

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 4

In the Matter of:

Zschimmer & Schwarz, Inc.

Respondent.

Docket No. TSCA-04-2020-3003(b)

HEARINGS CLERK

2020 MAR 23 AM 9:22

USEPA REGION 4
OFFICE OF REGIONAL
COUNSEL

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 Zschimmer & Schwarz, Inc., a company doing business in Georgia. This proceeding pertains to Respondent's facility located at 70 Georgia Highway 22 West, Milledgeville, GA 31061 (Facility).

III. GOVERNING LAW

6. Section 8(b) of TSCA, 15 U.S.C. § 2607(b), requires 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."
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 Section 5 of TSCA, 15 U.S.C. § 2604; (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; and (3) fail to maintain records, submit reports or information, or permit access to or allow copying of records as required by TSCA.
8. 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.
9. 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 substance is a manufacturer of that component chemical substance.
10. The term "manufacture" is defined in 40 C.F.R. § 704.3, to mean manufacture for commercial purposes.
11. Pursuant to Section 15(a)(1)(A) of TSCA, U.S.C. § 2604, no person may manufacture a new chemical substance on or after the 30th day after the date on which the Administrator first publishes the TSCA Inventory List unless such person submits to the Administrator, at least 90 days before such manufacture or processing, a [premanufacture] notice (PMN) of such person's intention to manufacture or process such substance and such person complies with any applicable requirement of TSCA Section 15, U.S.C. § 2604(b).
12. Pursuant to 40 C.F.R. § 720.25(a), a chemical substance that is not listed on the TSCA Inventory is classified as a new chemical. Pursuant to 40 C.F.R. § 720.22, any person who intends to manufacture a new chemical substance in the United States for commercial purposes must submit a PMN unless the substance is excluded under 40 C.F.R. § 720.30 (chemicals not subject to the notification requirements).
13. Pursuant to 40 C.F.R. § 720.30, certain chemical substances are exempt from full PMN and reporting requirements including, but not limited to, any mixture(s) defined in 40 C.F.R. § 720.3(u) and polymer(s) defined in §723.250(a) that meet the requirements for a polymer exemption.
14. Pursuant to 40 C.F.R. § 723.250(c), a chemical substance is eligible for an exemption under 40 C.F.R. § 723.250 if that substance: (1) meets the definition of "polymer" referenced in 40 C.F.R.

§ 723.250(b); (2) meets the criteria in 40 C.F.R. § 723.250(e); and (3) is not a cationic polymer as defined in 40 C.F.R. § 723.250(b).

15. Pursuant to 40 C.F.R. § 723.250(f), for substances exempt under 40 C.F.R. §§ 723.250(e)(1), (e)(2), and (e)(3), manufacturers are required to submit a report of manufacture (postmarked) by January 31 of the year subsequent to the initial manufacture of each new chemical.
16. Pursuant to 40 C.F.R. § 723.250(h), to manufacture a substance under the terms of 40 C.F.R. § 723.250 (polymer exemption), a manufacturer must as of the date of first manufacture make the following certification statements and maintain them in accordance with 40 C.F.R. § 723.250(j): (1) the substance is manufactured or imported for a commercial purpose other than for research and development; (2) all information in the certification is truthful; and (3) the new chemical substance meets the definition of a polymer, is not specifically excluded from the exemption in paragraph (d) of 40 C.F.R. § 723.250, and meets the conditions of the exemption in 40 C.F.R. § 723.250(e).

IV. FINDINGS OF FACTS

17. Respondent is a person as defined in 40 C.F.R. § 704.3. Respondent operates a chemical manufacturing Facility.
18. On March 28, 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).
19. A review of the Respondent's records revealed that on August 18, 2017, Respondent manufactured Hexanedioic acid polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, isooctadecanoate (CAS # 367952-85-0, hereinafter Lexolube)].
20. Subsequent to the inspection, a search of the TSCA Confidential Inventory and Non-Confidential Inventory was conducted by the EPA Office of Pollution Prevention and Toxics (OPPT). On September 16, 2019, OPPT provided a Certified Statement [ER-19-5002] to the EPA Region 4 confirming Lexolube was not listed on the TSCA Master Inventory.
21. As referenced is paragraph 12, a chemical substance that is not listed on the TSCA Inventory is classified as a new chemical. Pursuant to 40 C.F.R. § 720.22, any person who intends to manufacture a new chemical substance in the United States for commercial purposes must submit a PMN unless the substance is excluded under 40 C.F.R. § 720.30 (chemicals not subject to the notification requirements).

