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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of:

IPS Corporation,

Respondent.

Docket No. TSCA-09-2019-0004

**CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO 40 C.F.R.
§§ 22.13 AND 22.18**

CONSENT AGREEMENT

The United States Environmental Protection Agency (“EPA”), Region 9, and IPS Corporation (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) (“CAFO”).

I. AUTHORITY, JURISDICTION AND PARTIES

1. This civil administrative action is brought pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2697, amended by Pub.L. No. 114-182 § 19(l), 130 Stat. 508 (June 22, 2016) (“TSCA”), for the assessment of a penalty against Respondent for its alleged failures to timely submit export notifications in violation of Sections 12(b) and 15 of TSCA, 15 U.S.C. §§ 2611(b) and 2614, and federal regulations promulgated to implement Section 12(b) at 40 C.F.R. Part 707, Subpart D, §§ 707.60-707.75.

2. Complainant is the Chief of the Waste and Chemical Section in the Air, Waste and Toxics Branch of the Enforcement Division, EPA, Region 9, who has been duly delegated the

authority to bring and settle this action under TSCA.

3. Respondent, a California corporation located in Compton, California, is a manufacturer of structural adhesives, solvent cements, and supplies for construction, industrial, and manufacturing applications.

II. STATUTORY AND REGULATORY BASIS

4. Pursuant to Section 12(b)(2) of TSCA, 15 U.S.C. § 2611(b)(2), and 40 C.F.R. § 707.60(a)(3), any person who exports or who intends to export to a foreign country a chemical substance or mixture for which an order has been proposed or promulgated under Sections 5 or 6 of TSCA must notify the Administrator of such exportation or intent to export.

5. Pursuant to Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit notices or other information required by TSCA or a rule thereunder.

6. Pursuant to 40 C.F.R. § 707.65(a), for each action under TSCA triggering export notification, exporters must notify EPA of their export or intended export of each subject chemical substance or mixture for which export notice is required under 40 C.F.R. § 706.60 in accordance with the requirements including those set forth at 40 C.F.R. § 707.65(a)(2)(ii).

7. 40 C.F.R. § 707.65(a)(2)(ii) specifies that the export notice must only be for the first export or intended export by an exporter to a particular country when the chemical substance or mixture is the subject of a rule that has been proposed or promulgated for a chemical substance or mixture under Section 5(a)(2) of TSCA, 15 U.S.C. § 2604(a)(2). In addition, the export notice must be postmarked within seven days of forming the intent to export or on the date of export, whichever is earlier. 40 C.F.R. § 707.65(a)(3). Finally, if the EPA action that prompts the notification obligation is a proposed rule, the requirement to submit export notifications shall begin thirty days after publication of the proposed rule. 40 C.F.R.

§ 707.65(b).

8. No notice of export is required for the export of a chemical substance or mixture that is a known or potential human carcinogen where such chemical substance or mixture is present in a concentration of less than 0.1% (by weight or volume). 40 C.F.R. § 707.60(c)(2).

9. On August 7, 2015, EPA proposed a Significant New Use Rule (“TCE Product Proposed SNUR”) under Section 5(a)(2) of TSCA covering manufacture or processing of trichloroethylene (“TCE”) for use in a consumer product. *See 80 Fed Reg.* 47441 (Aug. 7, 2015).

10. The term, “exporter,” means the person, who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the chemical substance or mixture to a destination out of the customs territory of the United States. 40 C.F.R. § 707.63(b).

11. The term, “chemical substance,” means any organic or inorganic substance of a particular molecular identity, including—(i) any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature and (ii) any element or uncombined radical. 40 C.F.R. § 707.63; and Section 3(2) of TSCA, 15 U.S.C. § 2602(2).

12. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), and the Civil Monetary Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation Adjustment Act of 1900, Pub. L 101-410, authorize civil penalties not to exceed \$37,500 per day for each violation of Section 15 of TSCA that occurred after December 6, 2013, through November 2, 2015, and \$38,892 per day for each violation of Section 15 of TSCA that occurred after November 2, 2015.

III. ALLEGED VIOLATIONS

13. At all times relevant to this matter, Respondent was an exporter, as defined at 40

C.F.R. § 707.63(b).

14. At all times relevant to this matter, TCE was a “chemical substance,” as defined at 40 C.F.R. § 707.63; and Section 3(2) of TSCA, 15 U.S.C. § 2602(2).

15. Based on the August 7, 2015, publication date of the TCE Product Proposed SNUR, the export notification obligation under Section 12(b) of TSCA commenced on September 8, 2015 in accordance with 40 C.F.R. § 707.65(b).

16. Products known as SCIGRIP 3 and SCIGRIP 4, manufactured by Respondent, contain TCE (a known or potential human carcinogen) at levels at or above 0.1% by weight or volume.

