



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2006 NOV -9 PM 3:34
REGIONAL HEARING
CLERK

NOV - 9 2006

COMMERCIAL DELIVERY SERVICE
(UNITED PARCEL SERVICE)

Mr. Takeshi Kiyotani, President
Tokyo Zairyo (U.S.A.), Inc.
50 Main Street
White Plains, New York 10606

SUBJ: In the Matter of Tokyo Zairyo (U.S.A.), Inc.
Docket TSCA-02-2007-9243

Dear Mr. Kiyotani:

Enclosed is the Complaint and Notice of Opportunity For Hearing, and supporting documents in the above-referenced proceeding. This Complaint alleges violations of the Toxic Substances Control (TSCA) and regulations promulgated pursuant to TSCA.

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint to the Environmental Protection Agency's ("EPA") Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

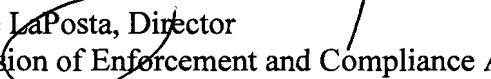
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Enclosed are copies of the "Consolidated Rules of Practice," which govern this proceeding. For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings," which may or may not apply to you.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney whose name is listed in the Complaint.

Sincerely yours,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (w/o enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2006 NOV - 9 PM 3: 34
REGIONAL HEARING
CLERK

-----X
: In the Matter of : COMPLAINT AND NOTICE OF
: Tokyo Zairyo (U.S.A.), Inc., : OPPORTUNITY FOR HEARING
: :
: Respondent. : Docket No. TSCA-02-2007-9243
: :
: Proceeding under Section 16(a) of :
: the Toxic Substances Control Act. :
: :
-----X

COMPLAINT

Complainant, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), by and through her attorneys, hereby alleges as and for her Complaint against Respondent:

Background Allegations

1. This is an action pursuant to Section 16(a)(1) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a)(1), to assess a civil penalty against Respondent for violations of provisions of Section 15 of TSCA, 15 U.S.C. § 2614.
2. This tribunal has jurisdiction over this civil administrative proceeding pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2), and 40 C.F.R. § 22.1(a)(5).
3. This "COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING" ("Complaint") constitutes the written notice required by Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2), for the assessment of a civil penalty for a violation(s) of Section 15 of TSCA, 15 U.S.C. § 2615.
4. This Complaint serves notice on Respondent of the opportunity to request a hearing in compliance with the provisions of Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2).
5. Complainant, the Director of the Division of Enforcement and Compliance Assistance of EPA, Region 2, has been duly delegated the authority to institute this proceeding.

6. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), any person who violates a provision of, *inter alia*, Section 15 of TSCA, 15 U.S.C. § 2614, shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation.

7. Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), as follows:

a) to \$27,500 for any violation occurring after January 30, 1997 through March 15, 2004; and

b) to \$32,500 for any violation occurring after March 15, 2004.

8. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), “[e]ach day a violation of [Section 15 of TSCA, 15 U.S.C. § 2614] continues shall, for purposes of [Section 16(a) of TSCA, 15 U.S.C. § 2615(a)], constitute a separate violation of section 2614 [15 U.S.C. § 2614].”

Respondent’s Identity

9. Respondent is Tokyo Zairyo (U.S.A.), Inc.

10. Respondent is a for-profit corporation existing since June 1986 under the laws of the State of New York.

11. Since its formation in June 1986, Respondent has been a “person” within the meaning of 40 C.F.R. Parts 710 and 720.¹

12. Respondent owns a facility the address of which is 50 Main Street, White Plains, New York 10606 (hereinafter, “Respondent’s facility”).

13. Respondent controls and operates Respondent’s facility.

¹ Terms or phrases defined by specified statutory and/or regulatory definitions are subsequently used in this Complaint as so defined. Unless the context requires otherwise, where a term or phrase is both statutorily and regulatorily defined, it is subsequently used in this Complaint as so defined in both the statute and the regulation. Where terms or phrases previously defined are again subsequently defined with reference to statutory and/or regulatory provisions, the latter definition is operative for the subsequent reiteration.

14. Respondent's facility constitutes its principal place of business.

15. Respondent is a "manufacturer" within the meaning of 40 C.F.R. § 720.3(t) of "chemical substances" (as defined in Section 3(2) of TSCA, 15 U.S.C. § 2602(2), and 40 C.F.R. §§ 710.2(h) and 720.3), including "new chemical substances" (as defined in Section 3(9) of TSCA, 15 U.S.C. § 2602(9), and 40 C.F.R. § 720.3(v)).

