



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG 10 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rachel E. Deming, Esq.
Scarola Ellis LLP
888 Seventh Avenue, 45th Floor
New York, NY 10106

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2010 AUG 11 PM 1:21
REGIONAL HEARING
NEW YORK

Re: *In the Matter of Ampacet Corporation*, Docket No. TSCA-02-2009-9243

Dear Ms. Deming:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the U.S. Environmental Protection Agency - Region 2.

Please note the payment provisions of the Agreement. Please arrange for payment of the penalty according to the instructions given in the Final Order.

Sincerely,

Naomi P. Shapiro
Assistant Regional Counsel

cc: Barbara A. Gunning, Administrative Law Judge

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 AUG 11 PM 1:21
REGIONAL HEARING
CLERK

-----X
:
In the Matter of :
:
Ampacet Corporation, :
:
Respondent. :
:
Proceeding under Section 16(a) of the :
Toxic Substances Control Act. :
-----X

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. TSCA-02-2009-9243

PRELIMINARY STATEMENT

This Consent Agreement and Final Order ("CA/FO") resolves a civil administrative proceeding instituted pursuant to Section 16 of the Toxic Substances Control Act ("TSCA"). The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2, issued a Complaint and Notice of Opportunity for Hearing to the Respondent, Ampacet Corporation, on September 17, 2009 (the "Complaint").

The Complaint charged Respondent with violating regulations promulgated under Section 8(a) of TSCA, 15 U.S.C. § 2607(a), and thereby Section 15 of TSCA, 15 U.S.C. § 2614. The Respondent filed an Answer and Request for Opportunity for Hearing on November 27, 2009. EPA and Respondent met to discuss settlement on December 17, 2009. The parties agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 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 Ampacet Corporation. Respondent leases office space in a building located at 660 White Plains Road, Tarrytown, NY 10591. Respondent's office at 660 White Plains Road in Tarrytown, New York, is the site responsible for importation of goods into the United States.

2. Respondent is a "person," "manufacturer" and "importer" as those terms are defined in 40 C.F.R. §§ 704.3 and 710.3.

3. Manufacturers and importers, as those terms are defined in 40 C.F.R. §§ 704.3 and 710.3, are required periodically to report the manufacture and importation of certain chemical substances using the "Partial Updating of the Inventory Data Base Production and Site Report" (hereinafter "Form U") in accordance with 40 C.F.R. Part 710, Subpart C.

4. In the Complaint, EPA alleged that during calendar year 2005, Respondent imported the following chemical substances for which a Form U was required to be submitted:

CHEMICAL NAME	CHEMICAL ABSTRACTS REGISTRY NUMBER
CARBON BLACK	1333-86-4
CALCIUM CARBONATE	1317-65-3
TITANIUM DIOXIDE	13463-67-7
LEAD CHROMATE	1344-37-2
MOLYBDATE ORANGE	12656-85-8
IRON OXIDE	1309-37-1

6. On or about August 13, 2008, duly-designated representatives of EPA conducted an inspection of Respondent's facility to determine Respondent's compliance with the reporting requirements of TSCA.

7. Based on the inspection, and on the Respondent's subsequent submission of a Form U, EPA alleged in the Complaint that Respondent had failed to submit a timely, complete, and accurate Form U by March 23, 2007 for the six (6) chemical substances manufactured (imported) by Respondent as required by 40 C.F.R. §§ 710.48 and 710.53.

8. In the Complaint, EPA also alleged that Respondent's failures to submit the required reports constitute six separate violations of the implementing regulations at 40 C.F.R. Part 710 for TSCA Sections 8(a) and 15, 15 U.S.C. §§ 2607(a) and 2614.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 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. § 22.18, it is hereby agreed as follows:

1. For purposes of this proceeding, Respondent (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies specific factual allegations contained in the Complaint; and (c) consents to the terms of this Consent Agreement.

2. Respondent certifies that with respect to the violations alleged herein, Respondent is in full compliance with Section 8(a) of TSCA, 15 U.S.C. § 2607(a). The Respondent's signatory further certifies that the Respondent has a procedure in place for determining the reportability under Section 8(a) of TSCA of the chemical substances it manufactures (imports) and for reporting the applicable substances to the U.S.EPA in accordance with the relevant regulations.

