UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of	:	
	:	**CONSENT AGREEMENT**
Dimmid, Inc.,	:	**AND**
	:	**FINAL ORDER**
Respondent.	:	
	:	**DOCKET NUMBER**
	:	**TSCA-02-2023-9226**
Proceeding under Section 16(a) of the Toxic Substance Control Act, as amended, 15 U.S.C. § 2615(a).	:	

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was commenced pursuant to Section 16(a) of the Toxic Substances Control Act, as amended, 15 U.S.C. § 2615(a) ("TSCA").

EPA issued a complaint against Respondent on or about June 13, 2023. The complaint alleged in four counts that Respondent had violated various regulatory provisions promulgated under authority of TSCA. On or about August 7, 2023, Respondent filed its answer in which it admitted various allegations and denied, in part, liability.

EPA and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. § 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CA/FO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made. The following constitutes Complainant's findings of fact and conclusions of law based upon EPA's review of official United States customs records, correspondence with representatives of Respondent and admissions Respondent has made.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Dimmid, Inc., a corporation existing under the laws of the State of New York, including during calendar years 2016, 2017, 2018, 2019 and 2020. During the entirety of this

time period (as well as at present), Respondent has: (a) used for mailing purposes in order to conduct its commercial import operations a location at 4635 Bedford Avenue, Brooklyn (Kings County), New York 11235, and (b) has operated out of a site the address of which is 1662 Cropsey Avenue, Brooklyn (Kings County), New York 11214 (the latter referred to as the "Cropsey Avenue site").

2. For all times set forth above (as well as at present), Respondent has been a person within the meaning of 40 C.F.R. § 711.3.

3. For all times set forth above (as well as at present), Respondent has been engaged in the commercial importation into the United States of various "chemical substances" (as defined in Section 3(2) of TSCA, 15 U.S.C. § 2602(2)). Respondent made and/or finalized the transactions necessary to ensure the importations, including legal and logistical arrangements, from the Cropsey Avenue site.

4. Under, and within the meaning of, Section 3(7) of TSCA, 15 U.S.C. § 2602(7), and 40 C.F.R. § 711.3, Respondent, as an importer engaged in commercial importation operations, is classified as a "manufacturer" of chemical substances.

5. Between May 5, 2016 and October 17, 2018, Respondent, for commercial purposes, imported into the United States dichloromethane (also known as methylene chloride; Chemical Abstract Services Registry Number ["CASRN"] 75-09-2), as follows: (a) in five separate shipments in calendar year 2016; (b) in two separate shipments in calendar year 2017; and (c) in four separate shipments in calendar year 2018, with the amount imported greater than 2,500 pounds in at least one of those three calendar years.

6. Between January 7, 2016 and February 13, 2019, Respondent, for commercial purposes, imported into the United States trichloroethylene (CASRN 79-01-6), as follows: (a) in eight separate shipments in calendar year 2016; (b) in five separate shipments in calendar year 2017; (c) in five separate shipments in calendar year 2018; and (d) in one shipment in calendar year 2019, with the amount imported greater than 2,500 pounds in at least one of those four calendar years.

7. Each of dichloromethane and trichloroethylene was listed, as of June 1, 2020, on EPA's "Master Inventory File" (also known as the "TSCA Inventory") compiled under TSCA Section 8(b), 15 U.S.C. § 2607(b), and for the time period including (but not limited to) such date: (a) dichloromethane was subject to a TSCA Section 6 rule (40 C.F.R. Part 751, Subpart B); and (b) trichloroethylene was subject to a proposed rule under TSCA Section 6 (81 *Fed. Reg.* 91592 [December 16, 2016]).

8. Pursuant to 40 C.F.R. § 711.8(b), Respondent was required to report to EPA its

importations, by calendar year, of each of dichloromethane and trichloroethylene (pursuant to 40 C.F.R. § 711.15(a)) during the period June 1, 2020, through January 29, 2021 (pursuant to 40 C.F.R. § 711.20; 85 *Fed. Reg.* 75235 [November 25, 2020]); Respondent had not been excluded from the reporting requirements pursuant to 40 C.F.R. § 711.9.

9. Respondent did not file the required Chemical Data Reporting ("CDR") data for either dichloromethane or trichloroethylene during the June 1, 2020 to January 29, 2021 period. Instead, Respondent, admitting it "was not aware of the reporting requirements and guidelines," in an e-mail dated August 7, 2023, reported it had on July 26, 2023 "completed…and submitted the CDR reports as required" for these two chemical substances.

