



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUL 31 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Kevin Kilroy
Regulatory Manager
Smithers-Oasis North America
919 Marvin Street
Kent, Ohio 44240

Re: Floralife, Inc.
Consent Agreement and Final Order
Docket No. TSCA-04-2013-2722(b)

Dear Mr. Kilroy:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Mr. Verne George of the EPA Region 4 staff at (404) 562-8988.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

RECEIVED
EPA REGION IV
2013 JUL 31 AM 7:06
HEARING CLERK

In the Matter of:)
)
Floralife, Inc.) Docket No. TSCA-04-2013-2722(b)
)
)
Respondent.)
_____)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4. Respondent is Floralife, Inc.
2. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the EPA Region 4 Regional Administrator by EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has redelegated this authority to the Director of the Air, Pesticides and Toxics Management Division by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter and has the authority

to sign Consent Agreements memorializing settlements between the EPA and Respondents.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony; the making of any argument; or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for any person to:
 - (1) fail or refuse to comply with any rule or order promulgated pursuant to Sections 4, 5, 8, 12 or 13 of TSCA , 15 U.S.C. § 2603, § 2604, § 2607, § 2611 or § 2612; (2) use for commercial purposes a chemical substance or mixture that the person knew or had reason to know was manufactured, imported, processed, or distributed in commerce in violation of TSCA Section 5, 15 U.S.C. § 2604; (3) fail to maintain records, submit reports or information, or permit access to or allow copying of records as required by TSCA; and (4) refuse to permit entry or inspection as authorized by Section 11 of TSCA, 15 U.S.C. § 2610.
5. Any person who violates a provision of Section 15 of TSCA shall be liable for a civil penalty in an amount not to exceed \$25,000 for each such violation, in accordance with Section 16(a) of TSCA. The Debt Collection Improvement Act of 1996 requires the EPA to review and adjust penalties, as necessary, for inflation at least once every four years. As such, pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule,

40 C.F.R. Part 19, the revised maximum penalty for each violation occurring after January 30, 1997, through March 15, 2004, is \$27,500; for each violation occurring after March 15, 2004, through January 12, 2009, the maximum penalty for each violation is \$32,500; and for each violation occurring after January 12, 2009, the maximum penalty for each violation is \$37,500. Each day a violation continues may constitute a separate violation.

6. Respondent has claimed certain information as Confidential Business Information (CBI), and that information has been redacted from this CAFO. To determine the identity of the chemical substance and mixture referenced in this CAFO or any additional CBI that has been deleted, Complainant and/or Respondent should refer to Complainant's show cause letter dated October 10, 2012, sent to the Respondent identifying the potential violations of TSCA and notifying the Respondent of the opportunity to show cause why the EPA should not proceed with an enforcement action.

III. Specific Allegations

7. Respondent operates a chemical manufacturing facility (facility) located at 751 Thunderbolt Drive, Walterboro, South Carolina.
8. Respondent is a manufacturer as the term is defined in 40 C.F.R. § 720.3(t).
9. On August 6, 2008, a consultant submitted an exemption notice to the EPA on behalf of Respondent pursuant to 40 C.F.R. § 723.50(e). The exemption notice sought a low volume exemption (LVE) for approval to import [CBI deleted], hereinafter referred to as "Chemical A," under 40 C.F.R. § 723.50(c)(1). Respondent's exemption notice specified the use for which Chemical A was being imported. Pursuant to 40 C.F.R. § 723.50(a)(1), the exemption, if granted, would enable Respondent to be exempt from complying with

- the premanufacture notice requirements of section 5(a)(1)(A) of TSCA for the manufacture of chemical substances in quantities of 10,000 kilograms or less per year.
10. On August 13, 2008, the EPA acknowledged receipt of the LVE notice. Pursuant to 40 C.F.R. § 723.50(g)(1), the EPA has 30 days to review the exemption request. Further, pursuant to 40 C.F.R. § 723.50(g)(2), upon expiration of the 30-day period, if the EPA has taken no action, the manufacturer may consider its exemption request approved and begin to manufacture the new chemical substance under the terms described in its notice, and in 40 C.F.R. § 723.50. The 30-day review period for Respondent's LVE request expired on September 5, 2008. Because the EPA took no action on Respondent's LVE request prior to the expiration of the 30-day period, the LVE was automatically approved.
 11. Thereafter, Respondent imported Chemical A as an [CBI deleted] for use in the production of [CBI deleted].
 12. Subsequent to the effective date of the LVE, on several occasions between May 7, 2009, and June 23, 2010, Respondent used a portion (< 200 grams) of Chemical A to produce [CBI deleted], hereinafter referred to as Mixture A, for a commercial purpose that was not a specified use under the LVE notice approved by the EPA.
 13. On June 25, 2010, the EPA Region 4 notified Respondent that the EPA Region 4 would be conducting an inspection of its facility on July 15, 2010, to determine compliance with TSCA Sections 4, 5, 8, 12, and 13.
 14. On July 15, 2010, the EPA Region 4 conducted an inspection at the facility pursuant to Section 11(a) of TSCA, 15 U.S.C. § 2610(a) to determine compliance with Sections 4, 5, 8, 12, and 13.

