



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7666 6718

Mr. Dwain Colvin
Dover Chemical Corporation
3676 Dover Road NW
Dover, Ohio 44622

Dwain Colvin, Dover Chemical Corporation TSCA-05-2011-0010

Dear Mr. Colvin:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on June 20, 2011, with the Regional Hearing Clerk.

The civil penalty in the amount of \$58,000 is to be paid in the manner described in paragraphs 49 and 50. Please be certain that the number BD 2751147X009 and the docket number are written on both the transmittal letter and on the check. Payment is due by July 20, 2011 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)
Kathleen, Counsel for Complainant/C-14J

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. EPA REGION 5

2011 JUN 20 PM 4: 10

In the Matter of:)
)
Dover Chemical Corporation)
Dover, Ohio)
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Respondent.)
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Docket No.: TSCA-05-2011-0010

**Proceeding to Assess a Civil Penalty
under Section 16(a) of the Toxic
Substances Control Act,
15 U.S.C. § 2615(a)**

Consent Agreement and Final Order

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a) and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Dover Chemical Corporation (Dover), a corporation organized under the laws of the State of Ohio that is doing business in Ohio.
4. At all times relevant to this complaint, Dover's headquarters and manufacturing facility have been located at 3676 Davis Road, Dover, Ohio 44077 (facility).
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

10. Under Sections 5, 8, and 14 of TSCA, 15 U.S.C. §§ 2604, 2607, and 2613, U.S. EPA promulgated the Premanufacture Notice Requirements and Review Procedures (PMN Rule) on May 13, 1983. 48 Fed. Reg. 21742 (1983). The PMN Rule, as amended, is codified at 40 C.F.R. Part 720.

11. The regulation at 40 C.F.R. § 720.22(a)(1) requires that any person who intends to manufacture a new chemical substance in the United States for commercial purposes submit a notice to U.S. EPA unless the substance is excluded under 40 C.F.R. § 720.30.

12. U.S. EPA compiles, keeps current, and publishes a list of each chemical substance which is manufactured or processed in the United States, pursuant to section 8(b)(1) of TSCA, 15 U.S.C. § 2607(b)(1). This list is known as the "Master Inventory File," and includes chemical substances reported pursuant to section 5(a)(1) of TSCA, 15 U.S.C. § 2604(a)(1).

13. The regulation at 40 C.F.R. § 720.30(c) states that a new chemical substance is not subject to the notification requirement of 40 C.F.R. Part 720 if it will be manufactured or imported in small quantities solely for research and development under 40 C.F.R. § 720.36.

14. The regulation at 40 C.F.R. § 720.36(c)(2) states that if a manufacturer or importer distributes a chemical substance manufactured or imported under 40 C.F.R. § 720.36 to persons not in its employ, the manufacturer or importer must, among other things, notify in writing those persons that the substance is to be used only for research and development purposes. (In this complaint, this notice will be referred to as a “written TSCA R&D notice.”)

15. The regulation at 40 C.F.R. § 720.36(c)(3) states that the adequacy of any notification under 40 C.F.R. § 720.36 is the responsibility of the manufacturer or importer.

16. The regulation at 40 C.F.R. § 720.120(a) states that any person who fails to comply with any provision of 40 C.F.R. Part 720 is in violation of Section 15 of TSCA, 15 U.S.C. § 2614, and may be subject to civil and criminal penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

17. Pursuant to his authority under Section 8(a) of TSCA, 15 U.S.C. § 2607(a), the Administrator of U.S. EPA promulgated the Chemical Information Rules on June 22, 1982 (47 Fed. Reg. 26992). The Chemical Information Rules subsequently have been amended and are codified at 40 C.F.R. Part 712.

18. Pursuant to 40 C.F.R. § 712.20, persons who manufacture for commercial purposes during the reporting period a chemical substance listed in 40 C.F.R. § 712.30 must submit the "Manufacturer's Report-Preliminary Assessment Information" (hereinafter "PAIR report") for each plant site at which they manufactured the chemical substance, except as described in 40 C.F.R. § 712.25.

