

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

_____)	
<i>In the Matter of:</i>)	
)	
LG Energy Solution)	Docket No. TSCA-HQ-2023-5001
Michigan Inc.)	
Holland, MI)	
)	
Respondent)	
_____)	

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (EPA or Agency), and Respondent, LG Energy Solution Michigan, Inc. (LGESMI) (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 July 18, 2022, Respondent voluntarily disclosed to EPA potential noncompliance with TSCA requirements of a manufactured (imported) chemical substance. Respondent has claimed the identity of the chemical as confidential business information (CBI), which is herein referred to as Chemical A.
3. EPA has determined that Respondent’s voluntary self-disclosure, described in Counts I, II, and III, qualifies 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).
4. Respondent identified the potential noncompliance with TSCA requirements through a compliance audit, which was supervised by external counsel with a technical consultant, and which remains ongoing and is expected to be concluded by November 30, 2022.

5. On May 18, 2015, Respondent submitted a Low Volume Exemption (LVE) for Chemical A with a Chemical Abstract Service Registry Number (CASRN) provided by a third party, which the Agency later determined was not the CASRN of the manufactured (or imported) chemical.
6. On May 27, 2021, Respondent submitted a Premanufacture Notice (PMN) for Chemical A with a CASRN provided by a third party, which the Agency later determined was not the CASRN of the manufactured (or imported) chemical.
7. On November 15, 2021, Respondent amended the CASRN in the PMN for Chemical A based on new information regarding the chemical identity.
8. 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 1 LG Way, Holland, MI 49423 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

COUNT I – TSCA § 5(a)(1) VIOLATIONS

9. 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).
10. 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 PMN to EPA at least ninety (90) calendar days before manufacturing that substance.
11. On July 18, 2022, August 4, 2022, and August 17, 2022, Respondent voluntarily informed EPA that it had manufactured (imported) Chemical A between 2017 and 2022 (with relevant dates and quantities claimed as CBI).
12. Chemical A was not included on the TSCA Inventory at the time of import and therefore 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).
13. Respondent’s failure to submit a PMN at least ninety (90) days before manufacturing (importing) Chemical A constitutes 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), and may subject an entity to civil penalties pursuant section 16(a) of TSCA, 15 U.S.C. § 2615(a).

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

14. 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.”
15. On July 18, 2022, August 4, 2022, and August 17, 2022, Respondent voluntarily informed EPA that it had imported Chemical A between 2017 and 2022 (with relevant dates claimed CBI).
16. Respondent’s failure to submit proper certifications under section 13 of TSCA prior to importing 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

17. Paragraphs 11 and 12 are incorporated and realleged herein.
18. 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[.]”
19. On July 18, 2022 and August 4, 2022, and as later clarified, Respondent voluntarily informed EPA that it used existing stock of the product containing Chemical A on at least 30 days in 2022 (with dates and quantities claimed as CBI).
20. Respondent's use of existing stock of Chemical A after the disclosure date, 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

21. 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 \$327,334. 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).
22. 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.
23. Not more than thirty (30) calendar days after the effective date of the Final Order, Respondent shall

Either:

24. Dispatch a cashier's or certified check in the amount of \$327,334 made payable to the order of the "Treasurer of the United States of America," and bearing the case docket number TSCA HQ-2023-5001, to the following address:
U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Or

25. Effect a wire transfer in the amount of \$327,334 with the notation “**LG Energy Solution Michigan, Inc.** Civil Penalty Docket No. TSCA-2023-5001,” 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.”]

26. 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. 2119C)
Washington, DC 20460
(202) 564-4167

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

27. 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:

- c. 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).
- d. 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.
- e. 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

28. 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.
29. This settlement is conditioned upon the thoroughness and accuracy of Respondent's submissions to EPA in this matter.
30. As a condition of this Agreement, Respondent may process, use, and distribute its existing stocks of Chemical A while EPA and Respondent finalize a TSCA section 5(e) Consent Order for Chemical A. The processing, use, and distribution of the existing stocks must be in accordance with the following:
 - a. Terms of Processing/Use. Respondent may process/use Chemical A only:
 - i. at its Holland, Michigan facility;
 - ii. as an electrode material for use in the manufacture of batteries;
 - iii. where fugitive air emissions are captured and controlled in the facility's vacuum dust collection system; and
 - iv. until December 31, 2022, or until its existing stocks have been used.
 - b. No Release to Water. The Respondent is prohibited from any release of Chemical A, or any waste stream containing Chemical A, into water.
 - i. If for any reason the Respondent fails to comply with the release limitations applicable to Chemical A, the Company shall notify EPA, in writing, within 5 days of the release.
 - ii. The notification must include the location of the release, an explanation and description of the reasons for the release, the amount of the release or deviation, all actions taken or to be taken to prevent or minimize the release and future release, and a schedule for implementation of any measures to be taken to prevent or mitigate effects of the release and any future releases.
 - c. Respiratory Protection
 - i. Respondent must ensure that each person subject to inhalation is provided with, and is required to wear, a National Institute for Occupational Safety and Health (NIOSH)-certified Combination Particulate and Gas/Vapor respirator with an Assigned Protection Factor (APF) of 50.
 - ii. All respirators must be issued, used and maintained according to an appropriate respiratory protection program in accordance with Occupational Safety and Health Administration (OSHA) and NIOSH respiratory protection requirements in 29 C.F.R. § 1910.134 and 42 C.F.R. part 84.

