



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAR 26 2008

4APT-PTSB

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Douglas E. Cloud
Alston & Bird LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424

SUBJ: Imerys Carbonates, LLC
Consent Agreement and Final Order
Docket Number: TSCA-04-2008-2502(b)

Dear Mr. Cloud:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter that has been filed with the Regional Hearing Clerk and served as required in the Consolidated Rules of Practice, 40 C.F.R. § 22.6. Please make note of the provisions in Section V of the CAFO, with respect to payment of the assessed penalty, which is due within 30 days from the effective date of the CAFO.

Also enclosed, please find 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 (SEC) any environmental enforcement actions taken by EPA.

If you have any questions, please call Mary Summers of the EPA Region 4 staff at (404) 562-8997.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanneane M. Gettle".

Jeanneane M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
)
IMERY'S CARBONATES, LLC,)
)
)
Respondent.)
_____)

Docket Number: *TSCA-04-2008-2502(B)*

2008/07/25 AM 6:19
RECEIVED
EPA REGION 4
HEALTH & ENVIRONMENT

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 the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Imerys Carbonates, LLC, Sylacauga, Alabama, (hereinafter, "Respondent").

2. 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

3. The Administrator of EPA promulgated rules in 40 C.F.R. Part 761, pursuant to Section 6(e) of TSCA, 15 U.S.C. §2605. Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. §2614. Any person who violates Section 15 of TSCA may be assessed a penalty of up to \$25,000 for each such violation, in accordance with Section 16(a) of TSCA, 15 U.S.C. §2615(a). For a violation occurring after March 15, 2004, a penalty of up to \$32,500 may be assessed pursuant to 40 C.F.R. Part 19. Each day a violation continues may constitute a separate violation.

4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. §2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.

5. "PCB Item" is defined in 40 C.F.R. §761.3 as any PCB article, PCB Article Container, PCB equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

III. Factual Allegations

6. Respondent operates a calcium carbonate production facility in the State of Alabama, and falls within the definition of "person" pursuant to 40 C.F.R. §761.3.

7. On March 27 and 29, 2007, the state of Alabama inspected Respondent's facility at 1301 Gene Stewart Boulevard, Sylacauga, Alabama to determine compliance with the PCB regulations found at 40 C.F.R. Part 761. The following violations were detected during the inspections:

a. **40 C.F.R. Section 761.40(a)(10) requires that each storage area used to store PCBs and PCB Items for disposal shall be marked with the TSCA PCB label as illustrated in Figure 1 in §761.45(a).** Respondent failed to properly mark a storage area where it had stored three transformers containing PCBs and four 55-gallon drums containing presumed PCB Capacitors with the required label. Therefore, Respondent violated 40 C.F.R. §761.40(a)(10).

b. **40 C.F.R. Section 761.65(c)(8) requires that PCB Items shall be dated on the item when they are removed from service for disposal.** Respondent failed to put out-of-service dates on PCB Items described in Paragraph 7(a) above when they were removed from service. Therefore, Respondent violated 40 C.F.R. §761.65(c)(8).

c. **40 C.F.R. Section 761.65(b)(1)(i) requires as of July 1, 1978, that owners or operators of any facilities used for the storage of PCBs and PCB Items designated for disposal shall have adequate roof and walls to prevent rain water from reaching the stored PCBs, and an adequate floor that has a continuous curbing with a minimum 6 inch high curb.** The PCB Items described in Paragraph 7(a) were stored outside on plastic sheeting with adequate curbing, but without adequate roof and walls. Therefore, Respondent violated 40 C.F.R. §761.65(b)(1)(i).

d. **40 C.F.R. Section 761.40(a)(3) requires that PCB Items shall be marked with the TSCA PCB label as illustrated in Figure 1 in §761.45(a).** The four 55-gallon drums filled with presumed PCB Capacitors described in Paragraph 7(a) were not marked with the TSCA PCB label. Therefore, Respondent violated 40 C.F.R. §761.40(a)(3).

