



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAY 01 2009

4APT-PTSB

Certified Mail – Return Receipt Requested

Mr. Nicholas Gunia  
Chief Executive Officer  
KG International, Inc.  
8125 N.W. 64<sup>th</sup> Street  
Miami, FL 33166

SUBJ: Docket No. TSCA-04-2009-2620(b)  
KG International, Inc.

Dear Mr. Gunia:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.


As stated in Section V of the CAFO, a payment of \$6,302.53 of the assessed penalty of \$25,495.58 is due within 30 days from the effective date. The remaining three payments are due in ninety day intervals thereafter, as indicated in the CAFO. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Mr. Tony Spann at (404) 562-8971.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document

puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

  
101 Jeanne M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

In the Matter of: )  
 )  
KG International, Inc. )  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-04-2009-2620(b)

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**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 Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is KG International, 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 Statements**

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, as amended. 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 October 1, 2008.

6. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Tony Spann  
Chemical Products and  
Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-8971

### **III. Specific Allegations**

7. Respondent owns and operates a chemical distribution business located at 8125 N.W. 64<sup>th</sup> Street, Miami, Florida.
8. Respondent is a small importer as the term is defined in 40 C.F.R. § 704.3.
9. On July 18, 2007, an authorized agent of EPA Region 4 conducted an audit at Respondent's office pursuant to Section 11(a) of TSCA, 15 U.S.C. § 2610(a).
10. Respondent imported [CBI deleted] pounds of Chemical A in 2005.
11. Chemical A was subject to the 2006 Inventory Update Reporting (IUR) as described in 40 C.F.R. § 710, Subpart C.
12. As described in 40 C.F.R. § 710.53, the 2006 IUR reporting period for Chemical A was August 23, 2006, through March 23, 2007.
13. Respondent failed to submit the 2006 IUR Report to EPA for Chemical A during the reporting period described 40 C.F.R. § 710.53.
14. Pursuant 40 C.F.R. § 710.1(c) and Section 15(3) of TSCA it is unlawful for any person to fail or refuse to submit information required under the IUR Regulations.
15. In 2006, Respondent exported Chemical B to [CBI deleted].

16. Chemical B was subject to the export notification regulations promulgated at 40 C.F.R. § 707, Subpart D.
17. At the time of the inspection, there was no record indicating the Respondent submitted an export notice to the EPA for Chemical B.
18. Respondent failed to comply with the export notification requirements set forth at 40 C.F.R. § 707.65(a).
19. Pursuant to 40 C.F.R. § 707.60(f), failure to comply with TSCA Section 12(b) as set forth in 40 C.F.R. § 707, Subpart D is a violation of TSCA Section 15(3).

#### **IV. Consent Agreement**

20. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above, but neither admits nor denies the factual allegations set forth above.
21. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
22. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
23. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
24. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws

and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.

25. 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**

26. Respondent is assessed a total civil penalty of Twenty Five Thousand Four Hundred Ninety Five Dollars and Fifty Eight Cents (\$25,495.58), which is to be paid in four payments, the first due within thirty days of the effective date of this CAFO and subsequent payments in ninety day intervals thereafter. The total civil penalty due is based on a penalty of \$25,210.15 plus interest for payments over time. Respondent shall make payments in accordance with the following schedule.

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	30 days of filing of CAFO	\$6,302.53
2	120 days of filing of CAFO	\$6,447.06
3	210 days of filing of CAFO	\$6,396.81
4	300 days of filing of CAFO	\$6,349.18

27. Respondent shall remit the civil penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check to the following address by U.S. Postal Service:

U.S. 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 Docket Number of this CAFO.**

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.):

U. S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson (314) 418-4087

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

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

Tony Spann  
Chemical Products and  
Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

and

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

29. 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.



, including the interest, or overdue costs.

In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.

31. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
32. This CAFO shall be binding upon the Respondent, its successors and assigns.
33. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

**The remainder of this page is intentionally left blank.**

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: KG International, Inc., Docket Number: TSCA-04-2009-2620(b), to the addressees listed below.

Nicholas Gunia  
Chief Executive Officer  
KG International, Inc.  
8125 N.W. 64<sup>th</sup> Street  
Miami, FL 33166

(via Certified Mail, Return Receipt Requested)

Tony Spann  
Chemical Products and  
Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

(via EPA's internal mail)

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

(via EPA's internal mail)

Date: 5-1-09



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth St., SW  
Atlanta, GA 30303  
(404) 562-9511