16. Respondent "manufacture[s]" (as defined in Section 3(7) of TSCA, 15 U.S.C. § 2602(7)) and 40 C.F.R. §§ 710.2(o) and 720.3) chemical substances, including new chemical substances.

17. Respondent "manufacture[s] or import[s] for commercial purposes" (as such phrase is defined in 40 C.F.R. §§ 710.2(p) and 720.3) chemical substances, including new chemical substances.

18. Respondent is an "importer" within the meaning of 40 C.F.R. §§ 710.2(l), 720.3(l) and 19 C.F.R. § 101.1 of chemical substances, including new chemical substances.

Respondent's Business Operations

19. Respondent is engaged in the business of the wholesale importation and exportation of chemical substances, ingredients and resins that are used to manufacture rubber materials and products.

20. Respondent's principal importations consist of carbon black, talc, rubber accelerators and rubber antidegradatives.

21. Respondent's customers are chemical companies.

22. Respondent enjoyed sales of nine million dollars in 2004.

Prior Contact between Respondent and EPA

23. On or about May 19, 2005 duly delegated representatives of the EPA conducted an inspection of and at Respondent's facility pursuant to Section 11 of TSCA, 15 U.S.C. § 2610 (hereinafter "the inspection").

24. The inspection was conducted for the purpose of determining Respondent's compliance with TSCA and the regulations promulgated pursuant to TSCA, including its compliance with regard to its importation of chemical substances and new chemical substances.

COUNT 1
Premanufacture Notification

25. Complainant realleges paragraphs 1 through 24, above, as if fully set forth below.

26. Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A), provides, *inter alia*, that no person may “manufacture” (as also defined in Section 5(i) of TSCA, 15 U.S.C. § 2604(i)) a new chemical substance without submitting a notice in accordance with Section 5(d) of TSCA, 15 U.S.C. § 2604(d), to the Administrator of the EPA at least 90 days before any manufacture (or importation) of such substance.

27. Forty C.F.R. § 720.22(a)(1) provides, in relevant part, that any person who intends to “manufacture” (as defined in 40 C.F.R. § 720.3(t)) a new chemical substance in the “United States” (as defined in 40 C.F.R. § 720.3(hh)) for “commercial purposes” (as defined in 40 C.F.R. § 720.3(r)) must submit a notice of such intention.

28. Forty C.F.R. § 720.40(b) provides, in relevant part, that each person who is required to submit a notice for the manufacture of a new chemical substance must submit such notice at least 90 days before the manufacture of such new chemical substance for commercial purposes begins.

29. The notification required pursuant to Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A), and required pursuant to 40 C.F.R. § 720.22(a)(1) is described in 40 C.F.R. Part 720, Subpart C, and it is known as the “Premanufacture Notification” (“PMN”).

30. Forty C.F.R. § 723.50(a) provides an exemption from the aforementioned (paragraphs 26 through 28, above) PMN requirements when, *inter alia*, a chemical substance is manufactured or imported in quantities of 10,000 kilograms (kgs) or less per year, provided, *inter alia*, that the manufacturer or importer of such chemical substance “[s]ubmit a [PMN] 30 days before manufacture begins....”

31. The aforementioned (paragraph 30, above) 30-day notification is commonly known as “Low Volume Exemption” (hereinafter, “LVE notification”).

32. In calendar year 2002, Respondent imported N, N’ Dilauryl Thiourea, a chemical identified with Chemical Abstracts Service Registry Number (“CASRN”) 7505-51-3 (hereinafter said chemical referred to as “NNDT”), into the “customs territory of the United States” (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) on or about each of the dates listed below in the respective quantities listed for each such date:

- a. March 22nd, 160 kgs;
- b. September 18th, 100 kgs;
- c. October 15th, 100 kgs;
- d. November 26th, 200 kgs; and
- e. December 16th, 200 kgs.

33. In calendar year 2003, Respondent imported NNDT into the customs territory of the United States on or about each of the following dates listed below in the respective quantities listed for each such date:

- a. January 24th, 200 kgs;
- b. February 21st, 200 kgs;
- c. March 31st, 200 kgs; and
- d. October 10th, 300 kgs.