e. **40 C.F.R. Section 761.65(c)(5) requires that all PCB Items in storage shall be checked for leaks at least once every 30 days and that records of inspections, maintenance, cleanup and disposal must be maintained in accordance with 40 C.F.R. §§761.180(a) and (b).** Respondent failed to conduct the required inspections of the PCB Items described in Paragraph 7(a) for leaks and spills at least once every thirty days, and failed to maintain quarterly records of any inspections of the PCB Items for calendar years 2006, 2005, 2004, 2003 and prior years. Therefore, Respondent violated 40 C.F.R. §761.65(c)(5).

f. **40 C.F.R. Sections 761.180(a) and (b) require that owners and operators of a facility who are using or storing for disposal at any one time at least 45 kilograms of PCBs contained in PCB Items, must develop and maintain at the facility all annual records and a written annual document log of the disposition of PCBs and PCB Items. The written annual document log must be prepared by July 1 covering the previous calendar year.** Respondent had PCBs and PCB Items described in Paragraph 7(a) above stored for disposal at its facility, but failed to develop all annual records and written annual document logs of the disposition of PCB Items for calendar years 2006, 2005, 2004, 2003, and prior years. Therefore, Respondent violated 40 C.F.R. §§761.180(a) and (b).

IV. Consent Agreement

8. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above but neither admits nor denies the factual allegations set forth above.

9. Respondent waives its right to a hearing on the allegations contained herein.

10. Respondent consents to the assessment of, and agrees to pay the civil penalty as set forth in this CAFO.

11. Respondent certifies that as of the date of its execution of this CAFO, to the best of its knowledge, it is in compliance with all relevant requirements of TSCA.

12. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16 of TSCA, for the specific violations alleged herein. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.

13. 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.

V. Final Order

14. Respondent is assessed a civil penalty of Thirty-Eight Thousand, Nine Hundred Seven Dollars (\$38,907). Payment of the civil penalty shall be made by Respondent no later than thirty (30) days after the effective date of this CAFO.

15. Respondent shall pay the penalty by electronic wire transfer or by forwarding a cashier's or certified check, payable to "Treasurer, United States of America," to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Accounting Operations
P.O. Box 979077
St. Louis, MO 63197-9000

The check shall reference on its face the name and the Docket Number of the CAFO.

For payment submittal by any overnight mail service (FedEx, UPS, DHL, etc):

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

For wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

16. At the time of payment, Respondent shall send a separate copy of the electronic transfer or check, and a written statement that payment has been 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 30303-3104;

Mary Summers
PCB & Chemical Products Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960; and

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

17. 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.

18. During settlement negotiations, the parties agreed that Respondent would conduct the following Supplemental Environmental Project (SEP), which the parties agreed is intended to secure significant environmental protection:

A. Respondent will retrofill five of its PCB Transformers, serial numbers **UAV4807-06, UAV4807-05, UAV4807-04, UAV4807-01, and UAV4807-02**, all containing 175 gallons each of PCB fluid. Respondent's contractor, C&S Maintenance & Installation, Inc., Birmingham, Alabama, will drain PCB oils out of the transformers, properly store and arrange for disposal of the PCB oil with TCI LLC, refill each transformer with non-PCB mineral oil, and retest the refilled transformers to confirm that they each contain less than 50 ppm PCBs. If a retrofilled transformer is shown to have PCB concentrations above 50 ppm, retrofilling will be repeated until such time as the PCB concentrations are confirmed to have dropped below and remain below 50 ppm. Respondent proposed to begin the work by February 1, 2008, and to complete it by March 1, 2008, except that retesting would be completed by June 1, 2008.

B. Prior to the parties having signed this CAFO, Respondent advised EPA that its contractor had completed the initial retrofilling of the five transformers but not the retesting process. Respondent will complete the retesting process by June 1, 2008.

C. Respondent will spend a minimum of \$20,500 for this SEP.

19. Respondent will complete the SEP by March 1, 2008, except for retesting which will be completed by June 1, 2008.

20. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

21. By no later than July 1, 2008, Respondent shall submit the following documentation to Ms. Summers at the address listed above:

- A. A final report, detailing all activities undertaken to complete the SEP ;
- B. An affidavit from an appropriate company official, which shall state that the project was completed as proposed.