19. Pursuant to 40 C.F.R. § 712.30(a)(2), a person's PAIR report for a chemical substance must cover his latest complete corporate fiscal year as of the effective date of the

listing of the chemical substance in 40 C.F.R. § 712.30. (This period of time sometimes is called the "reporting period" in 40 C.F.R. Part 712.)

20. Pursuant to 40 C.F.R. § 712.30(c), the PAIR report for each chemical substance must be submitted to U.S. EPA within 60 days of the effective date of the listing of the chemical substance in 40 C.F.R. § 712.30.

21. Sections 15(1)(B), (1)(C), and (3)(B) of TSCA, 15 U.S.C. §§ 2614(1)(B), (1)(C), and (3)(B), makes unlawful any person's failure to comply with any requirement prescribed by Section 5 of TSCA, 15 U.S.C. § 2604, or any rule promulgated under Section 5 of TSCA, 15 U.S.C. § 2604, or failure to submit reports, notices or other information as required by TSCA or a rule promulgated thereunder.

22. Each unlawful act pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, subjects Respondent to civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

Factual Allegations and Alleged Violations

23. On August 27, 2009, a representative of U.S. EPA conducted an inspection of Respondent's facility to determine compliance with Sections 5, 8, 12, and 13 of TSCA, 15 U.S.C. §§ 2604, 2607, 2611, and 2612, and regulations promulgated thereunder.

24. Respondent is a "person" as defined at 40 C.F.R. § 712.3(l).

25. Respondent's latest complete corporate fiscal year prior to September 29, 2006, was calendar year 2005.

Count 1

26. During calendar year 2005, Respondent manufactured approximately 434,360 lbs. of MaycoBase 1540 (hereinafter "Specified Chemical") at its facility.

27. The Specified Chemical is an organic substance of a particular molecular identity.

28. In calendar year 2005, Respondent manufactured the Specified Chemical entirely for use other than as a pesticide, as defined in the Federal Insecticide, Fungicide, and Rodenticide Act; as tobacco or any tobacco product; as a source material, special nuclear material, or byproduct material as such those terms are defined in the Atomic Energy Act of 1954 and any regulations issued under such Act; as an article the sale of which is subject to the tax imposed by Section 4181 of the Internal Revenue Code of 1954 (i.e. any pistol, firearm, revolver, shells or cartridges); or as a food, food additive, drug, cosmetic or device as such terms are defined in Section 201 of the Federal Food, Drug, and Cosmetic Act.

29. The Specified Chemical which Respondent manufactured at its facility during calendar year 2005 is a "chemical substance," as that term is defined at Section 3(2) of TSCA, 15 U.S.C. § 2602(2).

30. U.S. EPA listed the Specified Chemical in 40 C.F.R. § 712.30 on August 16, 2006, with an effective date of September 29, 2006, and a reporting due date of November 26, 2006.

31. Respondent did "manufacture," as that term is defined at Section 3(7) of TSCA, 15 U.S.C. § 2602(7), the Specified Chemical during calendar year 2005 at its facility.

32. Respondent did "manufacture for commercial purposes," as that term is defined at 40 C.F.R. § 712.3(h), the Specified Chemical during calendar year 2005 at its facility.

33. Respondent is not exempt, pursuant to any provision of 40 C.F.R. §§ 712.25 or 712.30(a)(3), from the requirement at 40 C.F.R. § 712.20 to submit a PAIR report for the Specified Chemical.

34. Respondent was required to submit to U.S. EPA a PAIR report no later than November 28, 2006, for its calendar year 2005 manufacture for commercial purposes of the Specified Chemical at its facility.

35. On or about November 2, 2009, Respondent submitted to U.S. EPA a PAIR report for its manufacture for commercial purposes of approximately 434,360 lbs. of the Specified Chemical during calendar year 2005 at its facility.

36. Respondent's submission to U.S. EPA of a PAIR report for its manufacture for commercial purposes of the Specified Chemical during calendar year 2005 at its facility was more than 60 days late and as such constitutes a violation of 40 C.F.R. §§ 712.20(a) and 712.30(c) and Sections 8(a) and 15(3)(B) of TSCA, 15 U.S.C. §§ 2607(a) and 2614(3)(B).

37. 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 promulgated thereunder.

