

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 4

In the Matter of:

Ferro Corporation,

Respondent.

Docket No. TSCA-04-2020-3004(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, EPA Region 4 who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency (EPA) 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 Ferro Corporation, a corporation doing business in the State of Georgia. This proceeding pertains to Respondent's facility located at 6369 Peachtree Street, Peachtree Corners, Georgia 30071 (Facility).

III. GOVERNING LAW

6. Section 12(b) of TSCA, 15 U.S.C. § 2611(b), requires any person who exports or intends to export a chemical substance or mixture subject to certain TSCA regulations to notify the EPA of such activity.
7. 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.
8. The term “exporter” is defined in 40 C.F.R. § 707.63 to mean 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.
9. Pursuant to Section 12(b) of TSCA, as further clarified in 40 C.F.R. § 707.60(a), any person who exports or intends to export a chemical substance or mixture is required to notify the EPA of such exportation to a particular country if any of the following actions have been taken under the Act with respect to that chemical substance or mixture such as: (1) data are required under Section 4 or 5(b); (2) an order has been issued under Section 5; (3) a rule has been proposed or promulgated under Section 5 or 6; (4) an action is pending or relief has been granted under Section 5 or 7.
10. Pursuant to 40 C.F.R. § 707.65(a)(3), any person exporting a subject chemical or mixture is required to submit an export notice to the EPA, postmarked within seven days of forming an intent to export or on the date of export, whichever is earlier.
11. Pursuant to 40 C.F.R. § 707.65(b), if the EPA action that prompts the notice is a proposed rule, then the requirement to submit export notices to the EPA shall begin 30 days after publication of the action in the Federal Register.

IV. FINDINGS OF FACTS

12. Respondent is a person as defined in 40 C.F.R. § 704.3. Respondent operates a chemical manufacturing, processing, exporting, and importing business.
13. On April 1, 2019, 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).

Export of C.I. Pigment Red 104

14. Based on a review of the records obtained by the EPA during and after the above-referenced inspection, it was determined that between January 9, 2017 and October 26, 2018, Respondent

exported C.I. Pigment Red 104 (hereinafter Pigment Red) (CAS # 12656-85-8) to Canada on several occasions.

15. At the time Pigment Red was exported, it was: (1) subject to a proposed significant new use rule (SNUR); and (2) listed on the TSCA Section 12(b) list.
16. During the inspection, Respondent provided the EPA with a copy of a TSCA section 12(b) notice that it believed had been submitted to the EPA on March 16, 2012 for Pigment Red.
17. Based on the EPA's data system that tracks chemical exports, there is no record on file showing that the EPA received the March 16, 2012 export notice for Pigment Red.
18. The proposed SNUR that Pigment Red is subject to was published on January 15, 2002. The proposed SNUR is cited at 67 Fed. Reg. 1937.
19. On May 2, 2019, Respondent submitted a late TSCA Section 12(b) export notice for the Pigment Red.

Export of Chemical A

20. Based on a review of the records obtained by the EPA during and after the above-referenced inspection, it was also determined that on July 1, 2017, Respondent exported a material containing bismuth bromide iodide oxide (hereinafter Chemical A) (CAS # 340181-06-8) to Canada.
21. During the time period that Chemical A was exported to Canada, it was subject to a TSCA Section 5(e) order.
22. The effective date of the TSCA Section 5(e) order that Chemical A is subject to was May 10, 2017.
23. Based on the EPA's data system that tracks chemical substances exported to foreign countries, as of the date of the TSCA Inspection (April 1, 2019), there was no record on file indicating Respondent submitted an export notice to the EPA for Chemical A.
24. On July 16, 2020, Respondent submitted a late TSCA Section 12(b) export notice for Chemical A.

