



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

RECEIVED ENVIRONMENTAL 2010 JUL 30 AM 10:29 HEARING CLERK

In the Matter of:)
CHEM-WAY CORPORATION,) Docket No. EPCRA-04-2010-2015
Respondent.)

ORDER REGARDING TSCA INFORMATION REQUEST

By Correspondence dated July 12, 2010, Respondent Chem-Way Corporation notified this Tribunal of its recent receipt of "the attached letter from the EPA on a TSCA inspection." Furthermore, it represented therein that one of the defenses it plans to raise in this action relates to its contention that "the EPCRA inspection was non-random and in retaliation for assisting a customer in an unrelated EPA enforcement action" and indicated that it is "dubious of the assertion" that it was neutrally chosen for the information request made "in the midst of an enforcement action." Respondent asks this Tribunal to enjoin or stay the information request issued to it during the pendency of this enforcement action, or in the alternative, to require the author of the information request to attend and testify at the hearing on this matter as to "whether Chem-Way Corporation was neutrally chosen for this inspection." No certificate of service accompanied the Correspondence but it indicates that copies thereof were sent to the Complainant's counsel and the Regional Hearing Clerk. Further missing is a statement as to the position of the Complainant in regard to the relief requested in the Correspondence.

The "attached letter" referred to in the Correspondence is an Information Request Letter ("IRL") dated July 8, 2010, issued to Respondent by Curt F. Fein, Chief Chemical Products and Asbestos Section, U.S. EPA, Region 4. The IRL seeks information about Respondent's activities at its Charlotte, North Carolina facility "that are subject to provisions of the Toxic Substances Control Act (TSCA), 15 USC § 2601 et seq." The IRL states that "[t]his is a neutral scheme information request meaning that [Respondent's] company was chosen for this action at random pursuant to Section 11 of TSCA, 15 USC § 2610, to determine compliance with Sections 4,5, 8, 12, and 13 (15 USC §§ 2603, 2604, 2607, 2611, and 2612, respectively)."

To date, Complainant has not responded to the Correspondence but no response is deemed necessary.

First, it must be noted that Respondent's request for relief is in improper form. The Consolidated Rules of Practice provide for requests for relief in the form of "motions," and that

such motions shall contain a caption and be accompanied by a certificate of service. *See*, 40 C.F.R. §§ 22.16(a) and 22.5(c), 22.5(a)(3). In addition, by failing to indicate that prior to seeking the relief requested Respondent contacted the Complainant to ascertain its position in regard thereto, the Correspondence violates the terms of the Prehearing Order issued in this matter on March 9, 2010.

Second, Section 22.19(e)(5) of the Consolidated Rules which pertains to discovery in administrative penalty actions, provides in pertinent part that:

Nothing in this paragraph [] shall limit . . . EPA's authority under any applicable law to conduct inspections, issue information request letters or administrative subpoenas, or otherwise obtain information.

40 C.F.R. § 22.19(e)(5).

The IRL indicates that it was issued to Respondent pursuant to TSCA, Section 2610, which provides in pertinent part as follows:

(a) In general. For purposes of administering this Act [15 USCS §§ 2601 et seq.], the Administrator, and any duly designated representative of the Administrator, may inspect any establishment, facility, or other premises in which chemical substances, mixtures, or products subject to title IV [15 USCS §§ 2681 et seq.] are manufactured, processed, stored, or held before or after their distribution in commerce and any conveyance being used to transport chemical substances, mixtures, such products, or such articles in connection with distribution in commerce. Such an inspection may only be made upon the presentation of appropriate credentials and of a written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner.

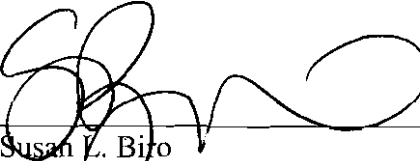
(b) Scope.

(1) Except as provided in paragraph (2), an inspection conducted under subsection (a) shall extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of this Act [15 USCS §§ 2601 et seq.] applicable to the chemical substances, mixtures, or products subject to title IV [15 USCS §§ 2681 et seq.] within such premises or conveyance have been complied with.

15 U.S.C. § 2610. Thus, it appears that EPA was authorized by TSCA to issue the IRL and such authority was not limited by the pendency of the instant administrative action.

Therefore, Respondent has failed to proffer sufficient grounds for this Tribunal enjoining or staying the IRL during the pendency of this proceeding or in the alternative subpoenaing Curt Fehn, the author of the IRL, to testify in this proceeding as to whether Respondent was “neutrally chosen” in regard to receipt thereof.

Accordingly, Respondent’s requests for relief submitted in its Correspondence dated July 12, 2010 are hereby **DENIED**.




Susan L. Biro
Chief Administrative Law Judge

Date: July 20, 2010
Washington, D.C.

In the Matter of Chem-Way Corporation. Respondent
Docket No. EPCRA-04-2010-2015

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Regarding TSCA Information Request**, dated July 20, 2010, was sent this day in the following manner to the addressees listed below.


Maria Whiting-Beale
Staff Assistant

Dated: July 20, 2010

Original And One Copy By Pouch Mail To:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Copy By Pouch Mail To:

Jennifer Lewis, Esquire
Associate Regional Counsel
U.S. EPA
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Copy By Regular Mail To:

James W. Potter, Esquire
Nexsent Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201