CLAIMS 1-11

17. Paragraphs 1 through 16 are realleged and incorporated herein by reference.

18. Between September 8, 2015, and December 31, 2016, Respondent exported SCIGRIP 3 and/or SCIGRIP 4 to 11 different foreign countries.

19. Between September 8, 2015, and December 31, 2016, Respondent allegedly failed to submit timely export notices to EPA for the exportation of SCIGRIP 3 and/or SCIGRIP 4 to 11 different foreign countries.

20. Respondent’s alleged failures to submit timely export notices to EPA for the exportation of SCIGRIP 3 and/or SCIGRIP 4 to 11 different foreign countries between September 8, 2015, and December 31, 2016, constitute 11 alleged violations of Sections 12(b)(2) and 15(3) of TSCA, 15 U.S.C. §§ 2611(b)(2) and 2614(3), and 40 C.F.R. §§ 707.60 and 707.65.

IV. RESPONDENT’S ADMISSIONS

21. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual and legal allegations

contained in this CAFO; (iii) consents to the terms of this CAFO, including the assessment of the civil administrative penalty under Section V of this CAFO; (iv) waives any right to contest the allegations contained in Section III of this CAFO; and (v) waives the right to appeal the propose Final Order contained in this CAFO.

V. CIVIL ADMINISTRATIVE PENALTY

22. Respondent agrees to the assessment of a penalty in the amount of EIGHTY-SEVEN THOUSAND DOLLARS (\$87,000) as final settlement of the civil claims against Respondent arising under TSCA as alleged in Section III of this CAFO.

23. Respondent shall pay the assessed penalty no later than thirty (30) days after the effective date of the CAFO. The assessed penalty shall be paid by certified or cashier's check, payable to "Treasurer, United States of America," or paid by one of the other methods listed below and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077

St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

ABA = 051036706

Transaction Code 22 – checking

Environmental Protection Agency

Account 31006

CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter “sf01.1” in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

Concurrently, a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter indicating Respondent’s name, the case title, and the docket number to the following addressees:

Regional Hearing Clerk (ORC-1)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Christopher Rollins
Enforcement Division, Waste & Chemical Section (ENF-2-2)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

24. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent’s federal, state, or local taxes.

25. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph 22 by the deadline specified in Paragraph 23, then Respondent shall pay to EPA a

stipulated penalty of \$1,000 per day in addition to the assessed penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all accrued stipulated penalties are paid and shall become due and payable upon written request by EPA. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 23 may lead to any or all of the following actions:

- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
- b. The debt being collected 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. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 23. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).

Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

VI. RETENTION OF RIGHTS

26. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the alleged violations and facts specifically alleged in this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section III of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in this CAFO.

27. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

VII. ATTORNEYS' FEES AND COSTS

28. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

VIII. EFFECTIVE DATE

29. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be

effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

IX. BINDING EFFECT

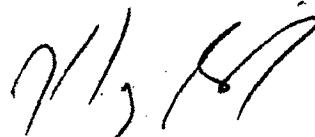
30. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

31. 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.

FOR RESPONDENT, IPS CORPORATION:

10-1-18

DATE



Name Thomas Tracy Bilbrough
Title CEO
IPS Corporation

FOR COMPLAINANT:

10/15/18

DATE




Douglas K. McDaniel
Chief, Waste & Chemical Section
Enforcement Division

FINAL ORDER

Complainant and Respondent, having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2019-⁰⁰⁰⁴) be entered, and that Respondent shall pay a civil administrative penalty in the amount of EIGHTY-SEVEN THOUSAND DOLLARS (\$87,000) and comply with the terms and conditions set forth in the Consent Agreement. This Consent Agreement and Final Order shall become effective upon filing.

10/18/18

DATE



STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order **In the Matter of: IPS Corporation (Docket #: TSCA-09-2019-00 04)** was filed with the Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

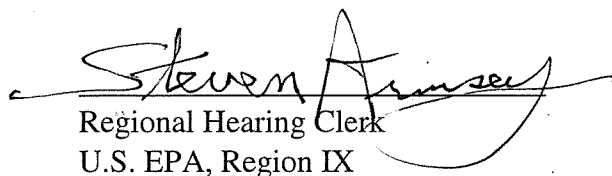
A copy was mailed via CERTIFIED MAIL to:

Mr. Steven D. Weber
Attorney at Law
Parker Poe Adams & Bernstein LLP
Three Wells Fargo Center
401 South Tryon Street, Suite 3000
Charlotte, NC 28202

CERTIFIED MAIL NUMBER: 7015 3010 0000 3883 4225

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Brian P. Riedel, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Regional Hearing Clerk
U.S. EPA, Region IX

Oct. 18, 2018
Date