



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

NOV 16 2018

REPLY TO THE ATTENTION OF:

LC-17J

VIA EMAIL

Mr. Joel Bowers
Shareholder
Barnes and Thornburg, LLC
100 1st Source Bank Center
100 North Michigan
South Bend, Indiana 46601

Joel.Bowers@btlaw.com

Consent Agreement and Final Order In the Matter of Toda America Incorporated
Docket Number TSCA-05-2019-0003

Mr. Bowers:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on November 16, 2018 with the Regional Hearing Clerk.

The civil penalty in the amount of \$325,000 is to be paid in the manner described in paragraphs 22 and 23. Please be certain that the docket number is written on both the notice of payment letter and comment or description field of the electronic funds transfer. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

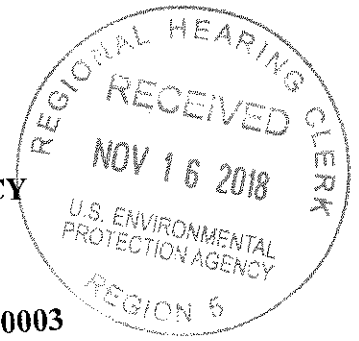
Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)
)
Toda America Incorporated,)
Battle Creek, Michigan,)
)
Respondent.)
_____)

Docket No. TSCA-05-2019-0003
Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxic
Substances Control Act,
15 U.S.C. § 2615(a)

Consent Agreement and Final Order

Preliminary Statement

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 22.1(a)(5), 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. Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Toda America Incorporated, a corporation doing business in Michigan at all times relevant to this consent agreement and final order (CAFO).

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 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 the assessment of the civil penalty specified in this CAFO and to 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 Background

9. TSCA Section 8(e) provides that, “Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.” 15 U.S.C. § 2607(e).

10. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614 (3)(B), states it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA.

11. A violation of Section 15(3)(B) of TSCA subjects an entity to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

12. Each day such violation continues constitutes a separate violation of Section 15 of TSCA, 15 U.S.C. § 2614.

Factual Allegations and Alleged Violations

13. Respondent is a corporation located at 4750 W. Dickman Road, Battle Creek, Michigan 49037, and incorporated in Illinois.

14. Respondent is a person subject to the requirements of TSCA Section 8(e), 15 U.S.C. § 2607(e).

15. Respondent manufactures, processes, or distributes in commerce chemical substances or mixtures, or in the past has manufactured, processed, or distributed in commerce the chemical substances or mixtures addressed in this CAFO as those terms are defined in TSCA Section 3, 15 U.S.C. § 2602, and TSCA Section 8(f), 15 U.S.C. § 2607(f).

16. Respondent is subject to TSCA and regulations promulgated thereunder.

17. In August 2014, Respondent received acute inhalation toxicity studies on each of the following four chemical substances or mixtures:

- a. Lithium, nickel, cobalt, aluminum, boron oxide (formulation NAT-7051);
- b. Lithium, nickel, cobalt, aluminum oxide (formulation NAT-7050);
- c. Lithium, nickel, cobalt, manganese oxide (formulation KS-406); and
- d. Lithium, nickel, cobalt, manganese oxide (formulation NM-4).

18. On May 13, 2016, under Section 8(e), 15 U.S.C. § 2607(e), Respondent submitted to EPA four studies concerning acute inhalation toxicity in rats regarding the four chemical substances or mixtures identified in Paragraph 17, above.

19. EPA has determined that the four inhalation studies referenced in Paragraph 17, above, meet EPA's criteria for reporting under TSCA Section 8(e).

20. EPA alleges that Respondent's failure to immediately submit each of the four inhalation studies referenced in Paragraph 17, above, to the Administrator as required under TSCA Section 8(e) constitutes four failures to submit a report, notice, or other information as required by TSCA Section 15(3)(B), 15 U.S.C. § 2614(3)(B).

Civil Penalty

21. Based on analysis of the factors specified in TSCA Section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B), the facts of this case, Respondent's cooperation, and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$325,000.

22. Within 30 days after the effective date of this CAFO, Respondent must pay a \$325,000 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

23. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Claudia Niess (LC-17J)
Land and Chemical Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Mary McAuliffe (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

25. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest under Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

26. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. 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

27. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: mcauliffe.mary@epa.gov (for Complainant), and Joel.Bowers@btlaw.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

28. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

29. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

Except as provided in Paragraph 28, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

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

31. Respondent certifies that regarding the violations alleged herein, Respondent is in compliance with Sections 8(e) and 15(3)(8) of TSCA, 15 U.S.C. §§ 2607(e) and 2614(3)(8).

32. This CAFO may be used for the sole purpose of establishing Respondent's compliance history in any future enforcement proceeding that EPA may bring against Respondent within five (5) years of the date of the execution of this CAFO.

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

34. Each person signing this consent 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.


35. Each party agrees to bear its own costs and attorneys fees in this action.

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

**In the Matter of:
Toda America Incorporated
Docket No. TSCA-05-2019-0003**

Toda America Incorporated, Respondent

10/24/2018
Date


Yoshiaru Aizawa, President
Toda America Incorporated

In the Matter of:
Toda America Incorporated
Docket No. TSCA-05-2019-0003

United States Environmental Protection Agency, Complainant

11/14/2018
Date

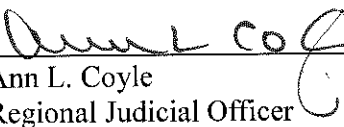
Michael D. Harris *for T.H.*
Tinka G. Hyde
Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5

In the Matter of:
Toda America Incorporated
Docket No. TSCA-05-2019-0003

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.

11/14/18
Date



Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Toda America Incorporated
Docket Number: **TSCA-05-2019-0003**

CERTIFICATE OF SERVICE

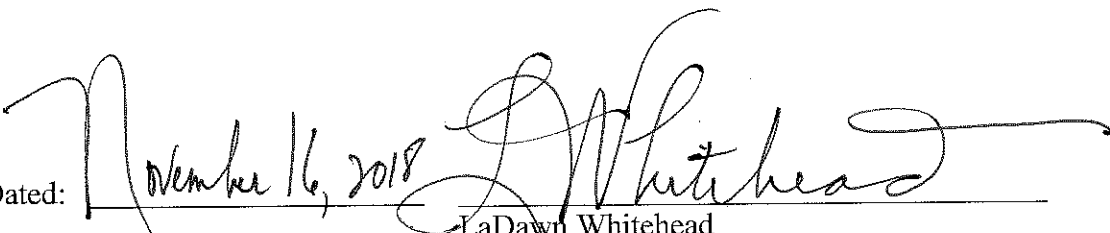
I certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, docket number **TSCA-05-2019-0003**, which was filed on November 16, 2018, in the following manner to the following addressees:

Copy by E-mail to Attorney for Complainant: Ms. Mary McAuliffe
mcauliffe.mary@epa.gov

Copy by E-mail to Respondent: Mr. Joel Bowers
Joel.Bowers@btlaw.com

Copy by E-mail to Regional Judicial Officer: Ms. Ann Coyle
coyle.ann@epa.gov

Dated: November 16, 2018


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5