



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 12 2011

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7666 9214

Mr. Ray Buehler
Baerlocher USA, LLC
5890 Highland Ridge Drive
Cincinnati, Ohio 44077

Baerlocher USA, LLC TSCA-05-2011-0007

Dear Mr. Buehler:

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, 2011 with the Regional Hearing Clerk.

The civil penalty in the amount of \$30,860.00 is to be paid in the manner described in paragraphs 32 and 33. Please be certain that the number **BD 2751147X006** and the docket number are written on both the transmittal letter and on the check. Payment is due by May 12, 2011 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terry Bonace".

Terry Bonace
Pesticides and Toxics Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)
Kathleen Schnieders, Counsel for Complainant/C-14J
Matthew Kitchen, Counsel for Respondent

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Baerlocher USA, LLC
Dover, Ohio

Respondent.

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) Docket No.: TSCA-05-2011-0007

) 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

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, by lawful delegation, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Baerlocher USA, LLC (Baerlocher), a limited liability company doing business in Ohio.
4. At all times relevant to this Complaint, Baerlocher has been a limited liability company incorporated under the laws of the State of Delaware, with its headquarters at 5890 Highland Ridge Drive, Cincinnati, Ohio 45232 and a manufacturing facility at 3676 Davis Road, Dover, Ohio 44077 (hereinafter "Dover facility").

5. 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).

6. 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.

7. 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

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

9. 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.

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

Statutory and Regulatory Background

11. Pursuant to his authority under Section 8(a) of TSCA, 15 U.S.C. § 2607(a), the Administrator of EPA promulgated the Chemical Information Rules on June 22, 1982 (47 Fed. Reg. 26992). The Chemical Information Rules subsequently have been amended and are codified at 40 C.F.R. Part 712.

12. Pursuant to 40 C.F.R. § 712.20, persons who manufacture for commercial purposes during the reporting period a chemical substance listed in 40 C.F.R. § 712.30 must submit the "Manufacturer's Report-Preliminary Assessment Information" (hereinafter "PAIR

report") for each plant site at which they manufactured the chemical substance, except as described in 40 C.F.R. § 712.25.

13. Pursuant to 40 C.F.R. § 712.30(a)(2), a person's PAIR report for a chemical substance must cover his latest complete corporate fiscal year as of the effective date of the listing of the chemical substance in 40 C.F.R. § 712.30. (This period of time sometimes is called the "reporting period" in 40 C.F.R. Part 712.)

14. Pursuant to 40 C.F.R. § 712.30(c), the PAIR report for each chemical substance must be submitted to EPA within 60 days of the effective date of the listing of the chemical substance in 40 C.F.R. § 712.30.

15. Under Section 15(3) of TSCA, 15 U.S.C. § 2614(3), it is unlawful for any person to fail or refuse to establish or maintain records, submit reports, notices or other information required by TSCA, or any rule promulgated thereunder.

Factual Allegations and Alleged Violations

16. On August 27, 2009, a representative of EPA conducted an inspection of Respondent's Dover facility to determine compliance with Sections 5, 8, 12, and 13 of TSCA, 15 U.S.C. §§ 2604, 2607, 2611, and 2612, and regulations promulgated thereunder.

17. Respondent is a "person" as defined at 40 C.F.R. § 712.3(l).

18. Respondent's latest complete corporate fiscal year prior to September 29, 2006, was calendar year 2005.

19. During calendar year 2005, Respondent manufactured at its Dover facility approximately 374,578 kilograms of the chemical barium, carbonate nonylphenol complexes, CAS No. 68515-89-9 (hereinafter the "Specified Chemical").

