

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

\_\_\_\_\_  
In re: )  
          ) )  
Swix Sport USA ) Docket No. TSCA-HQ-2020-5005  
          ) )  
Respondent ) )  
\_\_\_\_\_) )

**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.<sup>1</sup>

**ENVIRONMENTAL APPEALS BOARD**

Dated: May 13 2020

*Mary Kay Lynch*  
\_\_\_\_\_  
Mary Kay Lynch  
Environmental Appeals Judge

<sup>1</sup> 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.**

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<b>IN THE MATTER OF</b>	)	
	)	
<b>Swix Sport USA</b>	)	
<b>60 Newark Street</b>	)	
<b>Haverhill, MA 01832</b>	)	<b>Docket No. TSCA-HQ-2020-5005</b>
	)	
<b>Respondent</b>	)	
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**CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency (hereinafter “EPA” or the “Agency”), and Respondent, Swix Sport USA (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 21<sup>st</sup> 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 22.18(b)(3).
  
2. To avoid the disruption of orderly business activities and expense of litigation, for purposes of this proceeding and as required by 40 C.F.R. § 22.18(b)(2), Respondent:
  - a. admits the jurisdictional allegations set forth herein and waives any defenses as to jurisdiction;
  - b. neither admits nor denies the specific factual allegations contained herein;
  - c. consents to the assessment of a civil penalty as stated below;
  - d. consents to the issuance of any specified compliance or corrective action order;

- e. consents to any conditions specified in this Consent Agreement;
- f. waives any right to contest the alleged violations of law set forth herein; and
- g. waives the rights to appeal the Final Order accompanying this Consent Agreement.

## II. EPA's FINDINGS OF FACT AND LAW

- 3. Respondent, a corporation with its U.S. headquarters located at 60 Newark Street, Haverhill, MA 01832, 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.
- 4. 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. . . ."
- 5. Per- and polyfluoroalkyl substances (PFAS) are a group of man-made chemicals that includes many chemicals. There is evidence that exposure to PFAS can lead to adverse human health effects. Some PFAS are very persistent in the environment and in the human body. PFAS may be released into the air, soil, and water, including sources of drinking water.
- 6. There are six 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", "Chemical B", "Chemical C", "Chemical D", "Chemical E", and "Chemical F," respectively.
- 7. Respondent manufactures (imports), distributes in commerce, uses, or disposes of Chemicals A, B, C, D, E, and F, 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.
- 8. The Parties agree to the conditions of settlement set forth in Section IV, which describe an education/outreach and training program called the "Responsible Waxing Project" (RWP). RWP is a project aimed at:
  - a. educating the ski racing community about the existence of PFAS chemicals in racing waxes; the physical and chemical properties of PFAS substances; and how they impact the environment; and
  - b. promoting the use of wax alternatives with lower environmental impact, including but not limited to waxes that are PFAS-free. The primary objective of RWP is to educate and motivate the ski racing community to phase out and ultimately eliminate the use

of PFAS-containing waxes in ski racing beginning with the 2020 ski season and concluding no later than September 1, 2022.

The RWP will also include an education/training element for ski wax technicians to reinforce safe waxing practices including the use of appropriate personal protection equipment and steps to properly dispose of wax shavings during the waxing process. The RWP is described in more detail in Section IV of this CAFO.

9. Respondent voluntarily began implementing projects that are part of the RWP included in this CAFO.

### **COUNT I – TSCA § 5(a)(1) VIOLATIONS**

10. 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).
11. 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.
12. On June 28, 2018, July 6, 2018, and July 9, 2018, Respondent informed EPA that it had manufactured (imported) products containing Chemicals A, B, C, D, E, and F as follows:  
Chemical A between August 19, 2013 and March 1, 2018 at least 12 times;  
Chemical B between February 4, 2015 and February 5, 2018 at least 14 times;  
Chemical C between August 19, 2013 and March 20, 2018 at least 12 times;  
Chemical D between August 19, 2013 and August 24, 2017 at least 15 times;  
Chemical E between August 19, 2013 and August 24, 2017 at least 15 times; and  
Chemical F between August 19, 2013 and August 24, 2017 at least 15 times.
13. Chemicals A, B, C, D, E, and F 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).
14. Respondent’s failure to submit PMNs at least ninety (90) days before manufacturing (importing) Chemicals A, B, C, D, E, and F 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).
15. 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 § 13(a)(1)(B) VIOLATIONS**

