



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAR 07 2013

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Edwin Schwartz  
Esquire  
Sweetnam and Schwartz, LLC  
Three Ravinia Drive, Suite 1700  
Atlanta, Georgia 30346

Re: TSE Industries, Inc.  
Consent Agreement and Final Order  
Docket No. TSCA-04-2013-2700(b)

Dear Mr. Schwartz:

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.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

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 the Respondent on notice of their potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or Respondent's compliance status in the future, please contact Mr. Verne George of the EPA Region 4 staff at (404) 562-8988.

Sincerely,

A handwritten signature in black ink that reads "Anthony G. Toney" with a stylized flourish at the end.

Anthony G. Toney  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

HEARING CLERK

2013 MAR -7 AM 9:17

RECEIVED  
EPA REGION IV

In the Matter of: )  
)  
TSE Industries, Inc. ) Docket No. TSCA-04-2013-2700(b)  
)  
Respondent. )  
\_\_\_\_\_ )

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, U.S. Environmental Protection Agency, Region 4. Respondent is TSE Industries, Inc.
2. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the EPA Region 4 Regional Administrator by EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has redelegated this authority to the Director of the Air, Pesticides and Toxics Management Division by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter and has the authority

to sign consent agreements memorializing settlements between the EPA and Respondents.

3. On February 27, 2012, the Complainant and Respondent entered in a Tolling Agreement (Agreement) to extend the five year statute of limitations (SOL) date for the violation of Section 15(3) of TSCA, 15 U.S.C. § 2614 and 40 C.F.R. § 710.1(c), from March 23, 2012, until September 30, 2012. Subsequently, on September 19, 2012, the parties entered into a second Agreement to extend the SOL until December 31, 2012. Finally, on December 14, 2012, the parties entered into a third Agreement to extend the SOL until April 1, 2013.
4. 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**

5. 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; and (3) fail to maintain records, submit reports or information, or permit access to or allow copying of records as required by TSCA.

6. Pursuant to Section 8(a) of TSCA, which authorizes EPA to collect certain information on chemical substances manufactured or processed in the United States, the EPA promulgated the TSCA Inventory Update Reporting (IUR) rule. Pursuant to the IUR rule, EPA collects information on chemicals listed on the TSCA Master Inventory File every five years. The relevant regulations set forth at 40 C.F.R. Part 710, Subpart C, cited to herein were applicable during the 2006 IUR submission period that commenced on August 25, 2006, and ended on March 23, 2007.
7. Any person who violates a provision of Section 15 of TSCA shall be liable for a civil penalty in an amount not to exceed \$25,000 for each such violation, in accordance with Section 16(a) of TSCA. The Debt Collection Improvement Act of 1996 requires the EPA to review and adjust penalties, as necessary, for inflation at least once every four years.
8. As such, pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule, 40 C.F.R. Part 19, the revised maximum penalty for each violation occurring after January 30, 1997, through March 15, 2004, is \$27,500; for each violation occurring after March 15, 2004, through January 12, 2009, the maximum penalty for each violation is \$32,500; and for each violation occurring after January 12, 2009, the maximum penalty for each violation is \$37,500. Each day a violation continues may constitute a separate violation.

## **II. Specific Allegations**

9. Respondent operates a chemical manufacturing facility located at 5260 113<sup>th</sup> Avenue North, Clearwater, Florida (Facility).

10. Respondent is a person as the term is defined in 40 C.F.R. § 761.6.
11. Respondent is a manufacturer as the term is defined in 40 C.F.R. § 720.3(t).
12. On June 2, 2010, an authorized agent of the EPA Region 4 conducted an inspection at Respondent's Facility pursuant to Section 11(a) of TSCA, 15 U.S.C. § 2610(a). During the inspection, the authorized agent requested records pertaining to the manufacture of products by the Respondent. These records were promptly provided by the Respondent.
13. Based on a review of the records that were obtained by EPA Region 4, it was determined that between January 2, 2008 and April 16, 2010, Respondent manufactured twenty batches of Millathane 76 for commercial purpose.
14. Based on a review of the records that were obtained by EPA Region 4, it was determined that between August 4, 2008, and February 23, 2010, Respondent manufactured three batches of Millathane HT for commercial purpose.
15. Pursuant to EPA's certified statement (ER-11-5001), the chemical substances above-referenced in paragraphs 13 and 14, were not listed chemical substances on the TSCA Inventory at the time they were manufactured by the Respondent.
16. Pursuant to 40 C.F.R. § 720.25(a), a chemical substance that is not listed on the TSCA Inventory is classified as a new chemical substance.
17. Millathane 76 and Millithane HT were new chemical substances at the time they were manufactured by the Respondent.
18. Pursuant to 40 C.F.R. § 720.22, any person who intends to manufacture a new chemical substance in the United States for commercial purposes must submit a notice unless the substance is excluded under § 720.30 (chemicals not subject to the notification requirements).