34. In calendar year 2004, Respondent imported NNDT into the customs territory of the United States on or about each of the following dates listed below in the respective quantities listed for each such date:

- a. January 20th, 300 kgs;
- b. March 3rd, 200 kgs;
- c. April 1st, 200 kgs;
- d. April 30th, 300 kgs;
- e. July 13th, 500 kgs; and
- f. September 8th, 200 kgs.

35. In calendar year 2005, Respondent imported NNDT into the customs territory of the United States on or about each of the following dates listed below in the respective quantities listed for each such date:

- a. February 15th, 200 kgs; and
- b. April 13th, 200 kgs.

36. NNDT is a "chemical substance" within the meaning of, and for purposes of, Section 3(2) of TSCA, 15 U.S.C. § 2602(2), and 40 C.F.R. § 720.3(e).

37. Each importation of NNDT on the aforementioned (§s 32, 33, 34 and 35, above) 17 dates was for a commercial purpose.

38. NNDT did not appear on the inventory of chemical substances the EPA has compiled and maintains pursuant to Section 8(b) of TSCA, 15 U.S.C. § 2607(b) (known and henceforth referred to as the "Master Inventory File"), on or before any of the aforementioned (§s 32, 33, 34 and 35, above) 17 dates of importation of NNDT.

39. On or before each of the aforementioned (§s 32, 33, 34 and 35, above) 17 dates of importation, NNDT constituted a “new chemical substance” within the meaning of, and for purposes of, Section 3(9) of TSCA, 15 U.S.C. § 2602(9) and 40 C.F.R. § 720.3(v).

40. On or about June 1, 2005, Respondent first submitted to the Administrator of the EPA a LVE notification for NNDT.

41. For each date of the aforementioned (§s 32, 33, 34 and 35, above) 17 dates of importation of NNDT, Respondent had not submitted to the Administrator of the EPA at least 90 days prior to such importation a PMN for its intention to import NNDT.

42. Section 15(1)(B) of TSCA, 15 U.S.C. §§ 2614(1)(B), provides that it is unlawful for any person to fail or refuse to comply with any requirement prescribed by, *inter alia*, Section 5 of TSCA, 15 U.S.C. § 2604.

43. Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2614(1)(C), provides that it is unlawful for any person to fail or refuse to comply with any rule promulgated under, *inter alia*, Section 5 of TSCA, 15 U.S.C. § 2604.

44. For each date of the aforementioned (§s 32, 33, 34 and 35, above) 17 dates on which Respondent imported NNDT into the customs territory of the United States without first having submitted a PMN to the Administrator of the EPA at least 90 days prior to said importation of NNDT for commercial purposes, Respondent failed or refused to comply with:

- a. Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A); and
- b. Forty C.F.R. § 720.22(a)(1).

45. The requirement for the submission of a PMN to the Administrator of the EPA at least 90 days before the manufacture of a new chemical substance for commercial purposes constitutes a requirement prescribed by Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A).

46. Forty C.F.R. § 720.22(a)(1) is a rule promulgated under Section 5 of TSCA, 15 U.S.C. § 2604.

47. A failure or refusal to comply with Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A) is made unlawful by, and thus constitutes a violation of, Section 15(1)(B) of TSCA, 15 U.S.C. § 2614(1)(B).

48. A failure or refusal to comply with 40 C.F.R. § 720.22(a)(1) is made unlawful by, and thus constitutes a violation of, Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

49. On each date of Respondent’s aforementioned (§s 32, 33, 34 and 35, above) 17 dates of importation of NNDT, Respondent separately and distinctly violated:

- a. Section 15(1)(B) of TSCA, 15 U.S.C. § 2614(1)(B); and
- b. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

50. Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), for each of the aforementioned (¶ 49, above) 17 violations of:

- a. Section 15(1)(B) of TSCA, 15 U.S.C. § 2614(1)(B); and
- b. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

COUNT 2

Premanufacture Notification

51. Complainant realleges paragraphs 1 through 24, above, and paragraphs 26 through 31, above, as if fully set forth below.

52. In calendar year 2001, Respondent imported a chemical known as tetrakis (2-ethylhexyl) thioperoxydicarbonic diamide, identified with Chemical Abstracts Service Registry Number (“CASRN”) 37437-21-1 (hereinafter said chemical referred to as “TTPD”) into the “customs territory of the United States” (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), on or about each of the dates listed below in the respective quantities listed for each such date:

- a. November 13th, 880 kgs; and
- b. December 10th, 500 kgs.