d. Dermal Personal Protective Equipment

- i. The Respondent must ensure that each employee reasonably likely to be dermally exposed through direct handling or contact with equipment or surfaces containing or contaminated with Chemical A is provided with, and is required to wear, personal protective equipment (“PPE”) (i.e., gloves and body suits) that provides a barrier to prevent dermal exposure.
- ii. PPE must be selected and used in accordance with the OSHA’s requirements at 29 C.F.R. §§ 1910.132, 1910.133, and 1910.138.
- iii. Gloves must be replaced at the end of each work shift during which they are exposed to Chemical A. If permeation testing was used to establish impermeability, gloves may not be used for longer than for which they were tested.
- iv. Demonstration of Imperviousness. The Respondent must demonstrate that the PPE selected provides an impervious barrier to prevent dermal exposure during expected duration and conditions of exposure. The Respondent may make this demonstration by any one or a combination of the following:
 1. Permeation Testing. PPE must be tested alone and in combination with other chemical substances in the work area under the expected conditions of exposure. Permeation testing should be conducted according to the American Society for Testing and Materials (ASTM) F739 “Standard Test Method for Permeation of Liquids and Gases through Protective Clothing Materials under Conditions of Continuous Contact.” Results must be reported as the cumulative permeation rate as a function of time and documented in accordance with ASTM F739 using the format specified in ASTM F1194-99 (2010) “Standard Guide for Documenting the Results of Chemical Permeation Testing of Materials Used in Protective Clothing Materials.”
 2. Manufacturer Specifications. Manufacturer specifications may be used to establish that the PPE is impervious to Chemical A, alone and in combination with other chemical substances in the work area under the expected conditions of exposure.

31. Respondent shall maintain records documenting compliance with Paragraph 30 for 5 years after the date they are created and must produce them for inspection, copying or as otherwise required under Section 11 of TSCA, 15 U.S.C. § 2610.

32. Respondent shall submit a monthly status report on its use of its existing stocks via EPA’s Central Data Exchange on the 1st of each month until the existing stocks of Chemical A are completely used.

33. Respondent shall implement policies and procedures to promote compliance with TSCA sections 4, 5, 6, 8, 12, 13, and 15(2), which will include appropriate training for staff, following completion of the ongoing compliance audit referenced in Paragraph 4.

34. 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.
35. 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.
36. 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

37. 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.
38. This Consent Agreement shall take full effect upon signing and filing of the Final Order by EPA's Environmental Appeals Board.
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 submitted documentation required by the Consent Agreement and Final Order.
40. 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.
41. The penalty, including any stipulated penalties specified above, represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.
42. 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.
43. The Parties agree to bear their own costs and attorney's fees.

WE AGREE TO THIS:

A handwritten signature in blue ink, appearing to read 'Andrew R. Stewart', written over a horizontal line.

Andrew R. Stewart, Attorney
Sidley Austin LLP
Counsel for
LG Energy Solution Michigan, Inc.

Date: 09/30/2022

WE AGREE TO THIS:

GREGORY SULLIVAN Digitally signed by
GREGORY SULLIVAN
Date: 2022.09.30
14:17:59 -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

Date: _____

JAMES MILES Digitally signed by
JAMES MILES
Date: 2022.09.30
12:07:43 -04'00'

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

Date: _____

CERTIFICATE OF SERVICE

I certify that copies of the foregoing “Consent Agreement” and “Final Order,” in the matter of LG Energy Solution Michigan, Inc., Docket No. TSCA-HQ-2023-5001, were sent to the following persons in the manner indicated:

By Email:

Andrew R. Stewart, Attorney
Sidley Austin LLP
Counsel for LG Energy Solution Michigan, Inc.
1501 K St. N.W.
Washington, DC 20005
Email: AStewart@Sidley.com
Direct Dial: 202-736-8854

James Miles, 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: miles.james@epa.gov
Direct Dial: (202) 564-5161

Dated: Nov 08, 2022

Emilio Cortes

Emilio Cortes
Clerk of the Board