

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

2014 MAY 13 PM 2: 03

REGIONAL HEARING
CLERK

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: In the Matter of :
: :
: Bluestar Silicones USA Corp., : **CONSENT AGREEMENT**
: : **and FINAL ORDER**
: Respondent. :
: :
: Proceeding under Section 16(a) of : **Docket No. TSCA-02-2014-9126**
: the Toxic Substances Control Act. :
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PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The United States Environmental Protection Agency ("EPA"), under authority of TSCA, has promulgated regulations governing, *inter alia*, the importation of chemical substances into the United States and the requirements for reporting such chemical substances.

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator to enforce violations of TSCA and its implementing regulations in providing that "[a]ny person who violates a provision of section 2614 or 2689 of this title [Sections 15 of TSCA, 15 U.S.C. § 2614, Section 409 of TSCA, 15 U.S.C. § 2689] shall be liable to the United States for a civil penalty...." Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance ("Complainant") of the EPA, Region 2, has been duly delegated the authority to institute this action.

Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations ("C.F.R.") § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

It has been agreed by the parties hereto — Complainant and Respondent Bluestar Silicones USA Corporation — that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving EPA's claims against Respondent without further litigation. To that end, the parties have met and discussed settlement. This CA/FO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No findings of fact or conclusions of law have been made by any tribunal, either an administrative (Article I) tribunal or a judicial (Article III) tribunal. The following constitute EPA's findings of fact and accompanying conclusions of law based on information of which Complainant was aware as of March 1, 2014.

EPA FINDINGS OF FACT

1. Respondent, Bluestar Silicones USA Corp., is, and has been for all times set forth below, a corporation that imports chemical substances for sale and distribution in interstate commerce in the United States.
 2. Respondent owns, operates and/or controls a facility the address of which is 2 Tower Center Boulevard, Suite 1601, in East Brunswick, New Jersey 08816.
 3. On or about September 28, 2011, Respondent voluntarily disclosed to EPA, Region 2, violations of Sections 5 and 13 of TSCA, 15 U.S.C. §§ 2604 and 2612, respectively (hereinafter the September 28th disclosure referred to as "the disclosure").
 4. The disclosure included information that Respondent had imported (and then used) less than 750 pounds of each of two chemical substances, one identified as L-12-0023, the other as L-12-0022, such importations having occurred on a number of separate occasions (days) between February 2007 and June 2011.
 5. Each of L-12-0023 and L-12-0022 was, at the time of each such importation, incorporated into a product (hereinafter identified as "STCS") intended for customers to apply to fabrics to enhance their non-slip properties, including such household consumer items as medical stockings and pantyhose.
 5. At no time during the period between (and including) February 2007 and June 2011 was either L-12-0023 or L-12-0022 listed on the TSCA Chemical Substance Master Inventory EPA has compiled and maintained pursuant to Section 8(b) of TSCA, 15 U.S.C. § 2607(b).
 6. Respondent never submitted (nor did a third party acting on behalf or at the behest of Respondent submit) to the Administrator of EPA a Premanufacture Notice at least 90 days prior to any importation of either L-12-0023 or L-12-0022.
 7. Shortly after the disclosure, Respondent submitted and obtained from EPA a Low Volume Exemption for each of L-12-0023 and L-12-0022.
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8. At the time of each of the importations, Respondent (or a third party acting on behalf or at the behest of Respondent) certified to United States Customs that its importations of the STCS, into which the aforementioned two chemical substances were incorporated, complied with all applicable TSCA requirements and regulations.

9. Each such certification was erroneous because, *inter alia*, neither L-12-0023 nor L-12-0022 was listed on the TSCA Chemical Substance Master Inventory at the time of any such importation.

10. Subsequent to the disclosure, Respondent sold and distributed in interstate commerce its pre-existing stock (*i.e.* stock imported prior to the disclosure) of STCS. Respondent has indicated that such sales occurred for a limited period of time and were few in number.

11. Respondent reported these violations to EPA and presented other information that it contends supports a lower civil penalty.

EPA CONCLUSIONS OF LAW

1. Respondent is, and for all times pertinent to the EPA findings set forth above has been, a "person" within the meaning of 40 C.F.R. § 720.3(x).
 2. Respondent is, and has been for all times pertinent to the EPA findings set forth above, a "manufacturer" within the meaning of 40 C.F.R. § 720.3(t).
 3. Respondent is, and has been for all times pertinent to the EPA findings set forth above, an "importer" within the meaning of 40 C.F.R. § 720.3(l) and 19 C.F.R. § 101.1.
 4. At all times pertinent to the EPA findings set forth above, each of L-12-0023 and L-12-0022 was a "chemical substance" within the meaning of 40 C.F.R. § 720.3.
 5. At all times pertinent to the EPA findings set forth above, each of L-12-0023 and L-12-0022 was a "new chemical substance" within the meaning of 40 C.F.R. § 720.3(v).
 6. As an importer of chemical substances and new chemical substances, Respondent is subject to the requirements of, *inter alia*, the following:
 - a) Section 5 of TSCA, 15 U.S.C. § 2604, and the regulations EPA has promulgated pursuant to such authority which are codified at 40 C.F.R. Part 720; and
 - b) Section 13 of TSCA, 15 U.S.C. § 2612, and the applicable regulations promulgated pursuant to such authority which are codified at 19 C.F.R. Part 12.
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7. As an importer, Respondent (or third party acting on behalf or at the behest of Respondent) was required to submit to the Administrator of EPA a Premanufacture Notice at least 90 days prior to importing each of L-12-0023 and L-12-0022,

