



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 1562 3709

Nicholas Nierengarten
Gray Plant Mooty
500 IDS Center
80 South Eight Street
Minneapolis, Minnesota 55402

Cortec Corporation, Docket No. TSCA-05-2007- 0003

Dear Mr. Nierengarten:

I have enclosed a Complaint and Notice of Opportunity for Hearing concerning violations of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2614 et seq. which was filed on February 5, 2007 with the Regional Hearing Clerk. The Complaint was inadvertently not filed on the same date as the Consent Agreement and Final Order, settling this matter, which was filed on January 31, 2007.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "R. Terence Bonace".

R. Terence Bonace
Life Scientist
Pesticides and Toxics Enforcement Section

Enclosures

REGIONAL CLERK
REGION 5 PM 12:46

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

2007 FEB -5 PM 12:49
REGIONAL CLERK

In the Matter of:

Cortec Corporation
4119 White Bear Parkway
St. Paul, Minnesota 55110

Respondent.

) COMPLAINT AND
) NOTICE OF OPPORTUNITY
) TO REQUEST A HEARING

) Docket No. TSCA-05-2007-0003'

COMPLAINT

1. This civil administrative action for the assessment of a civil penalty is filed pursuant to the Toxic Substances Control Act, as amended, 15 U.S.C. §§ 2601 through 2630, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation or Suspension of Permits, Final Rule (64 Fed. Reg. 41038, July 23, 1999).

2. Complainant is, by lawful delegation, the Chief, Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency (U.S. EPA or Agency), Region 5.

3. Respondent is Cortec Corporation, which is and was at all times relevant to this Complaint a corporation incorporated under the laws of the State of Minnesota.

4. Respondent has a place of business located at 4119 White Bear Parkway, St. Paul, Minnesota.

5. On August 21, 2003, a representative of the U.S. EPA conducted an inspection at Respondent's place of business, to determine compliance with Sections 4, 5, 8, 12, and 13 of TSCA, 15 U.S.C. §§ 2503, 2604, 2607, 2611, and 2612, and regulations promulgated thereunder.

PMN Rule and Exemption Violations

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

7. Any person who intends to manufacture a new chemical substance in the United States for commercial purposes must submit a notice unless the substance is excluded under 40 C.F.R. § 720.30. 40 C.F.R. § 720.22(a)(1).

8. A new chemical substance is any chemical substance which is not included on the TSCA Inventory. 40 C.F.R. § 720.3(v).

9. The Inventory is a list of chemical substances manufactured or processed in the United States that U.S. EPA compiled and keeps current under Section 8(b) of TSCA, 15 U.S.C. § 2607. 40 C.F.R. § 720.3(o).

10. A person who manufactures or imports a new chemical substance and fails to comply with any provision of these Sections is in violation of Section 15 of TSCA, 15 U.S.C. § 2614. 40 C.F.R. § 723.250(l)(1).

11. Failure to comply with any provision of 40 C.F.R. Part 720 is a violation of Section 15 of TSCA, 15 U.S.C. § 2614. 40 C.F.R. § 720.120(a).

12. Violators may be subject to the civil penalties in Section 16 of TSCA, 15 U.S.C. 2615, for each violation. 40 C.F.R. § 720.120(f).

13. Sections 15(1)(B), 15(1)(C) and 15(3)(B) of TSCA, 15 U.S.C. §§ 2614(1)(B), 2614(1)(C), and 2614(3)(B), 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, any rule promulgated or order issued under Section 5, or to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.

General Allegations

14. At all times relevant to this Complaint, Respondent was a person, as defined at 40 C.F.R. § 720.3(x) and 40 C.F.R. § 723.250(b).

Chemical A

15. Respondent manufactured the quantities of the chemical (CBI-deleted), hereafter referred to as Chemical A, on or about the dates and in the quantities listed in Table 1 below:

Table 1

(CBI-deleted)

16. The dates of manufacture of Chemical A are within the five years prior to the commencement of this action.

17. Chemical A is an organic or inorganic substance of a particular molecular identity.

18. Respondent “manufactured” the entire quantity of each relevant batch of Chemical A, as referenced in Table 1 above, as set forth in Section 3(7) of TSCA, 15 U.S.C. § 2602(7), and in the regulations at 40 C.F.R. § 720.3(q), 40 C.F.R. § 723.250(b), and 19 C.F.R. § 12.120.

