

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:)	
)	Docket Number TSCA-HQ-2025-5017
Lake City Paint Inc)	
10248 Railroad St.)	CIVIL COMPLAINT AND NOTICE OF
Lake City, PA 16423)	OPPORTUNITY FOR HEARING
)	
Respondent)	
)	

COMPLAINT

This Complaint and Notice of Opportunity for Hearing (Complaint) is filed pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Pub. L. No. 114-182, June 22, 2016, 130 Stat 448 (2016 Act), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

As a result of an EPA investigation and Respondent's submission of information in response to a subpoena issued under Section 11(c) of TSCA, 15 U.S.C. § 2610(c) on August 3, 2023, Complainant alleges that Respondent has violated the Methylene Chloride Rule at 40 C.F.R. § 751.105(c), thereby violating Section 15(1) of TSCA, 15 U.S.C. § 2614(1), as set forth below.

JURISDICTION

1. This administrative action for the assessment of civil penalties is initiated pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22.

PARTIES

2. Complainant is Diana Saenz, Acting Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency (EPA), who has been duly delegated the authority to institute this action.

3. Respondent is Lake City Paint Inc, a corporation located at 10248 Railroad St., Lake City, PA 16423.

GENERAL ALLEGATIONS

4. At all times relevant to the allegations in this Complaint, Respondent operated a business in which it offered for sale a product called Zenex Zenapower Gel Heavy Duty Paint Stripper (ZenaPower Gel).

5. At all times relevant to the allegations in this Complaint, ZenaPower Gel was a product that contained methylene chloride (Chemical Abstracts Service Registry Number 75-09-2).

6. At all times relevant to the allegations in this Complaint, ZenaPower Gel was a product advertised by Respondent for uses including removing paint and varnish.

7. On or around August 3, 2023, the EPA issued a subpoena to Respondent pursuant to Section 11(c) of TSCA, 15 U.S.C. § 2610(c), to obtain information concerning Respondent's distribution in commerce of ZenaPower Gel.

8. On or around April 26, 2024, Respondent submitted to EPA an exhibit documenting Respondent's sales of ZenaPower Gel.

9. At all times relevant to the allegations in this Complaint, Respondent distributed in commerce chemical substances, including ZenaPower Gel, to consumer end users.

10. Between July 21, 2021 and July 28, 2023, Respondent distributed in commerce ZenaPower Gel a total of six times (ten cans in total).

COUNT I

11. Paragraphs 1 through 10 of this Complaint are incorporated by reference as if set forth fully herein.

12. Respondent is a "person" as defined in 40 C.F.R. § 751.5 and is subject to TSCA and the regulations promulgated thereunder.

13. Methylene chloride is a "chemical substance" within the meaning of Section 3 of TSCA, 15 U.S.C. § 2602.

14. At all times relevant to the allegations in this Complaint, Respondent distributed in commerce chemical substances, including ZenaPower Gel, to consumers and is thus a "retailer" as defined in 40 C.F.R. § 751.5.

15. At all times relevant to the allegations in this Complaint, Respondent distributed in commerce ZenaPower Gel within the meaning of 40 C.F.R. § 751.103 and Section 3 of TSCA, 15 U.S.C. § 2602.

16. At all times relevant to the allegations in this Complaint, ZenaPower Gel was a product that contained methylene chloride that is used for paint and coating removal within the meaning of 40 C.F.R. § 751.103.

17. Respondent's distribution in commerce of ZenaPower Gel constituted prohibited distributions in commerce of methylene chloride for paint and coating removal by a retailer under 40 C.F.R. § 751.105(c). Violations of 40 C.F.R. § 751.105(c) are prohibited acts under Section 15(1) of TSCA, 15 U.S.C. § 2614(1), and subject to civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

CIVIL PENALTY ASSESSMENT

Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty for violations of Section 15 of TSCA, 15 U.S.C. § 2614, in an amount not to exceed \$49,772 for each separate violation of TSCA.