10. Each of Respondent's failures [(a) not having timely reported to EPA its importations of dichloromethane for any calendar year (2016 through 2018) in which such importations exceeded 2,500 pounds; and (b) not having timely reported to EPA its importations of trichloroethylene for any calendar year (2016 through 2019) in which such importations exceeded 2,500 pounds] constitutes a failure or refusal to comply with 40 C.F.R. § 711.5, which thereby constitutes an unlawful act, and thus a violation of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

11. The aforementioned reporting failures subject Respondent to the provisions of Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

12. The regulation codified at 40 C.F.R. § 751.107 provides, in pertinent part, that any person who imports methylene chloride for any use after August 26, 2019 must, prior to or with the shipment, notify any company to which the methylene chloride is shipped, in a "Safety Data Sheet" ("SDS") (previously known as a "Material Safety Data Sheet" or "MSDS"), that methylene chloride "is not and cannot be distributed in commerce…or processed…for consumer paint or coating removal."

13. In e-mail communications with EPA, Respondent has admitted having sold nearly 20 metric tons of methylene chloride to a customer since August 26, 2019, and it provided EPA with a copy of the SDS provided to the customer; said SDS lacked the notification prescribed in and required by the regulation.

14. Respondent has asserted it was not its responsibility but the "sole responsibility [of the company that produced the methylene chloride] to keep/update shipping doc[uments] according to gvmt [sic] requirements."

15. In not having provided the company to which it sold the methylene chloride, as set forth above, an SDS containing the specified provisions required by 40 C.F.R. § 751.107, Respondent did not comply with said regulation, which thereby constitutes an unlawful act, and thus a violation of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

16. The aforementioned notification failure subjects Respondent to the provisions of Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

17. In calendar year 2018, Respondent imported into the United States, for commercial purposes, a "new chemical substance" (as defined in 40 C.F.R. § 720.3(v)) known as "Clerane 180" in 10 separate shipments between April 5, 2018, and May 18, 2018, with each of the 10 shipments in excess of 7,500 pounds.

18. The Clerane 180 has been identified as "hydrocarbons, C10-C13, n-alkanes, isoalkanes, cyclics, [less than] 2% aromatics" with a "chemical nature" of "[a] complex and variable combination of paraffinic and cyclic hydrocarbons having a carbon number range predominantly of C10 to C13 and boiling in the range of approximately 160°C to 245°C."

19. At no time during Respondent's 2018 importations of the Clerane 180 (as such chemical substance is identified in Paragraph 18, above) was it listed on the TSCA Inventory. Respondent has informed EPA that: (a) it was working off documents (SDS) provided by the manufacturer Total Energies that listed Clerane 180 as part of the TSCA Inventory; and (b) Respondent trusted these documents as factual and did not believe it was required to check their validity.

20. Forty C.F.R. § 720.22(b)(1) requires that any person "who intends to import a new chemical substance into the United States for commercial purposes must submit a notice, unless the substance is excluded under [40 C.F.R.] § 720.30 or unless the substance is imported as part of an article."

21. The Clerane 180 was neither excluded from the 40 C.F.R. § 720.22(b)(1) notice requirement under 40 C.F.R. § 720.30, nor was it excluded therefrom because it was not imported as an "article" (as defined in 40 C.F.R. § 720.3(b)).

22. Despite the 40 C.F.R. § 720.22(b)(1) requirement for the filing of a pre-manufacture notice, Respondent never filed (nor did any other person) a pre-manufacture notice for its Clerane 180 importations.

23. Respondent has asserted that a third party it identified as "Total Energies" is the entity "responsible for all documents compliance [sic] including 'pre-manufacture notice.'"

24. Respondent never having filed a pre-manufacture notice for its importation of the Clerane 180 constitutes an unlawful act pursuant to, and thus a violation of, Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

25. The aforementioned failures to have filed a pre-manufacture notice subject Respondent to the provisions of Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

26. The regulation codified at 19 C.F.R. § 12.121(a)(1) requires that the importer or importer's authorized agent of a "TSCA chemical substance in bulk form or as part of a mixture" to certify that the "chemical shipment complies with all applicable rules and orders under TSCA by filing" with United States Customs and Border Protection the following statement:

> I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering any chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.

27. Having imported into the "customs territory of the United States" (within the meaning of 19 C.F.R. § 12.119) each of the 10 shipments of Clerane 180, which constituted "a TSCA chemical substance in bulk form" (within the meaning of 19 C.F.R. § 12.1219(a)(1)), Respondent was, within the meaning of the latter provision, the "importer" or "the authorized agent of such importer."

28. During the course of the 10 importations of the Clerane 180, it constituted "a TSCA chemical substance in bulk form" (within the meaning of 19 C.F.R. § 12.121(a)(1)), but not "a TSCA-excluded substance" (within the meaning of said provision)).