19. With respect to Chemical A, Respondent is a “manufacturer” as that term is defined at 40 C.F.R. § 720.3(t).

20. Respondent manufactured the entire quantity of each relevant batch of Chemical A, as referenced in Table 1 above, 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 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.

21. The entire quantity of each relevant batch of Chemical A, as referenced in Table 1, above, is a “chemical substance,” as defined at Section 3(2) of TSCA, 15 U.S.C. § 2602(2), and by the regulations at 40 C.F.R. § 720.3(e), 40 C.F.R. § 723.250(b), and 19 C.F.R. § 12.120.

22. At all relevant times during the dates of manufacture set forth above, Chemical A had not been listed on the TSCA Inventory.

23. At all relevant times during the dates of manufacture set forth above, Chemical A was a new chemical substance, as defined at Section 3(9) of TSCA, 15 U.S.C. § 2602(9), and by the regulations at 40 C.F.R. § 720.3(v), 40 C.F.R. § 723.250(b), and 19 C.F.R. § 12.120.

Chemical B

24. Respondent manufactured the quantities of the chemical (CBI-deleted), referred to herein as Chemical B, on or about the dates and in the quantities listed in Table 2 below:

Table 1

(CBI-deleted)

25. The dates of manufacture of Chemical B are within the five years prior to the commencement of this action.

26. Chemical B is an organic or inorganic substance of a particular molecular identity.

27. Respondent manufactured the entire quantity of each batch of Chemical B referenced in Table 2 above, as defined by Section 3(7) of TSCA, 15 U.S.C. § 2602(7), and by the regulations at 40 C.F.R. § 720.3(q), 40 C.F.R. § 723.250(b), and 19 C.F.R. § 12.120.

28. With respect to Chemical B, Respondent is a “manufacturer” as that term is defined at 40 C.F.R. § 720.3(t).

29. Respondent manufactured the entire quantity of each batch of Chemical B referenced in Table 2 above 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 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.

30. The entire quantity of each batch of Chemical B referenced in Table 2 above is a “chemical substance,” as defined at Section 3(2) of TSCA, 15 U.S.C. § 2602(2), and by the regulations at 40 C.F.R. § 720.3(e), 40 C.F.R. § 723.250(b), and 19 C.F.R. § 12.120.

31. At all relevant times during the dates of manufacture set forth above, Chemical B had not been listed on the TSCA Inventory.

32. At all relevant times during the dates of manufacture set forth above, Chemical B was a new chemical substance, as defined at Section 3(9) of TSCA, 15 U.S.C. § 2602(9), and by the regulations at 40 C.F.R. § 720.3(v), 40 C.F.R. § 723.250(b), and 19 C.F.R. § 12.120.

Specific Allegations

Count 1

33. Respondent manufactured each batch of Chemical A for commercial purposes.
40 C.F.R. § 720.3(c).

34. Respondent did not manufacture Chemical A in any manner as to exclude the chemical substance by any provision of 40 C.F.R. § 720.30.

35. Respondent manufactured Chemical A on or about the nine dates alleged above, as listed in Table 1, without previously filing a notice, as required by 40 C.F.R. § 720.22(b)(1).

36. Respondent's manufacture of a non-exempt new chemical substance (Chemical A) on or about the nine dates set forth above, for a non-exempt commercial purpose, without filing a notice with U.S. EPA under Section 5 of TSCA represents nine violations 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).

37. Each violation of 40 C.F.R. § 720.102(a) and (b) and Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A), is an unlawful act pursuant to Sections 15(1)(B), 15(1)(C) and 15(3)(B) of TSCA, 15 U.S.C. §§ 2614(1)(B), 2614(1)(C), and 2614(3)(B).

38. Each unlawful act pursuant to Sections 15(1)(B), 15(1)(C), and 15(3)(B) of TSCA, 15 U.S.C. §§ 2614(1)(B), 2614(1)(C), and 2614(3)(B), subjects Respondent to civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2

39. Respondent manufactured each batch of Chemical B for commercial purposes.
40 C.F.R. § 720.3(r).

40. Respondent did not manufacture Chemical B in any manner as to exclude the chemical substance by any provision of 40 C.F.R. § 720.30.

41. Respondent manufactured Chemical B on or about the 97 dates alleged above, as listed in Table 2, without previously filing a notice, as required by 40 C.F.R. § 720.22(b)(1).

