarChem Corporation, )

Respondent. )

) Docket Number TSCA-HQ-2007-5008

**FINAL ORDER**

The United States Environmental Protection Agency as Complainant, and MarChem Corporation, as Respondent, the Parties herein, having signed and consented to entry of the attached Consent Agreement incorporated by reference into this Final Order,

NOW, THEREFORE, IT IS ORDERED THAT:

1. Respondent, MarChem Corporation shall comply with all terms of the Consent Agreement;
2. Respondent is assessed a civil penalty of **Three Hundred Thousand Dollars (\$300,000)**; and
3. Respondent shall, in accordance with the payment provisions set forth in the Consent Agreement, make payment via a certified or cashier's check or through a wire transfer as described in the Consent Agreement.

IT IS SO ORDERED.

By: 

Environmental Appeals Board


Dated: 10/5/07

**CERTIFICATE OF SERVICE**

I certify that the foregoing "Consent Agreement and Final Order," *MarChem Corporation*, Docket No. TSCA-HQ-2007-5008, was filed and copies of the same were mailed to the parties as indicated below:

(Interoffice)                      James Vinch, Esq.  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W. (Mail Code 2249A)  
Washington, D.C. 20460  
(202) 564-1256  
Fax: (202) 564-0035

(U.S. Mail)                         Rodney Washburn, Esq.  
General Counsel  
Dash Multi-Corp, Inc.  
2500 Adie Road  
Maryland Heights, MO 63043

  
\_\_\_\_\_  
Annette Duncan  
Secretary  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-0001

OCT - 5 2007  
Dated: \_\_\_\_\_

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

In the Matter of:	)	
	)	
MarChem Corporation	)	Docket Number TSCA-HQ-2007-5008
Maryland Heights, MO	)	
	)	
Respondent	)	

**CONSENT AGREEMENT**

Complainant United States Environmental Protection Agency (EPA or Agency) and Respondent MarChem Corporation (MarChem or Respondent), the parties herein, 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 40 C.F.R. § 22.13(b) and § 22.18(b)(2) and (3).

2. To avoid the disruption of orderly business activities and expense of protracted and costly 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.

## **II. EPA'S FINDINGS OF FACT AND LAW**

### **COUNT I**

3. Respondent, a corporation located at 2500 Adie Road, Maryland Heights, Missouri 63043, is a "person" as defined in 40 C.F.R. § 720.3(x) and, as such, is subject to TSCA and the regulations promulgated thereunder.
4. Respondent "manufactures" a "chemical substance," as defined by sections 3(2)(A) and 3(7) of TSCA, 15 U.S.C. § 2602(2)(A) and (7), and 40 C.F.R. § 720.3(q) and (e).
5. Any chemical substance which is not included in the chemical substance list (TSCA Inventory) compiled and published under TSCA § 8(b), 15 U.S.C. § 2607(b), is a "new chemical substance" pursuant to TSCA § 3(9), 15 U.S.C. § 2602(9) and 40 C.F.R. § 720.3(v).
6. Pursuant to 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), no person may manufacture a new chemical substance unless such person submits a Premanufacture Notification (PMN) to EPA at least ninety (90) days before manufacturing that substance.

7. TSCA section 15(1)(B), 15 U.S.C. § 2614(1)(B), provides that it is unlawful for any person to fail or refuse to comply with any requirement prescribed by TSCA section 5, 15 U.S.C. § 2604.
8. TSCA section 15(1)(C), 15 U.S.C. § 2614(1)(C), provides that it is unlawful for any person to fail or refuse to comply with any rule promulgated under TSCA section 5, 15 U.S.C. § 2604.
9. TSCA section 15(3)(B), 15 U.S.C. § 2614(3)(B) provides that it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA.
10. During an inspection of Respondent's facility on August 26, 2004, EPA discovered that Respondent had been manufacturing a chemical substance identified by Respondent as H9735 (Chemical A) that EPA alleges was not on the TSCA Inventory thereby violating TSCA section 5(a)(1) and 40 C.F.R. § 720.22(a)(1) and § 720.40(b).
11. Pursuant to Inventory Transaction Reports provided by Respondent to EPA on June 15, 2005 and May 3, 2007, Respondent documented that it had manufactured for commercial purposes a total of 602,936 pounds of Chemical A on 131 separate occasions during the time period of June 11, 2003 through April 12, 2006, without ever submitting a PMN for this chemical. Respondent is no longer manufacturing Chemical A.

12. EPA alleges that from June 11, 2003 to April 12, 2006 Chemical A did not appear on the TSCA Inventory.
  
13. EPA alleges that Respondent's failure to submit a PMN at least ninety (90) days before manufacturing Chemical A constitutes a failure to comply with 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), which is a violation of TSCA section 15(1)(B), (1)(C) and (3)(B), 15 U.S.C. § 2614(1)(B), (1)(C) and (3)(B).