Export of Chemical B

25. Based on a review of the records obtained by the EPA regarding the above-referenced inspection, it was also determined that between September 22, 2017 and May 23, 2018, Respondent shipped material containing butanamide, 2,2'-[(3,3'-dichloro[1,1'-biphenyl]-4,4'-diyl)bis(2,1-diazenediyl)]bis[N-(4-methoxyphenyl)-3-oxo- (hereinafter referred to as Chemical B) (CAS # 31775-16-3) to Canada on three occasions.
26. At the time of export, Chemical B was subject to a SNUR promulgated at 40 C.F.R § 721.9265. The effective date of the SNUR was January 22, 1998.
27. In a March 9, 2020 email to the EPA, Respondent stated it has records of shipping Chemical B

on May 28, 2013 to Canada. The email did not include proof of export notification to the EPA required under TSCA Section 12(b). The EPA does not have any record of an export notification having been submitted in May or June 2013, for the May 28, 2013 export.

28. On July 16, 2020, Respondent submitted a late TSCA Section 12(b) notice for the 2013 export of Chemical B.
29. Based on the EPA's review of Respondent's export records for the chemicals referenced above, Respondent was required to submit export notifications to the EPA for the initial export of each chemical to a country within 7 days of forming the intent to export or on the date of export, whichever was earlier, as set forth in 40 C.F.R. § 707.65(a)(3).

V. ALLEGED VIOLATIONS

30. Based on the EPA's investigation including a review of the Respondent's records obtained during the EPA's inspection referenced in paragraph 13, it was determined that the Respondent failed to:
 - a. Submit export notifications for three chemicals – Pigment Red, Chemical A, and Chemical B within seven days of forming an intent to export or on the date of exportation, whichever was earlier, in violation of 40 C.F.R. § 707.65(a)(3) and Section 15 of TSCA, 15 U.S.C. § 2614.
 - b. For purposes of settlement of this matter, the parties agree that the assessed penalty will be for the failure to submit export notifications for Pigment Red and Chemical A, but not for Chemical B.

VI. STIPULATIONS

31. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
32. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - a. admits that 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.
33. 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 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.

34. 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

35. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **SIXTEEN THOUSAND FIVE HUNDRED AND FIFTY FIVE DOLLARS (\$16,555.00)**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.
36. 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

37. Respondent shall send proof of 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
bullock.patricia@epa.gov

and

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

38. "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 EPA requirements, in the amount due, and identified with the Facility name and "Docket No. TSCA-04-2020-3004(b)."
39. 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, 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, 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 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 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.
40. 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, 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 EPA or engaging in programs 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).

41. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

- 42. 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.
- 43. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of 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).
- 44. 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). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
- 45. 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 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.
- 46. Nothing herein shall be construed to limit the power of 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.
- 47. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties and the approval of the Regional Judicial Officer.
- 48. 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.
- 49. 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.

50. 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.
51. 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.
52. 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.
53. 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.
54. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that 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 EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
55. The parties intend 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.
56. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

EFFECTIVE DATE

57. 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 **Ferro Corporation**, Docket No. TSCA-04-2020-3004(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Brian E Zoretich August 28, 2020
Signature Date

Printed Name: BRIAN E. ZORETICH

Title: DIRECTOR, EHS and PRODUCT STEWARDSHIP

Address: 6060 PARKLAND BLVD; MAYFIELD HTS., OH 44124

The foregoing Consent Agreement In the Matter of **Ferro Corporation**, Docket No. **TSCA-04-2020-3004(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Ferro Corporation,

Respondent.

Docket No. TSCA-04-2020-3004(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 **Ferro Corporation**, Docket No. **TSCA-04-2020-3004(b)**, were filed and that copies of the same were emailed to the parties indicated below.

Via email to all parties at the following email addresses:

To Respondent: Michael Boucher
 Crowell & Moring LLP
 mboucher@crowell.com
 1001 Pennsylvania Avenue NW
 Washington, D. C. 20004-2595
 (202) 624-2787

To EPA: Shanieka Pennamon, Environmental Engineer
 pennamon.shanieka@epa.gov
 (404) 562-9213

 Robert Caplan, Senior Attorney
 caplan.robert@epa.gov
 (404) 562-9520

 U.S. EPA Region 4
 61 Forsyth Street, S.W.
 Atlanta, Georgia 30303-8960

Patricia A. Bullock, Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

