

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

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*In the Matter of:*

Infineum USA L.P.  
Linden, New Jersey

Respondent.

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Docket Number TSCA-HQ-2015-5001

**CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency (EPA or Agency), and Respondent, Infineum USA L.P. (Respondent), located at 1900 E. Linden Avenue, Linden, New Jersey 07036, (collectively, the Parties), having consented to the entry of this Consent Agreement and proposed Final Order before the taking of any testimony and without adjudication of any issues of law or fact, consent to the terms of this Consent Agreement and attached Final Order.

**I. PRELIMINARY STATEMENT**

1. This civil administrative proceeding for the assessment of penalties pursuant to section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), is being simultaneously commenced and concluded pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).
2. To avoid the disruption of orderly business activities and expense of protracted and costly litigation, Respondent, for purposes of this proceeding: (1) admits that EPA has

jurisdiction over the subject matter in this Consent Agreement, and (2) consents to the terms of this Consent Agreement and Final Order.

3. The Respondent waives any defenses it might have as to jurisdiction.

## **II. EPA'S FINDINGS OF FACT AND LAW**

### **COUNTS 1-3**

4. Any chemical substance which is not included in the chemical substance list (TSCA Inventory) compiled and published under TSCA § 8(b), 15 U.S.C. § 2607(b), is a "new chemical substance" pursuant to TSCA § 3(9), 15 U.S.C. § 2602(9) and 40 C.F.R. § 720.3(v).
5. Pursuant to TSCA § 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 a Premanufacture Notification (PMN) to EPA at least ninety (90) days before manufacturing that substance.
6. Pursuant to 40 C.F.R. § 720.3(x), "person" means "any natural person, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, or any municipality, any interstate body, and any department, agency or instrumentality of the Federal Government."
7. "Manufacture" is defined by section 3(7) of TSCA, 15 U.S.C. § 2602(7), as "to import into the customs territory of the United States..., produce, or manufacture."
8. A "chemical substance" is defined by section 3(2)(A) of TSCA, 15 U.S.C. § 2602(2)(A), as "any organic or inorganic substance of a particular molecular identity...."

9. TSCA § 15(1)(B), 15 U.S.C. § 2614(1)(B), provides that it is unlawful for any person to fail or refuse to comply with any requirements prescribed by TSCA section 5, 15 U.S.C. § 2604.
10. TSCA § 15(1)(C), 15 U.S.C. § 2614(1)(C), provides that it is unlawful for any person to fail or refuse to comply with any rule promulgated under TSCA section 5, 15 U.S.C. § 2604.
11. TSCA § 15(3)(B), 15 U.S.C. § 2614(3)(B), provides that it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA.
12. Respondent is a "person" as defined in 40 C.F.R. § 720.3(x) and as such is subject to TSCA and the regulations promulgated thereunder.
13. Respondent "manufactures" a "chemical substance," as defined above in Paragraphs 7 and 8.
14. Respondent is a limited partnership that owns or controls a facility located at 1900 E. Linden Avenue, Linden, New Jersey 07036.
15. On June 27, 2012, Respondent voluntarily informed EPA in writing that it had potentially violated TSCA § 5 by failing to submit a PMN for one (1) chemical substance. Respondent has claimed the chemical identity as TSCA Confidential Business Information under TSCA Section 14, thus, the chemical substance will be referred to as the company PMN generated identification number TS-12IN01. A "chemical substance" is defined by section 3(2)(A) of TSCA, 15 U.S.C. § 2602(2)(A), as "any organic or inorganic substance of a particular molecular identity...."
16. On November 8, 2012, Respondent voluntarily informed EPA in writing that it had potentially violated TSCA § 5 by failing to submit a PMN for two (2) other chemical

substances. Respondent has claimed the chemical identities as TSCA Confidential Business Information under TSCA Section 14, thus, the chemical substances will be referred to as the company PMN generated identification numbers TS-12IN02 and TS-12IN03.

