

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

NYCO America, LLC

Respondent.

Docket No. **TSCA-04-2023-3006(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, United States Environmental Protection Agency Region 4, who has been delegated the authority on behalf of the Administrator of the 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 NYCO America, LLC, a limited liability company formed in the State of Delaware and doing business in the State of Georgia. This proceeding pertains to Respondent's facility located at 87 Amlajack Way, Newnan, Georgia 30265 (Facility).

III. GOVERNING LAW

6. Pursuant to Section 12(b) of TSCA, 15 U.S.C. § 2611(b), and 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, among other actions taken by the EPA, an order or rule has been issued under Section 5 of TSCA, 15 U.S.C. § 2604.
7. Pursuant to Section 5(a)(2) of TSCA, 15 U.S.C. § 2604(a)(2), the EPA may, by rule, determine that use of a chemical is a significant new use with respect to which notification is required. Such significant new use rules are referred to as “SNURs.”
8. Pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for any person to fail or refuse to comply with any rule or order promulgated pursuant to Sections 5 and 12 of TSCA, 15 U.S.C. §§ 2604 and 2611.
9. The term “person” is defined in 40 C.F.R. § 704.3, to include any individual, 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.
10. The term “exporter” is defined in 40 C.F.R. § 707.63(b) 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.
11. Pursuant to 40 C.F.R. § 707.65(a)(2)(ii), the export notification required under Section 12(b) of TSCA and 40 C.F.R. § 707.60(a) must only be submitted to the EPA 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 SNUR that has been proposed or promulgated under TSCA Section 5(a)(2).
12. 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. A notice of intent to export must be based on a definite contractual obligation, or an equivalent intra-company agreement, to export the regulated chemical.
13. Any information 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 D) referenced in this CAFO or to identify other information designated as CBI, Respondent and/or Complainant should refer to the Opportunity to Show Cause letter dated October 24, 2022, sent to Respondent identifying potential violations of TSCA and notifying Respondent of the opportunity to show cause why the EPA should not proceed with an enforcement action.

IV. FINDINGS OF FACTS

14. Respondent is a person as defined in 40 C.F.R. § 704.3. Respondent operates a chemical exporting and importing business, and is an exporter as defined in 40 C.F.R. § 707.63(b).
15. On March 15, 2022, the EPA sent Respondent a Notice of Inspection pursuant to Section 11(a) of

TSCA, 15 U.S.C. § 2610(a), notifying Respondent that the EPA would be conducting an inspection of Respondent's Facility to determine its compliance with TSCA. Pursuant to a request in the Notice, Respondent submitted certain records to the EPA prior to the inspection. On April 28, 2022, an authorized agent of EPA Region 4 conducted the inspection of Respondent's Facility.

16. During the inspection, the EPA discussed the records that Respondent had submitted to the EPA. Subsequent to the inspection, Respondent submitted additional records to the EPA, including import and export records from 2016 to 2022.
17. After review of Respondent's records, the EPA issued Respondent an Opportunity to Show Cause letter on October 24, 2022, identifying potential violations of the export notification requirements under TSCA Section 12. On December 9, 2022, Respondent submitted additional information in response to the Show Cause letter.

Export of Chemical D

18. Respondent's Facility export records showed that Respondent exported eight shipments of [CBI Deleted], hereinafter referred to as Chemical D, from 2019 to 2022. Chemical D was exported to [CBI deleted] on July 25, 2019. Chemical D was also exported to [CBI deleted] on August 30, 2019; December 31, 2020; August 18, 2021; September 24, 2021; October 22, 2021; February 23, 2022; and April 4, 2022.
19. On [CBI deleted], the EPA promulgated a final SNUR for Chemical D pursuant to Section 5(a)(2) of TSCA. The effective date of Chemical D's SNUR was [CBI deleted]. Chemical D's SNUR is referenced at 40 C.F.R. § 721 [CBI deleted].
20. During the time period that Chemical D was exported by Respondent, it was: (1) subject to a final SNUR; and (2) subject to the export notification provisions of Section 12(b) of TSCA and 40 C.F.R. §§ 707.60(a), 707.65(a)(2)(ii), and 707.65(a)(3). Therefore, Respondent was required to submit TSCA Section 12(b) export notices for Chemical D to the EPA in writing for the export to [CBI deleted] by July 25, 2019, and for the export to [CBI deleted] by August 30, 2019 (the dates of the first export to each country).
21. A review of the EPA's data system that tracks chemical exports confirmed that Respondent failed to submit the TSCA Section 12(b) export notices to the EPA for Chemical D within seven days of forming the intent to export or on the date of export, whichever was earlier. Respondent presented no evidence to the EPA showing a definite contractual obligation, or an equivalent intra-company agreement, to export the regulated chemical. Therefore, the EPA determined that the notices should have been submitted by the date of export.
22. On May 9, 2022, Respondent submitted late TSCA Section 12(b) export notices to the EPA for Chemical D.

