

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

_____)
In the Matter of:)
)
The Lincoln Electric Company)
Cleveland, Ohio)
)
Respondent)
_____)

Docket Number TSCA-HQ-2013-5005

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (EPA or Agency), and Respondent, The Lincoln Electric Company (Respondent), located at 22801 Saint Clair Avenue, Cleveland, Ohio 44117-1199, (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 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.

3. The Respondent waives any defenses it might have as to jurisdiction.

II. EPA's FINDINGS OF FACT AND LAW

COUNTS 1-5

4. 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"
5. 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.
6. 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."
7. "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."
8. 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...."

9. 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.”
10. A person subject to 40 C.F.R. § 710.48(a) is required to file a Partial Updating of the TSCA Inventory Data Base Site Report (Form U) with the EPA pursuant to 40 C.F.R. § 710.59.
11. The deadline for Form U submissions for the 2006 IUR period was March 23, 2007, *see* 40 C.F.R. § 710.53.
12. 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.
13. Respondent “manufactures” a “chemical substance,” as defined above in Paragraphs 7 and 8.
14. Respondent is a corporation that owns or controls a facility located at 22801 Saint Clair Avenue, Cleveland, Ohio, 44117-1199.
15. During calendar year 2005, Respondent manufactured or imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substances at the facility described in paragraph 14:

Chemical #1: Fused & Dead-Burned Magnesia (CASN 1309-48-4)
16. Respondent also owns or controls a facility located at 4501 Quality Place, Mason, Ohio, 45040.

17. During calendar year 2005, Respondent manufactured or imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substances at the facility described in paragraph 16:

Chemical #2: Potassium fluoride (CASN 7789-23-3)

Chemical #3: Boric Acid (CASN 10043-35-3)

Chemical #4: Petrolatum (CASN 8009-03-08)

Chemical #5: Zinc Chloride (CASN 7646-85-7)

18. The chemical substances listed in paragraphs 15 and 17 above are included in the TSCA

Master Inventory File.

19. Respondent's failure to submit a Form U for each of the chemical substances listed in paragraphs 15 and 17 above by March 23, 2007 constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.53.

20. 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.

21. A violation of section 15(3)(B) of TSCA for failure to submit reports, notices, or other information as required by TSCA or a rule thereunder subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

III. CIVIL PENALTY

22. 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

25. In accordance with the *TSCA ERP*, the GBP for Counts 1 – 5 ($\$21,922^1 \times 5$) is \$109,610.
26. 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 Respondent's cooperation and general attitude to comply with TSCA. EPA has, therefore, determined that the civil penalty to settle this action is \$93,169.

VI. TERMS OF SETTLEMENT

27. This settlement resolves only the civil administrative claims alleged in this Consent Agreement for Respondent's Cleveland, Ohio and Mason, Ohio facilities for the failure to submit reports, notices, or other information as required by TSCA or a rule thereunder, which are the sole claims alleged by EPA as a result of the February 8, 2012 Notice of Violation, Opportunity to Show Cause and Information Request.
28. 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).
29. Respondent neither admits nor denies the allegations.
30. By executing this Consent Agreement, Respondent certifies that regarding the violations alleged herein for the failure to submit reports, notices, or other information as required by TSCA or a rule thereunder, Respondent is in compliance with sections 8 and 15 of TSCA;

¹ The ERP matrix penalty amount has been increased pursuant to the Debt Collection Improvement Act of 1996, Civil Monetary Inflation Adjustment Rule, 69 Fed. Reg. 7,121 (February 13, 2004), codified at 40 C.F.R. Parts 19 and 27.

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 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).

23. The proposed civil penalty is for the alleged failure of Respondent to submit reports, notices, or other information as required by TSCA or a rule thereunder and 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.
24. The GBP is determined by evaluating the nature, circumstances, and extent of the violation. In accordance with the *TSCA ERP*, the nature of the violations set forth in Counts 1 – 5 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-A), the “circumstances” factor (vertical axis) intersects the “extent” factor (horizontal axis).

15 U.S.C. §§ 2607 and 2614.

31. Respondent represents and warrants that the facts it has certified and referenced in this Consent Agreement are true.
32. The effect of this settlement (provided in paragraph 27) is conditioned upon the thoroughness and accuracy of the representations in Respondent's revised Form U submission and the certification referenced in paragraph 31.
33. Respondent agrees to pay a civil penalty in the sum of **Ninety-Three Thousand One Hundred and Sixty Nine Dollars (\$93,169)** 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, certified check, or other instrument of payment agreed upon by the complainant and respondent with a notation of "The Lincoln Electric Company, Civil Penalty Docket No. TSCA-HQ-2013-5005," payable to the order of the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2013-5005
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of "The Lincoln Electric Company, Civil Penalty Docket No. TSCA-HQ-2013-5005" by using the following instructions:

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

B. Respondent shall forward a copy of the check or documentation of a wire transfer to:

Tony R. Ellis, Case Development Officer
Waste and Chemical Enforcement Division (2249A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (Room No. 5041-A)
Washington, DC 20460
Phone (202) 564-4167 Fax (202) 564-0035

C. If Respondent fails to make the payment in a timely manner as required by paragraph

33.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

34. The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to sign and consent to this Agreement.

35. This Consent Agreement shall take full effect upon signing and filing of the Final Order by EPA's Environmental Appeals Board and shall be binding upon the Parties, and their respective officers, directors, employees, successors and assigns.

36. 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 documentation required by the Consent Agreement and Final Order.
37. 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 the EPA Environmental Appeals Board.
38. The penalty, including any stipulated penalties specified above, represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.
39. 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.
40. The Parties agree to bear their own costs.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of The Lincoln Electric Company, Docket No. TSCA-HQ-2013-5005.

For Respondent:

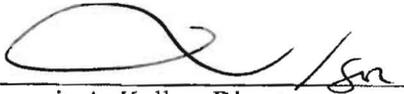


John S. Petkovsek
Director, EHS
The Lincoln Electric Company
22801 Saint Clair Avenue
Cleveland, Ohio 44117-1199

3/21/13
DATE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of The Lincoln Electric Company, Docket No. TSCA-HQ-2013-5005.

For Complainant:



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

4/1/13

DATE