16. 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.”
17. On June 28, 2018, July 6, 2018, and July 9, 2018, Respondent informed EPA that it had manufactured (imported) products containing Chemicals A, B, C, D, E and F as follows:  
Chemical A between August 19, 2013 and March 1, 2018 at least 12 times;  
Chemical B between February 4, 2015 and February 5, 2018 at least 14 times;  
Chemical C between August 19, 2013 and March 20, 2018 at least 12 times;  
Chemical D between August 19, 2013 and August 24, 2017 at least 15 times;  
Chemical E between August 19, 2013 and August 24, 2017 at least 15 times; and  
Chemical F between August 19, 2013 and August 24, 2017 at least 15 times.
18. Respondent’s failure to submit proper certifications under section 13 of TSCA prior to importing Chemicals A, B, C, D, E, and F 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).
19. 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. TERMS OF SETTLEMENT**

20. Swix has ceased the manufacture (import) of the chemicals in Counts I and II above.
21. As described in Section IV, Conditions below, as a condition of settlement, Respondent will develop and implement an outreach and training program (referred to herein as the “RWP”) aimed at (1) educating the ski racing community about PFAS chemicals in racing waxes and their impact on the environment; and (2) promoting the use of wax alternatives with lower environmental impact, including but not limited to racing waxes that are PFAS-free (the “Program Content”). The primary objective of the program will be to educate and motivate the ski racing community to phase out (and ultimately eliminate) the use of PFAS-containing waxes in ski racing beginning with the 2020 ski season and concluding no later than September 1, 2022. The RWP will also include an education/training component for ski wax technicians on the proper disposal of racing wax shavings and the use of appropriate PPE during the waxing process.
22. The RWP will be conducted starting with the 2020 ski season and ending no later than September 1, 2022 (the “Program Period) and will focus on all three segments of the racing community – 1) Nordic/Cross Country; 2) Nordic/Racing and 3) Alpine and Snowboard. The

RWP will be completed and the Final Report submitted to EPA **on or before September 1, 2022.**

23. The RWP is estimated to cost approximately \$1 million dollars (\$1,000,000). SWIX shall be responsible for all aspects of RWP development and implementation, including the development of all education and training materials across a wide variety of communication platforms (including on-line communication modules, videos, visual presentations, brochures, posters, and other materials). The Program Content will be presented on-site at key events (as described in Section IV) and through other venues that reach coaches, parents, athletes, volunteers, and supporters in the ski racing community. In total, the scope of the RWP is designed to reach 90-95% of the targeted ski racing audience within the three segments of the racing community noted above.

#### IV. CONDITIONS

24. Respondent and EPA have agreed, in compromise of the civil penalty that otherwise may be imposed herein to the following conditions of settlement:
- a. PFAS Ski Wax Education Program: Within 60 days from the Respondent's date of signature on this CAFO, Respondent must present materials containing the Program Content as defined in paragraph 21 at one (1) major ski event. Respondent will present the Program Content through a minimum of two (2) on-site, live presentations at the event. The presentations must be open to coaches, waxing technicians and skiers competing in the event. EPA is aware that Respondent may begin its outreach program immediately upon signature of the Consent Agreement in order to reach the current ski season.
  - b. Training for Wax Technicians: Within 60 days from the Respondent's date of signature on this Consent Agreement, Respondent must initiate the development of a program designed to train ski wax technicians on the proper use of appropriate PPE, proper ventilation, and the proper disposal of racing wax shavings during the waxing process to help minimize the amount of wax shavings from PFAS-containing ski waxes being left on the ground where they could enter the environment. Respondent must produce a video to implement this program. The duration of the video must be no less than 10 minutes in duration and must include, at a minimum the following criteria:
    - The recommendation to use eco-friendly and biodegradable waxes and cleaning products.
    - A discussion of the proper disposal of wax shavings and of the appropriate personal protective equipment (PPE) to be worn and used when waxing skis, including a description of (1) the PPE (including gloves and masks with the recommended filters); (2) the proper use and maintenance of the PPE; and the (3) proper use of waxing tools.