8. Each of the aforementioned (paragraph 4 of the "EPA Findings of Fact" section, above) importations into the United States of the following chemical substances without a Premanufacture Notice first having been submitted to the Administrator of the EPA at least 90 days prior to any such importation(s) for commercial purposes constitutes a failure or refusal to comply with Section 5(a)(1) of TSCA, 15 U.S.C. § 2604(a)(1), and 40 C.F.R. § 720.22(b)(1):

- a) L-12-0023; and
- b) L-12-0022.

9. As an importer, Respondent (or a third party acting on behalf or at the behest of Respondent) was required to truthfully and accurately certify that importations of chemical substances in accordance with the applicable requirements of 19 C.F.R. §§ 12.118 - 12.121.

10. Each of the aforementioned (paragraph 8 of the "EPA Findings of Fact" section, above) failures truthfully and accurately to certify that its importation of each of L-12-0023 and L-12-0022 is subject to TSCA and complies with all applicable rules and orders under TSCA, or that each is not subject to TSCA, constitutes a failure or refusal to comply with 19 C.F.R. § 12.121.

11. Sections 15(1) provides, in part, that it shall be unlawful for any person to: (B) fail or refuse to comply with, *inter alia*, any requirement prescribed by Section 5 of TSCA, 15 U.S.C. § 2604, or (C) any rule promulgated or order issued under, *inter alia*, Section 5 of TSCA, 15 U.S.C. § 2604.

12. Section 15(2) of TSCA, 15 U.S.C. § 2614(2), provides that it is unlawful for any person to use for commercial purposes a chemical substance which such person knew or had reason to know was manufactured, processed or distributed in commerce in violation of, *inter alia*, Section 5 of TSCA, 15 U.S.C. § 2604, or a rule or order thereunder.

13. The aforementioned sale(s) and distribution(s) of STCS (paragraph 10 of the "EPA Findings of Fact," above) constituted an unlawful sale(s) and distribution(s) pursuant to Section 15(2) of TSCA, 15 U.S.C. § 2614(2).

14. For the aforementioned actions (paragraphs 8, 10 and 13 of this section, above), Respondent is liable to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. 2615(a), as amended.

AGREEMENT ON CONSENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties hereto, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense, or uncertainty of a hearing on the merits: **a)** admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence this civil administrative proceeding for the violations described in the "EPA Findings of Fact" section, above; **b)** neither admits nor denies the "EPA Findings of Fact," above; **c)** neither admits nor denies the "EPA Conclusions of Law," above; **d)** consents to the assessment of the civil penalty as set forth below; and **e)** consents to the issuance of the Final Order accompanying this Consent Agreement.

It is further hereby agreed by and between the parties hereto that Respondent accepts and shall comply with the following terms and conditions:

1. Respondent shall pay a civil penalty in the amount of **TWENTY THOUSAND (\$20,000.00) DOLLARS**. In accordance with the terms and schedule of this Consent Agreement, payment shall be made by cashier's check, certified check or by electronic fund transfer (EFT) within forty-five (45) days¹ of the date the Regional Judicial Officer of EPA, Region 2, signs the Final Order accompanying this Consent Agreement. If payment is made by cashier's check or by certified check, each such check shall be made payable to the "**Treasurer, United States of America,**" and shall be identified with a notation thereon listing the following: ***In re Bluestar Silicones USA Corp., Docket Number TSCA-02-2014-9126***. If payment is made by either form of check, each such payment shall be mailed to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Alternatively, if Respondent chooses to make payment by EFT, Respondent shall then provide the following information to its remitter bank when payment is made:

- a. Amount of Payment
- b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**

¹ As used herein, the term "days" means calendar days.

c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**

d. Federal Reserve Bank of New York ABA routing number: **021030004**

e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**

f. Name of Respondent: **Bluestar Silicones USA Corp.**

g. Case docket number: **TSCA-02-2014-9126**

2. Payment instructions:

a. Payment shall be in accordance with the instructions set forth in paragraph 1 of this section, above. If Respondent makes payment by cashier's check or certified check, then such check shall be *received* at the above-listed address on or before the date specified. If Respondent makes payment by the EFT method, then the EFT shall be *received* on or before the date specified.

b. Whether Respondent makes payment by cashier's check, certified check or by the EFT method, Respondent shall promptly thereafter furnish reasonable proof that each required payment has been made, and each such proof shall be furnished to both:

Lee A. Spielmann
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866

c. Failure to pay the specified amount in full by the deadline set forth in paragraph 1 of this section, above, may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

d. Furthermore, if the required payment is not received on or before the date when it is made due under the terms of this document, interest therefor shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date payment was to have been made through the date payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period or any portion thereof, following the date payment was to have been received, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) days of the date for which payment was required hereto to have been made.