Polymer Exemption Certification and Exemption Report

22. Respondent has asserted and agrees that Lexolube is an exempted polymer as referenced at 40 C.F.R. § 723.250(c).
23. Respondent manufactured Lexolube pursuant to the polymer exemption regulations; therefore, as of the date of the first manufacture of Lexolube (August 18, 2017), Respondent was required to

prepare and thereafter to maintain the polymer exemption certification statement as referenced in paragraph 16. On March 27, 2019, Respondent prepared a polymer exemption certification statement as required by 40 C.F.R. § 723.250(h) for the manufacture of Lexolube.

24. Pursuant to 40 C.F.R. § 723.250(f), by January 31, 2018, Respondent was required to submit to OPPT a polymer exemption report for the manufacture of Lexolube that occurred on August 18, 2017. Respondent did not submit the report of manufacture until March 27, 2019.

V. ALLEGED VIOLATIONS

25. Based on the EPA's investigation including a review of the Respondent's records obtained during the EPA's inspection as noted in paragraph 18, the EPA alleges that the Respondent failed to:

- (a) Prepare and maintain a polymer exemption certification for Lexolube by August 18, 2017, in violation of 40 C.F.R. § 723.250(h) and Section 15 of TSCA, 15 U.S.C. § 2614; and
- (b) Submit a report of manufacture to the EPA by January 31, 2018, for the manufacture of Lexolube, in violation of 40 C.F.R. § 723.250(f).

VI. STIPULATIONS

26. The issuance of this CAFO simultaneously commences and concludes this proceeding in accordance with 40 C.F.R. § 22.13(b).

27. 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.

28. 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.
29. 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.

VII. TERMS OF PAYMENT

30. Respondent is assessed a civil penalty of **TWENTY-FIVE THOUSAND EIGHT HUNDRED DOLLARS (\$25,800)** which shall be paid within thirty (30) days of the effective date.
31. 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 Station: 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

32. 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

and

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

33. "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-04-2020-3003(b)."
34. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may recover, in addition to the amount of the unpaid penalty assessed, 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, 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), 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 under Section VII and is not paid in full, 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, as provided in 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.
35. 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 an appropriate district court to recover the penalty assessed and interest pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a). In any such action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

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

VIII. EFFECT OF CAFO

- 37. 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 this CAFO.
- 38. 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.
- 39. 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.
- 40. 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.
- 41. 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.
- 42. 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.
- 43. 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.

44. 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.
45. 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, 40 C.F.R. Part 2, the Freedom of Information Act (FOIA) or personally identifiable information.
46. 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.
47. 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.
48. 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.
49. 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.
50. 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.
51. 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

52. 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.

The foregoing Consent Agreement in the Matter of Zschimmer & Schwarz, Inc., Docket No. TSCA-04-2020-3003(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



Signature

3-10-20

Date

Printed Name: William D. Burton, Jr

Title: CEO

Address: 70 GA Highway 22 West, Milledgeville, GA 31061

The foregoing Consent Agreement in the Matter of Zschimmer & Schwarz, Inc. Docket No. TSCA-04-2020-3003(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

03/17/2020
DATE


Carol L. Kemker
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Zschimmer & Schwarz, Inc.

Respondent.

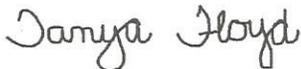
Docket No. TSCA-04-2020-3003(b)

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 this 23rd day of March, 2020.



Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of Zschimmer & Schwarz, Inc., Docket No. TSCA-04-2020-3003(b), were filed and copies of the same were mailed to the parties as indicated below.

Mr. William D. Burton, Jr.
Chief Executive Officer
Zschimmer & Schwarz, Inc.
70 Georgia Highway 22 West
Milledgeville, Georgia 31061

(via Certified Mail, Return Receipt Requested)

Ms. Shanieka Pennamon
Chemical Safety Section
U.S. EPA Region 4

(via EPA's internal mail)

Mr. Robert Caplan
Senior Attorney
Office of Regional Counsel
U.S. EPA Region 4

(via EPA's internal mail)

3-23-20

DATE



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