- A discussion of the importance of (1) following techniques and procedures to collect wax shavings; and (2) engaging in proper disposal of wax shavings so they are not left on the ground.
- c. Program for Ski Racing Coaches: Respondent must develop and implement an education program targeted at ski racing coaches. At a minimum, the targeted education program must cover the Program Content. Respondent must produce a professionally produced video to implement this program. The duration of the video must be no less than 15 minutes in duration and must include the Program Content. Respondent must deliver the targeted education program through at least one of the following mechanisms: on-line certification module; an on-site visual and oral presentation to coaches, or a professionally produced video. During the Program Period, Respondent must present the education program described in this Section 24(c) on-site at a minimum of ten (10) training events/certification camps for ski racing coaches. The presentations must be made by the Program Manager or an individual from senior-level management within Respondent with requisite experience and expertise.
- d. Additional Outreach to College Racing Teams and Clubs: Respondent must develop and present an education program targeted at coaches and racing participants at the collegiate level. At a minimum, the targeted education program must cover the Program Content. Respondent must deliver the targeted education program for collegiate level racing through at least one of the following communication mechanisms: an on-site visual and oral presentation, or a professionally produced video. During the Program Period, Respondent must present the education program described in this Section 24(d) on-site at a minimum of fifteen (15) collegiate level racing events. The presentations must be made by the Program Manager or an individual from senior-level management within Respondent with requisite experience and expertise.
- e. Initiative to Promote New Policies for Racing at the Junior Level: Respondent must develop a program targeted at ski racing at the high school level. At a minimum, the program to fulfill the condition set forth in this Section 24(e) must (1) cover the Program Content and (2) advocate the implementation of policies to ban the use the PFAS-containing waxes at high school level racing events. Respondent must utilize at least one of the following communication mechanisms to deliver the program: visual and oral presentations or a professionally produced video. Respondent must present the program described in this Section 24(e) on-site at a minimum of fifteen (15) state-level organizational/planning meetings for high school racing teams/clubs.
- f. Dedicated Project Manager: Respondent must appoint a manager to oversee the RWP during the Program Period.

- g. Website: Respondent must utilize a dedicated website for accessing the videos and other visual communication materials developed under the conditions set forth in this Section IV as part of the RWP.
- h. Video Productions: All videos produced and utilized by Respondent to fulfill the conditions set forth in Section IV must be included on the dedicated website required under Section 24(f).
- i. PFAS Alternative Ski Wax Information Distribution: During the Program Period, Respondent must present materials covering the Program Content on-site at a minimum of fifty (50) ski events identified in the list of events contained in Confidential Attachment A containing Confidential Business Information (CBI). The Respondent agrees to present materials covering the Program Content on-site at fifteen (15) of those ski events within 18 months from the Respondent's date of signature on this Consent Agreement. Respondent must produce a professionally produced video to implement this program. The duration of the video must be no less than 3 minutes in duration and must include the Program Content. Respondent must utilize at least one of the following communication mechanisms to deliver the program at the events: (1) visual and oral presentations; or (2) a professionally produced video of no less than three (3) minutes in duration. The on-site presentations must be open to coaches, waxing technicians and skiers competing in the event.
- j. Respondent agrees that: (1) none of the videos, visual presentations, brochures, posters and other materials containing the Program Content that are (i) developed by Respondent to satisfy any conditions in Section IV of this CAFO; and (ii) disseminated to the public as part of the implementation of the RWP shall be considered confidential business information; and (2) EPA has the right to refer to such materials provided that EPA's use of the materials is compliant with the fair use doctrine for copyrighted materials (e.g., for educational purposes).
- k. If Respondent does not present the Program Content at a minimum of fifty (50) ski events as described above in Section 24(i), then Respondent shall create website content targeted at the same audience that would have been targeted at the number of events that fall short of the minimum such that Respondent expends on alternative website content the same total amount of expenditures it would have expended to present the Program Content on-site at the ski events that comprise the short fall. The website content must consist of at least one (1) of the following communication vehicles: a web page with information covering the Program Content, a video, or a visual presentation (such as a presentation in Microsoft Power Point format). The alternative website content described in this Section 24(k) must be developed and implemented within the Program Period.
- l. Respondent must submit compliance reports describing how Respondents have complied with the conditions contained in paragraphs a through k, above, including the dates of events referenced in paragraphs a through k, and documentation of the educational materials (oral and visual presentations, videos, website content, posters,



