

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

In the Matter of :

**Haldor Topsoe, Inc.
Houston, Texas**

Respondent

Docket Number TSCA-HQ-2012-5015

**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 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 Haldor Topsoe, Inc. (Haldor Topsoe or Respondent), headquartered at 17629 El Camino Real, Suite 300, Houston, Texas, 77058.

Complainant alleges that Respondent did not comply with the reporting requirements of section 8(a) of TSCA, 15 U.S.C. § 2607(a), and the Inventory Update Reporting Rule (IUR) promulgated thereunder at 40 C.F.R. Part 710. Respondent's failure to comply with these requirements violates section 15 of TSCA, 15 U.S.C. § 2614.

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 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.”
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 the TSCA Inventory Data Base Site Report (Form U) with the EPA pursuant to 40 C.F.R. § 710.59.

8. Pursuant to 40 C.F.R. § 710.52(c)(3)(iv), the total volume of each reportable chemical substance must be reported within 10% of the actual volume manufactured and imported.
9. Pursuant to 40 C.F.R. § 710.53, any person who is subject to reporting was required to file a Form U for each reportable chemical substance with EPA between August 25, 2006 and March 23, 2007.

Counts I - IV

10. Respondent is a corporation that owns or controls a facility located at 10010 Bayport Road, Pasadena, Texas, 77507.
11. 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.
12. Respondent "manufactures" a "chemical substance," as defined above in Paragraphs 4 and 5.
13. During calendar year 2005, Respondent manufactured for commercial purposes 25,000 pounds (11,340 kilograms) or more of each of the following chemical substances at the facility described above in Paragraph 10:

Chemical #1: Potassium metavanadate, Chemical Abstract Service (CAS) No. 13769-43-2
Chemical #2: Potassium oxide, CAS No. 12136-45-7
Chemical #3: Iron, CAS No. 7439-89-6
Chemical #4: Iron (III) oxide, CAS No. 1309-37-1
14. The chemical substances listed above in Paragraph 13 are included in the TSCA Master Inventory File.
15. Pursuant to 40 C.F.R. § 710.46(b)(3), the chemical substances listed above in Paragraph 13 are excluded from reporting under the IUR Rule only with regard to the process and use reporting requirements under 40 C.F.R. § 710.52(c)(4).

16. Respondent failed to submit to the EPA a 2006 Form U for each of the chemical substances listed in Paragraph 13 as required between August 25, 2006 and March 23, 2007.
17. Respondent filed a 2006 Form U for each of the chemical substances listed in Paragraph 13 on or about March 2, 2009.
18. Respondent's failure to submit a Form U for each of the chemical substances listed in Paragraph 13 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.
19. Respondent's failure to submit a Form U for each of the chemical substances in Paragraph 13 constitutes four separate violations of section 15 (3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).
20. 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 V - XIII

21. Paragraphs 10 through 12 are re-alleged and incorporated herein by reference.
22. During calendar year 2005, Respondent manufactured for commercial purposes 25,000 pounds (11,340 kilograms) or more of each of the following chemical substances at the facility described above in Paragraph 10:

Chemical #5: Nickel, CAS No. 7440-02-0
Chemical #6: Copper (II) oxide, CAS No. 1317-38-0
Chemical #7: Zinc oxide, CAS No. 1314-13-2
Chemical #8: Magnesium oxide, CAS No. 1309-48-4
Chemical #9: Iron (II, III) oxide, CAS No. 1309-38-2
Chemical #10: Silica, CAS No. 7631-86-9
Chemical #11: Tungsten trioxide, CAS No. 1314-35-8
Chemical #12: Nickel oxide, CAS No. 1313-99-1
Chemical #13: Aluminum oxide, CAS No. 1344-28-1

23. The chemical substances listed above in Paragraph 22 are included in the TSCA Master Inventory File.
24. Pursuant to 40 C.F.R. § 710.46(b)(3), the chemical substances listed above in Paragraph 22 are excluded from reporting under the IUR Rule only with regard to the process and use reporting requirements under 40 C.F.R. § 710.52(c)(4).
25. Respondent filed a Form U for each of the chemical substances listed in Paragraph 22 on or about December 14, 2006.
26. On or about March 2, 2009, Respondent filed a revised Form U to amend the volumes originally reported for each of the chemical substances listed in Paragraph 22 above.
27. The amended volumes Respondent submitted on or about March 2, 2009, differed from the volumes Respondent reported on or about December 14, 2006, by significantly more than the 10% variance allowable under 40 C.F.R. § 710.52(c)(3)(iv).
28. Respondent's failure to report the total volume of the chemicals listed in Paragraph 22 above within 10% of the actual volume manufactured and imported constitutes a failure to submit a report, notice or other information in the manner required by 40 C.F.R. § 710.52(c)(3)(iv).
29. Respondent's failure to report in the manner required by 40 C.F.R. § 710.52(c)(3)(iv) for each of the chemical substances in Paragraph 22 constitutes nine separate violations of 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 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. 13, 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(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 the EPA's *Enforcement Response Policy (ERP) for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13* (revised March 31, 1999; effective June 1, 1999). *See* Attachment B. The 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 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 \$202,779 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* 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 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:

Erin Saylor, Attorney-Advisor
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) 564-6124
Email: saylor.erin@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.

