

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into by and between the United States of America, acting through its United States Attorney for the Eastern District of Pennsylvania on behalf of the Drug Enforcement Administration (collectively, the “United States”) and Taminco US Inc. (“Taminco”), through its authorized representatives. Collectively all of the above will be referred to as “the Parties.”

II. RECITALS

A. Taminco is a Delaware corporation with its headquarters in Allentown, Pennsylvania. Taminco was acquired in December 2011 by a large private equity firm and then again in December 2014 by a large multi-national chemical corporation headquartered in the United States. Since December 2014, Taminco has been a wholly-owned subsidiary of the large multi-national chemical corporation.

B. Taminco is in the business of manufacturing and selling chemical products, including alkylamines. Taminco has manufacturing facilities for chemical products within the United States in Pace, Florida and in St. Gabriel, Louisiana. It also has corporate offices in Allentown, Pennsylvania and Merelbeke, Belgium.

C. Taminco manufactures the chemical Monomethylamine (MMA) at its facility in Pace, Florida. Taminco ships MMA as an anhydrous chemical (100% purity) or diluted with water at 40% purity (MMA-40).

D. Taminco possesses DEA registrations permitting it to manufacture, distribute, import and export listed chemicals from its Pace, Florida, and St. Gabriel, Louisiana manufacturing plants.

E. Title 21 U.S.C. § 842(a)(9) makes it unlawful for any person to engage in a regulated transaction without obtaining the identification required by Section 830(a)(3). Title 21 U.S.C. § 842(a)(10) makes it unlawful for any person negligently to fail to keep a record or make a report under Section 830 of Title 21 or negligently fail to self-certify as required under Section 830.

F. On such date as may be determined by the Court, Taminco will plead guilty to a six-count Information charging it with engaging in regulated transactions without obtaining the required identification of certain customers in Mexico who purchased a List I chemical from Taminco, and in three of those counts also with failing to report a disappearance of certain shipments of the List I chemical, all misdemeanors, in violation of 21 U.S.C. §§ 842(a)(9) and 842(a)(10).

G. The United States contends that it has certain claims against Taminco arising under Title 21, United States Code, Section 842, for the following conduct occurring between 2007 and 2010 (hereinafter the conduct described in this paragraph, including subparagraphs 1-6 below, will be referred to as the "Covered Conduct"):

1. Taminco manufactured, distributed, sold and exported MMA.
2. MMA is a List I chemical and its manufacture, distribution, import and export are regulated by federal statutes and regulations.
3. Taminco engaged in regulated transactions involving the sale of MMA to customers in Mexico during the period 2007 to 2010. As relevant to this agreement, it prepared MMA as a 40% aqueous solution for shipment to these customers and had the MMA packaged in 55-gallon drums for shipment. This mixture is known as MMA-40.

4. Taminco knowingly engaged in regulated transactions involving the sale of MMA-40 to customers in Mexico without having verified the existence and apparent validity of the foreign business entities ordering the List I chemicals as required by 21 C.F.R. § 1310.07. Taminco failed to obtain the required identification of customers IPP, GC and CRC during the period 2009 through 2010.

5. In early and mid-2010, Taminco sold and distributed shipments of 19 truckloads containing 16,800 kilograms each of MMA-40. Taminco sold and distributed nine (9) truckloads to customer GC in Mexico and sold and distributed ten (10) truckloads to customer CRC in Mexico, respectively.

6. In September 2010, Taminco discovered that it could not verify that some or all of the MMA-40 in the shipments of nine truckloads (containing 896 barrels) reached the intended recipient in Mexico. Taminco subsequently knowingly failed to report to the appropriate DEA Field Office that the shipments were missing and/or that delivery could not be verified.

H. Taminco has agreed to enter into a Memorandum of Agreement (MOA) with the DEA, attached hereto as Exhibit A, in which Taminco will agree for the duration of the MOA that, in addition to full compliance with all applicable provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, the Comprehensive Methamphetamine Control Act of 1996, the regulations issued thereunder, it will do the following:

1. Taminco shall notify DEA of all export transactions involving the export of a listed chemical that was manufactured at Taminco's Pace, Florida and/or St. Gabriel, Louisiana facilities. Taminco in its discretion may arrange with DEA to make such reports on a monthly basis or within 15 days of the transaction.

2. Taminco shall notify DEA of any regulated transaction involving an extraordinary quantity of a listed chemical that was manufactured at Taminco's Pace, Florida and/or St. Gabriel, Louisiana facilities, an uncommon method of payment or delivery, or any other circumstances it believes may indicate that the listed chemical for exportation will be used in violation of the controlled Substance Act (CSA) as required by 21 U.S.C. § 830; and

3. Taminco shall report any unusual or excessive loss or disappearance of a listed chemical under its control that was manufactured at Taminco's Pace, Florida and/or St. Gabriel, Louisiana facilities.

I. As part of the agreed MOA to be entered into by DEA and Taminco, DEA has agreed that it will forego administrative action against any of Taminco's various DEA registrations based on the facts and circumstances recited therein, subject to Taminco's compliance with the MOA's terms and requirements.

J. This Agreement is made in compromise of disputed claims. While Taminco has agreed to make certain admissions in connection with the Plea Agreement, this Agreement is not an admission of facts or liability by Taminco, or a concession by the United States that its claims are not well-founded.