17. On June 27, 2012, Respondent informed EPA that between 2006 and 2012 it had manufactured 138 commercial batches of TS-12IN01 prior to submitting a PMN for this chemical.
18. At the time of manufacture referenced above, TS-12IN01 did not appear in the TSCA Inventory.
19. On September 13, 2013, Respondent informed EPA that since 2007 it had imported TS-12IN03 on 13 dates prior to submitting a PMN for this chemical.
20. At the time of importation referenced above, TS-12IN03 did not appear in the TSCA Inventory.
21. On September 13, 2013, Respondent informed EPA that since 2008 it had imported TS-12IN02 on 17 dates prior to submitting a PMN for this chemical.
22. At the time of importation referenced above, TS-12IN02 did not appear in the TSCA Inventory.
23. EPA alleges that Respondent's failure to submit a PMN at least ninety (90) days before manufacturing or importing the chemicals referenced in Paragraphs 15 and 16 above constitutes a failure to comply with TSCA § 5(a)(1), 15 U.S.C. § 2604(a)(1) and 40 C.F.R. § 720.22(a)(1) and § 720.40(b), which is a violation of TSCA section 15(1)(B), (1)(C) and (3)(B), 15 U.S.C. § 2614(1)(B), (1)(C) and (3)(B).

### **III. CIVIL PENALTY / ECONOMIC BENEFIT**

24. Respondent submitted its self-disclosure pursuant to the Agency's revised Final Policy on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19618 (April 11, 2000) (commonly referred to as the "Audit Policy").
25. EPA issued and revised the Audit Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA substantially reduces or eliminates gravity-based civil penalties; however, EPA retains its discretion to recover any economic benefit gained as a result of noncompliance. Where the disclosing party establishes that it satisfies all the conditions listed below, as set forth in the Audit Policy, EPA will not seek gravity-based penalties for violations of the federal environmental requirements. The Respondent must demonstrate that it meets the following criteria:
- (1) Discovery of the violation(s) through an environmental audit or a Compliance Management System; (2) Voluntary disclosure; (3) Prompt disclosure; (4) Discovery and disclosure independent of government or third-party plaintiff; (5) Correction and remediation; (6) Prevent recurrence; (7) No repeat violations; (8) Other violations excluded; and (9) Cooperation.
26. Based upon the representations by Respondent in Respondent's correspondence to EPA dated September 13, 2013, from Thomas B. Johnston, Counsel for Infineum USA L.P., to Philip Milton, EPA, the Agency has concluded that Respondent has met the nine conditions for mitigating the violations of TSCA § 5(a)(1), 15 U.S.C. § 2604(a)(1) and 40 C.F.R. § 720.22(a)(1) and § 720.40(b), which is a violation of TSCA section 15(1)(B),

(1)(C) and (3)(B), 15 U.S.C. § 2614(1)(B), (1)(C) and (3)(B). The effect of settlement described in paragraph 29 below is conditional upon the accuracy of the representations in Respondent's correspondence cited above.

27. Pursuant to EPA's Audit Policy, TSCA Civil Penalty Policy (45 FR 59770 (1980)), and the TSCA Section 5 Enforcement Response Policy ("ERP") (amended July 1, 1993), EPA shall collect economic benefit unless the amount is insignificant. The "BEN" model was used to determine the economic benefit enjoyed by Respondent from delaying the expenditures associated with creating and filing the three necessary PMN's. The economic benefit is calculated to be \$13,259 for TS-12IN01, \$11,292 for TS-12IN02, and \$11,922 for TS-12IN03.
28. The aggregate total of economic benefit is calculated to be \$36,473.

#### **IV. TERMS OF SETTLEMENT**

29. This settlement resolves only the civil administrative claims alleged in this Consent Agreement for Respondent's facility located at 900 E. Linden Avenue, Linden, New Jersey 07036.
30. Respondent is authorized to distribute and otherwise use TS-12IN01, TS-12IN02, and TS-12IN03 stocks in its control as of the effective date of the Final Order, provided the distribution and use of each chemical substance conforms to any applicable restrictions under TSCA and other applicable federal, state, or local laws, statutes, regulations, and rules.
31. Respondent waives its right to request an administrative hearing pursuant to section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and waives its right to file a petition for judicial review of the Final Order assessing the civil penalty pursuant to section 16(a)(3) of TSCA, 15 U.S.C. § 2615(a)(3).