PAYMENT OF PENALTY

Instead of filing an Answer, requesting a hearing, or requesting an informal settlement conference, you may pay the proposed penalty to resolve this matter. *See* 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 "Haldor Topsoe, Inc., Penalty Docket No. TSCA-HQ-2012-5015", payable to the order of the "Treasurer, United States of America", to:

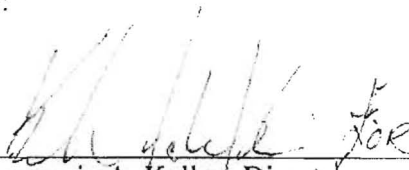
U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2012-5015
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of "Haldor Topsoe, Inc., Penalty Docket No. TSCA-HQ-2012-5015" 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"

In the Matter of Haldor Topsoe, Inc.
(Docket Number TSCA-HQ-2012-5015)

By:



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

Date: _____

6/19/2012

In the Matter of Haldor Topsoe, Inc.

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).

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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**Haldor Topsoe, Inc.
Houston, Texas**

Respondent

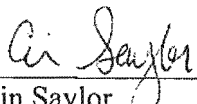
Docket Number TSCA-HQ-2012-5015

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Complaint and Notice of Opportunity for Hearing, Docket No. TSCA-HQ-2012-5015, has been filed with the Headquarters Hearing Clerk and that a copy was sent certified mail, return receipt requested to:

Anders Olsen
Chief Executive Officer
Haldor Topsoe, Inc.
17629 El Camino Real, Suite 300
Houston, Texas 77058

Edward Lewis, Partner
Fulbright & Jaworski LLP
Fulbright Tower
1301 McKinney, Suite 5100
Houston, Texas 77010-3095



Erin Saylor
Attorney-Advisor
Waste and Chemical Enforcement Division
Office of Civil Enforcement (Mail Code 2249A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

6/20/2012

Date

2731512

Generated: Jul 3, 2012 9:52:47 AM **Transaction Reporting System (TRS)**

Fedwire Detail Report

Voucher Details

Voucher Number	Voucher Date	Voucher Type	Number of Fedwire Messages	ALC	Credit Ind	Voucher Amount
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Message Summary: 1207020007591

Type/Sub-Type	Agency Account ID	Cash Flow ID	Cash Flow Name	Financial Transaction Status	Financial Transaction Type	Business Date	Settlement Date	Credit Ind	Message Amount	Trace Number
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Message Details

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		MSG-STATUS-IND	N
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		ACCEPTANCE-TIME	0514
		ACCEPTANCE-APPL-ID	FT03
1120	OMAD	OUTPUT-CYCLE-DATE	20120702
		OUTPUT-DESTINATION-ID	MMQFMP60
		OUTPUT-SEQUENCE-NUMBER	000052
		OUTPUT-DATE	0702
		OUTPUT-TIME	0514
		OUTPUT-FRB-APPL-ID	FT03
1510	TYPE-SUBTYPE	TYPE-CODE	10

CNR TSCA HQ 2012 595

CNR 80 202779.00

Department of the Treasury/Financial Management Service
This report contains Personally Identifiable Information

LIABILITY ✓

HAUDON TOPSOC

REGION HQ

BLAICE

7-2-12

Generated:

Jul 3, 2012 9:52:47 AM

Transaction Reporting System (TRS)**Fedwire Detail Report****Message Details**

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		INPUT-SOURCE	B6B7HU1R
		INPUT-SEQUENCE-NUMBER	002226
2000	AMOUNT	AMOUNT	000020277900
3100	SENDER-DI	SENDER-DI-NUMBER	026009593
		SENDER-SHORT-NAME	BK AMER NYC
3320	SENDER-REFERENCE	SENDER-REFERENCE	2012070200081116
3400	RECEIVER-DI	RECEIVER-DI-NUMBER	021030004
		RECEIVER-SHORT-NAME	TREAS NYC
3600	BUSINESS-FUNCTION	BUSINESS-FUNCTION-CODE	CTP
4200	BENEFICIARY	BENEFICIARY-ID-CODE	D
		BENEFICIARY-IDENTIFIER	68010727
		BENEFICIARY-NAME	US ENVIRONMENTAL PROTECTION AGENCY
4320	REF-FOR-BNF	BENEFICIARY-REF	38946013
5000	ORIGINATOR	ORIGINATOR-ID-CODE	D
		ORIGINATOR-IDENTIFIER	488014649574
		ORIGINATOR-NAME	HALDOR TOPSOE INC
		ORIGINATOR-ADDRESS-LINE1	OPERATING
		ORIGINATOR-ADDRESS-LINE2	17629 EL CAMINO REAL FL 3
		ORIGINATOR-ADDRESS-LINE3	HOUSTON TX 77058-2901
5100	ORIGINATOR-FI	ORIGINATOR-FI-ID-CODE	B
		ORIGINATOR-FI-IDENTIFIER	BOFAUS3N
6000	ORIGINATOR-TO-BENEFICIARY-INFO	ORIGINATOR-TO-BENEFICIARY-LINE1	D 68010727 ENVIRONMENTAL PROTECTION
		ORIGINATOR-TO-BENEFICIARY-LINE2	AGENCY

Department of the Treasury/Financial Managment Service

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