

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

_____)	
IN THE MATTER OF)	
)	
Tricon International Ltd., d/b/a)	
Tricon Energy Limited, and)	
Tricon Dry Chemicals, LLC)	Docket No. TSCA-HQ-2016-5001
Houston, TX 77056)	
)	
Respondent)	
_____)	

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (hereinafter “EPA” or the “Agency”), and Respondent which, for purposes of this Consent Agreement, consists of Tricon International Limited/Tricon Energy Limited and Tricon Dry Chemicals, LLC (hereinafter “Tricon” or “Respondent”), located at 777 Post Oak Boulevard, Houston, TX 77056, (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, 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 § 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), is being simultaneously commenced and concluded pursuant Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of 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. EPA notified Respondent by telephone and letter of inspection notification on September 11, 2014 that the Agency would conduct a TSCA compliance inspection at Tricon's offices in Houston, Texas. On September 25, 2014, EPA inspected the facility.
5. During the inspection, the EPA inspector determined that Respondent had failed to report imported chemicals subject to the 2012 CDR. The deadline for CDR submissions for the 2012 CDR period was August 13, 2012. Subsequent to the inspection, on October 29, 2014 Respondent submitted its 2012 Form U CDR submission. (Subsequent to the initial reporting, Respondent amended its CDR Form U submission correcting submissions which had been incorrectly reported in the hydrate form.)
6. Respondent's failure to submit a CDR Form U for each of the chemical substances by August 13, 2012 constitutes a failure to submit a report, notice, or other information as required by 40 C.F.R. § 711.20.
7. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

COUNT I – TSCA § 8 VIOLATIONS

8. Respondent owns or controls a facility located at 777 Post Oak Boulevard, Suite 550; Houston, TX 77056, is a "person" as defined in 40 C.F.R. § 710.3 and is subject to the requirements of TSCA, 15 U.S.C. § 2601 *et seq.* and the regulations promulgated thereunder.
9. 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..."
10. Respondent imports and distributes chemical substances or mixtures into the customs territory of the United States as those terms are defined in TSCA § 3(7) and 3(2), 15 U.S.C. § 2602(7) and (2), respectively, and 40 C.F.R. § 711.3.
11. 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 (including imports) a chemical substance, as defined by Section 3(7) of TSCA, 15 U.S.C. § 2602(7) must maintain records and "submit to the Administrator such reports, as the Administrator may reasonably require..."
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 thereunder.
13. Pursuant to 40 C.F.R. § 711.8(a), unless an exclusion applies, "[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 the principal reporting year (i.e. calendar year 2011) is subject to reporting.”

14. A person subject to 40 C.F.R. § 711.8(a) is required to electronically file using the eCDRweb submission tool to submit Form U to EPA pursuant to 40 C.F.R. § 711.35.
15. The deadline for Form U submissions for the 2012 CDR period was August 13, 2012, see 40 C.F.R. § 711.20.
16. During calendar year 2011, Respondent imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substances at the facility: described in paragraph 8:
 - Chemical 1: Sulfuric acid magnesium salt (1:1) (7487-88-9)
[Incorrectly reported in Respondent's initial October 29, 2014 CDR submission as the hydrate form: Magnesium sulfate heptahydrate (10034-99-8)]
 - Chemical 2: 1,4-Dimethylbenzene (106-42-3)
 - Chemical 3: Ethanol, 2,2'-[1,2-ethanediylbis(oxy)]bis- (112-27-6)
 - Chemical 4: Bis(2-Ethylhexyl)phalate (117-81-7)
 - Chemical 5: Potassium Hydroxide (1310-58-3)
 - Chemical 6: Sodium Hydroxide (1310-73-2)
 - Chemical 7: Titanium(IV) oxide (13463-67-7)
 - Chemical 8: Potassium carbonate (584-08-)
 - Chemical 9: 2-Cyanoguanidine (461-58-5)
 - Chemical 10: Methanol (67-56-1)
 - Chemical 11: Gasoline, pyrolysis, debutanizer bottoms (68606-10-0)
 - Chemical 12: Dichloromethane (75-09-2)
 - Chemical 13: Sodium nitrite (7632-00-0)
 - Chemical 14: Phosphoric acid (7664-38-2)
 - Chemical 15: Polyphosphoric acids (8017-16-1)
 - Chemical 16: Benzene, 1,2-dimethyl- (95-47-6)

17. The chemical substances listed in paragraph 16 above are included in the TSCA Master Inventory File.
18. Respondent's failure to submit a Form U for each of the chemical substances listed in paragraph 16 above by August 13, 2012 constitutes a failure to submit a report, notice, or other information as required by 40 C.F.R. § 711.20.
19. 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.

