

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

FILED

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**U.S. EPA REGION 4
HEARING CLERK**

In the Matter of:

Sabic Innovative Plastics US, LLC

Respondent.

Docket No. TSCA-04-2024-6002(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*, 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 (EPA), 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 Sabic Innovative Plastics US, LLC, a limited liability company doing business in the State of Alabama. This proceeding pertains to Respondent's facility located at 1 Plastics Drive, Burksville, Alabama 36752 (Facility).

III. GOVERNING LAW

6. Section 8(b) of TSCA, 15 U.S.C. § 2607(b), 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" or the TSCA "Master Inventory File" as defined in 40 C.F.R. § 711.3.
7. Pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful, among other things, for any person to fail or refuse to comply with any rule or order promulgated pursuant to Section 8 of TSCA, 15 U.S.C. § 2607.
8. Pursuant to Section 8(a) of TSCA, 15 U.S.C. § 2607(a), the EPA promulgated rules pertaining to general recordkeeping and reporting requirements at 40 C.F.R. Part 704. According to 40 C.F.R. § 704.3, "Definitions," in addition to the definitions set forth in 40 C.F.R. § 704.3, all definitions set forth in Section 3 of TSCA also apply to the 40 C.F.R. Part 704 rules.
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 "importer" is defined in 40 C.F.R. § 704.3, to mean any person who imports any chemical substance or any chemical substance as part of a mixture or article into the customs territory of the United States.
11. The term "import" is defined in 40 C.F.R. § 704.3, to mean to import for commercial purposes.
12. The term "import for commercial purposes" is defined in 40 C.F.R. § 704.3, to mean to import with the purpose of obtaining an immediate or eventual commercial advantage for the importer and includes the importation of any amount of a chemical substance or mixture.
13. The term "manufacturer" is defined in 40 C.F.R. § 704.3, 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.
14. The term "manufacture" is defined in 40 C.F.R. § 704.3, to mean to manufacture for commercial purposes.
15. The term "manufacture for commercial purposes" is defined in 40 C.F.R. § 704.3, to mean to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and includes among other things, such "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.
16. Pursuant to Section 8(a) of TSCA, 15 U.S.C. § 2607(a), the EPA promulgated rules pertaining to Chemical Data Reporting (CDR) found at 40 C.F.R. Part 711. According to 40 C.F.R. § 711.3,

“Definitions,” in addition to the definitions specified in 40 C.F.R. § 711.3, all definitions in Section 3 of TSCA and in 40 C.F.R. Part 704 apply to the 40 C.F.R. Part 711 rules.

17. Pursuant to 40 C.F.R. § 711.8(a), any person who manufactured (including imported) for commercial purposes 25,000 pounds or more of a chemical substance described in 40 C.F.R. § 711.5, at any single site owned or controlled by that person, in any of the calendar years 2016, 2017, 2018, or 2019, is subject to the CDR requirements for the 2020 submission period.
18. As referenced in 40 C.F.R. § 711.15, any person who is subject to 40 C.F.R. § 711.8 must submit the information described in 40 C.F.R. § 711.15(a) for each chemical substance described in 40 C.F.R. § 711.5 that the person manufactured (including imported) for commercial purposes in an amount of 25,000 pounds (11,340 kilograms (kgs)) or more, or in an amount of 2,500 pounds (1,134 kgs) or more for chemical substances subject to the rules, orders, or actions described in 40 C.F.R. § 711.8(b), at any one site during any calendar year since the last principal reporting year.
19. The term “principal reporting year” is defined in 40 C.F.R. § 711.3 to mean the latest complete calendar year preceding the submission period.
20. Pursuant to 40 C.F.R. § 711.15(b)(3)(iii), for the principal reporting year only, the total annual domestically manufactured volume (not including imported volume) and the total annual imported volume must be separately reported. These amounts must be reported to two significant figures of accuracy.
21. Pursuant to 40 C.F.R. § 711.20, the 2020 submission period ran from June 1, 2020, until January 29, 2021, and 2020 CDR Reports were required to have been submitted to the EPA during that time period.
22. Pursuant to 40 C.F.R. § 711.5, any chemical substance that is in the TSCA Master Inventory File at the beginning of a submission period described in 40 C.F.R. § 711.20 must be reported pursuant to the CDR requirements under Section 8(a) of TSCA and 40 C.F.R. Part 711, unless the chemical substance is specifically excluded by 40 C.F.R. § 711.6.
23. Any information Respondent has claimed as Confidential Business Information which may support or form the basis for this CAFO has been intentionally redacted. To determine the identity of the chemical substances referenced in this CAFO (Chemicals A, B, and C), or to identify any other information that may be designated as CBI, Respondent and/or Complainant should refer to the Opportunity to Show Cause letter dated September 28, 2023, 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

