

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No.
)	
vs.)	
)	
INEOS CHLOR AMERICAS, INC.,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff, United States of America, by the authority of the Attorney General of the United States and through its undersigned attorneys, acting at the request and on behalf of the United States Environmental Protection Agency (“EPA”), alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought against Defendant INEOS Chlor Americas, Inc. (“INEOS Chlor”) pursuant to Section 17(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2616(a), to obtain injunctive relief for violations of TSCA Section 15, 15 U.S.C. § 2614. This Complaint alleges that INEOS Chlor “manufactured” and continues to “manufacture” multiple “new chemical substances” as defined in TSCA Section 3(9), 15 U.S.C. § 2602(9), while failing to comply with the manufacturing and processing notices required under TSCA Section 5, 15 U.S.C. § 2604. The violations alleged in the Complaint occurred and continue to occur at INEOS Chlor’s headquarters located in Wilmington, Delaware.

JURISDICTION

2. This Court has jurisdiction over the subject matter of this action, and the parties hereto, pursuant to TSCA Section 17(a), 28 U.S.C. § 2616, and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to TSCA Section 17(a), 28 U.S.C. § 2616, because Defendant resides within this District and because the violations that constitute the basis of this Complaint occurred and are occurring at Defendant's facility located in this District.

DEFENDANT

4. Defendant INEOS Chlor is a corporation incorporated in the State of Delaware and is headquartered at 2036 Foulk Road, Wilmington, Delaware.

5. INEOS Chlor is a person, as defined under 40 C.F.R. § 720.3(x), subject to the requirements of TSCA, 15 U.S.C. § 2601, *et seq.*

STATUTORY AND REGULATORY BACKGROUND

6. The Toxic Substances Control Act establishes a scheme designed to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards. 15 U.S.C. § 2601(b)(2).

7. TSCA Sections 15(1)(B) and (C), 15 U.S.C. § 2614(1)(B) and (C), provide, *inter alia*, that it is unlawful for any person to fail or refuse to comply with any requirement prescribed by or rule promulgated under TSCA Section 5, 15 U.S.C. § 2604.

8. Pursuant to TSCA Section 8(b), 15 U.S.C. § 2607(b), EPA compiled and keeps current a list of each chemical substance manufactured or processed in the United States. This list is known as the TSCA Inventory. TSCA § 8(b), 15 U.S.C. § 2607(b), and 40 C.F.R. § 720.3(o).

9. Pursuant to TSCA Section 3(9), 15 U.S.C. § 2602(9), and 40 C.F.R. § 720.3(v), any chemical substance not included on the TSCA Inventory constitutes a “new chemical substance.”

10. The term “chemical substance” is defined to include “any combination of such substances occurring in whole or in part as a result of a chemical reaction.” 15 U.S.C. § 2602(2)(A)(i).

11. TSCA Section 3(7), 15 U.S.C. § 2602(7), defines “manufacture” to mean “import into the customs territory of the United States . . . , produce or manufacture”.

12. Pursuant to TSCA Section 5(a)(1), 15 U.S.C. § 2604(a)(1), and 40 C.F.R. § 720.22(a)(1) and § 720.40(b), no person may manufacture a new chemical substance unless such person submits to EPA a notice (“Premanufacture Notification” or “PMN”) that complies with the requirements of TSCA Section 5(d), 15 U.S.C. § 2604(d). The PMN must be submitted to EPA at least 90 days before manufacturing a new chemical substance.

GENERAL ALLEGATIONS

13. Chlorinated paraffins are straight-chain hydrocarbons or combinations of straight-chain hydrocarbons that have been chlorinated. Chlorinated paraffins are made by a chemical reaction that involves chlorinating paraffins obtained from petroleum distillation.

14. INEOS Chlor imports chemical substances, including chlorinated paraffins, through its Wilmington, Delaware headquarters.

15. On September 17, 2009, EPA issued a subpoena to INEOS pursuant to TSCA Section 11, 15 U.S.C. § 2610, to obtain information concerning INEOS' importation of chlorinated paraffins. INEOS Chlor subsequently submitted subpoena responses dated October 1, 2009 and October 14, 2009 (collectively, the "Subpoena Response") to EPA. The Subpoena Response showed that INEOS Chlor imports into the United States various chlorinated paraffins or chlorinated paraffin combinations within particular carbon chain length ranges.

16. Different chlorinated paraffins and chlorinated paraffin combinations have different chemical descriptions and identifiers. For example, chlorinated paraffin combinations with carbon chain lengths ranging from ten carbons (C₁₀) to thirteen carbons (C₁₃) have been assigned a unique Registry Number by the Chemical Abstracts Service ("CAS") (*i.e.*, CAS Registry Number 85535-84-8). Chlorinated paraffin combinations with carbon chain lengths ranging from six carbons (C₆) to 18 carbons (C₁₈) have been assigned a different CAS Registry Number (*i.e.*, CAS Registry Number 68920-70-7).

17. The TSCA Inventory currently includes some chlorinated paraffin combinations (such as C₆-C₁₈ chloroalkanes, CAS Registry Number 68920-70-7), but it does not include other combinations (such as C₁₀-C₁₃ chloroalkanes, CAS Registry Number 85535-84-8).

COUNT 1

18. The allegations contained in paragraphs 1 through 17, inclusive, are realleged and incorporated by reference as if fully stated herein.

19. INEOS Chlor has imported various chlorinated paraffins for commercial purposes. In its Subpoena Response, INEOS Chlor provided a chemical description for each chlorinated paraffin or chlorinated paraffin combination it imported between 2002 and 2008.

20. The chemical descriptions and identifiers provided by INEOS in the Subpoena Response were reviewed by EPA's Office of Pollution Prevention and Toxics ("OPPT") and determined to be incorrect. OPPT determined the correct chemical descriptions and identifiers for the different chlorinated paraffins and chlorinated paraffin combinations manufactured by INEOS Chlor.

21. The correct chemical descriptions and identifiers for a number of the chlorinated paraffins and chlorinated paraffin combinations imported by INEOS Chlor are not listed on the TSCA Inventory.

22. INEOS Chlor has not submitted PMNs to the Administrator of EPA for its chlorinated paraffins and chlorinated paraffin combinations that are not listed on the TSCA Inventory.

23. INEOS Chlor violated Section 5(a)(1) of TSCA, 15 U.S.C. § 2604(a)(1), each time it "manufactured" a chemical substance (i.e. imported the chemical substance) which did not appear on the TSCA Inventory without first submitting a PMN to EPA at least 90 days before manufacturing such substance.

PRAYER FOR RELIEF

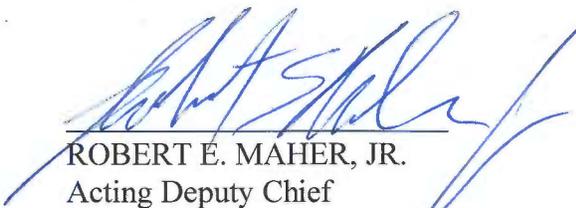
WHEREFORE, based upon all the allegations contained in Paragraphs 1 through 25 above, the United States requests that this Court:

1. Permanently enjoin INEOS Chlor from the manufacture (including importation) of chlorinated paraffins, except in accordance with TSCA and any applicable regulatory requirements;

2. Award Plaintiff its costs of this action; and,

3. Grant such other relief as the Court deems just and proper.

Respectfully submitted,



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