

Statutory and Regulatory Background

1. Section 8(a)(1)(A) of TSCA, 15 U.S.C. § 2607(a)(1)(A), authorizes the promulgation of rules by EPA under which each person who manufactures a chemical substance must maintain records and “submit to the Administrator such reports, as the Administrator may reasonably require,”
2. 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 thereunder.
3. Pursuant to 40 C.F.R. § 710.3, “person” means “any natural or juridical person including any individual, corporation, partnership, or association, any State or political subdivision thereof, or any municipality, and interstate body and any department, agency, or instrumentality of the Federal Government.”
4. “Manufacture” is defined by section 3(7) of TSCA, 15 U.S.C. § 2602(7), as “to import into the customs territory of the United States . . . , produce, or manufacture.”
5. A “chemical substance” is defined by section 3(2)(A) of TSCA, 15 U.S.C. § 2602(2)(A), as “any organic or inorganic substance of a particular molecular identity”
6. TSCA section 12(b)(1), 15 U.S.C. § 2611(b)(1), and the regulations set forth at 40 C.F.R. § 707.60, require any person who exports or intends to export a chemical substance or mixture for which a rule has been proposed or promulgated under TSCA sections 5 or 6 to notify the EPA of such exportation to a particular country.

Counts I - II

7. Respondent is a corporation that owns or controls a facility located at 598 3rd Street, Mead, Colorado, 80542.

8. Respondent is a "person" as defined in 40 C.F.R. § 710.3 and as such is subject to TSCA and the regulations promulgated thereunder.
9. Respondent "manufactures" a "chemical substance," as defined above in Paragraphs 4 and 5.
10. Respondent is an "exporter" as defined in 40 C.F.R. § 707.63(b).
11. Respondent is subject to the export notification requirement of TSCA section 12(b), 15 U.S.C. § 2611(b), and the regulations set forth at 40 C.F.R. § 707.60 because the chemical substance Methylum, triphenyl-, tetrakis (pentafluorophenyl) borate (1-), CASRN # 136040-19-2, which Respondent manufactures, is subject to a TSCA section 5(a)(2) rule.
12. Respondent exported the chemical substance indicated in Paragraph 11 above to two different countries on two different dates from January 23, 2009 to January 21, 2011 without prior notification to the Agency as required by TSCA section 12(b), 15 U.S.C. § 2611(b), 40 C.F.R. § 707.60, and as specified in 40 C.F.R. §§ 707.65 and 707.67.
13. Respondent's failure to comply with the required export notification requirements of TSCA section 12(b), 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).
14. A person who violates section 15 (3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), is subject to a civil penalty pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

II. CIVIL PENALTY ASSESSMENT

Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty for violations of TSCA section 15, 15 U.S.C. § 2614, in the maximum amount of \$25,000 for each day of violation. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires EPA to adjust penalties to account for

inflation. EPA's Civil Monetary Penalty Inflation Adjustment Rule establishes \$37,500 as the maximum civil penalty that may be assessed under TSCA § 16(a) for each day of violation occurring after January 12, 2009. *See* 40 C.F.R. Part 19.

For purposes of determining the amount of a civil penalty to be assessed, TSCA section 16(a)(2)(B), 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 will take into account the particular facts and circumstances of this case with specific reference to the statutory factors set forth in TSCA section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B), and the EPA's *Enforcement Response Policy (ERP) for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13* (revised March 31, 1999; effective June 1, 1999). *See* Attachment B. 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*, which sets forth a general penalty assessment policy for TSCA violations. 45 Fed. Reg. 59,770 (Sept. 10, 1980). *See* Attachment C. The policies provide rational, consistent, and equitable calculation methodologies for applying the statutory factors enumerated above to particular 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 \$14,450 for the violations alleged in this Complaint.

III. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in TSCA section 16(a)(2)(A), 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, Respondent must file a written Answer to the Complaint with the Headquarters Hearing Clerk, within 30 days of service of this Complaint, at the following address:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., 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. *See* Attachment A.

Pursuant to the Consolidated Rules of Practice, 40 C.F.R. § 22.15, 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. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which 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 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, as follows:

Erin Saylor, Attorney-Advisor
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
Telephone: (202) 564-6124
Email: saylor.erin@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, or 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. A Consent Agreement signed by EPA and Respondent would be binding as to all terms and conditions specified therein 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.

PAYMENT OF PENALTY

Instead of filing an Answer, requesting a hearing, or requesting an informal settlement conference, you may pay the proposed penalty to resolve this matter. *See* 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 "Boulder Scientific Company, Penalty Docket No. TSCA-HQ-2014-5005", payable to the order of the "Treasurer, United States of America", to:

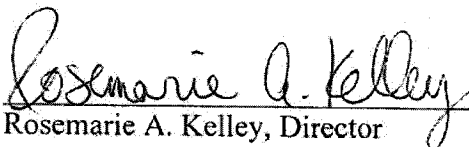
U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2014-5005
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of "Boulder Scientific Company, Penalty Docket No. TSCA-HQ-2014-5005" 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"

**In the Matter of Boulder Scientific Company
(Docket Number TSCA-HQ-2014-5005)**

By:



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

Date:

3/19/14

In the Matter of Boulder Scientific Company

ATTACHMENTS

Attachment A Consolidated Rules of Practice, 40 C.F.R. Part 22.

Attachment B *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).*

Attachment C *Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy, 45 Fed. Reg. 59,770 (Sept. 10, 1980).*

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

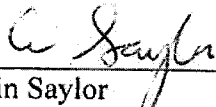
In the Matter of :)
)
Boulder Scientific Company)
Mead, CO)
)
Respondent)
_____)

Docket Number TSCA-HQ-2014-5005

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Complaint and Notice of Opportunity for Hearing, Docket No. TSCA-HQ-2014-5005, has been filed with the Headquarters Hearing Clerk and that a copy was sent certified mail, return receipt requested to:

Scott Birmingham
Chief Executive Officer
Boulder Scientific Company
P.O. Box 548
Mead, CO 80542



Erin Saylor
Attorney-Advisor
Waste and Chemical Enforcement Division
Office of Civil Enforcement (Mail Code 2249A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

3/20/2014

Date