

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

In the Matter of:

SiVance, LLC

Respondent.

Docket No. **TSCA-04-2022-3004(b)**

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 16(a) of the Toxic Substances Control Act (TSCA or the Act), 15 U.S.C. § 2615(a), and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 4, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 16(a) of TSCA, 15 U.S.C. § 2615(a).
5. Respondent is SiVance, LLC, a limited liability company doing business in the State of Florida. This proceeding pertains to Respondent's facility located at 5002 NE 54th Place, Gainesville, Florida 32609 (Facility).

III. GOVERNING LAW

6. Section 8(b) of TSCA requires the EPA to compile, keep current and publish a list of each chemical substance that is manufactured or processed, including imports, in the United States for uses under TSCA. The list is also known as the "TSCA Inventory."

7. The term “person” is defined in 40 C.F.R. § 720.3(x), to include any natural person, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, any municipality, any interstate body, and any department, agency, or instrumentality of the Federal Government.
8. The term “manufacture” is defined in 40 C.F.R. § 720.3(q), as to produce or manufacture in the United States or import into the customs territory of the United States.
9. The term “new chemical substance” is defined in 40 C.F.R. § 720.3(v), to mean any chemical substance which is not included on the TSCA Inventory.
10. The terms “manufacture or import for commercial purposes” is defined in 40 C.F.R. § 720.3(r), to mean to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer or importer, and includes, among other things, “manufacture” of any amount of a chemical substance or mixture: (i) For commercial distribution, including for test marketing; or (ii) For use by the manufacturer, including use for product research and development or as an intermediate.
11. The term “manufacturer” is defined in 40 C.F.R. § 720.3(t), to mean a person who imports, produces, or manufactures a chemical substance. A person who extracts a component chemical substance from a previously existing chemical substance or a complex combination of substances is a manufacturer of that component chemical substance. A person who contracts with a manufacturer to manufacture or produce a chemical is also a manufacturer if (1) the manufacturer manufactures or produces the substance exclusively for that person, and (2) that person specifies the identity of the substance and controls the total amount produced and the basic technology for the plant process.
12. 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 requirement of Section 5 of TSCA, 15 U.S.C. § 2604, or any rule promulgated thereunder; and (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 Section 5 of TSCA, 15 U.S.C. § 2604.
13. Pursuant to Section 5(a)(1) of TSCA, 15 U.S.C. 2604(a)(1), 40 C.F.R. §§ 720.22 and 720.40(b), any person who intends to manufacture a new chemical substance in the United States for commercial purposes, or who intends to import a new chemical substance into the United States for commercial purposes (unless the substance is imported as part of an article) must submit a pre-manufacturing notice (“PMN”) at least 90 calendar days before the manufacture or import of the new chemical substance for commercial purposes begins, unless the substance is excluded under 40 C.F.R. § 720.30 or exempted at 40 C.F.R. Part 723.
14. Pursuant to 40 C.F.R. § 720.120(b), a person who manufactures or imports a new chemical substance before a notice is submitted and the notice review period expires is in violation of Section 15 of the Act even if that person was not required to submit the notice under § 720.22.
15. Any information the Respondent has claimed as Confidential Business Information (CBI) which may support or form the basis for this CAFO has been intentionally left out. To determine the identity of the chemical substance (Chemical A) referenced in this CAFO or to identify other information designated as CBI, Respondent or Complainant should refer to the letter dated August 24, 2021, sent to the Respondent identifying violations of TSCA and notifying the Respondent of the opportunity to show cause regarding why the EPA should not proceed with an enforcement action.

