

ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

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In re Kyocera International, Inc.)	Docket No. TSCA-HQ-2023-5005
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FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA’s Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD



 Aaron P. Avila
 Environmental Appeals Judge

Dated: September 5, 2023

¹ The three-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila, Wendy L. Blake, and Mary Kay Lynch.

**BEFORE THE ENVIRONMENTAL APPEALS BOARD UNITED
STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
IN THE MATTER OF)	
)	
Kyocera International, Inc.)	
8611 Balboa Ave.)	
San Diego, CA 92123)	Docket No. TSCA-HQ-2023-5005
)	
)	
Respondent)	
_____)	

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (hereinafter, “EPA” or “Agency”), and Respondent, Kyocera International, Inc. (“KII”) (collectively, the “Parties”), hereby enter into this Consent Agreement and proposed Final Order before the taking of any testimony and without adjudicating any issues of law or fact, consent to the terms of this Consent Agreement and attached Final Order.

PRELIMINARY STATEMENT

1. This civil administrative proceeding for the assessment of penalties pursuant to section 16(a) of 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), is being simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (b)(3).
2. On June 23, 2021, with supplemental information provided on March 8, 2023, and March 31, 2023, Respondent voluntarily disclosed to EPA potential noncompliance with TSCA requirements for six manufactured (imported) and processed chemical substances subject to TSCA section 5 and section 13. Respondent has claimed the identity of the chemicals as TSCA confidential business information (CBI), and those chemicals are herein referred to as Chemicals A, B, C, D, E, and F.

3. The disclosure described in Counts I, II, and III have been determined by EPA to satisfy all but condition D(1) of the conditions set forth in EPA's policy entitled *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (Audit Policy), 65 Fed. Reg. 19,618 (Apr. 11, 2000). Under the Audit Policy, an entity that satisfies all of the conditions except for condition D(1) qualifies for a 75% reduction to its gravity component.
4. To avoid the disruption of orderly business activities and the expense of protracted and costly litigation, Respondent, for purposes of this proceeding only and as required by 40 C.F.R. § 22.18(b)(2):
 - a. admits the following jurisdictional allegations and waives any defenses to jurisdiction:
 - i. Respondent is a corporation located at 8611 Balboa Ave., San Diego, CA 92123, and is a "person" as defined in 40 C.F.R. § 720.3(x) and, as such, is subject to TSCA and its regulations: and
 - ii. Respondent manufactures (imports), processes, and distributes in commerce, Chemicals A, B, C, D, E, and F or mixtures containing these chemicals, or in the past has manufactured (imported) processed, and distributed in commerce Chemicals A, B, C, D, E, and F or mixtures containing these chemical as those terms are defined in sections 3(2), (5), (9), (10), and (13) of TSCA, 15 U.S.C. § 2602(2), (5), (9), (10), and (13) respectively, and 40 C.F.R. § 720.3(e), (i), (q), (u), and (aa). Respondent is subject to TSCA, and the regulations promulgated thereunder
 - b. neither admits nor denies the specific factual allegations contained herein;
 - c. consents to the assessment of a civil penalty on the terms discussed below;
 - d. consents to any conditions specified in this Consent Agreement;
 - e. waives any right to contest the alleged violations of law set forth herein; and any right to request a judicial or administrative hearing on any issue of law or fact set forth in this Consent Agreement; and
 - f. waives the right to appeal the proposed Final Order accompanying this Consent Agreement.