22. At the request of EPA, and in the timeframe designated by EPA, Respondent shall provide any additional information to confirm the performance of the SEP. This paragraph shall in no way limit or otherwise affect the rights of EPA to inspect the facility or request information under TSCA or any other authority.

23. Respondent certifies that, as of the date this CAFO is signed by Respondent, it is not required to perform any part of the SEP by any federal, state, or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of the date Respondent signs this CAFO, it has not received, and is not negotiating to receive, credit for any part of the SEP in any other EPA enforcement action.

24. If Respondent chooses to make any public statement, written or oral, which makes reference to any part of the project that comprises this SEP, it shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 6(e) of TSCA, 15 U.S.C. §2605(e)." This statement must be in at least a font size of 12 points.

25. If Respondent fails to timely and fully complete any part of the SEP, including the failure to spend the total minimum amount of **\$20,500**, Respondent shall pay the United States a stipulated penalty of **\$15,375 (75% of the mitigated amount)**, except as follows:

- A. If the SEP was fully and timely completed, and Respondent expended at least **Ninety percent (90%)** of the total amount required, Respondent shall not pay a stipulated penalty;
- B. If the SEP is not fully and timely completed; but Respondent spent at least **Ninety percent (90%)** of the total amount required, Respondent shall not pay a stipulated penalty if it made a good faith effort to fully and timely complete the SEP;

- C. If the SEP was fully and timely completed, but Respondent spent less than **Ninety percent (90%)** of the total amount required, Respondent shall pay a stipulated penalty of **\$5,125 (25% of the mitigated amount)**.

For purposes of this paragraph, whether the Respondent has fully and timely completed the SEP and whether Respondent made a good faith effort to do so shall be in the sole discretion of EPA.

26. If Respondent fails to submit the documentation required in paragraphs 21 and 22 by the date(s) specified, Respondent shall pay to the United States a stipulated penalty of **\$500 for each day** that the information is not submitted until the documentation is submitted.

27. Respondent shall pay any stipulated penalties that accrue under Paragraphs 25 and 26 above within fifteen (15) calendar days of Respondent's receipt of a written demand for payment from EPA for such penalties. Such penalties shall be paid in accordance with the payment instructions set forth in Paragraph 15 above.

28. Pursuant to 31 U.S.C. §3717, 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. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. §3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge of six percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

29. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

30. This CAFO shall be binding upon the Respondent, its successors and assigns.

31. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Mary Summers (Air Division)
U.S. EPA - Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303
(404) 562-8997

32. 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 legally bind that party to it.

The remainder of this page is intentionally left blank.

VI. Effective Date

37. 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:

Imerys Carbonates, LLC
Docket Number: TSCA-04-2008-2502(b)

By: [Signature] Date: Feb. 19, 2008
Name: Mike Perot (Typed or Printed)
Title: plant manager (Typed or Printed)

U.S. Environmental Protection Agency

By: [Signature] Date: 3/14/08
Director
Air, Pesticides & Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 24th day of March, 2008.

[Signature]
Susán B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

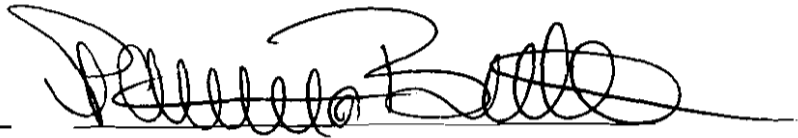
I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Imerys; Docket No. TSCA-04-2008-2502(b) on the parties listed below in the manner indicated:

Mary Summers (Via EPA's Internal Mail)
US EPA, Region 4
Air Division

Robert Caplan (Via EPA's Internal Mail)
US EPA, Region 4
Office of Environmental Accountability

Mr. Doug Cloud (Via Certified Mail, Return Receipt Requested)
Alston & Bird LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424

Date: 3-25-08



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi J Wilson on 3/21/08
(Name) (Date)

in the OEH at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Imerys Carbonates LLC
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 38,907
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2008 2502 (6)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date: _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |