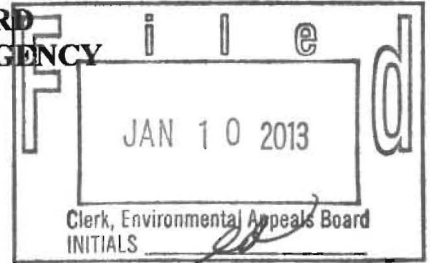


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In the Matter of:)
)
)
GE Reuter Stokes, Inc.)
Twinsburg, OH 44087)
)
)
Respondent)

Docket Number TSCA-HQ-2013-5001

CONSENT AGREEMENT

Complainant United States Environmental Protection Agency (EPA or Agency) and Respondent General Electric (GE) Reuter Stokes, Inc. (GE 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 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.
3. The Respondent waives any defenses it might have as to jurisdiction with regard to the specific matter and chemical addressed in this Consent Agreement and Final Order.

II. EPA'S FINDINGS OF FACT AND LAW

COUNT I

4. Respondent, a corporation located at 8499 Darrow Road, Twinsburg, OH 44087, is a "person" as defined in 40 C.F.R. § 720.3(x) and, as such, is subject to TSCA and its regulations.
5. Respondent "manufactures" a "chemical substance," as defined by TSCA §§ 3(7) and 3(2) respectively, 15 U.S.C. § 2602(7) and (2), and 40 C.F.R. § 720.3(e) and (q). The term "manufacture" means to import into the United States, produce, or manufacture.
6. 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).

7. Pursuant to TSCA § 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 (import) a new chemical substance unless such person submits a Premanufacture Notification (PMN) to EPA at least ninety (90) days before manufacturing that substance.
8. TSCA § 5(h)(4), 15 U.S.C. § 2604(h)(4), provides that EPA may exempt the manufacturer of certain new chemicals from all or part of the full PMN requirements.
9. 40 C.F.R. Part 723, PREMANUFACTURE NOTIFICATION EXEMPTIONS, was promulgated under the authority of TSCA § 5, 15 U.S.C. § 2604 (“Manufacturing and processing notices”) and sets forth EPA’s regulations regarding TSCA § 5(h)(4), 15 U.S.C. § 2604(h)(4). Section 723.50 addresses chemical substances manufactured in quantities of 10,000 kilograms or less per year, and/or chemical substances with low environmental release and human exposures.
10. 40 C.F.R. § 723.50(e)(1) provides that a Low Volume Exemption (“LVE”) applicant must submit to EPA an exemption application on the standard PMN form at least thirty (30) days (a mandatory EPA review period) before the manufacture (import) of the new chemical substance begins.
11. 40 C.F.R. § 723.50(e)(2) requires that the LVE application include: (1) the identity of the manufacturer or importer; (2) the identity of the chemical substances; (3) the identity of any unknown impurities; (4) any known synonyms; (5) any by-products; (6) the intended

production volume; (7) a description of intended categories of use; (8) for manufacturer-controlled sites only, the identity of manufacturing sites, process descriptions, and worker exposure and environmental release information; for sites not controlled by the manufacturer, processing and use operation descriptions, the estimated number of processing and use sites, and worker exposure/environmental release information; (9) an indication on the first page of the application that the submission is a "TSCA section 5(h)(4) exemption notice" and whether the application is submitted under 40 C.F.R. § 723.50(c)(1) (<10,000 kilograms) or (c)(2) (low environmental releases and human exposures); (10) any test data in the possession or control of the applicant regarding the new chemical's effects on human health and the environment; (11) required certifications; and (12) a sanitized copy of the notice.

12. TSCA § 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.
13. TSCA § 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.
14. TSCA § 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.

15. On September 28, 2012, Respondent voluntarily informed EPA in writing that it had potentially violated TSCA § 5 by failing to submit a PMN or LVE application for a new chemical substance identified by Respondent as Helium 3 (CAS# 14762-55-1).
16. On October 2, 2012, Respondent informed EPA that it had imported Helium 3 on one occasion prior to submitting a PMN or LVE for this chemical.
17. At the time of importation referenced above, Helium 3 did not appear in the TSCA Inventory.
18. EPA alleges that Respondent's failure to submit a PMN at least ninety (90) days before manufacturing (importing) Helium 3 constitutes a failure to comply with TSCA § 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

19. The proposed penalty in this matter is \$1,420. 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 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. 59,770 (Sept. 10, 1980) (Penalty Policy). The *TSCA ERP* 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).

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. Respondent agrees to pay a civil penalty in the sum of **One Thousand Four Hundred and Twenty Dollars (\$1,420)** 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 “GE Reuter Stokes, Inc., Civil Penalty Docket No. TSCA-HQ-2013-5001,” payable to the order of the “Treasurer, United States of America,” to:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2013-5001
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of “GE Reuter Stokes, Inc., Civil Penalty Docket No. TSCA-HQ-2013-5001” 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"

B. Concurrently with paragraph 21.A., Respondent shall forward a copy of the check or documentation of a wire transfer and a certification that regarding the violations alleged herein, Respondent is in compliance with sections 5 and 15 of TSCA, 15 U.S.C. §§ 2604 and 2614.

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

C. If Respondent fails to make the payment in a timely manner as required by paragraph 21.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.

IV. RESERVATION OF RIGHTS AND COVENANT NOT TO SUE

22. Payment of the penalty resolves the civil administrative claims alleged in this Consent Agreement for Respondent's facility located at 8499 Darrow Road, Twinsburg, OH 44087

23. Respondent is authorized to distribute and otherwise use Helium 3 stocks in its control on October 1, 2012, but shall not use more than 2000 kilograms of such stocks.
24. 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.
25. 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 Consent Agreement and Final Order.
26. This settlement is conditioned upon the thoroughness and accuracy of Respondent's representations to EPA in this matter.
27. Compliance with this Consent Agreement and Final Order 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.

28. 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.

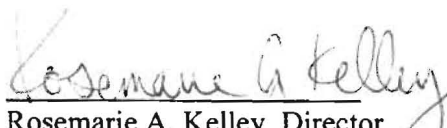
V. OTHER MATTERS

29. 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.
30. This Consent Agreement shall take full effect upon the signing and filing of the Final Order by EPA's Environmental Appeals Board.
31. 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.
32. 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.

33. The penalty, including any stipulated penalties, specified above represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.
34. 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.
35. The Parties agree to bear their own costs.

WE HEREBY AGREE TO THIS:

For Complainant:

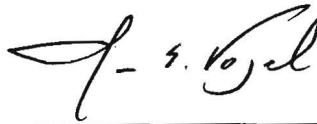


Rosemarie A. Kelley, Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

12/19/12

Date

For Respondent:



JAMES E. VOGEL
GENERAL MANAGER
GE REUTER STOKES INC.

10-26-12

Date