

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
)
Holly Oak Chemical Inc.)
)
)
Respondent.)
_____)

Docket Number: *TSCA-04-2008-2506 (b)*

RECEIVED
EPA REGION IV
2007 NOV -7 PM 1:30
HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2615(a), and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified in 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Holly Oak Chemical Inc., (hereinafter, Respondent).

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statement

3. Pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for any person to: (1) fail or refuse to comply with any rule or order promulgated pursuant to Sections 4, 5, 8, 12 or 13 of TSCA (15 U.S.C. §§ 2603, 2604, 2607, 2611 or 2612); (2) use for commercial purposes a chemical substance or mixture that the person knew or had reason to know was manufactured, imported, processed, or distributed in commerce in violation of TSCA Section 5, 15 U.S.C. § 2604; (3) fail to maintain records, submit reports or information, or permit access to or allow copying of records as required by TSCA; and (4) refuse to permit entry or inspection as authorized by Section 11 of TSCA, 15 U.S.C. § 2610. Any person who violates a provision of Section 15 of TSCA may be assessed a penalty of up to \$27,500 for each such violation, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19. For a violation occurring after March 15, 2004, a penalty of up to \$32,500 may be assessed. Each day a violation continues may constitute a separate violation.

4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.

5. Complainant will file the original non-confidential CAFO with the Regional Hearing Clerk and a copy will be mailed to the Respondent. To determine the confidential business information (CBI) that was deleted (CBI deleted) from this CAFO, Complainant or Respondent should refer to the EPA Confidential Notice of Violation dated June 21, 2007.

III. Specific Allegations

6. On September 5, 2006, an authorized agent of the EPA Region 4 conducted an inspection at Respondent's place of business pursuant to Section 11(a) of TSCA, 15 U.S.C. 2610(a).

7. Respondent's place of business is located at 101 Case Street, Fountain Inn, SC 29644.

8. Respondent is a manufacturer and importer as the terms are defined in 40 C.F.R. § 720.3(t) and (l).

9. Respondent is a small business as the term is defined in 40 C.F.R. § 704.3.

10. In 2001, Respondent manufactured (CBI deleted) pounds of [CBI deleted (CAS #)], hereinafter referred to as Chemical A;

11. The Chemical A was subject to the 2002 Inventory Update Reporting (IUR).

12. During the IUR period [August 25, 2002 –December 23, 2002], Respondent failed to submit an IUR Report to the EPA for Chemical A.

13. As of the date of the TSCA inspection, Respondent did not submit a 2002 IUR Report for the Chemical A.

14. Respondent violated 40 C.F.R. § 710.32(c) by failing to submit the 2002 IUR Report for Chemical A to the EPA.

IV. Consent Agreement

15. For the purposes of this CAFO, Respondent admits to the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

16. Respondent waives its right to a hearing on the allegations contained herein.

17. Respondent waives any right to contest the allegations and its right to appeal the proposed final order, accompanying this consent agreement.

18. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

19. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA Section.

20. Compliance with this CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or pursue criminal enforcement.

21. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.

V. Final Order

22. Respondent is assessed a civil penalty in the amount of Nine Thousand Three Hundred and Fifty Dollars (\$9,350), plus interest of Two Hundred and Thirty Four Dollars and Ninety-Two Cents (\$234.92) which is to be paid over a one year period in four quarterly payments of Two Thousand Three Hundred and Ninety Six Dollars and Twenty-Three Cents (\$2396.23). Respondent shall make payments in accordance with the following schedule:

- | | |
|---------------------------------|-----------|
| 1. On or before January 1, 2008 | \$2396.23 |
| 2. On or before April 1, 2008 | \$2396.23 |
| 3. On or before July 1, 2008 | \$2396.23 |
| 4. On or before October 1, 2008 | \$2396.23 |

23. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to "Treasurer, United States of America," to one of the following addresses:

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

The check shall reference on its face the name of the Respondent and the Docket No. of the CAFO.

24. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Laila B. Hudda
PCB and Chemical Products
Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Saundi Wilson
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960.

25. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

26. Pursuant to 31 U.S.C. §3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date.

27. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

28. This CAFO shall be binding upon the Respondent, its successors and assigns.

29. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Laila B. Hudda
PCB and Chemical Products
Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9007

30. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

Remainder of page is intentionally blank.

VI. Effective Date

31. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: HOLLY OAK CHEMICAL INC.

Docket Number: TSCA-04-2008-2506(b)

By: Wesley L. Smith Date: September 17, 2007

Name: Wesley L. Smith (Typed or Printed)

Title: Executive V.P. (Typed or Printed)

United States Environmental Protection Agency

By: Beverly H. Banister Date: 10/22/07

Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 5th day of November, 2007

By: Susan B. Schub

Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of **Holly Oak Chemical Inc.**, Docket No. TSCA-04-2008-2772(b) to the addressees listed below:

FOR RESPONDENT:
Requested)

(Certified Mail, Return Receipt

Wesley Smith
Holly Oak Chemical Inc.
101 Case Street. (P. O. Box 266)
Fountain Inn, SC 29644

Laila B. Hudda
PCB and Chemical Products
Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

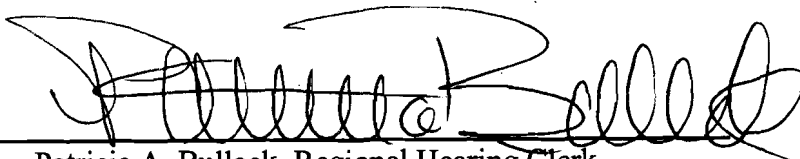
(via EPA's internal mail)

Robert Caplan
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth St., SW
Atlanta, GA 30303-8960

(via EPA's internal mail)

Date:

11-2-07



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi J Wilson on 11/2/07
(Name) (Date)

in the OEH at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Holly oak Chemical Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 9350
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2008 2506 (b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

- A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:
- | | |
|--|---|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD)
3. Designated Program Office |
|--|---|
- B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:
- | | |
|--|---|
| 1. Originating Office
2. Regional Hearing Clerk | 3. Designated Program Office
4. Regional Counsel (EAD) |
|--|---|