



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
2890 WOODBRIDGE AVENUE
EDISON, NEW JERSEY 08837-3679

SEP 21 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

7011 2970 0003 2009 0230

Mr. Mike Kucharski
President & Chief Executive Officer
VanDeMark Chemical Inc.
1 North Transit Road
Lockport, New York 14094

Re: In the Matter of VanDeMark Chemical, Inc.
Docket No. TSCA-02-2016-9241

Dear Mr. Kucharski:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Judicial Officer (RJO) of the U.S. Environmental Protection Agency, Region 2.

Please note that the forty-five (45) day period for payment of the civil penalty commenced as of the date this Consent Agreement was signed by the RJO. Please arrange for payment of this penalty according to the instructions given within the enclosed document under "Terms of Consent Agreement." Further, please ensure that a copy of your payment check or documentation of electronic payment is provided to the EPA staff member listed in that section of the Agreement.

Please contact Mark Bean, of my staff, at (732) 321-6606 or by electronic mail at baen.mark@epa.gov should you have any questions regarding this matter.

Sincerely,

for John Gorman, Chief
Pesticides and Toxic Substances Branch

Enclosure

U.S. Environmental Protection Agency
2016 SEP 23 AM 7:33
REGIONAL JUDICIAL OFFICER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

2016 SEP 23 11 7:32

U.S. Environmental Protection Agency
Region 2
Docket No. TSCA-02-2016-9241

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

CONSENT AGREEMENT AND
FINAL ORDER

Docket No. TSCA-02-2016-9241

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). Pursuant to 40 C.F.R. § 22.13(b) of 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 (July 1, 2000), where the parties agree to settlement of 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 Order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA" or "Complainant"), alleges that VanDeMark Chemical, Inc. ("VDM" or "Respondent"), violated Section 8 of TSCA, 15 U.S.C. § 2607, and the regulations promulgated pursuant to the provisions of this section which are set

forth at 40 C.F.R. Part 711, the TSCA Chemical Data Reporting Requirements. Complainant further alleges that Respondent has thereby violated Section 15 of TSCA, 15 U.S.C. § 2614.

EPA and VDM agree that settling this matter by entering into this Consent Agreement and Final Order (hereinafter “CAFO”) pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22.

FINDINGS OF FACT

1. Respondent is VanDeMark Chemical, Inc.
2. Respondent owns, operates, and/or controls the facility located at One North Transit Road, Lockport, New York 14094 (hereinafter “Respondent’s facility”).
3. On October 29, 2015 EPA conducted an inspection of and at Respondent’s facility.
4. Respondent manufactured a chemical substance (hereinafter designated as “Chemical A” for purposes of confidentiality) in volumes subject to the reporting requirements of Section 8(a) of TSCA and the regulations promulgated pursuant to Section 8 of TSCA, set forth at 40 C.F.R. § 711.15.
5. On August 8, 2012, Respondent filed a timely Inventory Update using EPA’s eCDR web reporting tool for certain reportable chemical substances, but failed to report Chemical A.
6. On July 27, 2016 the parties met via telephone for an informal settlement conference.

CONCLUSIONS OF LAW

1. Respondent is a "person" as that term is defined in 40 C.F.R. § 720.3.
2. Respondent is a "manufacturer" as that term is defined at 40 C.F.R. § 711.3.
3. Respondent's facility is a "site" as that term is defined at 40 C.F.R. § 711.3.
4. Chemical A is a "reportable chemical substance" as that term is defined at 40 C.F.R. § 711.3.
5. Chemical A was listed on EPA's "Master Inventory File," prior to the beginning of the principal reporting year applicable to this matter.
6. Pursuant to 40 C.F.R. § 711.5, Chemical A is a chemical substance for which information must be reported.
7. Failure to meet the reporting requirements of 40 C.F.R. § 711.15 is a violation of 40 C.F.R. § 711, which is a violation of TSCA 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 of Practice 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. Respondent shall hereinafter comply with all applicable provisions of TSCA and the regulations promulgated pursuant to it.

2. 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.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **TWENTY THOUSAND FOUR HUNDRED EIGHTY-FIVE DOLLARS (\$20,485)**, payable 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 Fund 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 6801072
Environmental Protection Agency"
- 6) Name of Respondent
- 7) Docket Number

Promptly after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that such payment has been made to both:

Mark Bean, Life Scientist
U.S. Environmental Protection Agency, Region 2
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-105
Edison, NJ 08837

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

Payment must be received at the above address (or account of EPA) on or before **45 calendar days** after 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.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, and the regulations promulgated thereunder that attach or might have attached as a result of the “Findings of Fact and Conclusions of Law” section, above.

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.

5. 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.

6. 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 or allegations contained in the “Findings of Fact” and “Conclusions of Law” sections, above, or on any allegations arising thereunder. Respondent further waives its right otherwise to contest all such assertions and/or allegations.

7. Respondent 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 the Regional Judicial Officer 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.

8. This Consent Agreement does not waive, extinguish, or otherwise effect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

9. 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.

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

11. 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 *M. A. Kucharski*
VanDeMark Chemical, Incorporated

NAME: *Michael A. Kucharski*
(PLEASE PRINT)

TITLE: *President & CEO*

DATE: *September 12, 2016*

COMPLAINANT:

for John De
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency, Region 2
290 Broadway
New York, NY 10007

DATE: *9/20/16*

In the Matter of VanDeMark Chemical, Inc.
Docket No. TSCA-02-2016-9241

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement, issued In the Matter of VanDeMark Chemical, Incorporated, bearing Docket Number TSCA-02-2016-9241. 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 into 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: September 20, 2016

Helen Ferrara

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

VanDeMark Chemical, Inc.
Docket No. TSCA-02-2016-9241

CERTIFICATE OF SERVICE

This is to certify that on the 27th day of September, 2016, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2016-9241, by certified mail, return receipt requested, to:

Mike Kucharski
President & Chief Executive Officer
VanDeMark Chemical Inc
1 North Transit Road
Lockport, New York 14094

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.