Count 2

38. Respondent distributed samples of a chemical that Respondent calls "Doverphos 7.5," for research and development purposes on January 9, 2007, February 6, 2007, April 8, 2007, April 9, 2007, April 19, 2007, August 23, 2007, and September 26, 2008.

39. Doverphos 7.5 is a "chemical substance" as defined at 40 C.F.R. § 720.3(e).

40. Respondent was the manufacturer or importer of Doverphos, as defined at 40 C.F.R. § 720.36.

41. At the time of each shipment of Doverphos 7.5, it did not appear on the inventory that U.S. EPA has compiled and keeps current under section 8(b) of TSCA, 15 U.S.C. § 2607(b).

42. At the time of each shipment of Doverphos 7.5, it was a “new chemical substance” as that term is used in 40 C.F.R. § 720.22(a)(1) and defined at 40 C.F.R. 720.3(v).

43. For each shipment of Doverphos 7.5, Respondent was subject to the research and development requirements of the PMN Rule at 40 C.F.R. § 720.36.

44. Respondent did not provide written TSCA R&D notification for Doverphos 7.5 to the recipients of the R&D samples.

45. Respondent’s distribution of Doverphos 7.5 on seven occasions without providing written TSCA R&D notice constitutes seven violations of 40 C.F.R. § 720.36(c)(2) and (3).

46. Respondent’s violations of 40 C.F.R. § 720.36(c)(2) and (3) constitute unlawful acts under Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

Civil Penalty

47. Pursuant to Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), Complainant determined that an appropriate civil penalty to settle this action is \$58,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior TSCA violations, the degree of culpability, and such other matters as justice may require. Complainant also considered EPA’s “Guidelines for Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act” (45 Fed. Reg. 59770) and “The Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13,” effective June 1, 1999.

48. Respondent has developed policy and procedural changes for its handling of new

chemical substances to assure proper notification of recipients of research and development samples, to assure labeling of new chemical substances produced for export only, as required in Section 12 of TSCA, 15 U.S.C. § 2611, and to assure timely filing of any PAIR reports that may be required.

49. Within 30 days after the effective date of this CAFO, Respondent must pay a \$58,000 civil penalty for the violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

50. A transmittal letter stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Terence Bonace-CMB (LC-8J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Kathleen Schnieders-ORC (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3509

51. This civil penalty is not deductible for federal tax purposes.

52. If Respondent does not timely pay the civil penalty EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties

and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action. TSCA Section 16(a)(4), 42 U.S.C. § 2615(a)(4).

53. Interest will accrue on any overdue amount from the date payment was due in accordance with 31 C.F.R. § 901.9(b). Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

54. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

55. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

56. This CAFO does not affect Respondent's responsibility to comply with TSCA and other applicable federal, state, and local laws.

57. The terms of this CAFO bind Respondent, its successors, and assigns.

58. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

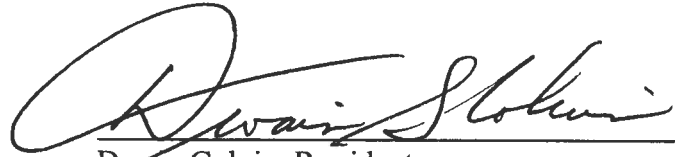
59. Each party agrees to bear its own costs and attorney's fees, in this action.

60. This CAFO constitutes the entire agreement between the parties.

Dover Chemical Company, Respondent

5/23/2011

Date



Dwain Colvin, President
Dover Chemical Company

United States Environmental Protection Agency, Complainant

June 10, 2011

Date



Margaret M. Guerriero
Division Director
Land and Chemicals Division

**In the Matter of:
Dover Chemical Company
Docket No. TSCA-05-2011-0010**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

6-13-11

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

REGIONAL HEARING CLERK
U.S. EPA REGION 5
2011 JUN 20 PM 4:28


CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Dover Chemicals Corporatinoj, was filed on June 20, 2011, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7666 6718 to:

Mr. Dwain Colvin
Dover Chemicals Corporation
3676 Dover Road NW
Dover, Ohio 44622

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Kathleen Schnieders, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2011-0010

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U.S. EPA REGION 5