



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

JUL 26 2010

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7670 5950

Mr. Michael R. Graeff
President
Koch Knight, LLC
5385 Orchard View Drive S.E.
East Canton, Ohio 44730

Koch Knight, LLC TSCA-05-2010-0015

Dear Mr. Graeff:

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 July 26, 2010, with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,676.00 is to be paid in the manner described in paragraphs 24 and 25. Please be certain that the number **BD 2751047X010** and the docket number are written on both the transmittal letter and on the check. Payment is due by August 25, 2010 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Koch Knight, LLC
5385 Orchard View Drive S.E.
East Canton, Ohio 44730

Respondent.

) Docket No. TSCA-05-2010-0015
)
)

) Proceeding to Assess a Civil
) Penalty Under
) Section 12(b) of the
) Toxic Substances Control Act,
) 15 U.S.C. § 2611(b)
)

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Consent Agreement and Final Order

Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Sections 12(b) and 16(a) of the Toxic Substances Control Act (TSCA or “the Act”), 15 U.S.C. §§ 2611(b) and 2615(a), and Sections 22.13(b) and 22.18(2)(b) and (c) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (c).
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5 (Complainant).
3. The Respondent is Koch Knight, LLC (Respondent), a corporation doing business in the State of Ohio with a business address of 5385 Orchard View Drive, S.E., East Canton, Ohio 44730.
4. Complainant and Respondent (jointly “the Parties”) agree to settle the above-captioned cause of action under TSCA before the filing of a complaint, via the filing of this Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).
5. 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 each of their interests and in the public interest.

6. 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

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

8. 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

9. Section 12(b) of TSCA, 15 U.S.C. § 2611(b) requires that any person who exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under Section 4 of TSCA, 15 U.S.C. § 2603, or Section 5 of TSCA, 15 U.S.C. § 2604, shall notify the EPA of such exportation or intent to export.

10. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), provides that failure to submit reports, notices or other information as required under TSCA or a rule under the Act shall be unlawful.

11. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides that any person who violates a provision of Section 15 of TSCA, 15 U.S.C. § 2614, shall be liable to the United States for a civil penalty.

12. 40 C.F.R. § 707.60(f) provides that failure to comply with Section 12(b) of TSCA, 15 U.S.C. § 2611(b) will be considered a violation of Section 15(3) of TSCA, 15 U.S.C. § 2614(3), and will subject the exporter to the penalty provisions of Section 16 of TSCA, 15 U.S.C. § 2615.

13. 40 C.F.R. § 707.60(a) provides that Section 12(b) of TSCA, 15 U.S.C. § 2611(b) requires any person who exports or intends to export a chemical substance or mixture to notify EPA of such exportation to a particular country if, with respect to that chemical substance or mixture, data are required under Section 4 of TSCA, 15 U.S.C. § 2603 or Section 5 of TSCA, 15 U.S.C. § 2604.

14. 40 C.F.R. § 707.65(a) provides that for each action under TSCA that triggers the export notification required by 40 C.F.R. § 707.60, the exporter must notify EPA in writing of its export or intended export of each subject chemical substance or mixture, and such notice must be postmarked within seven (7) days of forming the intent to export or on the date of export, whichever is earlier.

Factual Allegations and Alleged Violations

15. On January 4, 2008, Respondent exported one 85 lb. shipment of a resin additive, BYK-R605 to a customer in Australia.

16. BYK-R605 contains the chemical substance p-Xylene.

17. Respondent's January 4, 2008 shipment of BYK-R605 contained 4.3% or 3.66 lbs. of p-Xylene.

18. P-Xylene has a Chemical Abstracts Service Registry (CAS) Number of 106-42-3. *See* 40 C.F.R. § 712.30.

19. P-Xylene is a chemical substance that is subject to the export notification requirements of Section 12(b) of TSCA, 15 U.S.C. § 2611(b).

20. Respondent was required to notify EPA in writing of its export to Australia of BYK-R605 containing 3.66 pounds of p-Xylene within seven (7) days of its January 4, 2008 shipment of the chemical substance.

21. Respondent notified EPA in writing of its export of the BYK-R605 containing 3.66

pounds of p-Xylene to Australia on July 18, 2008, more than six (6) months after the date on which it was required to provide the export notification.

22. Respondent's failure to notify EPA in writing of its export to Australia of the BYK-R605 containing 3.66 pounds of p-Xylene within seven (7) days of its January 4, 2008 shipment of the chemical was a violation of Sections 12(b) and 15(3) of TSCA, 15 U.S.C. §§ 2611(b), 2614(3) and 40 C.F.R. §§ 707.60(a) and (f).

23. On or about July 18, 2008, Respondent voluntarily self-disclosed to EPA the facts surrounding its violation of Sections 12(b) and 15(3) of TSCA, 15 U.S.C. §§ 2611(b), 2614(3) and 40 C.F.R. §§ 707.60(a) and (f), as described in paragraph 22 above.

Civil Penalty

24. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$3,676.00. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violation, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, and the degree of culpability. Complainant also considered EPA's *Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13*, dated June 1, 1999.

Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,676.00 civil penalty for the TSCA violation by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

For checks sent by regular mail through the U.S. Postal Service:

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

For checks sent by Express Mail, next business day delivery:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
Contact: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

For electronic funds transfer:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

For on line payment:

To pay on line using an ACJ debit or credit card, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

25. 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 any payment made by check. Respondent must send a copy of the check and transmittal letter (or written notification of the details of payment where electronic wire payment or on-line payment was used) to:

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

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Cynthia Kawakami (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

27. If Respondent does not pay the civil penalty timely, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

28. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must 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

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

30. This CAFO does not 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.

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

32. Respondent certifies that it is complying with TSCA.

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

34. Each person signing this CAFO 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.

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

36. This CAFO constitutes the entire agreement between the Parties.

Koch Knight, LLC, Respondent


6/25/10
Date


Michael R. Graeff, President

Koch Knight, LLC

United States Environmental Protection Agency, Complainant

7/20/10
Date



Bruce F. Sypniewski
Acting Director
Land and Chemicals Division

**In the Matter of:
Koch Knight, LLC
Docket No. TSCA-05-2010-0015**

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. §§ 22.13(b), 22.18 and 22.31. IT IS SO ORDERED.

7-22-10
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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 Koch Knight, LLC, was filed on July 26, 2010, 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 7670 5950 to:

Mr. Michael R. Graeff
President
Koch Knight, LLC
5385 Orchard View Drive S.E.
East Canton, Ohio 44730

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Cynthia Kawakami, 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

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