24. Respondent is a person as defined in 40 C.F.R. § 704.3. Respondent operates a chemical manufacturing, processing, and importing business.
25. On November 3, 2020, pursuant to the requirements of 40 C.F.R. § 711.15, Respondent timely submitted its 2020 CDR Report for sixteen (16) chemicals (including Chemicals A, B, and C) which Respondent had manufactured and imported for commercial purposes in quantities greater than

- 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 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.

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 **FIFTY-THREE THOUSAND DOLLARS (\$53,000.00)**, which is to be paid within thirty (30) days of the Effective Date of this CAFO.

36. 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 standard U.S. Postal Service delivery, the payment shall be addressed to:

U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, MO 63197-9000

If Respondent sends payment by non-standard mail delivery (e.g., FedEx, DHL, UPS, USPS certified, registered, etc.), the payment shall be sent to:

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

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, MD 20737
Remittance Express (REX): 1-866-234-5681

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

Regional Hearing Clerk
U.S. EPA Region 4
R4_Regional_Hearing_Clerk@epa.gov

and

Gopal Timsina
Chemical Safety and Land Enforcement Branch
Enforcement and Compliance Assurance Division

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-04-2024-6002(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, 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 costs 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, 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, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a). In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

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

42. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the Internal Revenue Service (IRS) annually, a completed Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (TIN) as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA Region 4's Cincinnati Finance Center contact, Jessica Henderson (Henderson.Jessica@epa.gov), on or before the date that Respondent's initial penalty payment is due, pursuant to Paragraph 35 of this CAFO, and the EPA recommends encrypting Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within thirty (30) days after the Effective Date of this CAFO, then Respondent, using the same email address identified in the preceding subparagraph, shall further:
 - i. notify the EPA's Cincinnati Finance Center of this fact, via email, by the date noted above; and


- ii. provide the EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

VIII. EFFECT OF CAFO

43. 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 in Sections IV and V above.
44. 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. 40 C.F.R. § 22.18(c).
45. 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.
46. 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.
47. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to an imminent hazard as authorized under Section 7 of the Act.
48. 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.
49. 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.
50. 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.
51. 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.

The foregoing Consent Agreement In the Matter of **Sabic Innovative Plastics US, LLC**, Docket No. **TSCA-04-2024-6002(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



Signature

3 April 2024
Date

Printed Name: Brian Powers

Title: President, SABIC Innovative Plastics US LLC

Address: 2500 CityWest Blvd, Houston, TX 77042, Suite 100

The foregoing Consent Agreement In the Matter of **Sabic Innovative Plastics US, LLC**, Docket No. **TSCA-04-2024-6002(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

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:

Sabco Innovative Plastics US, LLC

Respondent.

Docket No. **TSCA-04-2024-6002(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 **Sabic Innovative Plastics US, LLC**, Docket No. **TSCA-04-2024-6002(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: Catlin Tench
Process Engineering Manager
Sabic Innovative Plastics US, LLC
catlin.tench@sabic.com

To EPA: Gopal Timsina
Case Development Officer
timsina.gopal@epa.gov

Robert Caplan
Senior Attorney
caplan.robert@epa.gov

Shannon L. Richardson
Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov