



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

In re: Fujimi Corporation
Docket No. TSCA-HQ-2022-5001

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: Oct 06, 2022

Mary Kay Lynch
Mary Kay Lynch
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.

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

In the Matter of:)	
)	
Fujimi Corporation)	Docket No. TSCA-HQ-2022-5001
11200 SW Leveton Dr.)	
Tualatin, OR 97062)	
)	
Respondent)	
)	

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (EPA or Agency), and Respondent, Fujimi Corporation (Fujimi) (collectively, the Parties), having consented to the entry of this Consent Agreement and proposed Final Order before the taking of any testimony and without adjudication of any issues of law or fact, consent to the terms of this Consent Agreement and attached Final Order.

I. PRELIMINARY STATEMENT

1. This civil administrative proceeding for the assessment of penalties pursuant to section 16(a) of the 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, is being simultaneously commenced and concluded pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22.
2. On or about October 15, 2021, Respondent voluntarily disclosed to EPA potential noncompliance with TSCA requirements of a manufactured (imported) and processed chemical substance subject to a TSCA section 5 Significant New Use Rule and TSCA section 5 Significant New Use Notification requirements. Respondent has claimed the identity of the chemical as TSCA confidential business information (CBI), which is herein referred to as Chemical A.
3. The disclosures described in Counts I and II have been determined by EPA to satisfy all of the conditions set forth in EPA’s policy entitled *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (Audit Policy), 65 Fed. Reg. 19,618 (Apr. 11, 2000). All disclosures that fall within the Audit Policy qualify for a 100% reduction of the civil penalty’s gravity component.
4. Due to Respondent’s voluntary self-disclosure of potential noncompliance with TSCA, EPA has further determined that the allegations described in Count III qualify for reductions applicable

under the *TSCA Section 5 Enforcement Response Policy*, issued August 5, 1988, as amended June 8, 1989, and July 1, 1993 (TSCA ERP).

5. To avoid the disruption of orderly business activities and the expense of protracted and costly litigation, Respondent, for purposes of this proceeding only and as required by 40 C.F.R. § 22.18(b)(2):

- a. admits the following jurisdictional allegations and waives any defenses to jurisdiction:
 - i. Respondent is a corporation located at 11200 SW Leveton Dr., Tualatin, OR 97062, and is a “person” as defined in 40 C.F.R. § 720.3(x) and, as such, is subject to TSCA and its regulations: and
 - ii. Respondent manufactures (imports), processes, and distributes in commerce, Chemical A or mixtures containing this chemical, or in the past has manufactured (imported) processed, and distributed in commerce Chemical A or mixtures containing this chemical as those terms are defined in sections 3(2), (5), (9), (10), and (13) of TSCA, 15 U.S.C. § 2602(2), (5), (9), (10), and (13) respectively, and 40 C.F.R. § 720.3(e), (i), (q), (u), and (aa). Respondent is subject to TSCA, and the regulations promulgated thereunder
- b. neither admits nor denies the specific factual allegations contained herein;
- c. consents to the assessment of a civil penalty on the terms discussed below;
- d. consents to any conditions specified in this Consent Agreement;
- e. waives any right to contest the alleged violations of law set forth herein; and
- f. waives the rights to appeal the proposed Final Order accompanying this Consent Agreement.

II. EPA'S FINDINGS OF FACT AND LAW

6. Pursuant to EPA’s Audit Policy, Respondent hereby certifies and warrants as true for all the alleged violations described in Counts I and II, the following facts upon which this Agreement is based:

- A. The alleged violations were discovered through an audit or through a compliance management system reflecting the Respondent’s due diligence;
- B. The alleged violations were discovered voluntarily;

