



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
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CHICAGO, IL 60604-3590
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REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7672 1196

Mr. Steve Lundstram
General Manager
Rahn USA Corp.
1005 North Commins Dr.
Aurora, Illinois 60504

Consent Agreement and Final Order In The Matter
of Rahn USA Corp. Docket No. TSCA-05-2012-0013

Dear Mr. Lundstram:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on April 12, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,100 is to be paid in the manner described in paragraphs 42 and 43. Please be certain that the number **BD 2751247X014** and the docket number are written on both the transmittal letter and on the check. Payment is due by May 11, 2012, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Terry Bonace
Pesticides and Toxic Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)

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APR 18 2012

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

<p>In the Matter of:</p> <p>Rahn USA Corp. Aurora, Illinois</p> <p style="text-align: center;">Respondent.</p> <hr/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No.: TSCA-05-2012-0013</p> <p>Proceeding to Assess a Civil Penalty under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a)</p>
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Consent Agreement and Final Order

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a) and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Rahn USA, Corp., a corporation with a place of business located at 1005 North Commons Drive, Aurora, Illinois 60504.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to entry of this CAFO and to the assessment of the specified civil penalty, and agrees to comply with the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Sections 5, 8, and 14 of TSCA, 15 U.S.C. §§ 2604, 2607, and 2613, U.S. EPA promulgated the Premanufacture Notice Requirements and Review Procedures (PMN Rule) on May 13, 1983. 48 Fed. Reg. 21742 (1983). The PMN Rule, as amended, is codified at 40 C.F.R. Part 720.

10. The U.S. EPA compiles, keeps current and publishes, a list of each chemical substance which is manufactured or processed in the United States, pursuant to section 8(b)(1) of TSCA, 15 U.S.C. § 2607(b)(1). This list is known as the "Master Inventory File," and includes chemical substances reported pursuant to section 5(a)(1) of TSCA, 15 U.S.C. § 2604(a)(1), for which the U.S. EPA receives a Notice of Commencement (NOC).

11. Section 5(a)(1) of TSCA, 15 U.S.C. § 2604(a)(1), provides that, beginning 30 days after the EPA Administrator first publishes the Master Inventory File referenced in the preceding paragraph, no person may manufacture a new chemical substance unless such person submits the notice of intention to manufacture the substance required by Section 5(b) of TSCA to the Administrator, at least 90 days before such manufacture.

12. The regulation at 40 C.F.R. § 720.22(a)(1) requires that any person who intends to manufacture a new chemical substance in the United States for commercial purposes submit a notice to U.S. EPA unless the substance is excluded under 40 C.F.R. § 720.30.

13. The notice of intention referenced in paragraphs 11 and 12 above is known as the Premanufacture Notice (PMN).

14. The EPA Administrator first published the Master Inventory File in 1979.

15. According to Section 3(2)(A) of TSCA, 15 U.S.C. § 2602(2)(A), and 40 C.F.R. § 720.3(e), a “chemical substance” means any organic or inorganic substance of a particular molecular identity.

16. According to 40 C.F.R. § 720.3(o), “Inventory” means the list of chemical substances manufactured or processed in the United States that EPA compiled and keeps current under section 8(b) of TSCA. “Inventory” means the same as “Master Inventory File” referenced above.

17. According to Section 3(9) of TSCA, 15 U.S.C. § 2602(9), and 40 C.F.R. § 720.3(v), a “new chemical substance” means any chemical substance which is not included on the Inventory.

18. According to 40 C.F.R. § 720.3(r), “manufacture or import for commercial purposes” means to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer or importer, and includes “manufacture” of any amount of a chemical substance or mixture for use by the manufacturer, including use for product research and development.

19. According to Section 3(7) of TSCA, 15 U.S.C. § 2602(7), and 40 C.F.R. § 720.3(q), “manufacture” means to produce or manufacture in the United States or import into the customs territory of the United States.

20. Persons who have submitted a PMN are required by 40 C.F.R. § 720.102(a) and (b)(1) to submit a Notice of Commencement (NOC) of manufacture or import to the U.S. EPA

on or no later than 30 calendar days after the first day of manufacture or import of the new chemical substance for nonexempt commercial purposes.

21. The regulation at 40 C.F.R. § 720.120(a) states that any person who fails to comply with any provision of 40 C.F.R. Part 720 is in violation of Section 15 of TSCA, 15 U.S.C. § 2614, and may be subject to civil and criminal penalties pursuant to section 16 of TSCA, 15 U.S.C. § 2615.

22. The regulation at 40 C.F.R. § 720.120(f) states that violators of 40 C.F.R. Part 720 may be subject to the civil penalties in Section 16 of TSCA, 15 U.S.C. § 2615, for each violation.

23. Sections 15(1)(B) and 15(1)(C) of TSCA, 15 U.S.C. §§ 2614(1)(B) and 2614(1)(C), state, among other things, that it shall be unlawful for any person to fail or refuse to comply with any requirement prescribed by Section 5 or any rule promulgated or order issued under Section 5.

24. Under Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. Part 19, the Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 for each violation, for violations that occurred prior to January 31, 1997; up to \$27,500 for each violation that occurred on or after January 31, 1997 through March 15, 2004; up to \$32,500 for each violation that occurred after March 15, 2004 through January 12, 2009; and up to \$37,500 for each violation that occurred after January 12, 2009. Each day such a violation continues constitutes a separate violation of Section 15 of TSCA, 15 U.S.C. § 2614.

Factual Allegations and Alleged Violations

25. At all times relevant to this Complaint, Respondent was a person, as defined at 40 C.F.R. § 720.3(x).

26. On February 12, 2009, a representative of U.S. EPA conducted an inspection at Respondent's place of business to determine its compliance with Sections 4, 5, 8, 12, and 13 of TSCA, 15 U.S.C. §§ 2603, 2604, 2607, 2611, and 2612, and the implementing regulations.

