



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007

MAR 24 2010

OVERNIGHT DELIVERY

John Wheeler, Esq.
Attorney At Law
820 Raywood Circle
Plano, Texas 75075

In the Matter of Special Materials Company
Docket No. TSCA-02-2010-9241

Dear Mr. Wheeler:

Enclosed is a copy of the Consent Agreement/Final Order (CA/FO) in the above-referenced proceeding signed by the Regional Administrator of the U.S. Environmental Protection Agency.

Please note that all installment payments must be made in accordance with the terms of the CA/FO. Should you have any questions, please contact me at (212) 637-3195 or Coles Phinizy at (212) 637-3209.

Sincerely yours,

Gary H. Nurkin by CHPT.

Gary H. Nurkin
Assistant Regional Counsel

Enclosure

U.S. ENVIRONMENTAL
PROTECTION AGENCY
2010 MAR 24 AM 10:33
REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In The Matter of:

Special Materials Company,

Respondent

Proceeding under Section 16(a) of the
Toxics Substances Control Act.

**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket Number: TSCA-02-2010-9241

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
MAR 24 AM 10:53
REGIONAL HEARING
OFFICE

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a) (hereinafter "TSCA").

Section 16(a)(2)(A), 15 U.S.C. § 2615(a)(2)(A), authorizes the Administrator to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. The Respondent Special Materials Company ("SMC") maintains a corporate headquarters at 70 West 40th Street, New York, New York 10018. The United States Environmental Protection Agency ("EPA") inspected SMC on May 9, 2007, and concluded that SMC may have violated Section 15 of TSCA, 15 U.S.C. § 2614, and the regulations set forth at 40 C.F.R. Part 710. EPA representatives alleged that Respondent failed to submit, in a timely manner, to the EPA a Form U for chemicals that it had imported during the 2005 importing year.

EPA and SMC have subsequently engaged in settlement discussions with respect to the alleged violations that EPA discovered during the course of its inspection of SMC and have agreed to address these issues without the need for EPA to issue a separate formal Complaint to SMC. Pursuant to 40 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 be simultaneously 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). Both the Complainant, the Director of EPA Region 2's Division of Enforcement and Compliance Assistance, and the Respondent, SMC, have agreed that entering into this CA/FO is an appropriate means of resolving the alleged noncompliance with TSCA requirements that EPA believes existed at the SMC facility without further litigation or other administrative action.

This CA/FO is being issued pursuant to, and under the authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made. Respondent neither admits nor denies EPA's Findings of Fact and Conclusions of Law set forth below.

EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is Special Materials Company ("SMC")
2. Respondent is a corporation.
3. At the time of the EPA inspection, Respondent maintained a corporate headquarters located at 262 West 38th Street, New York, New York 10018 (hereinafter, "Respondent's facility").
4. Respondent is a "person" within the meaning of 40 C.F.R. §§ 704.3 and 710.3.
5. From 1996-2009, Respondent "manufacture[d] or import[ed] for commercial purposes" [as that phrase is defined in 40 C.F.R. §§ 704.3 and 710.3] "chemical substances" [as that phrase is defined in 40 C.F.R. §§ 704.3 and 710.3] at its facility.
6. Respondent is subject to the requirements of Section 8(a) of TSCA, 15 U.S.C. § 2607(a), and the regulations promulgated pursuant to it and set forth at 40 C.F.R. Part 710, which regulations require reporting for the chemical inventory EPA establishes and maintains pursuant to Section 8(b) of TSCA, 15 U.S.C. § 2607(b).
7. On or about May 9, 2007, duly authorized representatives of the EPA conducted an inspection of Respondent's facility pursuant to Section 11 of TSCA, 15 U.S.C. § 2610.
8. As a result of the above-referenced inspection, EPA representatives determined that Respondent violated the requirements of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), because Respondent had not submitted Forms U for chemicals it imported during the 2005 calendar year as required by 40 C.F.R. § 710.53.
9. EPA has determined that Respondent's failures to submit Forms U for each of these chemicals it imported during the 2005 calendar year constitute failures or refusals to comply with 40 C.F.R. § 710.53) which are violations of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

10. On or about April 9, 2009, Respondent submitted to EPA Forms U for thirty-one chemical substances that EPA alleged it imported during the 2005 calendar year

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 16 of TSCA, and 40 C.F.R. § 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. Part 22, it is hereby agreed by and between Complainant and Respondent, and voluntarily and knowingly accepted by SMC, that SMC for purposes of this Consent Agreement and in the interest of settling this matter expeditiously: (a) admits that EPA has jurisdiction over this matter as recited in the Preliminary Statement of the CA/FO; (b) neither admits nor denies the Findings of Fact or Conclusions of Law stated above; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and SMC, and voluntarily and knowingly accepted by SMC that the Respondent shall comply with the following terms and conditions:

1. Respondent hereby certifies, at the time of its signature to this document, that, to the best of its knowledge and belief, it is in compliance with all of the applicable regulatory requirements with respect to the reporting requirements for the chemical inventory applicable to manufacturers and importers.
2. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of 40 C.F.R. Part 710, relating to the reporting requirements for the chemical inventory applicable to manufacturers and importers.
3. Nothing in this document is intended nor shall it be construed, to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against SMC for having made any material misrepresentations or for SMC having provided materially false information in any document submitted to EPA.
4. SMC, based upon an assessment of its ability to pay, shall pay a civil penalty to EPA in the total amount of **SIXTY FIVE THOUSAND DOLLARS (\$65,000)**. Such payment shall be made by cashier's or certified checks or by Electronic Fund Transfers (EFT). If the payment is made by check, then the checks shall be made payable to the "**Treasurer, United States of America,**" in accordance with the following schedule:

(a) within 45 business days of the date of signature of the Final Order at the end of this document a check in the amount of thirty thousand dollars (\$30,000).

