

WASHINGTON, D.C.

Docket No. TSCA-HQ-2016-5002

Complainant, United States Environmental Protection Agency (hereinafter “EPA” or the “Agency”), and Respondent, American International Chemical (hereinafter “Respondent”), located at 135 Newbury Street, Framingham, MA 01701, (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.

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. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

COUNT I – TSCA § 8 VIOLATIONS

5. Respondent, a corporation that owns or controls a facility located at 135 Newbury Street; Framingham, MA 01701 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.
6. 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....”
7. Respondent manufactures, imports, processes, or 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.
8. 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,”
9. 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.
10. 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.”
11. 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.
12. The deadline for Form U submissions for the 2012 CDR period was August 13, 2012; see 40 C.F.R. § 711.20.
13. During calendar year 2011, 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 5:

Chemical 1:110-30-5, Octadecanamide, N,N'-1,2-ethanediylbis-

Chemical 2:112-84-5, 13-Docosenamide, (13Z)-
Chemical 3:124-26-5, Octadecanamide
Chemical 4:1561-92-8, 2-Propene-1-sulfonic acid, 2-methyl-, sodium salt (1:1)
Chemical 5:1592-23-0; Octadecanoic acid, calcium salt (2:1)
Chemical 6:1762-95-4, Thiocyanic acid, ammonium salt (1:1)
Chemical 7:540-72-7, Thiocyanic acid, sodium salt (1:1)
Chemical 8:144-62-7, Ethanedioic acid
Chemical 9:300-92-5, Aluminum, hydroxybis(octadecanoato-
.kappa.O)-
Chemical 10:7773-02-0, Sulfuric acid, zinc salt (1:1)
Chemical 11: 7727-54-0, Peroxydisulfuric acid $[(HO)S(O)_2]_2O_2$, ammonium salt (1:2)
Chemical 12:557-04-0, Octadecanoic acid, magnesium salt (2:1)
Chemical 13:7773-06-0, Sulfamic acid, ammonium salt (1:1)
Chemical 14:7775-27-1, Peroxydisulfuric acid $[(HO)S(O)_2]_2O_2$, sodium salt (1:2)
Chemical 15:822-16-2, Octadecanoic acid, sodium salt (1:1)

14. The chemical substances listed in paragraph 13 above are included in the TSCA Master Inventory File.
15. Respondent's failure to submit a Form U for the chemical substances listed in paragraph 13 above, along with the other chemical substances for which Form U reports were timely submitted by August 13, 2012, constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 711.20.
16. 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.
17. 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

18. The proposed gravity based penalty in this matter is THREE HUNDRED SIXTY ONE THOUSAND TWO HUNDRED U.S. DOLLARS (\$361,200)
19. 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).

20. In accordance with the TSCA § 8, 12, and 13 ERP, and amendments the gravity-based penalty (“GBP”) for Count I is \$361,200 ($\$24,080 \times 15$ chemicals = \$361,200). 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 an appropriate and fair civil penalty for Count I is THREE HUNDRED AND SEVEN THOUSAND TWENTY U.S. DOLLARS (\$307,020).

IV. PAYMENT SCHEDULE

21. Four equal payments in the amount of \$76,755 must be made accordance with or in advance of the following payment schedule:

- A. The first payment must be made not more than thirty (30) calendar days after the effective date of the Final Order.
- B. The second payment must be made, not later than March 1, 2016.
- C. The third payment must be made, not later than June 1, 2016.
- D. The fourth and final payment must be made not later than September 1, 2016.

22. Respondent shall either:

- A. Dispatch the payment(s) in the form of a cashier’s or certified check made payable to the order of the “Treasurer of the United States of America”, and bearing the Civil Penalty Docket No. “TSCA-HQ-2016-5002” to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2016-5002
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

OR

- B. Pay by wire transfer(s) with a notation of “American International Chemical, Civil Penalty Docket No. TSCA-HQ-2016-5002” 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"

23. Concurrently with Paragraph 22A or 22B, Respondent shall forward a copy of the check(s) or documentation of the wire transfer(s) 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.

24. 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.
25. If Respondent fails to make any of the payments in a timely manner as required by the payment schedule under Paragraph IV, then Respondent shall pay a stipulated penalty of ONE THOUSAND U.S. 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.
26. 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:

Lynn Bergeson
Bergeson & Campbell, P.C.
2200 Pennsylvania Ave, N.W. Suite 100W
Washington, D.C. 20037
E-mail: lbergeson@lawbc.com

and

American International Chemical
Attn: Mark Robertson, Executive VP Marketing
135 Newbury Street
Framingham, MA 01701
E-mail: mr@aicma.com

Respondent agrees that the notification may be issued *via* facsimile, e-mail, 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 23, Respondent may change the address and/or the person listed above.

V. RESERVATION OF RIGHTS AND COVENANT NOT TO SUE

27. Payment of the penalty resolves the civil administrative claims alleged in this Consent Agreement.
28. 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.
29. 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 agrees not to challenge the violations alleged in this Consent Agreement. Otherwise, Respondent neither admits nor denies the allegations, but consents to the terms and conditions of this CAFO.
30. By executing this Consent Agreement, Respondent certifies 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. This settlement is conditioned upon the thoroughness and accuracy of Respondent's representations to EPA in this matter.
32. 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 19, 2014 site inspection and Respondent's associated Form U submission.
33. 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.

VI. OTHER MATTERS

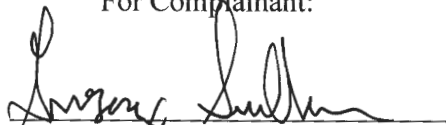
34. This Consent Agreement shall be binding upon the Parties, and their respective officers, directors, employees, successors and assigns. The undersigned representative of each Party

certifies that he or she is duly authorized by his or her respective Party to enter into this binding Consent Agreement.

35. This Consent Agreement shall take full effect upon the signing and filing of the Final Order by EPA's Environmental Appeals Board.
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 the documentation required by the CAFO.
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 EPA's 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, state, or local income 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 and attorney's fees.

WE HEREBY AGREE TO THIS:

For Complainant:



Gregory Sullivan
Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: 12-30-15



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

Date: 12-28-2015

For Respondent:



Mark Robertson
Executive VP Marketing
American International Chemical
135 Newbury Street
Framingham, MA 01701

Date: 12-22-15