K. To avoid the delay, uncertainty, inconvenience and expense of protracted litigation of the above claims, and in consideration of the mutual promise and obligation of this Agreement, the Parties agree and covenant as follows:

III. TERMS AND CONDITIONS

1. Taminco shall pay to the United States the sum of \$475,000.00 (“Settlement Payment”). The Settlement Payment is immediately due and owing as of the date the last signature is executed hereon and shall be paid no later than ten (10) business days thereafter, to the United States by electronic funds transfer to the United States Attorney’s Office for the Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106-4476.

2. In consideration of Taminco’s full and timely performance of all obligations set forth in this Agreement, including the MOA, the United States agrees to release Taminco and its directors, officers, and employees from all claims that the United States has or may have under the Controlled Substances Act, 21 U.S.C. §§ 801-971, and related regulations for the Covered Conduct described in paragraph II(G) above.

3. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Taminco) are any and all of the following¹:

- a. Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability²;

¹ The United States and Taminco recognize that simultaneous with the entry of this Agreement, the United States and Taminco will be entering into a Guilty Plea Agreement and the U.S. Department of Justice, Drug Enforcement Administration (DEA) and Taminco will be entering into a Memorandum of Agreement (MOA) as part of a “global” resolution of criminal, civil, administrative and regulatory actions arising from Covered Conduct described above in paragraph II(G) and the facts and circumstances described in the Guilty Plea Agreement and MOA, respectively.

² The United States and Taminco recognize and agree that any criminal liability arising from the Covered Conduct described above in paragraph II(G) is addressed by the criminal plea agreement between the parties and will be resolved by Taminco’s guilty plea pursuant to that agreement, the Court’s acceptance of that guilty plea, and the sentence imposed on Taminco by the Court. .

c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion or debarment from any and all Federal programs³;

d. Any future violations of the Controlled Substances Act and any failure by Taminco to satisfy the obligations as are created by this Agreement and/or the MOA.

4. Taminco agrees, on behalf of itself and its parents, subsidiaries, and affiliates, to release the United States, its agencies, employees, servants, and agents (including but not limited to the United States Drug Enforcement Administration) from any claims (including attorney's fees, costs and expenses of every kind and however denominated), which Taminco has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants and agents, related to the events and occurrences described in paragraph G above, and the United States' investigation and prosecution thereof.

5. This Agreement will be binding on any successor entity that succeeds to the interests of Taminco.

6. This Agreement shall be construed and enforced under and in accordance with the laws of the United States. Should any judicial action be required to enforce or interpret this Agreement, or to resolve any dispute hereunder, the Parties acknowledge that jurisdiction and venue for such action shall lie solely in the United States District Court for the Eastern District of Pennsylvania. Prior to the commencement of any litigation, the Parties shall provide notice of the violation as described in paragraph 9 below and provide a cure period of no less than sixty (60) days.

³ The United States and Taminco recognize and agree that any administrative liability, exclusion or debarment from any Federal programs arising from the Covered Conduct described above in paragraph II(G) and the facts and circumstances described in the MOA will be resolved by the entry of the MOA.

7. All agreements between Taminco and the United States to toll any applicable civil statute of limitations, repose, or other limitations period, executed prior to the effective date of this Agreement, shall be and are hereby terminated as of the effective date of this Agreement.

8. Each party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement. Taminco shall bear the costs of compliance with this Agreement, including the MOA.

9. Notices: Any notice required under this Agreement shall be satisfied by providing in writing delivered by any postal method requiring a receipt or express delivery unless either party has revised or updated the contact information provided below. Notice shall be effective upon receipt by the party in question.

To Taminco:

Eric Kraeutler, Esq.
Nathan J. Andrisani, Esq.
Morgan Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103

To the United States:

Charlene Keller Fullmer
Assistant United States Attorney
United States Attorney's Office
615 Chestnut Street
Philadelphia, PA 19106

10. This Agreement in all respects has been voluntarily and knowingly executed by the parties on advice and with approval of their respective counsel.

11. Each party acknowledges that it has participated in the drafting and preparation of this Agreement. Each party further agrees that no inference should be drawn against or in favor of any party based on such drafting and preparation.

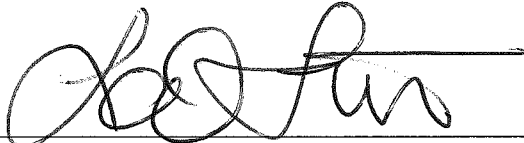
12. This Agreement may be executed in counterparts, each of which shall be considered an original, but such counterparts together shall constitute one and the same Agreement.

13. This Agreement is effective on the date of signature of the last signatory to this Agreement. The exhibit attached hereto is part of the Agreement and the obligations which the exhibit sets out are binding to the same extent as if they were part of the Agreement itself.

14. Each party who signs this Agreement in a representative capacity warrants that he or she is duly authorized to do so.

15. This Agreement, including the exhibit, constitutes the full and complete agreement between the parties with respect to the matters covered herein, and no modification hereof shall be effective unless in writing and signed by the party against which it is sought to be enforced.

FOR THE UNITED STATES OF AMERICA:



LOUIS D. LAPPEN
Acting United States Attorney




MARGARET L. HUTCHINSON
Chief, Civil Division



CHARLENE KELLER FULLMER
Deputy Chief, Affirmative Litigation
Assistant United States Attorney

FOR TAMINCO US INC.:

 10/19/15

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