

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of :
Mitsuya Boeki USA, Inc. : CONSENT AGREEMENT AND
Respondent. : FINAL ORDER
Docket No. TSCA-02-2016-9141
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
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REGIONAL HEARING
2016 SEP 27 PM 2:03
U.S. Environmental
Protection Agency-Region 2

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). Pursuant to 40 C.F.R. § 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22, where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order ("CAFO") pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 ("EPA" or "Complainant"), alleges that Mitsuya Boeki USA, Inc., ("MBUSA" or "Respondent") violated Section 8 of TSCA, 15 U.S.C. § 2607, and the regulations established under the authority of TSCA, set forth at 40 C.F.R. Part 711 ("Chemical Data

Reporting Requirements” or “CDR”) and that Respondent has thereby violated Section 15 of TSCA, 15 U.S.C. § 2614.

EPA and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving this case without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Mitsuya Boeki USA, Inc., incorporated in the State of New Jersey in 1999.
2. Respondent owns, operates and/or controls the facility in and around 250 Pehle Avenue, Saddle Brook, New Jersey 07663 (hereinafter, the “Facility”) that is the subject of this Consent Agreement.
3. Respondent is a "person" and "importer" within the meaning of 40 C.F.R. § 704.3.
4. Respondent is a "manufacturer" as that term is defined at 40 C.F.R. §§ 704.3 and 711.3.
5. Respondent manufactures (imports) chemical substances as those terms are defined by TSCA, 15 U.S.C. § 2602, and 40 C.F.R. Parts 704 and 711, and, as such, is subject to the requirements of Section 8 of TSCA, 15 U.S.C. § 2607, and the CDR requirements set forth at 40 C.F.R. Part 711.
6. Respondent does not meet either standard for exemption from the CDR requirements as a “small manufacturer or importer” set out at 40 C.F.R. § 704.3.
7. On July 24, 2014, a duly-designated EPA inspector conducted a TSCA inspection (the “Inspection”) at Respondent’s Facility.
8. During and subsequent to the Inspection, Respondent submitted records to EPA documenting its importation of seven chemical substances, Chemical A, Chemical B, Chemical C,

Chemical D, Chemical E, Chemical F, and Chemical G (hereafter referred to as “Chemicals A-G¹”), during calendar year 2011, the principal reporting year for the 2012 submission period, to Respondent’s Facility.

9. The records described in the previous paragraph further documented that Respondent imported Chemicals A-G in amounts exceeding the 25,000 pounds reporting threshold set out at 40 C.F.R. § 711.8.

10. At all relevant times, Chemicals A-G were “reportable chemical substances” and listed in the “Master Inventory File,” as those terms are defined at 40 C.F.R. § 711.3.

11. No exemptions within the meaning of 40 C.F.R. § 711.06 and 711.10 apply to Chemicals A-G or to Respondent’s manufacture (import) of them.

12. Pursuant to 40 C.F.R. §§ 711.5, 711.15(c), and 711.20, Respondent was required to report certain information regarding its manufacture (import) of Chemicals A-G, as described in paragraphs 8 and 9 above, to EPA during the 2012 CDR submission period of February 1, 2012 to August 13, 2012. Forty C.F.R. §§ 711.15 (a) and 711.35 specify the manner in which Respondent was to have reported the information.

13. As of the date of the Inspection, Respondent had not reported to EPA the required information regarding its manufacture (import) of Chemicals A-G, as described in paragraphs 8 and 9 above.

14. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), provides that it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by this chapter (15 U.S.C. §§ 2601-2692) or a rule thereunder.

¹ The chemical identities of Chemicals A through G have been claimed as Confidential Business Information by Respondent pursuant to 40 C.F.R. § 711.30

15. Respondent's failure to comply with the Chemical Data Reporting Requirements of 40 C.F.R. § 711 for its manufacture (import) of each of the seven chemicals (Chemical A through G) as described in paragraph 8 and 9 above, constitute multiple violations of TSCA §§ 8 and 15, 15 U.S.C. §§ 2607 and 2614.

16. On August 24, 2015, Respondent submitted to EPA the required information regarding its manufacture (import) of Chemicals A-G in calendar year 2011 and in amounts exceeding the reporting threshold.

17. EPA and Respondent met to discuss Respondent's violations of the CDR requirements, as described herein, and agreed to settle this matter by entering into this Consent Agreement.

CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18, it is hereby agreed by and between the parties, that Respondent voluntarily and knowingly agrees to comply with the following terms.

For the purposes of this Consent Agreement, Respondent: a) admits that EPA has jurisdiction to commence a civil administrative proceeding for the violations described in the "Findings of Fact and Conclusions of Law" section, above; b) neither admits nor denies the specific Findings of Fact and Conclusions of Law contained in this Consent Agreement; c) consents to the assessment of the civil penalty as set forth below; and d) consents to the issuance of the Final Order accompanying this Consent Agreement.

1. Respondent shall hereinafter maintain compliance with all applicable statutory requirements of TSCA § 8, 15 U.S.C. § 2607 and the implementing regulations at 40 C.F.R. Part 711.

2. Respondent hereby certifies that, as of the date of its signature to this Agreement, to the best of its knowledge and belief, it is now in full compliance with the provisions of TSCA § 8, 15 U.S.C. § 2607 and the implementing regulations at 40 C.F.R. Part 711.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **ONE HUNDRED FORTY-THREE THOUSAND THREE HUNDRED DOLLARS (\$143,300)**, payable to the "Treasurer of the United States of America." The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document.

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

Alternatively, payment may be made by Electronic Fund Transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall 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: 68010727
- 4) ABA number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- 6) Name of Respondent: Mitsuya Boeki USA, Inc.
- 7) Docket Number TSCA-02-2016-9141

Promptly after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that such payment has been made to both:

Jeannie M. Yu
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor

New York, NY 10007

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

Payment must be received at the above address (or account of EPA) on or before **45 calendar days** from the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the “due date”).

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 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 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.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement (upon full payment of the civil penalty due under paragraph 3) of the civil liabilities under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) *et seq.*, that attach or might have attached as a result of the violations described in the “Findings of Fact and

Conclusions of Law” section, above. Nothing herein shall be read to preclude EPA or the United States, on behalf of EPA, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

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

6. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the determinations contained in the “Findings of Fact and Conclusions of Law” section, above or on the accompanying Final Order. Respondent further waives its right otherwise to contest all such determinations or to contest the validity or any term of this CAFO in any action brought: a) by the United States, including EPA, to enforce this CAFO, or b) to enforce a judgment relating to this CAFO.

7. The civil penalty and any applicable stipulated penalties provided for herein are penalties within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.

8. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent’s obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

10. Each party shall bear its own costs and attorney fees in this matter.

11. Respondent consents to service upon Respondent of a copy of this Consent

Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

In the Matter of Mitsuya Boeki USA, Inc.,
Docket No. TSCA-02-2016-9141

RESPONDENT:

BY:


Mitsuya Boeki USA, Inc.

NAME:

Yukiraka Yoshikawa
(PLEASE PRINT)


TITLE:

President

DATE:

September 21, 2016

COMPLAINANT:


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

DATE:

9/21/16

In the Matter of Mitsuya Boeki USA, Inc.,
Docket No. TSCA-02-2016-9141

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement, entered into by the parties in settlement of EPA's Administrative Action bearing Docket No. TSCA-02-2016-9141, issued in the matter of Mitsuya Boeki USA, Inc., is hereby approved, incorporated herein, and issued as an Order pursuant to Section 16 of TSCA, 15 U.S.C. § 2615. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

DATE: _____

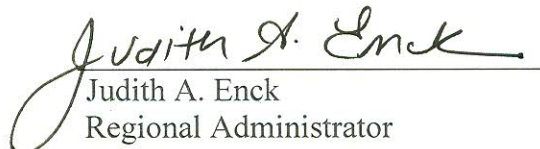
Judith A. Enck
Regional Administrator
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, NY 10007

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DATE: 9.21.16


Judith A. Enck
Regional Administrator
U.S. Environmental Protection
Agency - Region2
290 Broadway
New York, NY 10007

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order, bearing docket number TSCA-02-2016-9141, in the following manner to the respective addressees listed below:

Original and Copy
By Hand Delivery:

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

Copy by Certified Mail/
Return Receipt Requested:

Yukitaka Yoshikawa, President
Shoi Unemura, Sales Manager
Mitsuya Boeki USA, Inc.
250 Pehle Avenue, Suite 200
Saddle Brook, New Jersey 07663

Dated: September 27, 2016
New York, NY

2
Yolanda Maguire