3. The civil penalty provided for in this section constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

4. This CA/FO is not intended, and shall not be construed, to relieve Respondent of its obligation to comply with all applicable requirements governing the importation, reporting, use and sale and distribution in commerce of chemical substances (including new chemical substances) as set forth in TSCA or applicable regulations, including those contained in 40 C.F.R. Part 720, and 19 C.F.R. Part 12.

5. This Consent Agreement is being entered into by the parties to resolve the civil claims that might attach pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the violations described in the "EPA Findings of Fact" and the "EPA Conclusions of Law" set forth above.

6. Respondent's payment of the penalty in accordance with the requirements set forth in this document and any action it takes in compliance with or otherwise in connection with this Consent Agreement shall not affect the right of the EPA or the United States to pursue appropriate injunctive or otherwise equitable relief or criminal sanctions for any violation(s) of law resulting from or pertaining to Respondent's importation, manufacture, processing, sale or distribution in commerce of chemical substances.

7. Respondent hereby waives its right to seek or obtain (pursuant to Subpart D of 40 C.F.R. Part 22 or any other provision of applicable law) any hearing or judicial review of this CA/FO or on the "EPA Findings of Fact" and the "EPA Conclusions of Law" as set forth above, or otherwise to contest same.

8. Respondent has read the Consent Agreement, understands its terms, and consents to its issuance and to abide by its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above.

9. Respondent waives any right or any remedy it has or might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum

or other communication addressed to, the Regional Administrator of EPA, Region 2, the Deputy Regional Administrator of EPA, Region 2, or the Regional Judicial Officer of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

10. Respondent hereby certifies to the best of its knowledge that, as of the date of its execution of this Consent Agreement, Respondent's operations regarding the importation, manufacture, processing, sale or distribution in commerce of chemical substances (including new chemical substances) are in compliance with applicable provisions of TSCA, 40 C.F.R. Part 720, and 19 C.F.R. Part 12.

11. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order accompanying this Consent Agreement shall be the date when such order is filed with the Regional Hearing Clerk of EPA, Region 2.

12. Each party shall bear its own costs and fees.

13. Each undersigned signatory to this Consent Agreement certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.

In re Bluestar Silicones USA Corp.
Docket Number TSCA-02-2014-9126

RESPONDENT:

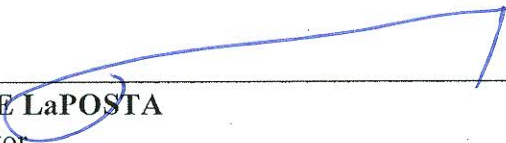
BY: 
BLUESTAR SILICONES USA CORP.

NAME: J. Christopher York
(PLEASE PRINT)

TITLE: President

DATE: April 23, 2014

COMPLAINANT:


DORE LaPOSTA
Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2


DATE: MAY 6, 2014

In the Matter of Bluestar Silicones USA Corp.
Docket Number TSCA-02-2014-9126

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Bluestar Silicones USA Corp.*, bearing Docket Number TSCA-02-2014-9126. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b) (3) and shall constitute an order under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

DATED: May 9, 2014
New York, New York



HELEN FERRARA
Regional Judicial Officer
U.S. Environmental Protection Agency --
Region 2

In re Bluestar Silicones USA Corp.
Docket No. TSCA-02-2014-9126

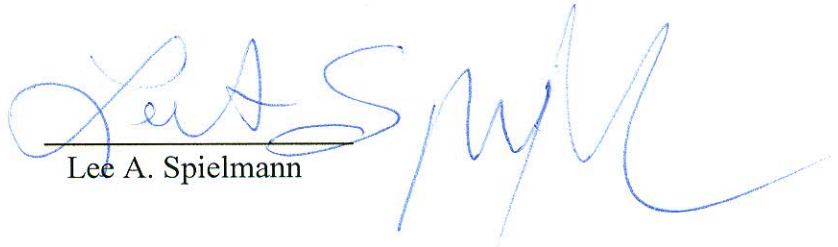
CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "CONSENT AGREEMENT AND FINAL ORDER," said Final Order having been executed by the Region Judicial Officer of the United States Environmental Protection Agency, Region 2, on May 9, 2014, in the above-referenced proceeding in the following manner to the addressee listed below:

By Inter-Office Mail:

Office of Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Dated: May 12, 2014
New York, New York



Lee A. Spielmann