(b) within 90 business days of the date of signature of the Final Order at the end of this document a check in the amount of thirty-five thousand dollars (\$35,000).

5. Each installment payment shall be made payable to the **“Treasurer, United States of America,”** and shall be mailed to the **“US Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, PO Box 979077, St. Louis, MO 63197-9000.”** The instruments of payment shall be identified with a notation thereon listing the following: *SPECIAL MATERIALS COMPANY*, and shall bear thereon the Docket Number *TSCA-02-2010-9241*.

Each installment payment must be *received* on or before the date specified for that installment (the date by which the installment payment must be received shall hereafter be referred to as its “due date”).

If SMC chooses to make the installment payments by EFT, then SMC shall pay in accordance with the schedule in paragraph 4, above, and provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency.”
- 6) Name of Respondent: Special Materials Company.
- 7) Case Number: TSCA-02-2010-9241.

Each installment EFT must similarly be *received* on or before the date specified for that installment (the date by which the installment payment must be received shall hereafter be referred to as its “due date”).

Whether the payment is made by check or by EFT, SMC shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Gary H. Nurkin, Esq.
Assistant Regional Counsel
Environmental Protection Agency, Region 2

290 Broadway, Room 1623
New York, New York 10007-1866
and

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

- a. Failure to pay the amount in full within the time period set forth 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.
 - b. Further, if any installment payment is not received on or before its due date, interest will 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 due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
 - c. If Respondent fails to make any of the above installment payments according to the terms and schedule set forth herein, Respondent shall, in addition to any other penalties provided for herein, pay a stipulated penalty of one thousand dollars (\$1,000.00) for any installment payment that is late. Respondent shall be responsible for any stipulated penalty that becomes due. Respondent shall follow the payment instructions set out in the start of this section for any stipulated penalty paid. If Respondent demonstrates good cause for its failure to make an installment payment on time, EPA may in its discretion, in writing, excuse Respondent from payment of the stipulated penalty.
 - d. The civil penalty and stipulated penalties constitute penalties within the meaning of 26 U.S.C. § 162(f).
6. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein and upon the accuracy of Respondent's representations in this proceeding) the civil and administrative claims for the violations of TSCA described in paragraph 8 of the Findings of Fact and Conclusions of Law. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of the settlement are set forth herein.

7. The provisions of this Consent Agreement shall be binding upon both EPA and SMC along with their authorized representatives and successors or assigns.
8. SMC explicitly waives its right to request or to seek any Hearing on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or the Findings of Fact and Conclusions of Law, above.
9. SMC waives any rights it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to, any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
10. The undersigned signatories for SMC and EPA each certify that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
11. SMC consents to the service of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
12. The effective date of this Consent Agreement and Final Order shall be the date that it is filed with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.
13. Each party hereto agrees to bear its own costs and fees in this matter.

In the Matter of Special Materials Company,
Docket No. TSCA-02-2010-9241

RESPONDENT: **SPECIAL MATERIALS COMPANY,**

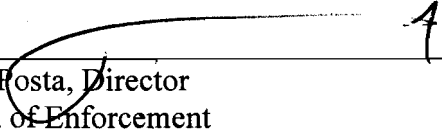
BY: 
Authorized Signature

NAME: Adam Feldman
(PLEASE PRINT)

TITLE: CEO

DATE: 3/4/10

COMPLAINANT:


Dore LaFosta, Director
Division of Enforcement
and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

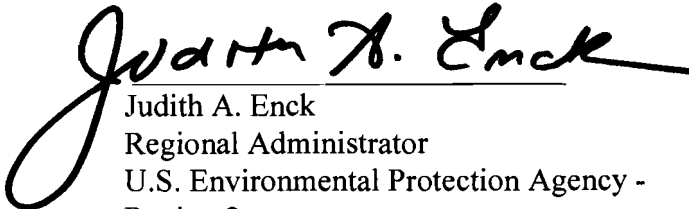
DATE: MARCH 15, 2010

In the Matter of Special Materials Company,
Docket No. TSCA-02-2010-9241

FINAL ORDER

The Regional Administrator of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Special Materials Company*, bearing Docket No. TSCA -02-2010-9241. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby 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. §§ 22.13(b) and 22.18(b)(3) and shall constitute an order issued under authority of Section 16 of TSCA 15 U.S.C. § 2615.

DATED: 3/18/17
New York, New York



Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency -
Region 2
290 Broadway
New York, New York 10007-1866

In the Matter of Special Materials Company
Docket No. TSCA-02-2010-9241

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

By Hand:

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

Copy

by Overnight Delivery:

John Wheeler, Esq.
820 Raywood Circle
Plano, TX 75075

MAR 24 2010

Mildred N. Baez