27. Genomer 4425 is an organic or inorganic substance of a particular molecular identity.

28. Genomer 4425 is a "chemical substance," as that term is defined at section 3(2) of TSCA, 15 U.S.C. § 2602(2), and 40 C.F.R. § 720.3(e).

29. At all times prior to May 19, 2008, Genomer 4425 had never been listed on the Inventory.

30. Prior to May 19, 2008, Genomer 4425 was a "new chemical substance" as that term is defined at section 3(9) of TSCA, 15 U.S.C. § 2602(9), and 40 C.F.R. § 720.3(v).

Count 1

31. The regulation at 40 C.F.R. § 720.120(b) states that a person who manufactures or imports a new chemical substance before a notice is submitted and the notice review period expires is in violation of Section 15 of TSCA.

32. Respondent submitted a PMN for Genomer 4425 on or about October 28, 2007, indicating that Respondent intended to "manufacture," as that term is defined at section 3(7) of TSCA, 15 U.S.C. § 2602(7), and 40 C.F.R. § 720.3(q), Genomer 4425, for a nonexempt "commercial purpose," as that term is defined at 40 C.F.R. § 720.3(r).

33. The 90-day review period for the Premanufacture Notice for Genomer 4425 ended on January 28, 2008.

34. Respondent imported 9 kilograms of Genomer 4425 prior to the end of the 90-day review period referenced in the previous paragraph.

35. Respondent's import of Genomer 4425, when it was a new chemical substance, prior to the completion of the 90-day review period represents a violation of Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A), and 40 C.F.R. § 720.120(a) and (b).

Count 2

36. The regulation at 40 C.F.R. § 720.102 requires that any person who commences the manufacture or import of a new chemical substance for a non-exempt commercial purpose for which that person previously submitted a PMN must submit a NOC within 30 calendar days after the first day of such manufacture or import.

37. Respondent submitted an NOC to the U.S. EPA approximately 42 days after it commenced import of Genomer 4425, for a nonexempt commercial purpose.

38. Respondent's submission of its NOC violated 40 C.F.R. § 720.102, because the NOC was not submitted to the U.S. EPA on, or no later than 30 calendar days after, the first day of manufacture or import of Genomer 4425 for a nonexempt commercial purpose.

39. The violations of 40 C.F.R. §§ 720.102(a) and (b) and 720.120, and Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A), described in Counts 1 and 2, are unlawful acts pursuant to Sections 15(1)(B) and 15(1)(C) of TSCA, 15 U.S.C. §§ 2614(1)(B) and 2614(1)(C).

40. The unlawful acts described in Counts 1 and 2 subject Respondent to civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

Civil Penalty

41. Pursuant to Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), Complainant determined that an appropriate civil penalty to settle this action is \$3,100. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and, with respect to the violator, ability to pay, effect on ability to

continue to do business, any history of prior TSCA violations, the degree of culpability, and such other matters as justice may require. Complainant also considered U.S. EPA's "Guidelines for Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act" (45 Fed. Reg. 59770) and the Amended TSCA Section 5 Enforcement Response Policy, dated June 8, 1989.

42. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,100 civil penalty for the TSCA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

43. A transmittal letter stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Terence Bonace (DT-8J)
Pesticides and Toxics Enforcement Section
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Mony Chabria (C-14J)
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3509

44. This civil penalty is not deductible for federal tax purposes.

45. If Respondent does not timely pay the civil penalty or any stipulated penalties under paragraph 46 below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action. TSCA Section 16(a)(4), 42 U.S.C. § 2615(a)(4).

46. Interest will accrue on any overdue amount from the date payment was due in accordance with 31 C.F.R. § 901.9(b). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

47. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

48. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

49. This CAFO does not affect Respondent's responsibility to comply with TSCA and other applicable federal, state, and local laws.

50. Respondent certifies that it is complying with TSCA, 15 U.S.C. § 2601 *et seq.*

51. The terms of this CAFO bind Respondent, its successors, and assigns.

52. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

53. Each party agrees to bear its own costs and attorney's fees in this action.

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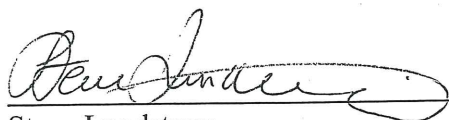
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U.S. ENVIRONMENTAL
PROTECTION AGENCY

54. This CAFO constitutes the entire agreement between the parties.


Rahn USA Corp., Respondent

3-8-2012
Date


Steve Lundstram
General Manager

United States Environmental Protection Agency, Complainant

April 6, 2012
Date


Margaret M. Guerriero, Director
Land and Chemicals Division

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PROTECTION AGENCY

In the Matter of:
Rahn USA, Corp.
Docket No. TSCA-05-2012-0013

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4-9-12
Date

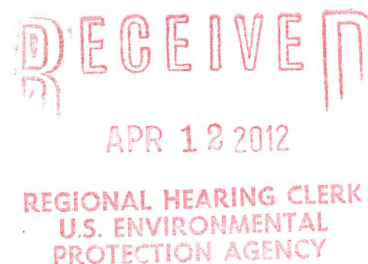


Susan Hedman
Regional Administrator
U.S. Environmental Protection
Agency, Region 5

CERTIFICATE OF SERVICE


This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Rahn USA Corp., was filed on April 12, 2012, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7672 1196, along with a copy each to:

Mr. Steve Lundstram
General Manager
Rahn USA Corp.
1005 North Commins Dr.
Aurora, Illinois 60504



and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Mony Chabria, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2012-0013