15. During the inspection, Respondent disclosed to the EPA Region 4 inspector that Chemical A had been used to produce Mixture A, a use that was not consistent with the LVE notice as authorized by the EPA.
16. On May 11, 2011, the EPA Region 4 referred the apparent unauthorized use of Chemical A to the EPA's Office of Pollution Prevention and Toxics at the EPA Headquarters in Washington, D.C. for further review. On August 31, 2011, the Office of Chemical Safety and Pollution Prevention (OCSPP) notified Respondent that the manufacture of Chemical A did not meet the terms of the LVE. On October 18, 2011, Respondent submitted an explanation to OCSPP, and confirmed that Chemical A was used in a manner that was not specified in the LVE notice. Pursuant to 40 C.F.R. § 723.50(h)(2)(iii), on November 21, 2011, OCSPP informed Respondent that the manufacture of Chemical A did not meet the requirements of the exemption allowed under 40 C.F.R. § 723.50, and that Respondent could no longer manufacture Chemical A under the LVE notice that was initially submitted.
17. Pursuant to 40 C.F.R. § 723.50(h)(3), an action under 40 C.F.R. § 723.50(h) does not preclude the EPA from taking action under Sections 7, 15, 16, or 17 of TSCA.
18. Complainant is taking an action pursuant to Section 15 of TSCA based on the information referenced in the OCSPP Assistant Administrator's letter dated November 21, 2011, and the information submitted by the Respondent in its November 15, 2012, response to the EPA Region 4's show cause letter dated October 10, 2012.
19. Pursuant to 40 C.F.R. § 723.50(j)(1), except as provided in paragraph 40 C.F.R. § 723.50(j)(6), chemical substances manufactured under 40 C.F.R. § 723.50 must be manufactured for the uses described in the exemption notice.

20. As referenced in 40 C.F.R. § 723.50(j)(4)(ii), any person who manufactures a new chemical substance under 40 C.F.R. §§ 723.50(c)(1) or (c)(2) must comply with the provisions of 40 C.F.R. § 723.50, including submission of a new notice under 40 C.F.R. § 723.50(e), before manufacturing the new chemical substance for a use that was not approved in a previous exemption notice for the substance.
21. Respondent failed to comply with 40 C.F.R. § 723.50(e) by failing to submit a new LVE notice to the EPA 30 days prior to importing the Chemical A on August 28, 2009.
22. Pursuant to 40 C.F.R. § 723.50(o)(1), failure to comply with any provision of 40 C.F.R. § 723.50 is a violation of Section 15 of TSCA, 15 U.S.C. 2614.
23. Pursuant to 40 C.F.R. § 723.50(o)(3), violators may be subject to civil and criminal penalties under Section 16 of TSCA, 15 U.S.C. 2615 for each violation.

IV. Consent Agreement

24. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
25. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
26. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
27. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with the TSCA regulations referenced in this CAFO and all other relevant and applicable TSCA requirements.
28. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United

States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

29. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.
30. Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual is authorized to receive service for the EPA in this proceeding:

Verne George
Chemical Products and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562- 8988.

V. Final Order

31. Respondent is assessed a civil penalty of NINE THOUSAND, TWO HUNDRED DOLLARS (\$9,200) which shall be paid within thirty (30) days of the effective date. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America." **The Respondent shall note on the face of the check the Respondent's name and the Docket Number associated with this CAFO.** The penalty payment shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service (USPS)
(excluding USPS overnight mail):

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Address for payment submittal using USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

Contact Phone Number: (314) 418-1028.

32. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960;

Verne George
Chemical Products and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960; and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960.

33. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made

pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

34. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, the EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
35. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
36. This CAFO shall be binding upon the Respondent and its successors and assigns.
37. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to this CAFO.

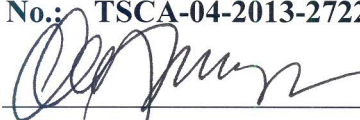
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VI. Effective Date

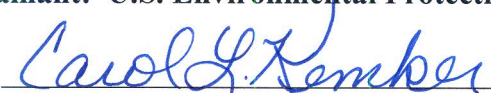
38. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:


Respondent: Floralife, Inc.
Docket No.: TSCA-04-2013-2722(b)

By:  Date: June 26, 2013
Name: Alan S. Tanouye
Title: General Manager

Complainant: U.S. Environmental Protection Agency

By:  Date: 7/10/13
Carol L. Kemker, Acting Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 30 day of July, 2013

By: 
Susan B. Schub
Regional Judicial Officer

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Floralife, Inc., Docket Number: TSCA-04-2013-2722(b), to the addressees listed below.

Mr. Kevin Kilroy
Regulatory Manager
Smithers-Oasis North America
919 Marvin Street
Kent, Ohio 44240

(via Certified Mail, Return Receipt Requested)

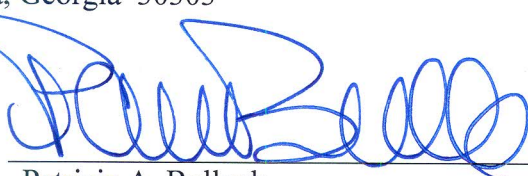
Verne George
Chemical Products and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

Robert Caplan
Senior Attorney
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

By:



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303

Date:

7-31-13

(404) 562-9511