II. EPA'S FINDINGS OF FACT AND LAW

5. Pursuant to EPA's Audit Policy, Respondent hereby certifies and warrants as true for all the alleged violations described in Counts I, II, and III, the following facts upon which this Agreement is based:
- A. The alleged violations were discovered in a manner other than through an Environmental Audit or through a Compliance Management System but did describe the process used to discover the violations reflecting the Respondent's due diligence;
 - B. The alleged violations were discovered voluntarily;
 - C. The alleged violations were promptly disclosed to the EPA in writing, as detailed in Respondent's eDisclosure;
 - D. The alleged violations were disclosed prior to commencement of an agency inspection or investigation, notice of citizen suit, filing of a complaint by a third party, reporting of the alleged violations by a "whistleblower" employee, or imminent discovery by a regulatory agency;
 - E. The alleged violations have been corrected, and Respondent is, to the best of its knowledge and belief, in full compliance with TSCA §§ 5 and 13, 15 U.S.C. §§ 2604 and 2612, and the implementing regulations with respect to such violations, as described in Counts I, II, and III, hereby incorporated by reference;
 - F. Appropriate steps have been taken to prevent a recurrence of the alleged violations;
 - G. Except as detailed in Respondent's eDisclosure, the specific alleged violations (or closely related violations), identified in Counts I, II, and III, have not occurred within three years of the date of disclosure identified in Section I, Paragraph 2 above, at the same facility that is the subject of this Agreement, and have not occurred within five years of the date of disclosure identified in Section I, Paragraph 2 above, as part of a pattern at multiple facilities owned or operated by Respondent. For the purposes of Subparagraph G, a violation is:
 - (i) Any violation of federal, state, or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, or notice of violation, conviction or plea agreement; or
 - (ii) Any act or omission for which the regulated entity has previously received penalty mitigation from EPA or a state or local agency;

- H. The alleged violations have not resulted in serious actual harm nor presented an imminent and substantial endangerment to human health or the environment, and it did not violate the specific terms of any judicial or administrative final order or agreement; and
- I. Respondent has fully and voluntarily cooperated as requested by EPA.

COUNT I – TSCA § 5(a)(1) VIOLATIONS

6. Any chemical substance which is not included in the chemical substance list compiled and published under section 8(b) of TSCA, 15 U.S.C. § 2607(b) (“TSCA Inventory”), is a “new chemical substance” as defined under section 3(11) of TSCA, 15 U.S.C. § 2602(11) and 40 C.F.R. § 720.3(v).
7. Section 5(a)(1) of TSCA, 15 U.S.C. § 2604(a)(1), and 40 C.F.R. §§ 720.22(a)(1) and 720.40(b), provide that no person may manufacture (import) a new chemical substance unless such person submits a Premanufacture Notice (“PMN”) to EPA at least ninety (90) calendar days before manufacturing that substance.
8. TSCA § 5(h)(4), 15 U.S.C. § 2604(h)(4), provides that EPA may exempt the manufacture of certain new chemicals from all or part of the full PMN requirements.
9. 40 C.F.R Part 723, Premanufacture Notification Exemptions, was promulgated under the authority of TSCA § 5, 15 U.S.C. § 2604 (“Manufacturing and processing notices”) and sets forth EPA’s regulations regarding TSCA § 5 (h)(4), 15 U.S.C. § 2604 (h)(4). 40 C.F.R. § 723.50 addresses chemical substances manufactured in quantities of 10,000 kilograms or less per year, and chemical substances with low environmental release and human exposure.
10. 40 C.F.R. § 723.50(e)(1) provides that a Low Volume Exemption (LVE) applicant must submit to EPA an exemption application on the standard PMN form at least thirty days before the manufacture of the new chemical substance begins.
11. On December 8, 2022, March 8, 2023, and March 31, 2023, Respondent informed EPA that it had manufactured (imported) Chemical A between the calendar years 2018 and 2022 at least 12 times; Chemical B between the calendar years 2016 and 2021 at least 21 times; and Chemical C between calendar years 2016 and 2021 at least 18 times, prior to submitting a PMN or LVE application for these Chemicals.
12. Chemicals A, B, and C were not included on the TSCA Inventory at the time of import, and therefore are “new chemical substances” as defined under section 3(11) of TSCA, 15 U.S.C. § 2602(11) and 40 C.F.R. § 720.3(v).

13. Respondent's failure to submit PMNs at least ninety (90) days before manufacturing (importing) Chemicals A, B, and C constitute a failure to comply with section 5 of TSCA, 15 U.S.C. § 2604, which is a prohibited act under section 15(1) of TSCA, 15 U.S.C. § 2614(1).
14. A violation of section 15 of TSCA, 15 U.S.C. § 2614, subjects an entity to civil penalties pursuant section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT II – TSCA § 5(a)(1) VIOLATIONS