42. Respondent's manufacture of a non-exempt new chemical substance (Chemical B) on or about those 97 dates, for a non-exempt commercial purpose, without filing a notice with U.S. EPA under Section 5 of TSCA represents 97 violations 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).

43. Each violation of 40 C.F.R. § 720.102(a) and (b) and Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A), is an unlawful act pursuant to Sections 15(1)(B), 15(1)(c), and 15(3)(B) of TSCA, 15 U.S.C. §§ 2614(1)(B), 2614(1)(C), and 2614(3)(B).

44. Each unlawful act pursuant to Sections 15(1)(B), 15(1)(C), and 15(3)(B) of TSCA, 15 U.S.C. §§ 2614(1)(B), 2614(1)(C), and 2614(3)(B), subjects Respondent to civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

Proposed Civil Penalty

Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), states that any person who violates a provision of Section 15 of TSCA, 15 U.S.C. § 2614, is liable to the United States for a civil penalty up to \$25,000 for each violation. Each day such a violation continues constitutes a separate violation of Section 15 of TSCA, 15 U.S.C. § 2614. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated pursuant

thereto at 40 C.F.R. Parts 19 and 27, *see* 61 Fed. Reg. 69360-69366 (Dec. 31, 1996) and 62 Fed. Reg. 13514-13517 (March 20, 1997), this amount was increased to \$27,500 on or after January 31, 1997 to March 15, 2004 and to \$32,500 for each offense of TSCA that occurred after March 15, 2004.

Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), states that in determining the amount of a civil penalty, Complainant shall consider 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 derived the civil penalty proposed below by applying the above-listed factors to the facts alleged in this Complaint. The manner in which the Agency considers each of these penalty determination factors is explained in detail in the following documents:

“Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act,” which appears in the Federal Register of September 10, 1980 (45 Fed. Reg. 59770), and the “Amended TSCA Section 5 Enforcement Response Policy,” dated June 18, 1989, as amended.

These policies provide a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

Based on the above, U.S. EPA proposes that Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

Count 1

Manufacture of a Non-Exempt New Chemical Substance
 Without First Submitting a TSCA Section 5 Notice
 to U.S. EPA, on 11 Occasions\$115,724
 40 C.F.R. § 720.22(b)(1)
 40 C.F.R. § 720.120(b)
 15 U.S.C. §§ 2614(1)(B), (1)(C), and (3)(B)

Count 2

Manufacture of a Non-Exempt New Chemical Substance
 Without First Submitting a TSCA Section 5 Notice
 to U.S. EPA, on 97 Occasions\$121,710
 40 C.F.R. § 720.22(b)(1)
 40 C.F.R. § 720.120(b)
 15 U.S.C. §§ 2614(1)(B), (1)(C), and (3)(B)

TOTAL PROPOSED CIVIL PENALTY\$237,434

Payment of The Proposed Civil Penalty

Respondent may choose to pay the total proposed civil penalty rather than file an Answer in response to this Complaint. Payment of the civil penalty must be made within 20 calendar days of service of this Complaint, and shall be made by certified or cashier's check, payable to the "Treasurer of the United States of America." The check shall be sent, with a transmittal letter identifying the Respondent and docket number of this Complaint, to:

U.S. EPA, Region 5
 P.O. Box 371531
 Pittsburgh, PA 15251-7531

Copies of the transmittal letter and check shall also be sent to the following persons:
 Regional Hearing Clerk (E-13J); Andre Daugavietis, Assistant Regional Counsel (C-14J); and

Terence Bonace, Enforcement Officer (DT-8J). The address for each is: U.S. EPA-Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

The day that the Complaint is served is not counted in computing the 20 calendar days allowed in which to pay the proposed civil penalty. Saturdays, Sundays and Federal holidays are counted. The time period allowed in which to pay the proposed civil penalty is extended to the next business day if the twentieth (20th) day expires on a Saturday, Sunday or Federal holiday.

Payment of the proposed civil penalty alone does not satisfy Respondent's legal obligation to correct the violations alleged in this Complaint and achieve compliance with TSCA.

Filing of an Answer

Respondent may choose to file an Answer in response to this Complaint, rather than immediately pay the civil penalty proposed above. Respondent's Answer must be in writing, must be filed within twenty (20) calendar days of service of this Complaint, and must be filed with the Regional Hearing Clerk at the address listed above. The method of the computation of the twenty (20) calendar days in which to file the Answer is the same as is described above in the "Payment of the Proposed Civil Penalty" Section.