32. Respondent neither admits nor denies the allegations.
33. By executing this Consent Agreement, Respondent certifies that regarding the violations alleged herein, Respondent is in compliance with sections 5 and 15 of TSCA; 15 U.S.C. §§ 2604 and 2614.
34. Respondent represents and warrants that the facts it has certified and referenced in this Consent Agreement are true.
35. The effect of this settlement (provided in paragraph 29) is conditioned upon the thoroughness and accuracy of the representations in Respondent's June 27, 2012 and September 13, 2013 Audit Policy disclosure correspondence and the certification referenced in paragraph 34.
36. Respondent agrees to pay a civil penalty in the sum of Thirty-Six Thousand Four Hundred and Seventy-Three Dollars (\$36,473) in accordance with the following terms:

- A. Not more than thirty (30) calendar days after the effective date of the Final Order, Respondent shall either submit a cashier's or certified check with a notation of "Infineum USA L.P., Civil Penalty Docket No. TSCA-HQ-2015-5001," payable to the order of the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Docket No. TSCA-HQ-2015-5001  
Cincinnati Finance Center P.O. Box 979077  
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of "Infineum USA L.P., Civil Penalty Docket No. TSCA-HQ-2015-5001" by using the following instructions:

Federal Reserve Bank of New York  
ABA = 021030004  
SWIFT address = FRNYUS33  
33 Liberty Street

New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

- B. Respondent shall forward a copy of the check or documentation of a wire transfer to:

Tony R. Ellis, Case Development Officer  
Waste and Chemical Enforcement Division (2249A)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW (Room No. 4148C)  
Washington, DC 20460  
Phone (202) 564-4167 Fax (202) 564-0035

- C. If Respondent fails to make the payment in a timely manner as required by paragraph 36.A. then Respondent shall pay a stipulated penalty of One Thousand Dollars (\$1,000.00) per calendar day for every day the penalty payment is late, unless EPA in writing excuses or mitigates the stipulated penalty. EPA may excuse or mitigate the stipulated penalty if EPA determines that the failure to comply occurred despite Respondent's exercise of good faith and due diligence.

#### **V. OTHER MATTERS**

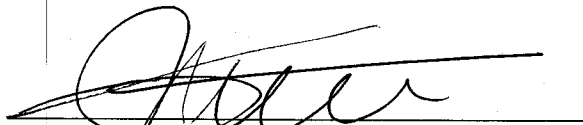
37. The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to sign and consent to this Agreement.
38. This Consent Agreement shall take full effect upon signing and filing of the Final Order by EPA's Environmental Appeals Board and shall be binding upon the Parties, and their respective officers, directors, employees, successors and assigns.
39. Respondent's obligations under this Consent Agreement shall end when it has paid in full the scheduled civil penalty / economic benefit, paid any stipulated penalties, and submitted documentation required by the Consent Agreement and Final Order.



40. 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 EPA Environmental Appeals Board.
41. The penalty, including any stipulated penalties specified above, represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.
42. 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.
43. The Parties agree to bear their own costs.

**THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Infineum USA L.P., Docket No. TSCA-HQ-2015-5001.**

For Respondent:

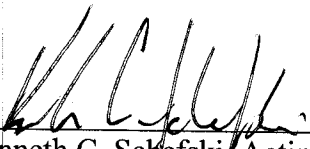
  
Philippe Creteur, President

DATE Oct 9, 2014

Infineum USA L.P.  
900 E. Linden Avenue  
Linden, New Jersey 07036

**THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Infineum USA L.P., Docket No. TSCA-HQ-2015-5001.**

For Complainant:

  
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Kenneth C. Schefski, Acting Director  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance  
Assurance  
United States Environmental Protection Agency

10/16/14  
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DATE