15. Paragraphs 6 through 8 are re-alleged and incorporated herein by reference.
16. The regulations at 40 C.F.R. § 723.250 authorized under section 5(h) of TSCA, 15 U.S.C. § 2604(h) set forth exemption from certain PMN requirements of section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A), for manufacturing of certain polymers, to include specific recordkeeping requirements at 40 C.F.R. § 723.250(j).
17. On December 8, 2022, March 8, 2023, and March 31, 2023, Respondent informed EPA that it had manufactured (imported) two polymer chemical substances, Chemicals D and E, between the calendar years 2018 and 2023, and had failed to comply with the recordkeeping regulations at 40 C.F.R. § 723.250(j), referenced in paragraph 16.
18. Respondent's failure to comply with 40 C.F.R. § 723.250(j) violates sections 15(1)(~~B~~), (~~1~~)(~~C~~) and (3)(A) of TSCA, 15 U.S.C. §§ 2614(1)(~~B~~), (~~1~~)(~~C~~), and (3)(A).
19. A violation of section 15 of TSCA, 15 U.S.C. § 2614, subjects an entity to civil penalties pursuant section 16(a) of TSCA, 15 U.S.C. § 2615(a).

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COUNT III – TSCA § 13(a)(1)(B) VIOLATIONS

20. Section 13(a)(1)(B) of TSCA, 15 U.S.C. § 2612(a)(1)(B), provides that the Treasury shall refuse entry of "any chemical substance or mixture offered for such entry if" it is offered for entry in violation of a rule or order under section 5, 15 U.S.C. § 2604. Pursuant to 40 C.F.R. § 707.20(b)(2)(i), importers must sign the following statement for each import of a chemical substance subject to TSCA: "I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order under TSCA."

21. On December 8, 2022, March 8, 2023, and March 31, 2023, Respondent informed EPA that it had manufactured (imported) Chemical A between the calendar years 2018 and 2022 at least 12 times; Chemical B between the calendar years 2016 and 2021 at least 21 times; and Chemical C between calendar years 2016 and 2021 at least 18 times, prior to submitting a PMN or LVE application for these Chemicals. Respondent also informed EPA that Chemical F was imported on 3 occasions, between 2021 and 2022, without it providing a positive TSCA certification statement for each import.
22. Respondent's failure to submit proper certifications under section 13 of TSCA prior to importing Chemicals A, B, C, and F constitutes a failure to comply with section 13 of TSCA, which is a prohibited act under section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), and may subject an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

III. CIVIL PENALTY

23. EPA agrees, based upon the facts and information submitted by Respondent and upon Respondent's certification herein to the veracity of this information, that Respondent has satisfied all but condition D(1) set forth in the Audit Policy for alleged violations described in Counts I, II, and III, and thereby qualifies for 75% reduction of the gravity component of the civil penalty for alleged violations that otherwise would apply to these alleged violations.
24. To avoid the disruption of orderly business activities and the expense of protracted and costly litigation, both Parties agree that the penalty for any and all allegations discussed within this Consent Agreement is \$105,937. The penalty is consistent with the "*TSCA Section 5 Enforcement Response Policy*" (issued August 5, 1988, as amended June 8, 1989 and July 1, 1993), and the *Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13 Response Policy* (Effective June 1, 1999) (TSCA ERP). The TSCA ERP was developed in accordance with the *Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, which sets forth a general penalty assessment policy for TSCA violations. 45 Fed. Reg. 59,770 (Sept. 10, 1980) (Penalty Policy). The TSCA ERP establishes a framework for applying the statutory factors to be considered in assessing a civil penalty, *i.e.*: "the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require." 15 U.S.C. § 2615(a)(2)(B).
25. The agreed upon civil penalty in this case reflects: (1) a determination of the Gravity-Based Penalty (GBP); and (2) adjustments to the GBP, taking into account the statutory factors.
26. Not more than thirty (30) calendar days after the effective date of the Final Order ("Effective Date"), Respondent shall either:

- A. Dispatch a cashier's or certified check made payable to the order of the "Treasurer of the United States of America," and bearing the Civil Penalty Docket No. "TSCA-HQ-2023-5005" to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2023-5005
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

OR

- B. Pay by wire transfer with a notation of "Kyocera International Inc., Civil Penalty Docket No. TSCA-HQ-2023-5005" 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"

27. Concurrently with Paragraph 26A or 26B, Respondent shall forward a copy of the check or documentation of a wire transfer as a PDF attachment to Tony Ellis at Ellis.Tony@epa.gov or to the following address:

U.S. Environmental Protection Agency
Office of Civil Enforcement
Waste and Chemical Enforcement Division (2249A)
Attn: Tony R. Ellis (Case Development Officer)
1200 Pennsylvania Ave., NW
Washington, DC 20460
E-mail: Ellis.Tony@epa.gov

By written notice to Respondent, EPA may change the address and/or person listed above.

28. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

29. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the Effective Date and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. In accordance with 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, Respondent must pay the following amounts on any amount overdue:
- a. Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. 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).
 - b. Monthly Handling Charge. Respondent must pay a late payment handling charge of FIFTEEN dollars (\$15.00) on any late payment, with an additional charge of FIFTEEN dollars (\$15.00) for each subsequent thirty (30) day period over which an unpaid balance remains.
 - c. Non-payment Penalty. On any portion of a civil penalty more than ninety (90) days past due, Respondent must pay a non-payment penalty charge of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. 40 C.F.R. § 13.11(c). This non-payment penalty charge is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

IV. TERMS OF SETTLEMENT

30. Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.
31. This settlement is conditioned upon the thoroughness and accuracy of Respondent's submissions to EPA in this matter.
32. Respondent has corrected the violations disclosed in their June 23, 2021 eDisclosure (see paragraph 2 above) by stopping the commercial manufacture (importation) of Chemicals A, B, C, and D, and by submitting LVE applications for Chemicals B and C identified as TS-KII001(Chemical B) and TS-KII003 (Chemical C) in Respondent's LVE application. The agency has granted both of these LVEs, and EPA now gives permission to release the self-imposed quarantined stocks for Chemicals B and C, subject to the terms and specific use conditions allowed for under TS-KI001 and TS-KI003. Additionally, Respondent has indicated to EPA that they no longer import Chemical A and has no existing stocks of the chemical substance. Respondent has corrected the section 5 violation for Chemical D by complying with the polymer exemption requirements and may now commercially manufacture or import Chemical D lawfully. Accordingly, Respondent may release the self-imposed quarantined stock for Chemical D.

33. Compliance with this CAFO shall not be a defense to any subsequent action EPA may commence pursuant to federal law or regulation for violations occurring after the date of this Consent Agreement, nor any violations of TSCA not alleged in this Consent Agreement that may have occurred prior to the date that this Consent Agreement is fully executed by both Parties.
34. Nothing in this Consent Agreement is intended to, nor shall be, construed to operate in any way to resolve any criminal liability of Respondent.
35. EPA and Respondent agree that Respondent has no obligations under this Consent Agreement should it be rejected by the EPA's Environmental Appeals Board ("EAB"); provided, however, that in the event that the EAB expresses any objections to, or its intent to reject, this Consent Agreement, the Parties agree that they shall exercise their mutual best efforts to address and resolve the EAB objections. The Parties shall have the right to withdraw from this Consent Agreement in the event they are unable to reach agreement on the EAB's proposed changes or objections.
36. This Consent Agreement may be amended or modified only by written agreement executed by both the EPA and Respondent.
37. This Consent Agreement shall be binding upon the Parties, and their respective officers, directors, employees, successors, and assigns. The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to enter into this binding Consent Agreement.
38. This Consent Agreement shall take full effect upon the signing and filing of the Final Order by the EAB.
39. Respondent's obligations under this Consent Agreement shall end when it has paid in full the scheduled civil penalty and paid any stipulated penalties.
40. Failure of Respondent to remit the civil penalties provided herein will result in this matter being forwarded to the United States Department of Justice for collection of the amount due, plus stipulated penalties and interest at the statutory judgment rate provided in 28 U.S.C. § 1961.
41. The Parties agree to bear their own costs and attorney's fees.
42. All of the terms and conditions of this Consent Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Consent Agreement shall be null and void if any term or condition of this Consent Agreement is held invalid or is not executed by all of the signatory parties in identical form or is not approved in such identical form by the EAB.

43. Respondent consents to the conditions specified in this Consent Agreement.

WE HEREBY AGREE TO THIS:

For Respondent:



Eric Klein
General Counsel
Kyocera International, Inc.
8611 Balboa Ave.
San Diego, CA 92123

Date: 6/22/23

Date: _____

For Complainant:

GREGORY
SULLIVAN

Digitally signed by GREGORY
SULLIVAN
Date: 2023.08.01 11:00:25 -04'00'

Gregory Sullivan, Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: _____

Catherine Lee

Catherine Lee, Attorney
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: 6/23/23

