

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)
In re:)
Stratasys, Inc.) Docket No. TSCA-HQ-2020-5002
_____)
_____)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA’s Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Dated: **Feb 18 2020**

Kathie A. Stein

Kathie A. Stein
Environmental Appeals Judge

¹ The three-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing “Consent Agreement” and “Final Order,” in the matter of Stratasys, Inc., Docket No. TSCA-HQ-2020-5002, were sent to the following persons in the manner indicated:

**By First Class Certified Mail/
Return Receipt Requested:**

Scott H Reisch
Hogan Lovells US LLP
1601 Wewatta Street, Suite 900
Denver, CO 80202

By Interoffice Mail:

Tony R. Ellis
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (Mail Code 2248A)
Washington, DC 20460

Dated: **Feb 18 2020**



Eurika Durr
Clerk of the Board

**BEFORE THE ENVIRONMENTAL APPEALS BOARD UNITED
STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
IN THE MATTER OF)	
)	
Stratasys, Inc.)	
7665 Commerce Way)	
Eden Prairie, MN 55344)	Docket No. TSCA-HQ-2020-5002
)	
)	
Respondent)	
_____)	

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (hereinafter “EPA” or the “Agency”), and Respondent, Stratasys, Inc. (hereinafter “Respondent”) (collectively, the “Parties”), hereby enter into this Consent Agreement (“Consent Agreement”), and the attached proposed Final Order (collectively, the “CAFO”) before the taking of any testimony and without adjudication of any issues of law or fact.

I. PRELIMINARY STATEMENT

1. This civil administrative proceeding for the assessment of penalties pursuant to section 16(a) of Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Pub. L. No. 114-182, June 22, 2016, 130 Stat 448 (2016 Act) is being simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (b)(3).
2. To avoid the disruption of orderly business activities and expense of litigation, Respondent, for purposes of this proceeding: (1) admits that EPA has jurisdiction over the subject matter in this Consent Agreement and (2) consents to the terms of this CAFO.
3. Respondent waives any defenses it might have as to jurisdiction.

II. EPA’s FINDINGS OF FACT AND LAW

4. Respondent, a Delaware corporation with its U.S. headquarters located at 7665 Commerce Way, Eden Prairie, Minnesota 55344, is a “person” as defined in 40 C.F.R. §§ 710.3 and

720.3(x) and, as such, is subject to TSCA, 15 U.S.C. § 2601 *et seq.*, and the regulations promulgated thereunder.

5. A “chemical substance” as defined by section 3(2)(A) of TSCA, 15 U.S.C. § 2602(2)(A), is “any organic or inorganic substance of a particular molecular identity”
6. There are two chemical substances at issue in this matter. Respondent has claimed the identity of these chemicals as Confidential Business Information; they are thus referred to herein and throughout this Consent Agreement as “Chemical A” and “Chemical B,” respectively.
7. Respondent manufactures (imports), distributes in commerce, uses, or disposes of Chemicals A or B, or mixtures containing these chemicals, or in the past has manufactured, imported, processed, distributed in commerce, used, or disposed of mixtures containing these chemicals as those terms are defined in sections 3(2), (9), and (10) of TSCA, 15 U.S.C. § 2602(2), (9), and (10) respectively, and 40 C.F.R. § 720.3(e), (q), and (u). Respondent is subject to TSCA and the regulations promulgated thereunder.

COUNT I – TSCA § 5(a)(1) VIOLATIONS

8. Any chemical substance which is not included in the chemical substance list compiled and published under section 8(b) of TSCA, 15 U.S.C. § 2607(b) (“TSCA Inventory”), is a “new chemical substance” as defined under section 3(11) of TSCA, 15 U.S.C. § 2602(11) and 40 C.F.R. § 720.3(v).
9. Section 5(a)(1) of TSCA, 15 U.S.C. § 2604(a)(1), and 40 C.F.R. §§ 720.22(a)(1) and 720.40(b), provide that no person may manufacture (import) a new chemical substance unless such person submits a Premanufacture Notice (“PMN”) to EPA at least ninety (90) calendar days before manufacturing that substance.
10. On June 12, 2018, Respondent voluntarily self-disclosed to EPA that it had manufactured (imported) Chemical A between August 11, 2015 and June 21, 2018 a total of 107 times, and that it manufactured (imported) Chemical B between February 13, 2015 and May 23, 2018 a total of 54 times.
11. Chemicals A and B were not included on the TSCA Inventory at the time of import and therefore are “new chemical substances” as defined under section 3(11) of TSCA, 15 U.S.C. § 2602(11) and 40 C.F.R. § 720.3(v).
12. Respondent’s failure to submit PMNs at least ninety (90) days before manufacturing (importing) Chemicals A and B constitute a failure to comply with section 5 of TSCA, 15 U.S.C. § 2604, which is a prohibited act under section 15(1) of TSCA, 15 U.S.C. § 2614(1).
13. A violation of section 15 of TSCA, 15 U.S.C. § 2614 subjects an entity to civil penalties pursuant section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT II – TSCA § 12(b) VIOLATION

14. Pursuant to section 12(b) of TSCA, 15 U.S.C. § 2611(b), it is unlawful for any person to export to a foreign country a chemical substance or mixture for which a rule has been proposed or promulgated under section 5 of TSCA, 15 U.S.C. § 2604, without notifying the Agency of such exportation or intent to export.
15. Chemical A is subject to a rule promulgated under section 5 of TSCA, 15 U.S.C. § 2604.
16. On June 26, 2018, Respondent informed EPA that it had exported Chemical A between January 26, 2016 and August 17, 2017 to 15 countries.
17. Respondent's failure to notify the Agency of its exportation of Chemical A constitutes a failure to comply with section 12(b) of TSCA, 15 U.S.C. § 2611(b), which is a prohibited act under section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).
18. A violation of section 15 of TSCA, 15 U.S.C. § 2614, subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT III – TSCA § 13(a)(1)(B) VIOLATIONS

19. Section 13(a)(1)(B) of TSCA, 15 U.S.C. § 2612(a)(1)(B), provides that the Treasury shall refuse entry of "any chemical substance or mixture offered for such entry if" it is offered for entry in violation of a rule or order under section 5, 15 U.S.C. § 2604. Pursuant to 40 C.F.R. § 707.20(b)(2)(i), importers must sign the following statement for each import of a chemical substance subject to TSCA: "I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order under TSCA."
20. On June 12, 2018, Respondent voluntarily self-disclosed to EPA that it had imported Chemical A between August 11, 2015 and June 21, 2018 a total of 107 times, and that it imported Chemical B between February 13, 2015 and May 23, 2018 a total of 54 times without submitting a TSCA certification for any of the imports.
21. Respondent's failure to submit proper certifications under section 13 of TSCA prior to importing Chemicals A and B constitute a failure to comply with section 13 of TSCA, which is a prohibited act under section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).
22. A violation of section 15 of TSCA, 15 U.S.C. § 2614, subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

III. CIVIL PENALTY

23. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, and in light of the nature, circumstances, and extent of the alleged violations, Respondent agrees to pay a civil penalty of TWO HUNDRED AND TWO THOUSAND, NINE HUNDRED U.S. DOLLARS (\$202,900).
24. The penalty is consistent with the “*TSCA Section 5 Enforcement Response Policy*” (issued August 5, 1988, as amended June 8, 1989 and July 1, 1993), and the “*Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*” (issued April 11, 2000).
25. Not more than thirty (30) calendar days after the effective date of the Final Order (“Effective Date”), Respondent shall either:
- A. Dispatch a cashier’s or certified check made payable to the order of the “Treasurer of the United States of America,” and bearing the Civil Penalty Docket No. “TSCA-HQ-2020-5002” to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2020-5002
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

OR

- B. Pay by wire transfer with a notation of “Stratasys, Inc., Civil Penalty Docket No. TSCA-HQ-2020-5002” by using the following instructions:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

26. Concurrently with Paragraph 25A or 25B, Respondent shall forward a copy of the check or documentation of a wire transfer to Tony Ellis at Ellis.Tony@epa.gov or to the following address:

U.S. Environmental Protection Agency
Office of Civil Enforcement

Waste and Chemical Enforcement Division (2249A)
Attn: Tony R. Ellis (Case Development Officer)
1200 Pennsylvania Ave., NW
Washington, DC 20460
E-mail: Ellis.Tony@epa.gov

By written notice to Respondent, EPA may change the address and/or person listed above.

27. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.
28. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the Effective Date and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. In accordance with 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, Respondent must pay the following amounts on any amount overdue:
 - 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 a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
 - b. Monthly Handling Charge. Respondent must pay a late payment handling charge of FIFTEEN dollars (\$15.00) on any late payment, with an additional charge of FIFTEEN dollars (\$15.00) for each subsequent thirty (30) day period over which an unpaid balance remains.
 - c. Non-payment Penalty. On any portion of a civil penalty more than ninety (90) days past due, Respondent must pay a non-payment penalty charge of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. 40 C.F.R. § 13.11(c). This non-payment penalty charge is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

IV. GENERAL MATTERS

29. By executing this Consent Agreement, Respondent certifies that, to the best of its knowledge and belief, it is presently in compliance with sections 5, 12(b), and 13 of TSCA, 15 U.S.C. §§ 2604, 2611(b), and 2612.
30. Full payment of the penalty proposed in this CAFO shall resolve any liability of Respondent or Respondent's affiliates for Federal civil penalties for violations alleged in this Consent Agreement. Such payment shall not resolve liability of Respondent or Respondent's affiliates for violations not alleged in this Consent Agreement.

31. As a condition of settlement, Respondent is authorized to dispose of a total of approximately 673.5 kilograms of Chemical A and approximately 0.028 kilograms of Chemical B in its control on the Effective Date, provided disposal conforms to any other applicable federal, state, or local laws, statutes, regulations and rules. Any existing stocks will be disposed within ninety (90) days from the Effective Date and Respondent will notify the EPA by sending documentation of the disposal, such as an invoice, with the following certification to Tony Ellis at Ellis.Tony@epa.gov:

I certify that, based on my inquiry of those individuals responsible for obtaining the information, the chemicals subject to the Consent Agreement and Final Order pursuant to Docket No. TSCA-HQ-2020-5002 have been disposed of in accordance with all applicable federal, state, or local laws, statutes, regulations and rules.

32. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent waives its right to contest the allegations herein, its right to appeal the Final Order, and its right to request a judicial or administrative hearing on any issue of law or fact set forth in, and resolved by, this Consent Agreement.
33. Compliance with this CAFO shall not be a defense to any subsequent action EPA may commence pursuant to federal law or regulation for violations occurring after the date of this Consent Agreement, nor any violations of TSCA not alleged in this Consent Agreement that may have occurred prior to the date that this Consent Agreement is fully executed by both Parties.
34. Nothing in this Consent Agreement is intended to, nor shall be, construed to operate in any way to resolve any criminal liability of Respondent.
35. EPA and Respondent agree that Respondent has no obligations under this Consent Agreement should it be rejected by the EPA's Environmental Appeals Board ("EAB"); provided, however, that in the event that the EAB expresses any objections to, or its intent to reject, this Consent Agreement, the Parties agree that they shall exercise their mutual best efforts to address and resolve the EAB objections. The Parties shall have the right to withdraw from this Consent Agreement in the event they are unable to reach agreement on the EAB's proposed changes or objections.
36. This Consent Agreement may be amended or modified only by written agreement executed by both the EPA and Respondent.
37. This Consent Agreement shall be binding upon the Parties, and their respective officers, directors, employees, successors, and assigns. The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to enter into this binding Consent Agreement.
38. This Consent Agreement shall take full effect upon the signing and filing of the Final Order by the EAB.

39. Respondent's obligations under this Consent Agreement shall end when it has paid in full the scheduled civil penalty, paid any stipulated penalties, and completed and notified the EPA of the disposal of chemicals identified in section III.
40. Failure of Respondent to remit the civil penalties provided herein will result in this matter being forwarded to the United States Department of Justice for collection of the amount due, plus stipulated penalties and interest at the statutory judgment rate provided in 28 U.S.C. § 1961.
41. The Parties agree to bear their own costs and attorney's fees.
42. All of the terms and conditions of this Consent Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Consent Agreement shall be null and void if any term or condition of this Consent Agreement is held invalid or is not executed by all of the signatory parties in identical form, or is not approved in such identical form by the EAB.
43. Respondent consents to the conditions specified in this Consent Agreement.


WE HEREBY AGREE TO THIS:

For Complainant:



Gregory Sullivan
Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

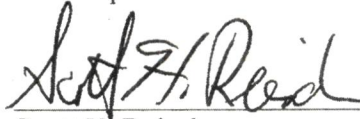
Date: 2/3/2020



Nicole Simmons, Attorney
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: 01/22/2020

For Respondent:



Scott H. Reisch
Counsel for Stratasys, Inc.
Hogan Lovells US LLP
1601 Wewatta Street
Suite 900
Denver, CO 80202

Date: 1/17/2020