53. In calendar year 2002, Respondent imported TTPD into the customs territory of the United States on or about each of the following dates listed below in the respective quantities listed for each such date:

- a. January 30th, 1,340 kgs;
- b. March 13th, 1,400 kgs;
- c. March 22nd, 1,160 kgs;
- d. June 21st, 700 kgs;
- e. September 18th, 1,145 kgs; and
- f. December 16th, 1,110 kgs.

54. On or about February 21, 2003, Respondent imported 300 kgs of TTPD into the customs territory of the United States.

55. TTPD is a “chemical substance” within the meaning of, and for purposes of, Section 3(2) of TSCA, 15 U.S.C. § 2602(2), and 40 C.F.R. § 720.3(e).

56. Each importation of TTPD on the aforementioned (¶s 52, 53 and 54, above) nine dates was for a commercial purpose.

57. TTPD did not appear on Master Inventory File on or before any of the aforementioned (§s 52, 53 and 54, above) nine dates of importation of TTPD.

58. On or before each of the aforementioned (§s 52, 53 and 54, above) nine dates of importation, TTPD constituted a “new chemical substance” within the meaning of, and for purposes of, Section 3(9) of TSCA, 15 U.S.C. § 2602(9) and 40 C.F.R. § 720.3(v).

59. On or about January 15, 2004, Respondent first submitted to the Administrator of EPA a LVE notification for TTPD.

60. For each date of the aforementioned (§s 52, 53 and 54, above) nine dates of importation of TTPD, Respondent had not submitted to the Administrator of the EPA at least 90 days prior to such importation a PMN for its intention to import TTPD.

61. Section 15(1)(B) of TSCA, 15 U.S.C. §§ 2614(1)(B), provides that it is unlawful for any person to fail or refuse to comply with any requirement prescribed by, *inter alia*, Section 5 of TSCA, 15 U.S.C. § 2604.

62. Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2614(1)(C), provides that it is unlawful for any person to fail or refuse to comply with any rule promulgated under, *inter alia*, Section 5 of TSCA, 15 U.S.C. § 2604.

63. For each date of the aforementioned (§s 52, 53 and 54, above) nine dates on which Respondent imported TTPD into the customs territory of the United States without first having submitted a PMN to the Administrator of the EPA at least 90 days prior to said importation of TTPD for commercial purposes, Respondent failed or refused to comply with:

- a. Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A); and
- b. Forty C.F.R. § 720.22(a)(1).

64. The requirement for the submission of a PMN to the Administrator of the EPA at least 90 days before the manufacture of a new chemical substance for commercial purposes constitutes a requirement prescribed by Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A).

65. Forty C.F.R. § 720.22(a)(1) is a rule promulgated under Section 5 of TSCA, 15 U.S.C. § 2604.

66. A failure or refusal to comply with Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A) is made unlawful by, and thus constitutes a violation of, Section 15(1)(B) of TSCA, 15 U.S.C. § 2614(1)(B).

67. A failure or refusal to comply with 40 C.F.R. § 720.22(a)(1) is made unlawful by, and thus constitutes a violation of, Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

68. On each date of Respondent's aforementioned (§s 52, 53 and 54, above) nine dates of importation of TTPD, Respondent separately and distinctly violated:

- a. Section 15(1)(B) of TSCA, 15 U.S.C. § 2614(1)(B); and
- b. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

69. Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), for each of the aforementioned (§ 68, above) nine violations of:

- a. Section 15(1)(B) of TSCA, 15 U.S.C. § 2614(1)(B); and
- b. Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

COUNT 3
TSCA Import Certification

70. Complainant realleges paragraphs 1 through 24, above, as if fully set forth below.

71. Section 13(a) of TSCA, 15 U.S.C. § 2612(a), provides, *inter alia*, that any chemical substance is prohibited from entry into the customs territory of the United States if such chemical substance fails to comply with any rule in effect under TSCA, 15 U.S.C. § 2601 *et. seq.*, or such chemical substance is offered in violation of provisions (or rules or orders under provisions) specified in Section 13(a)(1)(B) of TSCA, 15 U.S.C. § 2612(a)(1)(B).

72. Nineteen C.F.R. § 12.121(a) provides that an importer of a chemical substance imported in bulk or as part of a mixture, or the authorized agent of any such importer, must certify either that any such chemical shipment is subject to TSCA and complies with all applicable rules and orders under TSCA, or that any such chemical shipment is not subject to TSCA.