19. Pursuant to 40 C.F.R. § 720.30, certain chemicals substances are exempt from full premanufacture (PMN) notification and reporting requirements including, but not limited to, any mixture(s) defined in § 723.3(u) and polymer(s) defined in § 723.250(a) that meet the requirements for a polymer exemption.
20. In a letter dated August 22, 2011 to EPA, the Respondent submitted data to support that the new chemicals, Millathane 76 and Millithane HT are polymers as defined under 40 C.F.R. § 723.250 (a), and that both chemical substances meet the exemption criteria for a polymer set forth at 40 C.F.R. § 723.250(e).
21. Pursuant to 40 C.F.R. § 720.250(f), manufacturers of new chemicals that meet the polymer exemption criteria in accordance with 40 C.F.R. § 723.250(e), are required to submit a report of manufacture (postmark) by January 31 of the year subsequent to the initial manufacture of each new chemical.
22. Based on the manufacture dates in the production records above-referenced in paragraphs 13 and 14, Respondent was required to submit a polymer exemption notice report for each new chemical: Millathane 76 and Millithane HT by January 31, 2009.
23. Respondent submitted the required polymer exemption notice report(s) for the new chemicals above-referenced in paragraph 16, on or about January 22, 2013, approximately four years after the due date.
24. Pursuant to 40 C.F.R. § 723.250(l)(1), any person who manufactures or imports a new chemical and fails to comply with any provision of 40 C.F.R. § 723.250 is in violation of Section 15 of TSCA, 15 U.S.C. § 2614.

25. Respondent violated Section 15 of TSCA, 15 U.S.C. § 2614 and 40 C.F.R. § 723.250(l)(1) by failing to submit the polymer exemption notice report(s) for the new chemical substances, Millathane 76 and Millithane HT by January 31, 2009.
26. Based on a review of the records obtained by EPA Region 4 during the inspection on June 2, 2010, above-referenced in paragraph 12, it was determined that in 2005, Respondent manufactured for commercial purpose a reportable quantity (> 25,000 pounds) of the chemical substance, Thanecure T-9.
27. Pursuant to 40 C.F.R. § 710.48(a), any person who manufactured for commercial purposes, a reportable quantity of a chemical substance during calendar year 2005 that was on the TSCA Master Inventory File during the relevant IUR period (August 25, 2006, through March 23, 2007), was subject to reporting requirements set forth at 40 C.F.R. Part 710, Subpart C.
28. Thanecure T-9 was listed on the TSCA Master Inventory File at the beginning of the IUR period (August 25, 2006, through March 23, 2007) identified in 40 C.F.R. § 710.53, and was not a chemical substance that was excluded from reporting pursuant to 40 C.F.R. § 710.46.
29. Pursuant to 40 C.F.R. § 710.45, any chemical substance which is listed on the TSCA Master Inventory File at the beginning of the IUR period above-referenced in paragraph 27, and was not excluded from reporting pursuant to 40 C.F.R. § 710.46 was subject to the reporting requirements set forth at 40 C.F.R. Part 710, Subpart C.
30. Respondent failed to submit the IUR report for Thanecure T-9 to EPA during the 2006 IUR period that ended on March 23, 2007. The Respondent submitted the 2006 IUR report on or about January 22, 2013, approximately six years after the reporting period

ended. As referenced above in paragraph 3, the Tolling Agreement between the Complainant and Respondent extends the SOL date for this violation until April 1, 2013.