20. The Specified Chemical is an organic substance of a particular molecular identity.

21. Respondent manufactured at its Dover facility during calendar year 2005 approximately 374,578 kilograms of the Specified Chemical entirely for use other than as a pesticide, as defined in the Federal Insecticide, Fungicide, and Rodenticide Act; as tobacco or any tobacco product; as a source material, special nuclear material, or byproduct material as such those terms are defined in the Atomic Energy Act of 1954 and any regulations issued under such Act; as an article the sale of which is subject to the tax imposed by Section 4181 of the Internal Revenue Code of 1954 (i.e. any pistol, firearm, revolver, shells or cartridges); or as a food, food additive, drug, cosmetic or device as such terms are defined in Section 201 of the Federal Food, Drug, and Cosmetic Act.

22. The approximately 374,578 kilograms of the Specified Chemical is a "chemical substance," as that term is defined at Section 3(2) of TSCA, 15 U.S.C. § 2602(2).

23. EPA listed the Specified Chemical in 40 C.F.R. § 712.30 on August 16, 2006, with an effective date of September 29, 2006, and a reporting due date of November 26, 2006.

24. Respondent did "manufacture," as that term is defined at Section 3(7) of TSCA, 15 U.S.C. § 2602(7), the approximately 374,578 kilograms of the Specified Chemical at its Dover facility.

25. Respondent did "manufacture for commercial purposes," as that term is defined at 40 C.F.R. § 712.3(h), the approximately 374,578 kilograms of the Specified Chemical at its Dover facility.

26. Respondent is not exempt, pursuant to any provision of 40 C.F.R. §§ 712.25 or 712.30(a)(3), from the requirement at 40 C.F.R. § 712.20 to submit a PAIR report for the Specified Chemical.

27. Respondent was required to submit to EPA a PAIR report no later than November 28, 2006, for its calendar year 2005 manufacture for commercial purposes of approximately 374,578 kilograms of the Specified Chemical at its Dover facility.

28. On or about November 2, 2009, Respondent submitted to EPA a PAIR report for its manufacture for commercial purposes of approximately 374,578 kilograms of the Specified Chemical during calendar year 2005 at its Dover facility.

29. Respondent's submission to EPA of a PAIR report for its manufacture for commercial purposes of approximately 374,578 kilograms of the Specified Chemical during calendar year 2005 at its Dover facility was more than 60 days late and as such constitutes a violation of 40 C.F.R. §§ 712.20(a) and 712.30(c) and Sections 8(a) and 15(3)(B) of TSCA, 15 U.S.C. §§ 2607(a) and 2614(3)(B).

30. Respondent's violation of 40 C.F.R. §§ 712.20(a) and 712.30(c) and Sections 8(a) and 15(3)(B) of TSCA, 15 U.S.C. §§ 2607(a) and 2614(3)(B), subjects it to civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

Civil Penalty

31. 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 \$30,860. 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 EPA's "Guidelines for Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act" (45 Fed. Reg. 59770) and "The Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13," effective June 1, 1999.

32. Within 30 days after the effective date of this CAFO, Respondent must pay a \$30,860 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

33. 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-CMB (LC-8J)

U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Kathleen Schnieders-ORC (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3509

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

35. If Respondent does not timely pay the civil penalty 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).

36. Interest will accrue on any overdue amount from the date payment was due in accordance with 31 C.F.R. § 901.9(b). Respondent will 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

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

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

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

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

41. 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.

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

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

Baerlocher USA, LLC, Respondent

March 17, 2011
Date

Ray Buehler
Ray Buehler, President
Baerlocher USA, LLC

United States Environmental Protection Agency, Complainant

4-7-11
Date

Richard C. Karl
Richard C. Karl, Acting Director
Land and Chemicals Division

In the Matter of:
Baerlocher USA, LLC
Docket No. TSCA-05-2011-0007

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.

4-8-11

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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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 Baerlocher USA, LLC, was filed on April 12, 2011 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 7666 9214 to:

Mr. Ray Buehler
Baerlocher USA, LLC
5890 Highland Ridge Drive
Cincinnati, Ohio 44077

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Kathleen Schnieders, 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-05-2011-0007

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