73. Nineteen C.F.R. § 12.121(a) prescribes the aforementioned (paragraph 72, above) certification and when and with whom said certification is to be filed..

74. On or about each of the dates listed below, Respondent imported in bulk into the customs territory of the United States NNDT and/or TTPD:

- a. November 13, 2001;
- b. December 10, 2001;
- c. January 30, 2002;
- d. March 13, 2002;
- e. March 22, 2002;
- f. June 21, 2002;
- g. September 18, 2002;
- h. October 15, 2002;

- i. November 26, 2002;
- j. December 16, 2002;
- k. January 24, 2003;
- l. February 21, 2003;
- m. March 31, 2003;
- n. October 10, 2003;
- o. January 20, 2004;
- p. March 3, 2004;
- q. April 1, 2004;
- r. April 30, 2004;
- s. July 13, 2004;
- t. September 8, 2004;
- u. February 15, 2005; and
- v. April 13, 2005.

75. Of the 22 dates listed in paragraph 74 above, on 12 such dates the amount of NNDT and/or TTPD Respondent imported was less than 340.2 kgs (sub-paragraphs “h,” “i,” “k,” “m,” “n,” “o,” “p,” “q,” “r,” “t,” “u” and “v”) while on the remaining 10 dates the amount of NNDT and/or TTPD Respondent imported was more than 340.2 kgs (sub-paragraphs “a,” “b,” “c,” “d,” “e,” “f,” “g,” “j,” “l” and “s”).

76. Each of NNDT and TTPD constitutes a “chemical substance” (as defined in Section 3(9) of TSCA, 15 U.S.C. § 2602(9)).

77. With regard to the aforementioned (§s 74 and 75, above) importations of NNDT and/or TTPD, neither Respondent nor an authorized agent acting on behalf of Respondent filed correct and proper certifications in accordance with 19 C.F.R. § 19.121(a) with the director of the port of entry for any such importations.

78. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), provides, *inter alia*, that it is unlawful for any person to fail or refuse to submit reports, notices or other information that is required pursuant to TSCA, 15 U.S.C. § 2601 *et seq.*, or a rule thereunder.

79. Respondent's failure (or the failure of an authorized agent of Respondent) to certify the aforementioned (§s 74 and 75, above) chemical shipments in conformity with the requirement set forth in 19 C.F.R. § 12.121, as alleged in paragraph 77, above, constitutes failure or refusal to comply with 19 C.F.R. § 12.121.

80. Nineteen C.F.R. § 12.121 is a rule promulgated under TSCA, 15 U.S.C. § 2601 *et seq.*

81. A failure or refusal to comply with 19 C.F.R. § 12.121 is made unlawful by, and thus constitutes a violation of, Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

82. Each of Respondent's (or an authorized agent of Respondent) aforementioned (¶ 79, above) failures to provide the correct certification constitutes a separate and distinct violation of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

83. For each aforementioned (¶ 82, above) violation of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2614(a)(1).

COUNT 4
2002 Inventory Update

84. Complainant realleges paragraphs 1 through 24, above, as if fully set forth below.

85. In relevant part, 40 C.F.R. § 710.28(b)² requires that, with regard to any "chemical substance" (as defined in Section 3(2) of TSCA, 15 U.S.C. § 2602(2), and in 40 C.F.R. § 710.2(h)) listed in the inventory EPA is required to compile and keep current pursuant to Section 8(b) of TSCA, 15 U.S.C. § 15 U.S.C. § 2607(b) (hereinafter referred to as the "Master Inventory File"), a person who "imported for commercial purposes" (as defined in 40 C.F.R. § 710.2(p)) 10,000 pounds (4,540 kgs) or more of such chemical substance(s) at a single site owned or controlled by such person at any time during the person's latest complete corporate fiscal year before August 25, 2002, is subject to the reporting requirements of 40 C.F.R. Part 710, provided that such chemical substance is not specifically excluded by 40 C.F.R. § 710.26 from such reporting requirement.

86. Forty C.F.R. § 710.32 sets forth the information required to be submitted under the aforementioned (¶ 85, above) reporting requirements.

87. With regard to the aforementioned (¶ 85, above) importation during the person's latest complete corporate fiscal year before August 25, 2002, 40 C.F.R. § 710.33(b) requires that the information to be reported be submitted to EPA between August 26, 2002 and December 23, 2002.