29. For each of the 10 Clerane 180 imported shipments, Respondent certified it complied with all applicable TSCA provisions (including rules promulgated under TSCA) and that it was "not offering any chemical substance in violation of TSCA or any applicable rule or order thereunder" even though each such shipment: (a) failed to comply with all applicable TSCA provisions and (b) constituted Respondent 'offering [a] chemical substance for entry in violation of' a rule promulgated under authority of TSCA."

30. Because each of the 10 import certifications Respondent made for its importation of the Clerane 180 was incorrect inasmuch as the chemical substance had in fact been subject to TSCA's pre-manufacture notification requirement (with which Respondent had failed to comply, as set forth above), Respondent had failed, for each such importation, truthfully and accurately to comply with the certification requirement of 19 C.F.R. § 12.121(a)(1), a rule under Chapter 53 of TSCA, 15 U.S.C. §§ 2601 to 2692.

31. Respondent has asserted that "All incorrect certifications and pre-manufacturer [sic] notices regarding Clerane 180 should be addressed to its manufacturer Total Energies."

32. Respondent not having truthfully and accurately complied with the pertinent certification requirement for each of its 10 importations of the Clerane 180 constitutes an unlawful act pursuant to, and thus a violation of, Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

33. Each of the aforementioned failures to have complied truthfully and accurately with the certification requirement subjects Respondent to the provisions of Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

34. In June 2022, June 2023, and December 2023, Respondent willingly submitted to EPA tax returns for the latter to subject them to analysis and evaluation by its outside financial analyst. Such tax returns document Respondent's assertions as to its financial condition and were considered by EPA in support of settlement.

CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the provisions of 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms.

35. Respondent hereby certifies that, as of the date of the signature of its representative to this Consent Agreement, to the best of such official's knowledge and belief, it is now, to the extent applicable, in full compliance, and previous instances of non-compliance have been corrected, with regard to the following provisions: (a) the CDR requirement set forth in 40 C.F.R. § 711.5; (b) the downstream notification requirement of 40 C.F.R. § 751.107; (c) the pre-manufacture notification requirement set forth in 40 C.F.R. § 720.22; and (d) the TSCA import certification requirement set forth in 10 C.F.R. § 12.121(a). Respondent further certifies that its import operations are otherwise in compliance with the other applicable TSCA statutory provisions, regulations promulgated pursuant to, and orders issued in TSCA, 15 U.S.C. § 2601 *et seq*.

36. Respondent hereby certifies under penalty of law that the financial information contained in the tax returns it provided to EPA in June 2022, June 2023, and December 2023 is accurate, complete and is not misleading. Respondent acknowledges that EPA has relied upon such information in the negotiation of this settlement.

37. For the purpose of this proceeding, Respondent knowingly and voluntarily: (a) admits the jurisdictional allegations of the Complaint and the facts stipulated in this Consent Agreement; (b) consents to the assessment of the civil penalty as set forth below; (c) consents to the issuance of the Final Order incorporating all provisions of this Consent Agreement; and (d) waives any right it might possess to obtain judicial or administrative review of the Final Order

accompanying this Consent Agreement.

Penalty

38. Respondent shall pay a civil penalty to the EPA in the total amount of **FIVE HUNDRED DOLLARS ($500.00)**. Payment shall be due thirty (30) calendar days from the date on which the Regional Judicial Officer of EPA, Region 2, signs the Final Order accompanying this Consent Agreement ("the due date").

39. Payment shall be made by cashier's check, certified check, electronically via Fedwire or on-line in accordance with the instructions set forth in this paragraph. If Respondent makes payment by cashier's check or certified check, then such check shall be *received* at the below-listed address on or before the due date. If Respondent makes payment electronically, then such Fedwire or online payment shall be implemented on or before the date specified.

a. If Respondent chooses to make payment by cashier's check or by certified check, such check shall be made payable to the **"Treasurer, United States of America"** and shall be identified with a notation thereon listing the following: ***In the Matter of Dimmid, Inc.,* TSCA-02-2023-9226**. If payment is made by either form of check, such check shall be mailed to one of the following addresses.

- If sent by **United States Postal Service (USPS) standard delivery**, then send to:

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

- If sent by **services using signed receipt confirmation** (FedEx, DHL, UPS, USPS certified, USPS registered, etc.), then send to:

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

b. If Respondent chooses to make payment by Fedwire, Respondent shall then provide the following information to its remitter bank when each such payment is made:

i. Amount of Payment;

ii. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045;**
iii. Account Code for Federal Reserve Bank of New York receiving payment: **68010727;**
iv. Federal Reserve Bank of New York ABA routing number: **021030004;**
v. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency;**
vi. Name of Respondent: **Dimmid, Inc.**; and
vii. Docket Number: **TSCA-02-2023-9226.**

c. If Respondent chooses to make on-line payment, Respondent shall go to www.pay.gov and enter "SFO 1.1" in the search field on the tool bar on the Home Page; select "Continue" under "EPA Miscellaneous Payments – Cincinnati Finance Center;" and open the form and complete the required fields. Once payment has been effected, Respondent shall e-mail proof of payment to miller.jessea@epa.gov and wise.milton@epa.gov with ***In the Matter of Dimmid, Inc.*, TSCA-02-2023-9226** as the subject line.

