

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

REC'D - CLERK
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In the Matter of :
: CONSENT AGREEMENT
PeroxyChem, LLC : AND
: FINAL ORDER
Respondent, :
: Proceeding under the Toxic Substances : Docket No.
Control Act, 15 USC §§ 2601-2697 et seq. : TSCA-02-2019-9241
as amended ("TSCA") :
: :
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PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a). 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 (hereinafter "Consolidated Rules"), provide in 40 C.F.R. § 22.13(b) that when the parties agree to settle 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 pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 2 (hereinafter "EPA" or "Complainant"), alleges that PeroxyChem, LLC (hereinafter "Respondent"), violated Section 8(a) of TSCA, 15 U.S.C. § 2607(a), and the regulations promulgated pursuant to that Section, set forth at 40 C.F.R. Part 711, relating to requirements for Chemical Data Reporting ("CDR") and Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

EPA and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. §§ 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This Consent Agreement and Final Order is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made. The following constitute Complainant's findings of fact and conclusions of law.

FINDINGS OF FACT

1. Respondent is PeroxyChem, LLC.
2. Respondent owns, operates, and/or controls the facility located at 35 Sawyer Avenue in Tonawanda, New York (hereinafter "Respondent's facility").
3. On July 18, 2018, EPA conducted an inspection of and at Respondent's facility.
4. As a result of this inspection, Respondent submitted to EPA certain information regarding the manufacturing, including importation, of chemical substances subject to TSCA.
5. According to the information described in paragraph 4, above, Respondent manufactured or imported chemical substances in volumes of 25,000 pounds or more during the reporting period January 1, 2012 through December 31, 2015.
6. On October 21, 2016, Respondent filed a timely CDR report for the period named in paragraph 5, above, through EPA's Central Data Exchange.
7. Respondent inaccurately reported production volume information during one or more years of the reporting period for the chemical substances identified by the Chemical Abstract Services Registry Numbers (CASRNs) 7727-21-1, 79-21-0, 7775-27-1 and 7727-54-0.
8. On April 17, 2019, Complainant and Respondent met for an informal settlement conference prior to the issuance of any enforcement action.

CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the facility which is the subject of this Consent Agreement and Final Order, is subject to the regulations and requirements pertaining to the reporting requirements promulgated pursuant to Section 8(b) of TSCA, 15 U.S.C. § 2607(b), and set forth at 40 C.F.R. Part 711.
2. Respondent is a "person" as that term is defined in 40 C.F.R. § 710.3.
3. Respondent is a "manufacturer" as that term is defined at 40 C.F.R. § 711.3.
4. Respondent's facility is a "site" as that term is defined at 40 C.F.R. § 711.3.
5. The submission period for the 2016 CDR was June 1 through October 31, 2016.
6. Pursuant to 40 C.F.R. § 711.15, the principal reporting year for the 2016 CDR was calendar year 2015.
7. CASRNs 7727-21-1, 79-21-0, 7775-27-1 and 7727-54-0 are each a "reportable chemical substance" as that term is defined at 40 C.F.R. § 711.3.
8. CASRNs 7727-21-1, 79-21-0, 7775-27-1 and 7727-54-0 were listed on EPA's "Master Inventory File" prior to the beginning of the principal reporting year applicable to this matter.
9. Pursuant to 40 C.F.R. § 711.5, CASRNs 7727-21-1, 79-21-0, 7775-27-1 and 7727-54-0 were chemical substances for which information must be reported.
10. Pursuant to 40 C.F.R. § 711.15(b)(3)(iii), for each reportable chemical substance reported for the principle reporting year, the total annual volume in pounds must be reported to two significant figures of accuracy.
11. Failure to meet the reporting requirements of 40 C.F.R. § 711.15 is a violation of 40 C.F.R. § 711.8, which is a violation of Sections 8(a) and 15(3) of TSCA, 15 U.S.C. §§ 2607(a) and 2614(3), respectively.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the Consolidated Rules at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms.

1. For the purposes of this Consent Agreement, Respondent (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence a civil administrative proceeding for the violations alleged in the "Conclusions of Law" section, above; (b) neither admits nor denies the specific factual allegations contained in the "Findings of Fact" section, above; and (c) neither admits nor denies the assertions set forth in the "Conclusions of Law" section, above.

2. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **SIXTY EIGHT THOUSAND SEVEN HUNDRED SIXTY ONE DOLLARS (\$68,761)** 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. Such check shall be mailed to:

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 Funds 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; and
- 7) Docket Number.

Payment must be received at the above address (or account of EPA) on or before **30 calendar days** from the date of the 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.

3. Full payment of the penalty described in paragraph 2, above, shall fully and finally resolve Respondent’s liability for federal civil penalties for only the violation(s) and fact(s) described in the “Findings of Fact” and “Conclusions of Law” sections, above. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations 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 settlement are set forth herein.

4. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

5. 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 assertions contained in the “Findings of Fact” section, above, and the allegations contained in the “Conclusions of Law” section, above, or on any allegations arising thereunder.

6. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this

Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order. Respondent further waives any right it may have to appeal this Consent Agreement and the accompanying Final Order.

7. 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, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

8. 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.

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

10. Any responses, documentation, and other communications submitted to EPA in connection with this Consent Agreement shall be sent to:

Ann Finnegan, TSCA Enforcement Coordinator
U.S. Environmental Protection Agency, Region 2
Pesticides and Toxic Substances Compliance Branch
2890 Woodbridge Avenue, MS-225
Edison, NJ 08837

Unless the above-named EPA contact is later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following address:

Mr. Walter A. Kramer, Jr., Vice President
PeroxyChem, LLC
2005 Market Street, Suite 3200
Philadelphia, PA 19103

11. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA at Respondent's facility.

12. 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.

RESPONDENT:

BY: Walter A. Kramer Jr.
PeroxyChem, LLC

NAME: WALTER A. KRAMER JR.
(PLEASE PRINT)

TITLE: V.P. North AMERICA OPERATIONS

DATE: 7/15/2019

COMPLAINANT:

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

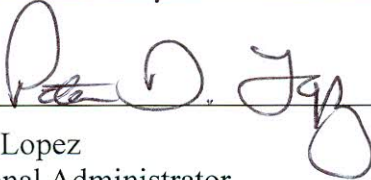
DATE: AUG - 5 2019

In the Matter of PeroxyChem LLC
Docket Number TSCA-02-2019-9241

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of PeroxyChem LLC bearing Docket Number TSCA-02-2019-9241. 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 issued under Section 6 of the Toxic Substances Control Act, 15 U.S.C. § 2605 for purposes of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

DATE: 8/22/19



Peter Lopez
Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

In the Matter of PeroxyChem LLC
Docket Number TSCA-02-2019-9241

CERTIFICATE OF SERVICE

This is to certify that on the 28th day of August 2019, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2019-9241, by certified mail, return receipt requested, to:

Mr. Walter A. Kramer, Jr., Vice President
PeroxyChem, LLC
2005 Market Street, Suite 3200
Philadelphia, PA 19103

On the same date, I mailed via EPA internal mail to the Region 2 Regional Hearing Clerk at 290 Broadway, New York, New York 10007 the original and one copy of the foregoing Consent Agreement and Final Order.