88. Forty C.F.R. § 710.39 sets forth how the information for the aforementioned (¶ 85, above) reporting must be submitted to the EPA (referred to in said regulation and subsequently herein as "Form U").

89. Respondent's fiscal year corresponds to the calendar year.

90. Respondent imported each of the following two chemicals (each followed by its "CAS Number," as defined in 40 C.F.R. § 704.3, in brackets) in excess of 10,000 pounds (4,540

² References to 40 C.F.R. Part 710 in this count are to citations published in the Code of Federal Regulations revised as of July 1, 2002.

kgs) during its latest complete corporate fiscal year ending prior to August 26, 2002 (*i.e.* during calendar year 2001):

a. Methyl ethyl ketone [78-93-3]

b. N, N dicyclohexyl-2-benzothiazole sulfenamide [4979-32-2]

91. Each of the aforementioned (§ 90, above) two chemicals constitutes a “chemical substance” (as defined in Section 3(9) of TSCA, 15 U.S.C. § 2602(9) and 40 C.F.R. § 710.2(h)).

92. For purposes of its importations of the aforementioned (§ 90, above) two chemical substances, Respondent’s facility constitutes a “site” within the meaning, and for purposes, of 40 C.F.R. § 710.28(c).

93. Each of the two aforementioned (§ 90, above) chemical substances was listed on the Master Inventory File as of August 26, 2002.

94. None of the two aforementioned (§ 90, above) chemical substances was excluded by 40 C.F.R. § 710.26 from the 40 C.F.R. Part 710 information reporting requirements.

95. Respondent’s aforementioned (§ 90, above) importation of each of the two chemical substances constitutes a “manufacture for commercial purposes” within the meaning of 40 C.F.R. § 710.2(p) and 40 C.F.R. § 710.33(b).

96. Pursuant to 40 C.F.R. § 710.28, Respondent was required to submit to the EPA a Form U for its importation during calendar year 2001 of each of the two aforementioned (§ 90, above) chemical substances.

97. Pursuant to 40 C.F.R. § 710.33(b), Respondent was required to submit to the EPA the Form U for its importation of each of the two aforementioned (§ 90, above) chemical substances during the time period between August 26, 2002 and December 23, 2002.

98. Respondent failed to submit to the EPA a Form U for each of the two aforementioned (§ 90, above) chemical substances during the time period between August 26, 2002 and December 23, 2002.

99. Respondent’s failure to have submitted to the EPA a Form U for each of the two chemical substances it imported, as alleged in paragraph 98, above, constitutes a failure or refusal to comply with 40 C.F.R. § 710.33(b).

100. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), provides, *inter alia*, that it is unlawful for any person to fail or refuse to submit reports, notices or other information that is required pursuant to TSCA, 15 U.S.C. § 2601 *et seq.*, or a rule thereunder.

101. Forty C.F.R. § 710.33(b) is a rule promulgated under Section 8(a) of TSCA, 15 U.S.C. § 2607(a).

102. A failure or refusal to comply with 40 C.F.R. § 710.33(b) is made unlawful by, and thus constitutes a violation of, Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

103. Each of Respondent's two aforementioned (§ 98, above) failures to submit to the EPA a Form U for each of the two aforementioned (§ 90, above) chemical substances constitutes a separate and distinct violation of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

104. For each of the two aforementioned (§ 103, above) violations of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2614(a)(1).

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 16 of TSCA, 15 U.S.C. § 2615, which, as amended, authorizes the assessment of a civil penalty of up to \$27,500/\$32,500 per day each violation of TSCA and any regulation promulgated pursuant thereto.³

For purposes of determining the amount of any penalty to be assessed, Section 16 requires the EPA to take into account the nature, circumstances, extent and gravity of the violations. As to the violator, Section 16 requires EPA to take into account its ability to pay, the effect of the penalty on its ability to continue to do business, its history of prior such violations, its degree of culpability, as well as such other matters as justice may require.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time of its issuance, with specific reference to EPA's "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act," which was published on September 10, 1980 in the Federal Register (45 Fed. Reg. 59,770), EPA's TSCA Sections 8, 12, and 13 Enforcement Response Policy (March 31, 1999), and EPA's Amended TSCA Section 5 Enforcement Response Policy (June 1989), copies of which are available upon request. These documents are also available on the Internet, at the EPA's website, "www.epa.gov/compliance." These policies provide rational, consistent and equitable calculation methodologies for applying the statutory penalty factors enumerated above to particular cases.

