

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the Matter of :

**Ponda International
Palo Alto, CA**

Respondent

Docket Number TSCA-HQ-2012-5006

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

I. COMPLAINT

This Complaint and Notice of Opportunity for Hearing (Complaint) is filed pursuant to section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. § 22. A copy of the Consolidated Rules of Practice is attached to this Complaint as Attachment A. The Complainant is Rosemarie A. Kelley, Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency (EPA or Complainant), who has been duly delegated the authority to initiate this action. The Respondent is Ponda International (Ponda or Respondent) located at 752 Middlefield Rd, Palo Alto, CA, 94301.

Complainant alleges that Respondent did not comply with the following three provisions of TSCA: (1) the testing requirements of section 4(b) of TSCA, 15 U.S.C. § 2603(b), and the Chemical Testing Requirements for High Production Volume Chemicals rule, 40 C.F.R. § 799.5085, (2) the reporting requirements of section 8(a) of TSCA, 15 U.S.C. § 2607(a), and the

Inventory Update Reporting Rule (IUR), 40 C.F.R. § 710, and, (3) the Chemical Testing Requirements for the Second Group of High Production Volume Chemicals (HPV 2) rule, 40 C.F.R. § 799.5087. Thus, Respondent's failure to comply with these requirements constitute three violations of section 15 of TSCA, 15 U.S.C. § 2614.

General Allegations

1. Respondent is Ponda International.
2. Respondent is a corporation organized under the laws of the State of California.
3. Respondent owns or controls a facility located at 752 Middlefield Rd, Palo Alto, CA, 94301.
4. Respondent is a "person" as defined in 40 C.F.R. § 790.3.
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. "Manufacture" is defined by sections 3(7) of TSCA, 15 U.S.C. § 2602(7), as "to import into the customs territory of the United States . . . , produce, or manufacture."
7. A person who violates section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), is subject to a civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count I

8. Pursuant to section 4(a)(1)(B) of TSCA, if a chemical substance or mixture is or will be produced in substantial quantities, and if there is or may be significant or substantial human exposure to such substance or mixture, then "the Administrator shall by rule require that testing be conducted on such substance or mixture."

9. Pursuant to 40 C.F.R. § 799.5085(b), persons who manufacture (including import) or intend to manufacture, or process or intend to process 9, 10-Anthracenedione, Chemical Abstract Service (CAS) No. 84-65-1 are subject to testing requirements.
10. Pursuant to 40 C.F.R. § 799.5085(c)(1), any person who meets the requirement set forth in Paragraph 9, and does not meet the requirements for Tier 2 are considered Tier 1 and are required to initially comply with the rule.
11. During the applicable period, Respondent manufactured 500 kg or more of 9, 10-Anthracenedione and did not otherwise meet the Tier 2 requirements.
12. Pursuant to 40 C.F.R. § 799.5085(c)(2), any person in Tier 1 who is required to comply must submit a letter of intent to test or apply to EPA for an exemption from testing no later than May 15, 2006.
13. Respondent failed to submit to EPA either a notice of intent to test or an application for exemption for 9, 10-Anthracenedione by May 15, 2006.
14. Respondent's failure to submit a notice of intent or application for exemption for 9, 10-Anthracenedione by May 15, 2006, is a failure to submit a report, notice, or other information as required by 40 C.F.R. § 799.5085
15. Respondent's failure to submit a notice of intent or application for exemption for 9, 10-Anthracenedione is a violation of section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).
16. 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.
17. A person who violates section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), is subject to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count II

18. Pursuant to 40 C.F.R. § 710.48(a), “[a]ny person who manufactured (including imported) for commercial purposes 25,000 pounds (11,340 kilograms) or more of a chemical substance [which is listed on the TSCA Master Inventory File] . . . at any single site owned or controlled by that person at any time during calendar year 2005 or during the calendar year at 5-year intervals thereafter is subject to reporting.”
19. Pursuant to 40 C.F.R. § 710.53, any person who is subject to reporting was required to file a report (Form U) with EPA between August 25, 2006, and March 23, 2007.
20. During calendar year 2005, Respondent manufactured for commercial purposes 25,000 pounds (11,340 kilograms) or more of 9, 10-Anthracenedione, CAS No. 84-65-1.
21. The chemical substance identified in paragraph 20, above, is listed on the TSCA Master Inventory File.
22. The chemical substance identified in paragraph 20, above, is not excluded from reporting under 40 C.F.R. § 710.46.
23. Respondent failed to submit to EPA a Form U for the chemical substance identified in Paragraph 20, above, between August 25, 2006, and March 23, 2007.
24. Respondent filed a 2006 Form U for the chemical substance listed in Paragraph 20, above, on or about October 27, 2008.
25. Respondent’s failure to submit a Form U for the chemical substance listed in Paragraph 20, above, between August 25, 2006, and March 23, 2007, is a failure to submit a report, notice, or other information as required by 40 C.F.R. §§ 710.48 and 53.
26. Respondent’s failure to submit a Form U for the chemical substance listed in Paragraph 20, above, is a violation of TSCA section 15(3)(B), 15 U.S.C. § 2614(3)(B).