40. Failure timely to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

41. Further, pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, the EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims.

a. **Interest:** Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on any portion of the civil penalty not paid by the relevant due date specified above. Forty C.F.R. § 13.11(a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) on installment payments.

b. **Handling Charges:** Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars ($15.00) shall be assessed for each thirty (30) day calendar period, or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.

c. **Late Penalty Charge:** A late penalty charge of six percent (6%) per year will

be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

42. The civil penalty (including any payment of interest or late payment handling charge that comes due) herein constitutes a "penalty" within the meaning of 26 U.S.C. § 162(f) and is not a deductible expenditure for purposes of federal or state law.

General Provisions

43. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms set forth herein.

44. Respondent's compliance with this Consent Agreement, including full payment of the penalty, shall only resolve Respondent's liability for federal civil penalties for the violations described in Paragraphs 9-33, above. In accordance with 40 C.F.R. § 22.31(a), full payment of this penalty shall not in any case affect the authority or prerogative of the EPA (or the United States on EPA's behalf) to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

45. Respondent hereby waives any right it might possess to obtain any hearing pursuant to Subpart D of 40 C.F.R. Part 22 or to obtain a judicial hearing of the assertions set forth in the "Findings of Fact and Conclusions of Law" section, above.

46. Respondent agrees not to contest the validity or any term of this Consent Agreement or in the Final Order accompanying this Consent Agreement in any suit, proceeding or action commenced: a) by the United States on behalf of EPA this CA/FO or b) to enforce a judgment arising out of the provisions of this CA/FO. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO. Respondent further waives any right it may possess to obtain any other type of judicial review of this CA/FO.

47. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA, regulations promulgated thereunder and/or orders issued thereunder.

48. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall

it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit.

49. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted to the EPA in accordance with the terms and conditions of this CA/FO shall be sent by electronic mail to:

Jesse Miller, Ph.D.
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue, MS-225
Edison, NJ 08837
miller.jessea@epa.gov

50. Unless the above-named EPA contact is later advised otherwise in writing, EPA shall deliver through electronic mail any written communication related to this matter to Respondent at dimmidmv@gmail.com and dimmidinc@aol.com. In cases where electronic mail is not feasible given document type or size, such correspondence will be mailed to the following addresses.

Michael Vernovsky, Executive Vice President
Dimmid, Inc.
4635 Bedford Avenue
Brooklyn, NY 11235

51. Respondent has read the Consent Agreement in its entirety, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

52. Complainant shall provide to Respondent a copy of the fully executed CA/FO. Respondent consents to service of this CA/FO by electronic mail to Michael Vernovsky at the addresses set forth in Paragraph 50, above, and also consents to service upon it by an employee of the EPA other than the Regional Hearing Clerk.

53. Each party shall bear its own costs and fees in this matter.

54. The provisions of this CA/FO shall be binding upon Respondent, its officials, authorized representatives, and successors or assigns.

55. The signatory for the Respondent certifies that: (a) he is duly and fully authorized to enter into and ratify this Consent Agreement and to accept the accompanying Final Order and all the terms, provisions, and requirements set forth in this CA/FO, and (b) he is duly and fully authorized to bind the party on behalf of which he is entering this CA/FO to comply with and abide by all the terms, provisions, and requirements of this CA/FO.

56. EPA and Respondent agree that the parties may use electronic signatures for this matter, with the same force and effect as with "wet" signatures.

RESPONDENT: **DIMMID, INC.**

BY: Mikhail Vernovsky
Authorizing Signature

NAME: Mikhail Vernovsky
(PLEASE PRINT)

TITLE: Vice President

DATE: 02/08/2024

COMPLAINANT:

KATHLEEN ANDERSON

Digitally signed by KATHLEEN ANDERSON
Date: 2024.02.09 11:13:45 -05'00'

Kate Anderson, Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

FINAL ORDER

The Regional Judicial Officer of the United States Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of ***In the Matter of Dimmid, Inc.*,** bearing **Docket No. TSCA-02-2023-9226**. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under authority of Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

HELEN FERRARA Digitally signed by HELEN FERRARA
Date: 2024.02.12 09:38:54 -05'00'

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007