



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAY 29 2012

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Phillip E. Hoover  
Attorney at Law  
Smith, Gambrell & Russell LLP  
1230 Peachtree Street  
Atlanta, Georgia 30309-3593

Re: Bastech, LLC  
Consent Agreement and Final Order  
Docket No. TSCA-04-2012-2644(b)

Dear Mr. Hoover:

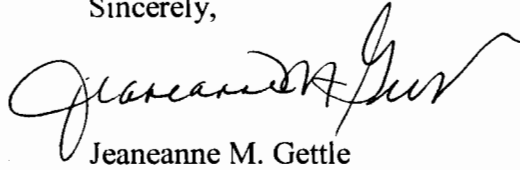
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

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 your client on notice of its 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 Ms. Marlene Tucker of the EPA Region 4 staff at (404) 562-9536.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle". The signature is fluid and cursive, with a large initial "J" and a long, sweeping tail.

Jeaneanne M. Gettle  
Chief

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

RECEIVED  
EPA REGION IV

2012 MAY 29 PM 12: 09

HEARING CLERK

In the Matter of: )  
 )  
Bastech, LLC )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-04-2012-2644(b)

**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 Bastech, LLC.
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 Respondent.



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.

### **III. Specific Allegations**

6. Respondent operates a chemical manufacturing facility located at 3211 Powers Avenue, Jacksonville, Florida (Facility).
7. Respondent is a manufacturer, importer and exporter as the terms are defined in 40 C.F.R. §§ 720.3, 710.3 and 707.63(b).
8. On or about May 16, 2011, the EPA Headquarters submitted an information request letter to the Respondent concerning the Respondent's compliance with the chemical testing requirements in Section 4 of TSCA, and the regulations set forth at 40 C.F.R. § 799.5085 (Chemical Testing Requirements for Certain High Production Volume Chemicals).
9. On June 8, 2011, an authorized agent of the EPA Region 4 conducted an inspection at Respondent's Facility, pursuant to Section 11(a) of TSCA, 15 U.S.C. § 2610(a).
10. On August 12, 2011, Complainant sent a notice of violation and show cause letter to the Respondent identifying potential violations of TSCA and notifying the Respondent of the opportunity to show cause why the EPA should not proceed with an enforcement action.
11. Based on a review of the records that were obtained by EPA Headquarters and EPA Region 4, it was determined that on or about June 11, 2007, the Respondent imported a shipment of 500 kilograms or more of the chemical substance, 9, 10-Anthracenedione.
12. Pursuant to Section 4 of TSCA and 40 C.F.R. § 799.5085(a) and (b), persons who manufacture (including import) or intend to manufacture, or process or intend to process

a chemical substance listed in 40 C.F.R. § 799.5085(j) [Table 2], including 9, 10-Anthracenedione, in excess of certain quantities, were subject to chemical test rule requirements during the period beginning on April 17, 2006, through the end of the test cost reimbursement period.

13. Pursuant to 40 C.F.R. § 791.3(h), the reimbursement period starts when the data from the last test required under a TSCA Section 4 test rule are submitted to EPA, and terminates after a period of time equal to that required to develop the data or after five years, whichever is greater.
14. Pursuant to 40 C.F.R. § 799.18, the end of the reimbursement period also known as the “sunset date” or “termination date” for 9, 10-Anthracenedione was on February 20, 2012, with respect to compliance with the chemical test rule in 40 C.F.R. § 799.5085.
15. Pursuant to 40 C.F.R. § 799.5085(c)(2) and 40 C.F.R. § 790.45(a), any person initially required to comply with the chemical testing requirements was required to submit a letter of intent to test or an exemption application from testing to EPA by no later than May 16, 2006. However, if the subject chemical is manufactured, processed or imported after the compliance date, then the letter of intent to test or exemption application must be received by EPA no later than the date manufacturing, importing or processing commenced.
16. Pursuant to 40 C.F.R. § 799.5085(c)(1), Respondent is a person subject to the chemical testing requirements because Respondent imported a shipment of 9, 10-Anthracenedione on June 11, 2007, during the effective period of the test rule for 9, 10-Anthracenedione

and was required to submit to EPA, a letter of intent to test, or apply for an exemption from testing for 9,10-Anthracenedione no later than the date of importation.

17. Based on a review of the records obtained by EPA Headquarters and EPA Region 4, there was no evidence indicating that Respondent had submitted a letter of intent to test or the exemption application from testing for 9, 10-Anthracenedione at the time Respondent imported the shipment on June 11, 2007.
18. Respondent did not submit an application for exemption from testing to EPA for 9, 10-Anthracenedione until approximately four years after the required time on or about June 27, 2011.
19. Respondent violated Section 4 of TSCA, 15 U.S.C. § 2603, and 40 C.F.R. § 799.5085(c)(2), by failing to submit to EPA, a letter of intent to test or the exemption application for 9, 10-Anthracenedione by June 11, 2007.
20. In 2005, Respondent imported a reportable quantity (> 100,000 pounds) of 9, 10-Anthracenedione established at 40 C.F.R. § 704.3.
21. In 2005, Respondent also manufactured reportable quantities (> 100,000 pounds) of the following chemical substances at its Jacksonville, Florida facility: fatty acids, tall oil compound with triethanolamine; fatty acids, tall oil compound with diethanolamine; and fatty acids, tall oil compound with triethylenetetramine.
22. The chemicals above-referenced in paragraphs 20 and 21, were on the TSCA Master Inventory at the beginning of the Inventory Update Reporting (IUR) period (August 25, 2006, through March 23, 2007), and were not excluded from reporting.
23. Pursuant to 40 C.F.R. § 710.45, any chemical substance which is on the TSCA Master Inventory at the beginning of the IUR period described in 40 C.F.R. § 710.53,

- and was not excluded from reporting pursuant to 40 C.F.R. § 710.46, is subject to the reporting requirements during the IUR period, set forth at 40 C.F.R. Part 710, Subpart C.
24. Pursuant to 40 C.F.R. § 710.52, any manufacturer, importer or processor of a reportable substance is required to submit certain information about the plant site, as well as specific information about the chemical(s) including, but not limited to, the name of the chemical(s), the chemical abstract service (CAS) registration number, the total volume in pounds, the maximum concentration of weight, and the number of workers reasonable likely to be exposed to each reportable chemical.
  25. Respondent submitted the respective IUR reports to EPA on June 20, 2011, and September 27, 2011, after the expiration date for the 2006 IUR period for the chemicals referenced above in paragraphs 20 and 21.
  26. Pursuant to Section 15(3) of TSCA, 15 U.S.C. § 2614(3) and 40 C.F.R. § 710.1(c), it is unlawful for any person to fail or refuse to submit information required under the reporting regulations.
  27. Respondent violated Section 15(3) of TSCA, 15 U.S.C. § 2614, and 40 C.F.R. § 710.1(c) by failing to submit the 2006 IUR reports to EPA for the chemicals above-referenced in paragraphs 20 and 21, during the reporting period.
  28. On January 9, 2008, March 3, 2009 and March 11, 2009, the Respondent exported shipments of a chemical mixture containing greater than one percent of 9, 10-Anthracenedione to Canada, Italy and Spain, respectively.
  29. As referenced above in paragraph 12, the chemical substance, 9, 10-Anthracenedione was subject to a chemical test rule promulgated pursuant to Section 4 of TSCA, 15 U.S.C. § 2603 and listed in 40 C.F.R. § 799.5085(j) [Table 2].



30. The regulation set forth at 40 C.F.R. § 799.5085(g) requires any person who exports or intends to export a chemical substance or mixture listed in 40 C.F.R. § 799.5085(j) [Table 2], to notify EPA of the intent to export a chemical substance or mixture within seven (7) days of the date of export to a particular country, as set forth in 40 C.F.R. Part 707, Subpart D (Notices of Export Under Section 12(b)).
31. The chemical substance, 9, 10-Anthracenedione was listed in 40 C.F.R. § 799.5085(j) [Table 2], at the time it was exported, therefore, any exporter of 9, 10-Anthracenedione was subject to the export notification requirements promulgated at 40 C.F.R. § 707, Subpart D.
32. Respondent did not submit the export notifications informing EPA that 9, 10-Anthracenedione was exported to the three countries above-referenced in paragraph 28, until June 20, 2011, which was not within the required timeframe established in 40 C.F.R. Part 707.
33. Respondent violated Sections 12(b) and 15(3)(B) of TSCA, 15 U.S.C. §§ 2411(b) and 2614(3)(B), and 40 C.F.R. § 707.65, by failing to timely submit the export notifications informing EPA of the intent to export 9, 10-Anthracenedione to Canada, Italy and Spain.

#### **IV. Consent Agreement**

34. 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.
35. 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.
36. 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.

37. 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.
38. 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.
39. 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.
40. 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, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-8988.

#### **V. Final Order**

41. Respondent is assessed a civil penalty of **ONE HUNDRED TWELVE THOUSAND SEVEN HUNDRED TEN DOLLARS (\$112,710)** which includes: \$18,615 for the TSCA Section 4 violation; \$74,460 for the TSCA Section 8 violation; and \$19,635 for the TSCA Section 12 violation. Four payments will be made to complete payment of the entire civil penalty including interest. The first installment is due within 30 days of the effective date of this CAFO. The subsequent three payments shall be due in 90 day

intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **ONE HUNDRED THIRTEEN THOUSAND FOUR HUNDRED FIFTEEN DOLLARS and THIRTY-TWO CENTS (\$113,415.32)**. Respondent shall make payments in accordance with the following schedule:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	within 30 days of filing of CAFO	\$28,353.83
2	within 120 days of filing of CAFO	\$28,353.83
3	within 210 days of filing of CAFO	\$28,353.83
4	within 300 days of filing of CAFO	\$28,353.83

42. 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 following methods to the address identified for the method chosen.

Address for payment submittal using the United States Postal Service:

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 other mail service (e.g., Federal Express, United Parcel Service (UPS), DHL, etc.):

U.S. Bank  
 1005 Convention Plaza  
 Mail Station SL-MO-C2GL  
 St. Louis, Missouri 63101  
 Contact Person: Natalie Pearson (314) 418-4087

43. 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.

44. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not made within 30 days after the due date, that payment plus all subsequent payments (the entire unpaid balance) **and all accrued interest** shall become immediately due and payable on the 31<sup>st</sup> day from such due date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.
45. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, the EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity,

amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

46. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of **ONE HUNDRED TWELVE THOUSAND SEVEN HUNDRED TEN DOLLARS (\$112,710)** within thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.
47. 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.
48. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, 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, 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.

49. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
50. This CAFO shall be binding upon the Respondent and its successors and assigns.
51. 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.

**The remainder of this page is intentionally blank.**

**VI. Effective Date**

52. 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: Bastech, LLC**  
**Docket No.: TSCA-04-2012-2644(b)**

By: ROBERT W CROSS JR Date: 5/18/2012

Name: Rw Cross

Title: PRESIDENT

**Complainant: U.S. Environmental Protection Agency**

By: Carol G. Kemper for Date: 5/24/12  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

APPROVED AND SO ORDERED this 29<sup>th</sup> day of May, 2012

By: Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

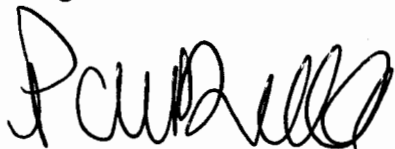
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Bastech, LLC, Docket Number: TSCA-04-2012-2644b), to the addressees listed below.

Phillip E. Hoover, Esq  
Smith, Gambrell & Russell LLP (via Certified Mail, Return Receipt Requested)  
1230 Peachtree Street  
Atlanta, Georgia 30309-3593

Verne George (via EPA's internal mail)  
Chemical Products and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Marlene J, Tucker  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

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

Date: 5-29-12

(404) 562-9511