#### COUNT II

14. Paragraphs 3 through 9 are re-alleged and incorporated herein by reference.
  
15. During an inspection of Respondent's facility on August 26, 2004, EPA discovered that Respondent had been manufacturing a chemical substance identified by Respondent as H4001-80 (Chemical B) that was not on the TSCA Inventory, thereby violating 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).
  
16. Pursuant to an Inventory Transaction Report provided by Respondent to EPA on June 15, 2005, Respondent documented that it had manufactured for commercial purposes 54,536 pounds of Chemical B on 26 separate occasions during the time period of September 4, 2002 through October 8, 2003, without ever submitting a PMN for this chemical.  
  
Respondent is no longer manufacturing Chemical B.

17. From September 4, 2002 to October 8, 2003 Chemical B did not appear on the TSCA Inventory.
18. Respondent's failure to submit a PMN at least ninety (90) days before manufacturing Chemical B constitutes a failure to comply with 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), which is a violation of TSCA section 15(1)(B), (1)(C) and (3)(B), 15 U.S.C. § 2614(1)(B), (1)(C) and (3)(B).

### COUNT III

19. Paragraphs 3 through 9 are re-alleged and incorporated herein by reference.
20. During an inspection of Respondent's facility on August 26, 2004, EPA discovered that Respondent had been manufacturing a chemical substance identified by Respondent as H4002-80 (Chemical C) that was not on the TSCA Inventory, thereby violating 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).
21. Pursuant to Inventory Transaction Reports provided by Respondent to EPA on June 15, 2005 and May 3, 2007, Respondent documented that it had manufactured 102,408 pounds of Chemical C on 52 separate occasions during the time period of September 23, 2003 through June 13, 2006, without ever submitting a PMN for this chemical. Respondent is no longer manufacturing Chemical C.

22. From September 23, 2003 to June 13, 2006 Chemical C did not appear on the TSCA Inventory.
  
23. Respondent's failure to submit a PMN at least ninety (90) days before manufacturing Chemical C constitutes a failure to comply with 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), which is a violation of TSCA section 15(1)(B), (1)(C) and (3)(B), 15 U.S.C. § 2614(1)(B), (1)(C) and (3)(B).

### **III. CIVIL PENALTY**

24. The proposed penalty in this matter is consistent with the *TSCA Section 5 Enforcement Response Policy*, issued August 5, 1988 and amended June 8, 1989 and July 1, 1993 (TSCA ERP). The *TSCA 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*, which sets forth a general penalty assessment policy for TSCA violations. 45 Fed. Reg. 59770 (Sept. 10, 1980) (Penalty Policy). The *TSCA ERP*, though not a regulation, establishes 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).



25. The proposed civil penalty in this case reflects: (1) a determination of the gravity-based penalty (GBP), in accordance with the statutory factors nature, circumstances, extent and gravity; and (2) adjustments to the GBP, taking into account the statutory factors ability to pay, effect on ability to continue business, prior violations, culpability, and such other matters as justice may require.
26. The GBP is determined by evaluating the nature, circumstances, and extent of the violation. In accordance with the *TSCA ERP*, the failure to submit a PMN when the substance was manufactured and distributed to others or further processed for commercial use by the company is a considered "Hazard Assessment," the circumstance level is "Level 3." When the quantity of the chemical manufactured on each separate occasion is over 7,500 lbs., the extent level is "Major." When the quantity of the chemical manufactured on each separate occasion between 750 lbs. and 7,500 lbs., the extent level is "Significant," and when the quantity of chemical manufactured is less than 750 lbs., the extent level is "Minor." The gravity factor is determined by the value at which, on the *TSCA ERP*'s GBP Matrix, the "circumstances" factor (vertical axis) intersects the "extent" factor (horizontal axis). In accordance with the *TSCA ERP*, the GBP for the 131 violations identified in Counts I is \$1,658,312. For the 26 violations identified in Count II, the GBP is \$286,000 and for the 52 violation identified in Count III, the GBP is \$626,955. Thus, the total GBP for Counts I, II and III is \$2,571,267.

27. EPA uses the "ABEL"<sup>1</sup> model to provide guidance in determining an entity's financial capability of paying a proposed civil penalty. Based upon tax returns and other financial data provided to EPA by Respondent, and, using the ABEL model along with other economic analysis of Respondent's data, EPA determined that Respondent did not have the financial ability to pay the full \$2,571,267 civil penalty and remain in business as a going concern. Based on ABEL and an independent economic analysis of Respondent's tax returns and financial data, EPA has determined that an appropriate and fair civil penalty payment to settle this action is \$300,000 and Respondent has the financial ability to pay this civil penalty while maintaining its ongoing business.

