

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

***In the Matter of :***

**Y H America, Inc.  
Versailles, KY**

**Respondent**

**Docket Number TSCA-HQ-2007-5004**

**CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency (EPA or Agency) and Respondent, Y H America, Inc. (Respondent or the Company)(collectively, the Parties), having consented to the entry of this Consent Agreement 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 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)-(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. EPA promulgated the Inventory Update Reporting (IUR) regulations (IUR Rule), 40 C.F.R. Part 710, pursuant to section 8(a) of TSCA, 15 U.S.C. § 2607(a).
4. Respondent, a corporation, located at 103 Kuhlman Drive, Versailles, Kentucky 40383, is a "person" as defined by the IUR Rule, 40 C.F.R. § 710.3.
5. 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 the IUR Rule, 40 C.F.R. § 710.3.
6. Respondent is subject to TSCA and regulations promulgated thereunder.
7. Pursuant to the IUR Rule, 40 C.F.R. § 710.28(b), unless an exclusion applies, "[a]ny person who manufactured for commercial purposes 10,000 pounds (4,540 kilograms) or more of a chemical substance [which is in the TSCA Master Inventory File] . . . at any single site owned or controlled by that person at any time during the person's latest complete corporate fiscal year before August 25, 1990, or before August 25 at four-year intervals thereafter" is subject to recurring IUR reporting during the applicable reporting period.
8. A person subject to IUR reporting is required to file a Partial Updating of TSCA Inventory Data Base Production and Site Report (Form U) with EPA.
9. The deadline for Form U submissions for the 2002 IUR period was December 23, 2002, 40 C.F.R. § 710.33(b).

10. During Respondent's latest complete corporate fiscal year prior to August 25, 2002, Respondent manufactured or imported for commercial purposes 10,000 pounds (4,540 kilograms) or more of the chemical substance, 1,2,4 Benezentricarboxylic Acid, Mixed 2-Ethylhexyl and Stearyl Triesters, hereinafter identified as P98-1032.
11. The chemical substance P98-1032 is included in the TSCA Master Inventory File, and is not excluded from reporting under the IUR Rule, 40 C.F.R. § 710.26.
12. Pursuant to 40 C.F.R. § 710.33(b), a rule promulgated under TSCA section 8(a), Respondent was required to file a Form U by December 23, 2002.
13. On July 22, 2003 by telephone and by an inspection letter of notification, EPA notified Respondent that the Agency would conduct an inspection to determine compliance with TSCA.
14. On July 29, 2003, an authorized representative of EPA conducted an inspection of Respondent's place of business at 103 Kuhlman Drive, Versailles, Kentucky 40383, pursuant to section 11 of TSCA, 15 U.S.C. § 2610.
15. In a letter to EPA dated August 8, 2003, Respondent stated that "[a]n IUR form related to the PMN P98-1032 for the substance C-818 has been filed with the EPA."
16. On or about August 11, 2003, Respondent filed an amended 2002 Form U to include the chemical substance P98-1032.
17. Respondent's failure to submit a Form U for P98-1032 by December 23, 2002 constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.33(b).
18. 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.

19. 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

20. The proposed penalty in this matter 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 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). 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).

21. 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.

22. The GBP is determined by evaluating the nature, circumstances, and extent of the violation. In accordance with the *TSCA ERP*, the nature of the violation set forth in Count I is “Hazard Assessment,” the circumstance level is “Level 1,” and the extent level is “Significant.”

The gravity factor is determined by the value at which, on the *TSCA ERP*'s GBP Matrix (page 8), the "circumstances" factor (vertical axis) intersects the "extent" factor (horizontal axis). In accordance with the *TSCA ERP* the GBP for Count I is \$18,700.00.

23. For purposes of settlement, pursuant to section 16(a) of TSCA and the *TSCA ERP*, EPA has reduced the GBP by fifteen percent (15%) to reflect other relevant factors such as the Company's cooperation, general attitude to comply with TSCA, and the promptness of the violator's corrective actions. EPA has, therefore, determined that an appropriate and fair civil penalty to settle this action is \$15,895.00.

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

24. This settlement resolves only the civil administrative claims alleged in this Consent Agreement for Respondent's facility located at 103 Kuhlman Drive, Versailles, Kentucky 40383.

25. 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).

26. 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. Otherwise, Respondent neither admits nor denies the allegations, but consents to the terms and conditions of this Consent Agreement and Final Order.

27. By executing this Consent Agreement, Respondent certifies that regarding the violations alleged herein, Respondent is in compliance with sections 8 and 15 of TSCA; 15 U.S.C. §§ 2607 and 2614.
28. Respondent represents and warrants that the facts it has certified and referenced in this Consent Agreement are true.
29. The effect of this settlement (provided in paragraph 24) is conditioned upon the thoroughness and accuracy of the representations in Respondent's Form U submission and the certification referenced in paragraph 27.
30. Respondent agrees to pay a civil penalty in the sum of **Fifteen Thousand Eight Hundred Ninety-Five Dollars (\$15,895.00)** 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 "Y H America, Inc., Civil Penalty Docket No. TSCA-HQ-2007-5004," payable to the order of the "Treasurer, United States of America," to:

EPA-Washington  
(Hearing Clerk)  
Docket No. TSCA-HQ-2007-5004  
P.O. Box 360277  
Pittsburgh, PA 15251-6277

or pay by wire transfer with a notation of "Y H America, Inc., Civil Penalty Docket No. TSCA-HQ-2007-5004" 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  
Toxics and Pesticides Enforcement Division (2245A)  
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 30.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**

31. 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.

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

33. 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.

34. 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.

35. The penalty, including any stipulated penalties, specified above represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.

36. 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.

37. The Parties agree to bear their own costs.

WE HEREBY AGREE TO THIS:

For Complainant:

Stephanie P. Brown

Stephanie P. Brown, Acting Director  
Toxics and Pesticides Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

12-22-06  
Date

For Respondent:

A. Matricula  
(Representative of Y H America, Inc.)

11/29/06  
Date