IV. FINDINGS OF FACTS

16. On February 17, 2021, the EPA sent a letter to the Respondent seeking information concerning its compliance with Sections 4, 5, 8, 12 and 13 of TSCA at its Facility. The letter was sent as an alternative to the EPA conducting an on-site inspection as authorized by Section 11(a) of TSCA, 15 U.S.C. § 2610(a).
17. On April 19, 2021, Respondent notified the EPA by telephone call that it had been manufacturing Chemical A, had determined that the substance was not listed on the public portion of the TSCA Inventory, and that Respondent was further investigating the situation.
18. On April 20, 2021, Respondent submitted a response to the EPA's letter, which included, among other items, data concerning chemicals manufactured and imported by the Respondent from 2018 to 2020.
19. On July 1, 2021, EPA granted a Low Volume Exemption from the PMN requirements for Chemical A, pursuant to Section 5 of TSCA and 40 C.F.R. § 723.50, in response to a request submitted on May 12, 2021.
20. On August 24, 2021, the EPA issued Respondent a Show Cause letter notifying the Respondent about its apparent non-compliance with the TSCA Inventory listing requirement with respect to Chemical A and offering Respondent an opportunity to meet with the EPA to discuss the matter. On October 6, 2021, Respondent submitted information in response to the Show Cause letter.
21. The information submitted by Respondent in response to the EPA's letters described above indicates that Respondent failed to submit a PMN at least ninety (90) calendar days before manufacturing Chemical A for commercial purposes.
22. Prior to a PMN or a request for a Low Volume Exemption being submitted to EPA, Respondent manufactured Chemical A on 29 occasions in 2018, 2019, and 2020. At the time of manufacturing, Chemical A was neither excluded under 40 C.F.R. § 720.30 nor exempted pursuant to 40 C.F.R. Part 723.
23. At the time Respondent manufactured Chemical A in 2018, 2019, and 2020; the chemical substance was not included in the TSCA Inventory, and therefore was a "new chemical substance" pursuant to 40 C.F.R. § 720.3(v).

V. ALLEGED VIOLATIONS

24. Based on the EPA's investigation, including a review of the Respondent's records as noted above in Section IV, the EPA alleges that the Respondent failed to submit a PMN at least ninety (90) days before manufacturing Chemical A, a new chemical substance, in violation of 40 C.F.R. §§ 720.22, 720.40(b), and 720.120(b), Section 5(a)(1) of TSCA, 15 U.S.C. § 2604, and Section 15 of TSCA, 15 U.S.C. § 2614.

VI. STIPULATIONS

25. Pursuant to 40 C.F.R. § 22.13(b), the issuance of this CAFO simultaneously commences and concludes this proceeding.
26. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- f. waives its rights to appeal the Final Order accompanying this CAFO.

27. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any rights it may possess at or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- d. by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
- f. agrees to comply with the terms of the CAFO.

28. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

29. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **TWO-HUNDRED AND TWELVE THOUSAND DOLLARS (\$212,000.00)**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.

30. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check.

If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Code: SL-MO-C2-GL
St. Louis, Missouri 63101
Contact number: (314) 425-1819

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: John Schmid, (202) 874-7026
REX (Remittance Express): 1-866-234-5681

31. Respondent shall send proof of each payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
R4_Regional_Hearing_Clerk@epa.gov

and

Shanieka Pennamon
Chemical Safety and Land Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
pennamon.shanieka@epa.gov

32. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the Facility name and "Docket No. TSCA-04-2022-3004(b)."
33. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require the Respondent to pay the following amounts on any amount overdue:
- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 90 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 90 days of the Effective Date of this CAFO interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
 - b. Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
 - c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(c), and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.

34. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:
- a. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;
 - b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
 - c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
 - d. request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above. In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review. Section 16(a) of TSCA, 15 U.S.C. § 2615(a).
35. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

36. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
37. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
38. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 16(a) of the Act, 42 U.S.C. § 2615(a), as well as criminal sanctions as provided in Section 16(b) of the Act, 42 U.S.C. § 2615(b). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
39. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
40. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
41. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

42. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
43. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
44. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential information under Section 14 of TSCA, 42 U.S.C. § 2613, and 40 C.F.R. Part 2 and the Freedom of Information Act (FOIA) or personally identifiable information.
45. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
46. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
47. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
48. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
49. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
50. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE


51. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

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Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement in the Matter of **SiVance, LLC**, Docket No. **TSCA-04-2022-3004(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:


Signature _____ Date April 26, 2022
Printed Name: Brian M. Burkhardt
Title: Vice President
Address: 5002 NE 54th Place Gainesville FL 32609

The foregoing Consent Agreement in the Matter of **SiVance, LLC**, Docket No. **TSCA-04-2022-3004(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

for

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

SiVance, LLC

Respondent.

Docket No. **TSCA-04-2022-3004(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **SiVance, LLC**, Docket No. **TSCA-04-2022-3004(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: Mr. Philip A. Moffat
Attorney
Verdant Law, PLLC
1025 Connecticut Avenue, NW, Suite 1000
Washington, D.C. 20036
(202) 828-1233
pmoffat@verdantlaw.com

To EPA: Shanieka Pennamon
Environmental Engineer
pennamon.shanieka@epa.gov

Robert Summers
Attorney-Adviser
summers.robert@epa.gov

Robert Caplan
Senior Attorney
caplan.robert@epa.gov

Shannon L. Richardson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960