3. Respondent shall pay, by cashier's or certified check payable to the "Treasurer, United States of America" or by Electronic Fund Transfer (EFT), a civil penalty in the amount of **Eighty Thousand Dollars (\$80,000)**. All payments specified herein shall be made according to the methods specified in this paragraph.

a. If by check, the check shall be identified with a notation of the name and docket number of this case as follows: In the Matter of Ampacet Corporation, Docket No. TSCA-02-2009-9243. The check shall be mailed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO. 63197-9000

b. If overnight delivery is preferred, Respondent may mail the check to the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
Attn: USEPA Box #979077
St. Louis, MO. 63101

c. If Respondent chooses to make payment by EFT, then 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 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 and docket number of the case.

Respondent shall also send documentation of payment to the following

Naomi P. Shapiro, Esq. Assistant Regional Counsel Office of Regional Counsel	and	Karen Maples Regional Hearing Clerk
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U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

4. Respondent's payment must be received on or before forty-five (45) calendar days after the date of signature by EPA of the Final Order, which is located at the end of this CA/FO (the date by which payment must be received shall hereafter be referred to as the “due date”).

a. Failure of Respondent to pay the penalty for which it is responsible in full pursuant to this Consent Agreement will result in further action for collection or appropriate action;

b. Further, if the 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; and

c. A late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30)-day period (or any portion thereof) following the due date in which the balance remains unpaid.

5. 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 certifications in this proceeding) the civil and administrative claims specifically alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA, or the United States on behalf of EPA, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

6. Respondent has read the CA/FO, understands its terms, finds it to be reasonable and consents to the 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.

7. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this CA/FO and agrees to pay this penalty in accordance with the terms of this CA/FO.

8. Respondent explicitly waives its right to request or to seek any Hearing on the

Complaint or any of the allegations therein asserted, on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

9. Respondent waives its right to appeal the proposed Final Order accompanying this Consent Agreement.

10. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.

11. Respondent explicitly waives any right 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, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, 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.

12. Nothing in this CA/FO shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

13. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of Federal, state, or local, nor shall it be construed to be a ruling on or determination of any issue related to a federal, state, or local permit.

14. Each party hereto agrees to bear its own costs and fees in this matter.

15. Respondent consents to service upon itself of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

16. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order herein shall be the date when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

17. 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 the terms and conditions set forth in this Consent Agreement.

18. The provisions of this CA/FO shall be binding upon EPA and Respondent, their officers, directors, officials, agents, servants, authorized representatives and successors or assigns.

RESPONDENT:

BY:



Ampacet Corporation

NAME:

JOEL SLUTSKY
(Please Print)


TITLE:

SENIOR VICE PRESIDENT, FINANCE

DATE:

AUGUST 2, 2010

COMPLAINANT:



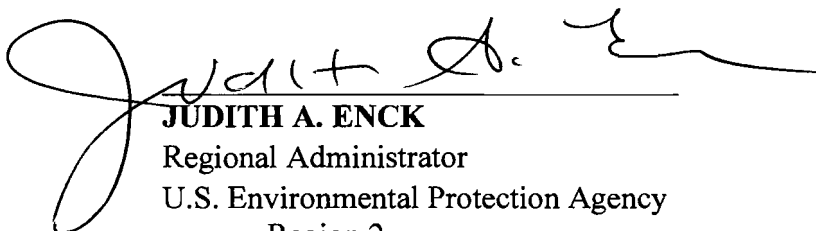
Dore LaPosta, Director
Division of Enforcement
and Compliance Assistance
U.S. Environmental Protection Agency
Region 2

DATE:

AUGUST 5, 2010

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued, as an Order, effective upon the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.



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

DATE: 8 | 5 | 10

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 below-referenced docket number, in the following manner to the respective addressees below:

Original and one copy
hand-carried:

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

Copy by Pouch Mail:

Administrative Law Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900 L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Copy by Certified Mail,
Return Receipt Requested:

Rachel E. Deming, Esq.
Scarola Ellis LLP
888 Seventh Avenue, 45th Floor
New York, NY 10106

Dated: AUG 10 2010

Suzanne N. Bae
New York, NY