#### **IV. TERMS OF SETTLEMENT**

28. This settlement resolves only the civil administrative claims alleged in this Consent Agreement for Respondent's facility located at 2500 Adie Road, Maryland Heights, Missouri 63043.
29. If Respondent recommences the manufacture of Chemical A, Chemical B or Chemical C at any time in the future, it must submit a PMN to EPA at least 90 days prior to manufacturing any such chemical substance as required by 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).

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<sup>1</sup> The ABEL model is a computer program used to calculate an entity's ability to pay a civil penalty. ABEL can be downloaded from the Internet at <http://www.epa.gov/compliance/civil/econmodels/index.html>.

30. Respondent waives its right to request an administrative hearing pursuant to section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A) and waives its right to file a petition for judicial review of the Final Order assessing the civil penalty pursuant to section 16(a)(3) of TSCA, 15 U.S.C. § 2615(a)(3).
31. 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 admits that it is liable for the violations alleged in this Consent Agreement. By executing this Consent Agreement, Respondent certifies that regarding the violations alleged herein, Respondent is in compliance with sections 5 and 15 of TSCA, 15 U.S.C. § 2604 and § 2614.
31. The occurrence of any violation is in dispute and the entry of the Consent Agreement and Final Order shall not constitute an admission by Respondent of any violation alleged in this Consent Agreement of any statute or regulation; however, Respondent consents to the terms and conditions of this Consent Agreement and Final Order.
32. Respondent represents and warrants the facts it has certified and referenced in this Consent Agreement are true with the exception of those facts alleged in paragraphs 10 and 12 that Chemical A did not appear on the TSCA Inventory during the time period between June 11, 2003 to April 12, 2006. With respect to paragraphs 10 and 12, Respondent neither admits nor denies the truth and accuracy of the facts alleging that Chemical A was not on the TSCA Inventory during the above-referenced time period.

33. The effect of this settlement (provided in paragraph 28) is conditioned upon the accuracy of the certification referenced in paragraph 32.

34. Respondent agrees to pay a civil penalty in the sum of **Three Hundred Thousand Dollars (\$300,000)** in accordance with the following terms:

A. Not more than thirty (30) calendar days after the effective date of the Final Order, Respondent shall either submit a cashier's or certified check with a notation of "MarChem Corporation, Civil Penalty Docket No. TSCA-HQ-2007-5008," payable to the order of the "Treasurer, United States of America," to:

EPA-Washington  
(Hearing Clerk)  
Docket No. TSCA-HQ-2007-5008  
P.O. Box 360277  
Pittsburgh, PA 15251-6277

or pay by wire transfer with a notation of "MarChem Corporation, Civil Penalty Docket No. TSCA-HQ-2007-5008" by using the following instructions:

Name of Beneficiary:	EPA
Number of Account for deposit:	68010099
The Bank Holding Acct:	Treas_NYC
The ABA routing Number:	021030004

B. Respondent shall forward a copy of the check or documentation of a wire transfer

to: Tony R. Ellis, Case Development Officer  
Waste and Chemical Enforcement Division (2249A)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W. (Room No. 5041-A)  
Washington, D.C. 20460  
(202) 564-4167  
Fax (202) 564-0035

C. If Respondent fails to make the payment in a timely manner as required by paragraph 34.A., then Respondent shall pay a stipulated penalty of **One Thousand 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.

#### V. OTHER MATTERS

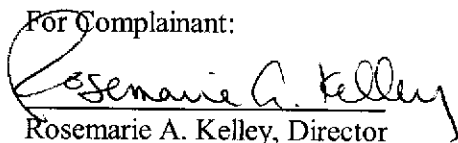
35. This Consent Agreement shall be binding upon the Parties, and their respective officers, directors, employees, successors and assigns. The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to enter into this binding Consent Agreement.
36. This Consent Agreement shall take full effect upon the signing and filing of the Final Order by EPA's Environmental Appeals Board.
37. Respondent's obligations under this Consent Agreement shall end when it has paid in full the scheduled civil penalty, paid any stipulated penalties, and submitted the documentation required by the Consent Agreement and Final Order.
38. 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.

39. The penalty, including any stipulated penalties, specified above represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.
40. 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.
41. The Parties agree to bear their own costs.

WE HEREBY AGREE TO THIS:

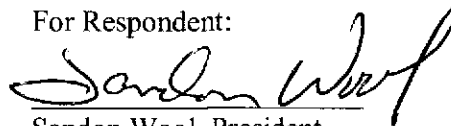
For Complainant:



Rosemarie A. Kelley, Director  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

8/6/07  
Date

For Respondent:



Sandon Wool, President  
MarChem Corporation

6/25/07  
Date