For purposes of determining the amount of a civil penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to take into account the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to pay, effect on its ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. In developing a proposed penalty, Complainant took into account the particular facts and circumstances of this case; the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and the EPA's *Interim Consolidated Enforcement Response and Penalty Policy (CERPP) for the Toxic Substances Control Act (TSCA) New and Existing Chemicals Program* (Jan. 2025). The CERPP provide a rational, consistent, and equitable calculation methodology for applying the statutory factors to cases.

EPA conducted an analysis of Respondent's financial information and determined Respondent has a limited ability to pay. Consequently, and in consideration of the facts alleged in this Complaint, and upon the nature, circumstances, extent, and gravity of the violations

alleged, as well as Respondent's ability to pay, effect on ability to continue to do business, any history of prior such violations of TSCA, the degree of culpability, and such other matters as justice may require, the Complainant proposes that Respondent be assessed a penalty of *FOURTEEN THOUSAND DOLLARS* (\$14,000) for the violations alleged in this Complaint.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided for in Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and consistent with 40 C.F.R. § 22.15, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. To request a hearing pursuant to 40 C.F.R. § 22.15, Respondent must file a written Answer to the Complaint with the Headquarters Hearing Clerk, within thirty (30) days of service of this Complaint, at the following address:

Headquarters Hearing Clerk (1900L)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice. Pursuant to 40 C.F.R. § 22.15 of the Consolidated Rules of Practice, Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which Respondent has any knowledge. The Answer should further specify any factual allegations that Respondent claims no knowledge of. The Answer should contain: (1) the circumstances or arguments that are alleged to constitute the grounds of any defense; (2) the facts that Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. The

denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

If Respondent fails to file a written Answer within thirty (30) days of service of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in Complainant's filing of a Motion for Default Order imposing the penalties herein without further proceedings.

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney of record assigned to represent EPA in this matter:

N. Lindsay Simmons
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
William Jefferson Clinton Building South
1200 Pennsylvania Ave., N.W. (Mail Code 2249A)
Washington, D.C. 20460
Telephone: 202-564-3223
E-mail: Simmons.Lindsay@epa.gov

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the facts of this case, the amount of the penalty, and the possibility of settlement. An informal settlement conference does not, however, affect Respondent's obligation to file a timely written Answer to the Complaint.

EPA has the authority, where appropriate, to modify the amount of the penalty, once determined, to reflect any settlement reached with Respondent in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement, signed by EPA and

Respondent. The terms and conditions specified in the Consent Agreement are binding upon issuance of a Final Order by the Environmental Appeals Board.

Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of this action with the Administrator, the members of the Environmental Appeals Board, the assigned Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the issuance of this Complaint. *See* 40 C.F.R. § 22.8.

PAYMENT OF PENALTY

Instead of filing an Answer, requesting a hearing, or requesting an informal settlement conference, Respondent may choose to pay the proposed penalty to resolve this matter pursuant to 40 C.F.R. § 22.18(a). Such payment should be made by sending either a cashier's or certified check with a notation of "Lake City Paint Inc." Penalty Docket No. "TSCA-HQ-2025-5017," payable to the order of the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2025-5017
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of "Lake City Paint Inc.," Penalty Docket No. "TSCA-HQ-2025-5017" by using the following instructions:

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."

A copy of the wire transfer should also be sent to the Cincinnati Finance Division.

A copy of the check or other instrument of payment must be sent to the attorney of record assigned to represent EPA in this matter.

Consistent with 40 C.F.R. § 22.18(c), full payment of the penalty proposed in this Complaint shall not affect the right of the Agency or the United States to pursue appropriate injunctive relief or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty proposed in this Complaint shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in this Complaint.

U.S. ENVIRONMENTAL PROTECTION AGENCY

TSCA-HQ-2025-5017

In the Matter of: Lake City Paint Inc.

By:

_____ Date: _____

Diana Saenz,
Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

ATTACHMENT

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22.

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Complaint and Notice of Opportunity for Hearing, Docket No. TSCA-HQ-2025-5017, has been filed with the Headquarters Hearing Clerk and that a copy was sent by email and by certified mail, return receipt requested, to:

David A. Rockman
Outside Counsel
Eckert Seamans
600 Grant Street, 44th Floor
Pittsburg, PA 15219
DRockman@eckertseamans.com

N. Lindsay Simmons
Senior Counsel
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency (Mail Code 2249A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460