- C. The alleged violations were promptly disclosed to the EPA in writing, as detailed in Respondent's eDisclosure;
- D. The alleged violations were disclosed prior to commencement of an agency inspection or investigation, notice of citizen suit, filing of a complaint by a third party, reporting of the alleged violations by a "whistleblower" employee, or imminent discovery by a regulatory agency;
- E. The alleged violations have been corrected and Respondent is, to the best of its knowledge and belief, in full compliance with TSCA §§ 5 and 13, 15 U.S.C. §§ 2604 and 2612, and the implementing regulations with respect to such violations, as described in Counts I and II, hereby incorporated by reference;
- F. Appropriate steps have been taken to prevent a recurrence of the alleged violations;
- G. Except as detailed in Respondent's eDisclosure, the specific alleged violations (or closely related violations), identified in Counts I and II have not occurred within three years of the date of disclosure identified in Section I, Paragraph 2 above, at the same facility that is the subject of this Agreement, and have not occurred within five years of the date of disclosure identified in Section I, Paragraph 2 above, as part of a pattern at multiple facilities owned or operated by Respondent. For the purposes of Subparagraph G, a violation is:
 - (i) Any violation of federal, state, or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, or notice of violation, conviction, or plea agreement; or
 - (ii) Any act or omission for which the regulated entity has previously received penalty mitigation from EPA or a state or local agency;
- H. The alleged violations have not resulted in serious actual harm nor presented an imminent and substantial endangerment to human health or the environment, and it did not violate the specific terms of any judicial or administrative final order or agreement; and
- I. Respondent has fully and voluntarily cooperated as requested by EPA.

COUNT I – TSCA § 5(a)(2) VIOLATIONS

- 7. TSCA § 5(a)(2), 15 U.S.C. § 2604(a)(2) and 40 C.F.R. § 721.25(a) provide that if EPA promulgates a Significant New Use Rule ("SNUR"), any manufacturer (including importer) or processor engaging in a designated significant new use must submit a Significant New Use Notice (or "SNUN") to EPA at least ninety (90) days before such new use.
- 8. The Agency has promulgated a SNUR for Chemical A under section 5(a)(2) of TSCA. The SNUR designated any use of Chemical A as a "significant new use" other than used as

described in the SNUR for Chemical A. The specific SNUR, Federal Register citation, and 40 C.F.R. citation is not being identified in the Consent Agreement because Chemical A has been claimed as TSCA CBI by Respondent.

9. On or about October 15 and October 23, 2021, Respondent voluntarily informed EPA that it imported and processed a product containing Chemical A during a period between 2017 and 2021 (with relevant dates claimed as CBI) prior to submitting a SNUN.
10. EPA alleges that Respondent's failure to submit a SNUN at least ninety (90) days before importing or processing a product containing Chemical A as described in Paragraph 8 above constitutes failure to comply with TSCA § 5, 15 U.S.C. § 2604, which is a prohibited act under TSCA section 15(1)(B), 15(1)(C) and 15(3)(B), 15 U.S.C. § 2614(1)(B), (1)(C) and (3)(B) for which penalties may be assessed.

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

11. 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.”
12. On or about October 15 and October 23, 2021, Respondent voluntarily informed EPA that it had imported and processed a product containing Chemical A during a period between 2017 and 2021 (with relevant dates claimed as CBI) prior to submitting a SNUN.
13. EPA alleges that Respondent's failure to submit proper certifications under section 13 of TSCA prior to importing a product containing Chemical A constitutes 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), and may subject an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT III – TSCA § 15(2) VIOLATIONS

14. Paragraphs 7 and 8 are incorporated and realleged herein.
15. TSCA section 15(2) states: “[i]t shall be unlawful for any person to— (2) use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 2604[.]”
16. On or about September 30, 2021, and during subsequent settlement discussions with EPA, Respondent asserted that in order to prevent disruption to the national economy during a

pandemic, it informed EPA that it planned to continue to process and distribute existing stocks of the product containing Chemical A to their sole customer (Respondent has claimed the identity of their sole customer as CBI) consistent with the terms of settlement, as delineated in paragraph 28 of this Agreement.

17. Respondent processed or distributed existing stocks of the product containing Chemical A to their sole customer on at least 25 days in 2021 and 2022 (with dates and quantities also claimed as CBI by Respondent).
18. EPA alleges that Respondent's processing, use, and distribution of existing stocks of the product containing Chemical A during the period cited in paragraph 17 above, constitutes a violation of TSCA section 15(2), 15 U.S.C. § 2614(2) which may subject an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

III. CIVIL PENALTY

19. EPA agrees, based upon the facts and information submitted by Respondent and upon Respondent's certification herein to the veracity of this information, that Respondent has satisfied all the conditions set forth in the Audit Policy for alleged violations described in Counts I and II and thereby qualifies for 100% reduction of the gravity component of the civil penalty for alleged violations that otherwise would apply to these alleged violations.
20. To avoid the disruption of orderly business activities and the expense of protracted and costly litigation, both Parties agree that the penalty for any and all allegations discussed within this Consent Agreement is \$513,450. The penalty is consistent with the TSCA ERP. The TSCA ERP was developed in accordance with the *Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, which sets forth a general penalty assessment policy for TSCA violations. 45 Fed. Reg. 59,770 (Sept. 10, 1980) (Penalty Policy). The TSCA ERP establishes a framework for applying the statutory factors to be considered in assessing a civil penalty, *i.e.*: "the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require." 15 U.S.C. § 2615(a)(2)(B).
20. The agreed upon civil penalty in this case reflects: (1) a determination of the Gravity-based Penalty (GBP); and (2) adjustments to the GBP, taking into account the statutory factors.
21. Not more than thirty (30) calendar days after the effective date of the Final Order, Respondent shall