31. Pursuant to Section 15(3) of TSCA, 15 U.S.C. § 2614 and 40 C.F.R. § 710.1(c), it is unlawful for any person to fail or refuse to submit information required under the reporting regulations.
32. Respondent violated Section 15(3) of TSCA, 15 U.S.C. § 2614 and 40 C.F.R. § 710.1(c) by failing to submit the 2006 IUR report for Thanecure T-9 to EPA during the reporting period above-referenced in paragraph 27.

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

33. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
34. 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.
35. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
36. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with the TSCA regulations referenced in this CAFO.
37. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any other liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.



38. Complainant and Respondent agree to settle this matter by their execution of this CAFO.

*RTZ* 39. 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.

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

Verne George  
Chemical Products and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-8988.

#### V. Final Order

41. Respondent is assessed a civil penalty of **FIFTY THOUSAND, THREE HUNDRED DOLLARS** (\$50,300). The penalty for the violations that allege the failure to file the polymer exemption notice report(s) pursuant to Section 15 of TSCA, 15 U.S.C. § 2614 and 40 C.F.R. § 723.250(l)(1), was calculated pursuant to the TSCA Section 5, Enforcement Response Policy (ERP) dated June 8, 1989, on a per day basis (level four; major extent; hazard assessment). The penalty for the violation that allege the failure to submit the 2006 IUR report during the reporting period pursuant to Section 15(3) of TSCA, 15 U.S.C. § 2614 and 40 C.F.R. § 710.1(c), was calculated pursuant to the TSCA Sections 8, 12, and 13 ERP dated March 31, 1999, as a one day violation (level one; significant extent).

42. Four payments will be made to complete payment of the entire civil penalty including calculated interest of one percent. The first installment is due within 30 days of the effective date of this CAFO. The subsequent three payments shall be due in 90 day intervals thereafter. Including the civil penalty and interest, the total amount that will be

paid upon the completion of all payments will be **FIFTY THOUSAND SIX HUNDRED EIGHTEEN DOLLARS and SIXTY CENTS** (\$50,618.60). Respondent shall make payments in accordance with the following schedule:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	within 30 days of filing of CAFO	\$12,654.65
2	within 120 days of filing of CAFO	\$12,654.65
3	within 210 days of filing of CAFO	\$12,654.65
4	within 300 days of filing of CAFO	\$12,654.65

43. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America." **The Respondent shall note on the face of the check the Respondent's name and the Docket Number associated with this CAFO.** The penalty payment shall be sent by one of the following methods to the address identified for the method chosen.

Address for payment submittal using the United States Postal Service:

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

Address for payment submittal using other mail service (e.g., Federal Express, United Parcel Service (UPS), DHL, etc.):

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

Contact Person: Natalie Pearson (314) 418-4087

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

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

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

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

45. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not made within 30 days after the due date, that payment plus all subsequent payments (the entire unpaid balance) **and all accrued interest** shall become immediately due and payable on the 31<sup>st</sup> day from such due date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.
46. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, the EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
47. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty

of **FIFTY THOUSAND, THREE HUNDRED DOLLARS (\$50,300.00)** within thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.

48. 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.
49. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
50. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
51. This CAFO shall be binding upon the Respondent and its successors and assigns.

52. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to this CAFO.

**VI. Effective Date**

53. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

Respondent: TSE Industries, Inc.  
Docket No.: TSCA-04-2013-2700(b)

By: \_\_\_\_\_

Date: 2/25/2013

Name: Robert R. Krajci Sr.

Title: CEO

Complainant: U.S. Environmental Protection Agency

By: \_\_\_\_\_

Date: 3-4-13

Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

APPROVED AND SO ORDERED this 7 day of March, 2013

By: \_\_\_\_\_

Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer

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 **TSE Industries, Inc.**, Docket Number: TSCA-04-2013-2700(b), to the addressees listed below.

Edwin Schwartz, Esq. (via Certified Mail, Return Receipt Requested)  
Sweetnam & Schwartz LLC  
Suite 1700  
Three Ravinia Drive  
Atlanta, Georgia 30346

Verne George (via EPA's internal mail)  
Chemical Products and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Marlene Tucker (via EPA's internal mail)  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

By:



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth St., S.W.  
Atlanta, GA 30303

Date:

3-7-13

(404) 562-9511