Copies of the Answer, and any other documents subsequently filed in this action, should be sent to Mr. Daugavietis and Mr. Bonace at the address indicated above.

In the Answer, Respondent must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge; or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer should also state:

1. The circumstances or arguments that Respondent alleges constitute the grounds of defense;
2. The facts that Respondent intends to place at issue; and
3. Whether Respondent requests a hearing.

Respondent's failure to deny any of the factual allegations contained in this Complaint constitutes admission of the allegation.

Default Order

The Regional Administrator of U.S. EPA, Region 5, or the Presiding Officer may issue a Default Order if Respondent fails to file a written Answer within twenty (20) calendar days of service of this Complaint. A Default Order constitutes Respondent's binding admission of all allegations made in the Complaint, and a waiver of Respondent's right to any hearings pursuant to TSCA. Such Default Order may become a Final Order of the Administrator of U.S. EPA within forty-five (45) days after its service. The civil penalty proposed in this Complaint shall then become due and payable without further proceedings sixty (60) days after a Final Order is issued upon Default. See the Consolidated Rules of Practice.

In addition, the default penalty is subject to the provisions relating to the imposition of interest, penalty and handling charges set forth in Section 16(a)(4) of TSCA, 15 U.S.C. § 1615(a)(4), and the Federal Claims Collection Act of 1966 (Claims Collection Act), 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to the Claims Collection Act. A late payment handling charge of fifteen dollars (\$15) will be imposed after thirty (30) days, with an additional charge of fifteen dollars (\$15) for each subsequent thirty (30) day period over which an unpaid balance remains. A six

percent (6%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the date that the Regional Administrator or Presiding Officer signs the Default Order. Respondent's refusal to remit the entire penalty assessed by the Default Order, by its due date, may result in the referral of this matter for collection to the United States Attorney.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a hearing to contest any material fact alleged in this Complaint, and/or to contest the appropriateness of the amount of the proposed civil penalty, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the Administrative Procedure Act (APA), 5 U.S.C. §§ 551 and following. Respondent must specifically make such request for a hearing in writing. Any hearing that Respondent requests will be held and conducted in accordance with the provisions of the APA and the Consolidated Rules of Practice.

Notice of Opportunity to Request an Informal Settlement Conference

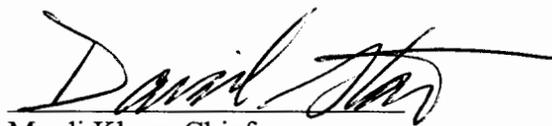
Respondent may request an informal settlement conference to discuss the facts of this case and to arrive at a settlement, regardless as to whether an Answer is filed. Respondent should contact Mr. Daugavietis or Mr. Bonace to request such a conference. For your information, Mr. Daugavietis's telephone number is (312) 886-6663; Mr. Bonace's telephone number is (312) 886-3387.

Respondent's request for an informal settlement conference does not extend the twenty (20) day period during which Respondent must either pay the proposed civil penalty or submit a

written Answer. Respondent may pursue the informal settlement conference procedure simultaneously with the adjudicatory hearing procedure. The Agency encourages all parties against whom a civil penalty is proposed to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty proposed in this Complaint simply because a settlement conference is held. The Regional Administrator, U.S. EPA, Region 5, shall issue a Consent Agreement and Final Order (CAFO) to embody any settlement that is reached as a result of a settlement conference. The issuance of such a CAFO in this matter shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to in the CAFO.

Please be advised that the Consolidated Rules of Practice prohibits any ex parte (unilateral) discussion of the merits of this action, after this Complaint was issued, with the Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in a decision on this case.

01/05/2007
Date


for Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

TSCA-05-2007-0003'

RECEIVED
REGIONAL HEARING CLERK
CERTIFICATE OF SERVICE
2007 FEB -5 PM 12:47

I hereby certify that one original and one copy of the Complaint and Notice of Opportunity to Request a Hearing, Docket No. TSCA-05-2007-0003, was filed on February 5, 2007 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, Chicago, Illinois, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 1562 3709, a true and correct copy to Respondent's attorney:

Nicholas Nierengarten
Gray Plant Mooty
500 IDS Center
80 South Eight Street
Minneapolis, Minnesota 55402

and forwarded copies to:

Marcy Toney, Regional Judicial Officer (C-14J)
Andre Daugavieitis, Counsel for Complainant (C-14J)
Ray Marasigan, Finance (MF-10J)

Terence Bonace

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