

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

In the Matter of:

Kronos Worldwide, Inc.
Dallas, Texas

Respondent

Docket Number TSCA-HQ-2011-5024

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (EPA or Agency), and Respondent, Kronos Worldwide, Inc. (Respondent), located at 5430 LBJ Fwy, Suite 1700, Dallas, Texas, 75240, (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

COUNT I

4. EPA promulgated the Inventory Update Reporting regulations (IUR Rule), 40 C.F.R. Part 710, pursuant to section 8(a) of TSCA, 15 U.S.C. § 2607(a).
5. Respondent is a "person" as defined by the IUR Rule, 40 C.F.R. § 710.3.
6. 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.
7. Respondent is subject to TSCA and regulations promulgated thereunder.
8. Pursuant to the IUR Rule, 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 in 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 recurring IUR reporting during the applicable reporting period.
9. A person subject to IUR reporting is required to file a Partial Updating of TSCA Inventory Data Base Site Report (Form U) with EPA.

10. The deadline for Form U submissions for the 2006 IUR period was March 23, 2007, *see* 40 C.F.R. § 710.53.
11. During calendar year 2005, Respondent manufactured or imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the chemical substance Titania slag, hereinafter identified as chemical abstract service number (CASN) 69012-30-2.
12. The chemical substance CASN 69012-30-2 is included in the TSCA Master Inventory File, and, pursuant to 40 C.F.R. § 710.46(b)(3), is excluded from reporting under the IUR Rule only with regard to the process and use reporting requirements under 40 C.F.R. § 710.54(c)(4).
13. Pursuant to 40 C.F.R. § 710.53, a rule promulgated under TSCA section 8(a), Respondent was required to file a Form U for CASN 69012-30-2 by March 23, 2007.
14. Respondent timely filed a Form U for each of seven chemical substances on December 7, 2006.
15. Respondent's December 7, 2006, submission did not include a Form U for the chemical substance CASN 69012-30-2.
16. On August 13, 2007, by telephone and letter, EPA notified Respondent that the Agency would conduct an inspection to determine compliance with TSCA.

17. On August 21, 2007, an authorized representative of EPA conducted an inspection of Respondent's place of business at 5430 LBJ Fwy, Suite 1700, Dallas, Texas, 75204, pursuant to section 11 of TSCA, 15 U.S.C. § 2610.
18. On or about November 28, 2007, Respondent filed a revised 2006 Form U submission to include the chemical substance CASN 69012-30-2.
19. Respondent's failure to submit a Form U for CASN 69012-30-2 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 subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNTS II-IV

22. Paragraphs 4 through 10 are re-alleged and incorporated herein by reference.
23. 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.
24. During calendar year 2005, Respondent manufactured or imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substances:

Chemical #1: Titanyl Sulfate (CASN 13825-74-6)

Chemical #2: Sulfuric Acid (CASN 7664-93-9)
Chemical #3: Ferrous Sulfate (CASN 7720-78-7)

25. The chemical substances listed in paragraph 24 above are included in the TSCA Master Inventory File, and, pursuant to 40 C.F.R. § 710.46(b)(3), are excluded from reporting under the IUR Rule only with regard to the process and use reporting requirements under 40 C.F.R. § 710.54(c)(4).
26. Pursuant to 40 C.F.R. § 710.53, a rule promulgated under TSCA section 8(a), Respondent was required to file a Form U for each of these chemicals by March 23, 2007.
27. Respondent timely filed a Form U for each of these chemicals on December 7, 2006.
28. On August 13, 2007, by telephone and letter, EPA notified Respondent that the Agency would conduct an inspection to determine compliance with TSCA.
29. On August 21, 2007, an authorized representative of EPA conducted an inspection of Respondent's place of business at 5430 LBJ Fwy, Suite 1700, Dallas, Texas, 75204, pursuant to section 11 of TSCA, 15 U.S.C. § 2610.
30. On or about November 28, 2007, Respondent filed a revised 2006 Form U submission to amend the volumes originally reported for each of the chemicals listed in paragraph 24 above.
31. The amended volumes Respondent submitted on or about November 28, 2007, differed from the volumes Respondent reported on December 7, 2006, by significantly more than the 10% variance allowable under 40 C.F.R. § 710.52(c)(3)(iv).

32. Respondent's failure to report the total volume of CASN 13825-74-6 within 10% of the actual volume manufactured and imported constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.52(c)(3)(iv).
33. Respondent's failure to report the total volume of CASN 7664-93-9 within 10% of the actual volume manufactured and imported constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.52(c)(3)(iv).
34. Respondent's failure to report the total volume of CASN 7720-78-7 within 10% of the actual volume manufactured and imported constitutes a failure to submit a report, notice or other information as required by 40 C.F.R. § 710.52(c)(3)(iv).
35. 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.
36. 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

37. 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. 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).

38. 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.

39. 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 \$21,922.¹

40. In accordance with the *TSCA ERP*, the nature of the violations set forth in Counts II - IV is “Hazard Assessment,” the circumstance level is “Level 2” and the extent level is

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.

"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 Counts II - IV (\$16,764 x 3) is \$50,292.

41. 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, general attitude to comply with TSCA, and the promptness of the Respondent's corrective actions. EPA has, therefore, determined that an appropriate and fair civil penalty to settle this action is \$61,382.

IV. TERMS OF SETTLEMENT

42. This settlement resolves only the civil administrative claims alleged in this Consent Agreement for Respondent's facility located at 5430 LBJ Fwy, Suite 1700, Dallas, Texas, 75240.
43. 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).
44. Respondent neither admits nor denies the allegations.

45. 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.
46. Respondent represents and warrants that the facts it has certified and referenced in this Consent Agreement are true.
47. The effect of this settlement (provided in paragraph 42) is conditioned upon the thoroughness and accuracy of the representations in Respondent's revised Form U submission and the certification referenced in paragraph 45 with respect to the violations alleged herein.
48. Respondent agrees to pay a civil penalty in the sum of **Sixty One Thousand Three Hundred Eighty Two Dollars (\$61,382)** 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 "Kronos Worldwide, Inc., Civil Penalty Docket No. TSCA-HQ-2011-5024," payable to the order of the "Treasurer, United States of America," to:
- U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2011-5024
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
- or pay by wire transfer with a notation of "Kronos Worldwide, Inc., Civil Penalty Docket No. TSCA-HQ-2011-5024" 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
(202) 564-4167 Fax (202) 564-0035

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

48.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

49. The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to sign this Consent Agreement.
50. 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.

51. 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.
52. 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.
53. The penalty, including any stipulated penalties specified above, represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.
54. 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.
55. The Parties agree to bear their own costs.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Kronos Worldwide, Inc., Docket No. TSCA-HQ-2011-5024.

For Respondent:



Robert D. Graham

Executive Vice President and General Counsel

Kronos Worldwide, Inc.

5430 LBJ Fwy, Suite 1700

Dallas, TX 75240

10/21/2011
DATE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Kronos Worldwide, Inc., Docket No. TSCA-HQ-2011-5024.

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

12/15/11
DATE