

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

In the Matter of :

Bethlehem Apparatus
Company, Inc.
Hellertown, PA

Respondent

Docket Number TSCA-HQ-2012-5016

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

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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. Part 22, a copy of which is enclosed with this Complaint. *See* 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 institute this action. The Respondent is Bethlehem Apparatus Company, Inc. (BACO or Respondent) located at 890 Front Street, Hellertown, PA 18055.

Complainant alleges that Respondent has violated the reporting requirements of section 8(a) of TSCA, 15 U.S.C. § 2607(a), and the Inventory Update Reporting Rule (IUR) at 40 C.F.R. Part 710 and sections 12(b) and 13 of TSCA, 15 U.S.C. §§ 2611(b) and 2612 and the Chemical

Imports and Exports Requirements at 40 C.F.R. Part 707, thereby violating section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

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 judicial 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. Pursuant to 40 C.F.R. § 710.48(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 calendar year 2005 or during the calendar year at 5-year intervals thereafter is subject to reporting.”

7. A person subject to 40 C.F.R. § 710.48(a) is required to file a Partial Updating of TSCA Inventory Data Base Site Report (Form U) with the EPA pursuant to 40 C.F.R. § 710.39.
8. 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.

COUNT I

9. Respondent is a corporation that owns or controls a facility located at 890 Front Street, Hellertown, PA 18055.
10. 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.
11. Respondent "manufactures" a "chemical substance," as defined above in Paragraphs 4 and 5.
12. During calendar year 2005, Respondent manufactured for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substance at the facility described above in Paragraph 9:

Chemical #1: Mercury - Chemical Abstract Service (CAS) No. 7439-97-6.
13. The chemical substance listed above in Paragraph 12 is included in the TSCA Master Inventory File.
14. The chemical substance listed above in Paragraph 12 is not excluded from reporting under 40 C.F.R. § 710.46.
15. Respondent failed to submit to the EPA a 2006 Form U for the chemical substance listed in Paragraph 12 as required between August 25, 2006 and March 23, 2007.
16. Respondent filed a 2006 Form U for the chemical substance listed in Paragraph 12 on or about March 30, 2012.

17. Respondent's failure to submit a Form U for the chemical substance listed in Paragraph 12 by 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.
18. Respondent's failure to submit a Form U for the chemical substance in Paragraph 12 constitutes a violation of section 15 (3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).
19. 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).

COUNTS II-VII

20. Paragraphs 2 through 5 are re-alleged and incorporated herein by reference.
21. Respondent is an "exporter" as defined in 40 C.F.R. § 707.63(b).
22. TSCA § 12(b), 15 U.S.C. §2611(b), 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 to notify the EPA of such exportation to a particular country for which a rule has been proposed or promulgated under TSCA §§ 5 or 6. Respondent is subject to the above requirement because the chemical substance Mercury, CAS No. 7439-97-6, which Respondent manufactures, is subject to a TSCA § 5(a)(2) rule.
23. Respondent exported the chemical substance indicated in Paragraph 22 above to six different countries on six different dates from January 11, 2008 to January 12, 2010 without prior notification to the Agency as required by TSCA § 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.

24. Respondent's failure to comply with the required export notice 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).
25. 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).

COUNTS VIII-XXXVII

26. Paragraphs 2 through 5 are re-alleged and incorporated herein by reference.
27. Pursuant to 19 C.F.R. § 12.121, promulgated to implement section 13 of TSCA, 15 U.S.C. § 2612, importers are required to certify by a signed statement that any shipment of a chemical substance subject to TSCA, imported in bulk or as part of a mixture, complies with TSCA, and that it is not offered for entry in violation of TSCA or any rule or order under TSCA, or that the chemicals imported are not subject to TSCA.
28. Beginning on June 13, 2007, and continuing to and including April 6, 2010, Respondent imported a chemical substance, Mercury, CAS No. 7439-97-6, on twenty-nine (29) different days and failed to submit the twenty-nine (29) certifications as required by 19 C.F.R. § 12.121.
29. Respondent's failure to comply with the required certification requirements of 19 C.F.R. § 12.121, promulgated to implement section 13 of TSCA, 15 U.S.C. § 2612, violates section 15 (3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).
30. 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 \$27,500 for each day of violation as the maximum civil penalty that may be assessed under TSCA section 16(a), per violation, occurring after January 30, 1997 through 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.

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 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)(*TSCA ERP*). *See* Attachment B. 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). *See* Attachment C. The *TSCA ERP* provides a

rational, consistent, and equitable calculation methodology 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 \$103,433 for the violations alleged in this Complaint.

III. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in TSCA § 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 thirty (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* 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 thirty (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:

Geraldine Gardner, 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) 564-4032; Email: Gardner.Geraldine@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 to resolve this matter pursuant to 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 "Bethlehem Apparatus Company, Inc., Penalty Docket No. TSCA-HQ-2012-5016," payable to the order of the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2012-5016
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of "Bethlehem Apparatus Company, Inc., Penalty Docket No. TSCA-HQ-2012-5016" by using the following instructions:

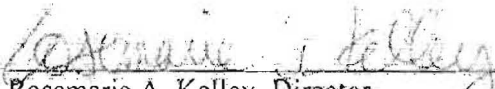
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

U.S. ENVIRONMENTAL PROTECTION AGENCY

TSCA-HQ-2012-5016

In Re: Bethlehem Apparatus Company, Inc. -- Complainant

By:



Date:

5/3/12

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. 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).

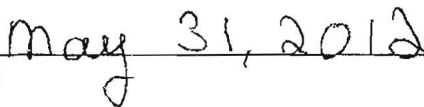
CERTIFICATION

I hereby certify that the original of the foregoing Complaint and Notice of Opportunity for Hearing, Docket No. TSCA-HQ-2012-5016, has been filed with the Headquarters Hearing Clerk and that a copy was sent certified mail, return receipt requested to:

Mr. Bruce Lawrence, Senior Executive Officer
Bethlehem Apparatus Company, Inc
890 Front Street
Hellertown, PA 18055



Tony R. Ellis (0249A)
Case Development Officer
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460


Date