Either:

22. Dispatch a cashier's or certified check in the amount of \$513,450 made payable to the order of the "Treasurer of the United States of America," and bearing the case docket number TSCA HQ-2022-5001, to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Or

23. Effect a wire transfer in the amount of \$513,450 with the notation "**Fujimi Corporation**, Civil Penalty Docket No. TSCA-2022-5001," 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."]

24. Respondent shall forward a copy of the check or documentation of a wire transfer to:

Tony R. Ellis, Case Development Officer
Waste and Chemical Enforcement Division (2249A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (Room No. 2119-C)
Washington, DC 20460
(202) 564-4167

Or as a PDF attachment in an email to: Ellis.Tony@epa.gov

25. 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. TERMS OF SETTLEMENT

26. Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.
27. This settlement is conditioned upon the thoroughness and accuracy of Respondent's submissions to EPA in this matter.
28. As a condition of this Agreement, Respondent may process, use, and distribute its existing stocks of product containing Chemical A to Respondent's customer (claimed as CBI by Respondent) in accordance with the applicable terms and conditions of the TSCA section 5(e) Consent Order (signed by Respondent on March 29, 2022), under the following limitations:

Duration of time for processing, use, and distribution of existing stocks:

- October 1, 2021 – July 1, 2022

Total amount of existing stocks allowed for processing, use and distribution:

- 150 kilograms

29. Compliance with this Consent Agreement and Final Order 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, or 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.
30. Nothing in this Consent Agreement or the Final Order is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent.

31. By executing this Consent Agreement, Respondent certifies that, to the best of its knowledge regarding the violations alleged herein, Respondent is in compliance with TSCA sections 5, 13 and 15, 15 U.S.C. §§ 2604, 2612 and 2614.

V. OTHER MATTERS

32. Subject to the terms and conditions herein, 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 sign this Consent Agreement.

33. This Consent Agreement shall take full effect upon signing and filing of the Final Order by EPA's Environmental Appeals Board.

34. Respondent's obligations under this Consent Agreement shall end when it has paid in full the scheduled civil penalty, paid any stipulated penalties, and submitted documentation required by the Consent Agreement and Final Order.

35. All 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 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 the signatory parties in identical form or is not approved in such identical form by the EPA Environmental Appeals Board.

36. The penalty, including any stipulated penalties specified above, represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.

37. 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.

38. The Parties agree to bear their own costs and attorney's fees.

WE AGREE TO THIS:

**Seth
Goldberg**

Digitally signed by Seth
Goldberg
Date: 2022.08.23
10:19:16 -04'00'

Seth Goldberg, Esq.
Steptoe & Johnson LLP
Counsel for Fujimi Corporation

Date: _____

WE AGREE TO THIS:

**GREGORY
SULLIVAN**

Digitally signed by
GREGORY SULLIVAN
Date: 2022.09.07
13:59:26 -04'00'

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

**DEAN
ZIEGEL**

Digitally signed by DEAN
ZIEGEL
Date: 2022.08.25
15:10:11 -04'00'

Dean B. Ziegel, Attorney
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance
Assurance
United States Environmental Protection Agency

Date: _____

Date: _____

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of Fujimi Corporation, Docket No. TSCA-HQ-2022-5001, were sent to the following persons in the manner indicated:

By E-mail:

Seth Goldberg, Partner
Steptoe & Johnson LLP
Counsel for Fujimi Corporation
1330 Connecticut Avenue, NW
Washington, DC 20036
Email: SGoldberg@steptoe.com
Direct Dial: (202) 429-6213

Dean B. Ziegel, Attorney
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code: 2249A
Washington, DC 20460
Email: Ziegel.Dean@epa.gov
Direct Dial: (202) 564-4038

Dated: Oct 06, 2022

Emilio Cortes

Emilio Cortes
Clerk of the Board