V. ALLEGED VIOLATIONS

23. Based on the EPA's investigation, including a review of Respondent's records as set forth above, the EPA alleges that Respondent failed to:

- a. Submit a TSCA Section 12(b) export notice to the EPA for Chemical D on two occasions (exported to two different countries) on the dates of export in violation of Sections 12(b) and 15 of TSCA, 15 U.S.C. §§ 2611(b) and 2614, and 40 C.F.R. §§ 707.60(a), 707.65(a)(2)(ii), and 707.65(a)(3).

VI. STIPULATIONS

24. Pursuant to 40 C.F.R. § 22.13(b), the issuance of this CAFO simultaneously commences and concludes this proceeding.

25. 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.

26. 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 law 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.

27. 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

28. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **SEVENTEEN THOUSAND, EIGHT-HUNDRED DOLLARS (\$17,800.00)**, which is to be paid within thirty (30) days of the Effective Date of this CAFO.

29. Payment 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 979078
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. Environmental Protection Agency
Government Lockbox 979078
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Code: SL-MO-C2-GL
St. Louis, Missouri 63101

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
Beneficiary: 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
REX (Remittance Express): 1-866-234-5681

30. Respondent shall send proof of each payment electronically, within twenty-four (24) hours of payment of the civil penalty, to:

Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov

and

Ryan Jones
Chemical Safety and Land Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. EPA Region 4
jones.ryan.a@epa.gov

31. "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-04-2023-3006(b).

32. 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 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 thirty (30) days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within thirty (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) 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.

33. 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 (*see* 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 (*see* 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 (*see* 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 (*see* Section 16(a) of TSCA, 15 U.S.C. § 2615(a)).
34. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

35. 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.
36. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall satisfy the requirements of this CAFO; but, 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 pursuant to 40 C.F.R. § 22.18(c).
37. 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.
38. 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.
39. 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 hazard as provided under the Act.

40. 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.
41. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO.
42. Any change in the legal status of 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.
43. 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.
44. 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.
45. 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.
46. 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.
47. The EPA 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.
48. 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.
49. 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

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

[Remainder of the Page Intentionally Left Blank

Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement in the Matter of **NYCO America, LLC**, Docket No. **TSCA-04-2023-3006(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



Signature

June 29, 2023

Date

Printed Name: James Vincent (Mustacchio)

Title: President & CEO, NYCO America

Address: 87 Amlajack Way, Newnan, GA 30265

The foregoing Consent Agreement in the Matter of **NYCO America, LLC**, Docket No. **TSCA-04-2023-3006(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

for

Keriema S. Newman
Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

NYCO America, LLC

Respondent.

Docket No. **TSCA-04-2023-3006(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.

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 **NYCO America, LLC**, Docket No. **TSCA-04-2023-3006(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: James Vincent
 Chief Executive Officer
 NYCO America, LLC
 james.mustacchio@nyco-group.com

 James G. Votaw, Esq.
 Keller and Heckman LLP
 votaw@khlaw.com

To EPA: Ryan Jones
 Environmental Engineer
 jones.ryan.a@epa.gov

 Roberto Buso
 Attorney-Advisor
 buso.roberto@epa.gov

 Robert Caplan
 Senior Attorney
 caplan.robert@epa.gov

Shannon L. Richardson
Regional Hearing Clerk
r4_regional_hearing_clerk@epa.gov