27. 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.
28. A person who violates section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), is subject to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count III

29. Pursuant to section 4(a)(1)(B) of TSCA, if a chemical substance or mixture is or will be produced in substantial quantities, and if there is or may be significant or substantial human exposure to such substance or mixture, then "the Administrator shall by rule require that testing be conducted on such substance or mixture."
30. Pursuant to 40 C.F.R. § 799.5087(b), persons who manufacture (including import) or intend to manufacture, or process or intend to process 9, 10-Anthracenedione are subject to chemical testing requirements.
31. Pursuant to 40 C.F.R. § 799.5087(c)(1), any person who meets the requirement set forth in Paragraph 30, and does not meet the requirements for Tier 2 are considered Tier 1 and are required to initially comply with the rule.
32. During the applicable period, Respondent manufactured 500 kg or more of 9, 10-Anthracenedione and did not otherwise meet the Tier 2 requirements.
33. Pursuant to 40 C.F.R. § 799.5087(c)(2), any person in Tier 1 who is required to comply must submit a letter of intent to test or apply to EPA for an exemption from testing no later than March 9, 2011.

34. Respondent failed to submit to EPA either a notice of intent or an application for exemption for the chemical substance identified in Paragraph 32, above, by March 9, 2011.
35. Respondent's failure to submit a notice of intent to test or an application for exemption for the chemical substance identified in Paragraph 32, above, by March 9, 2011, is a failure to submit a report, notice, or other information as required by 40 C.F.R. § 799.5087.
36. Respondent's failure to submit a notice of intent or application for exemption for the chemical substance identified in Paragraph 32, above, is a violation of section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).
37. 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.
38. A person who violates section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), is subject to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

II. CIVIL PENALTY ASSESSMENT

TSCA § 16, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty for violations of TSCA §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 \$27,500 for each day of violation as the maximum civil penalty that may be assessed under TSCA § 16(a), per violation, occurring between January 30, 1997 and March 15, 2004; \$32,500 for violations occurring between March

16, 2004 and January 12, 2009; and \$37,500 for violations occurring after January 12, 2009. See 40 C.F.R. Part 19; 61 Fed. Reg. 69,360 (Dec. 31, 1996); 69 Fed. Reg. 7,121 (Feb. 12, 2004); 73 Fed. Reg. 75,340 (Dec. 11, 2008).

For purposes of determining the amount of a civil penalty to be assessed, TSCA section 16(a)(2)(B), 15 U.S.C. § 2615, 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 (statutory factors). 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, and the EPA's *Enforcement Response Policy for Test Rules Under Section 4 of the Toxic Substances Control Act* (effective May 28, 1986) and the EPA's *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). *See* Attachments B and C. These policies 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. 59770 (Sept. 10, 1980). *See* Attachment D. 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 \$30,692.00 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:

Headquarters Hearing Clerk (1900L)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, 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 Enclosure 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:

Carl J. Eichenwald, Attorney
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) 564-4036
Email: eichenwald.carl@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.

V. PAYMENT OF PENALTY

Instead of filing an Answer, requesting a hearing, or requesting an informal settlement conference, you may choose to pay the proposed penalty. Such payment should be made by sending either a cashier's or certified check with a notation of "Ponda International, Penalty Docket No. TSCA-HQ-2012-5006", payable to the order of the "Treasurer, United States of America", to:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2012-5006
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of "Ponda International, Penalty Docket No. TSCA-HQ-2012-5006" 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"

By:

Rosemarie A. Kelley

Date: 3/6/2012

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

ATTACHMENTS


- Attachment A Consolidated Rules of Practice (40 C.F.R. § 22).
- Attachment B *Enforcement Response Policy for Test Rules Under Section 4 of the Toxic Substances Control Act* (effective May 28, 1986).
- Attachment C *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 D *Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, 45 Fed. Reg. 59770 (Sept. 10, 1980).

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES**

<i>In the Matter of :</i>)	Docket Number TSCA-HQ-2012-5006
Ponda International)	CERTIFICATE OF SERVICE
Palo Alto, CA)	
Respondent)	

I hereby certify that the original of the foregoing Complaint and Notice of Opportunity for Hearing, Docket No. TSCA-HQ-2012-5006, has been filed with the Headquarters Hearing Clerk and that a copy was sent certified mail, return receipt requested to:

Yiran Mao
President
Ponda International
752 Middlefield Rd
Palo Alto, CA 94301



Carolyn Bernota (2249A)
Case Development Officer
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

3/6/12

Date