The Complainant proposes, subject to receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalties for the violations alleged in the Complaint:⁴

COUNT 1

Premanufacture Notification:

Circumstance Level - 3		
Extent Category (PRE)- 11 Minor imports @ \$1,650		\$ 18,150
Extent Category (POST)- 1 Significant import @ \$12,895		\$ 12,895
5 Minor imports @ \$1,934		<u>\$ 9,670</u>
Gravity Based Penalty: \$ 40,715		
Proposed Gravity Based Penalty for Count 1:		\$ 40,715

COUNT 2

Premanufacture Notification:

Circumstance Level - 3		
Extent Category (PRE)- 8 Significant imports @ \$11,000		\$ 88,000
1 Minor import @ \$1,650		<u>\$ 1,650</u>
Gravity Based Penalty : \$ 89,650		
Proposed Gravity Based Penalty for Count 2:		\$ 89,650

COUNT 3

Import Certification:

Circumstance Level - 3		
Extent Category (PRE)- 9 Significant imports @ \$ 11,000		\$ 99,000
7 Minor imports @ \$ 1,650		\$ 11,550
Extent Category (POST)- 1 Significant import @ 12,895		\$12,895
5 Minor imports @ \$1,934		<u>\$ 9,670</u>

⁴ After each "Extent" category, a parenthetical will state either "PRE" or "POST." The former indicates violations occurring between January 30, 1997 through March 15, 2004; the latter designation indicates violations occurring after March 15, 2004.

Gravity Based Penalty : \$ 133,115
 Proposed Gravity Based Penalty for Count 3: **\$ 133,115**

COUNT 4

Inventory Update

Circumstance Level - 1
 Extent Category (PRE) - 2 Significant imports @ \$ 18,700 \$ 37,400
 Gravity Based Penalty : \$ 37,400
 Proposed Gravity Based Penalty for Count 4: **\$ 37,400**

Sum of the penalties for the four counts: \$300,880

TOTAL PROPOSED PENALTY (rounded off): **\$300,900**

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), codified at 40 C.F.R. Part 22 (July 1, 2005), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS." A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where Respondent⁵ intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
 U.S. Environmental Protection Agency, Region 2
 290 Broadway, 16th floor

New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). *See generally* Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22. *See* Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), which provides, in part: "A civil penalty for a violation of section 2614...of this title [15 U.S.C. § 2614] shall be assessed by the Administrator by an order made on the record after opportunity... for hearing in accordance with section 554 of Title 5 [5 U.S.C. § 554]."

If Respondent fails to request a hearing, such failure may operate to preclude Respondent from obtaining judicial review of an adverse EPA final order. *See* 15 U.S.C. § 2615(a)(3), which states, in part: "Any person who requested in accordance with paragraph (2)(A) [15 U.S.C. § 2615(a)(2)(A)] a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business."

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the EPA's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)] pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the EAB, Respondent must do so "within 30 days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by "first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these [rules] for the filing of a responsive document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of TSCA and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to the EPA Assistant Regional Counsel listed below:

Lee A. Spielmann
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
212-637-3222

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable TSCA statutory and regulatory requirements in its manufacture, importation and/or use of chemical substances, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may resolve this proceeding by paying the specific penalty proposed in the Complaint and filing a copy of the check or other instrument of


payment with the Regional Hearing Clerk, Region 2 (at the New York address noted above). 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America," in the full amount of the penalty assessed in this Complaint to the following addressee:

Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 2
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

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. A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified previously.

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said final order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable TSCA statutory and regulatory requirements in its manufacture, importation and/or use of chemical substances, and to maintain such compliance.

Dated: November 7, 2006
New York, New York


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st floor
New York, New York 10007-1866

CERTIFICATE OF SERVICE

This is to certify that on this day, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING," captioned *In the Matter of Tokyo Zairyo (U.S.A.), Inc.*, and bearing Docket Number TSCA-02-2007-9243 (hereinafter referred to as the "Complaint"), together with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by commercial delivery service (United Parcel Service), to the addressee listed below. I also on said date hand carried the original and a copy of the Complaint to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866

Takeshi Kiyotani, Chairman of the Board
Tokyo Zairyo (U.S.A.), Inc.
50 Main Street, Suite 385
White Plains, New York 10606

Dated: November 9, 2006
New York, New York