20. A violation of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

III. CIVIL PENALTY

21. Respondent is assessed a civil penalty of THREE HUNDRED TWENTY SEVEN, FIVE HUNDRED AND FIVE U.S. DOLLARS (\$327,505).
22. The penalty is consistent with 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”). The TSCA § 8, 12, and 13 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). The TSCA § 8, 12, and 13 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).
23. 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 in the amount of THREE HUNDRED TWENTY SEVEN, FIVE HUNDRED AND FIVE U.S. DOLLARS (\$327,505) made payable to the order of the “Treasurer of the United States of America”, and bearing the Civil Penalty Docket No. “TSCA-HQ-2016-5001” to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2016-5001
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

OR

- B. Pay by wire transfer in the amount of \$327,505 with a notation of “Tricon International Limited/Tricon Energy Limited, Civil Penalty Docket No. TSCA-HQ-2016-5001” 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”

24. Concurrently with Paragraph 23A or 23B, Respondent shall forward a copy of the check or documentation of a wire transfer to the following address:

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.

25. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.
26. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date that the EAB issues the Final Order, if the penalty is not paid by the date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge of not more than 12 percent (12 %) per year compounded annually will be assessed on any portion of the debt that remains delinquent more than thirty (30) days after payment is due.
27. Whenever this CAFO requires EPA to give notice or submit information to Respondent, such information shall be submitted to the address and to the attention of the individual listed below:

Philip A Moffat, Esq.
Verdant Law, PLLC
1025 Connecticut Ave., NW, Suite 1000
Washington, DC 20036
Phone: (202) 828-1233
Email: pmoffat@verdantlaw.com

and

Tricon International Limited/Tricon Energy Limited
Attn: James Prazak (Operations Manager)

777 Post Oak Boulevard
Houston, TX 77056
Phone: 713-496-3690
E-mail: PrazakJ@triconenergy.com

Respondent agrees that the notification may be issued *via* first class mail (including by certified mail or return receipt requested, Overnight Express, and Priority Mail), or any reliable commercial delivery service.

By written notice to EPA as specified in the address provided under Paragraph 24, Respondent may change the address and/or the person listed above.

IV. RESERVATION OF RIGHTS AND COVENANT NOT TO SUE

28. Payment of the penalty resolves the civil administrative claims alleged in this Consent Agreement.
29. Respondent neither admits nor denies the allegations in this Consent Agreement, but consents to the terms and conditions of this CAFO. Otherwise, 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.
30. By executing this Consent Agreement, Respondent certifies, to the best of its knowledge and belief, after making reasonable inquiry, that regarding the specific CDR violations alleged above, Respondent is in compliance with section 8(a) of TSCA; 15 U.S.C. § 2607(a).
31. 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 that were not disclosed to EPA by Respondent as part of the September 25, 2014 site inspection, Respondent's associated Form U submission, and information provided by Respondent to EPA in response to supplemental information requests following the inspection.
32. 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

33. 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.

34. This Consent Agreement shall take full effect upon the signing and filing of the Final Order by EPA's Environmental Appeals Board.
35. 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 CAFO.
36. 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.
37. 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.
38. 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.
39. The Parties agree to bear their own costs and attorney's fees.

WE HEREBY AGREE TO THIS:

For Complainant:



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: 3/7/16



Mark Seltzer, Attorney
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

For Respondent:



James Prazak
Operations Manager
Tricon International Limited, d/b/a as
Tricon Energy Limited, and
Tricon Dry Chemicals, LLC
777 Post Oak Boulevard, Suite 550
Houston, TX 77056

Date: 2/9/16

Date: 3/7/16

This page is blank.