brochures and other materials) through which the Program Content was disseminated. The first compliance report must be submitted within (3) months from the effective date of this CAFO. The subsequent compliance reports must be submitted within 6-month intervals from the effective date of this CAFO. The report must include a discussion of any substantive changes to the implementation of the RWP, including but not limited to its implementation progress, staffing, staff training, and any enhancements or amendments to the RWP, including any changes resulting from any relevant regulatory/legislative enactment or other circumstances beyond Respondent's control that impact the primary objectives of RWP.

The compliance reports, including the Final Report, must be submitted to:

Tony R. Ellis  
U.S. EPA Headquarters  
Office of Civil Enforcement  
Waste and Chemical Enforcement Division (2249A)  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Or via email to:

[Ellis.Tony@epa.gov](mailto:Ellis.Tony@epa.gov)

Each report submitted by Respondent must be signed by an official of Respondent and include the following certification: "I certify under penalty of law that based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete."

- m. All Reports must be provided to EPA in a version that is immediately available for public review. Confidential Business Information (CBI), if any, shall be redacted by Respondent and a statement inserted for each redacted item in the public version that Respondent declares that information CBI. A CBI version of the report will be sent simultaneously with the public version.
- n. FINAL REPORT: No later than September 1, 2022, Respondent must provide EPA with a Final Report on the RWP. The Final Report shall include a description of the actions Respondent has taken to meet the conditions set forth in Section IV and the expenditures made to meet them. The description of the expenditures may include, but is not limited to information on the total costs expended for: (1) the education activities for the ski racing community; education and training programs for waxing technicians; education and training for ski racing coaches; and the materials used for the junior racing initiative; (2) the videos, websites, brochures, visual presentations, posters and other materials used to implement the RWP; (3) the advocacy activities for the junior ski racing initiative; (4) the hiring and use of

personnel and third party contractors/consultants to perform the RWP such as salary, travel expenses and related fees and costs; and (5) all other costs expended by Respondent to implement the conditions in Section IV not otherwise covered by the foregoing. The Final Report must include the names and dates of the events where the Program Content was presented to meet the conditions of Section 24(a), 24(b), 24(c), 24(d), 24(e) and 24(i). The aggregate total of all expenditures incurred for the development and implementation of all educational activities and websites, videos and other visual and written materials used to complete the RWP will be provided in the Final Report. The list of events and the aggregate total of all expenditures for education activities described immediately above must be provided in the public version of the Final Report

- o. In the event that a legislative and/or regulatory enactment, or other circumstances beyond the Respondent's control have an impact on the RWP such that the primary objectives of the RWP (as described in paragraph 21) become moot or unnecessary, the parties shall meet to discuss modifications to the RWP in light of the new circumstances. If Respondent demonstrates that a substantial portion of the RWP has been completed EPA may, in its discretion, determine that no further modifications are necessary, and that Respondent has successfully completed the RWP. Respondent would not be required to implement modifications to the RWP that would result in a total cost for the RWP that exceeds \$1 million dollars minus the total cost Respondent has already incurred to implement the RWP.
- p. Prior to determining that Respondent has failed to comply with any term or condition set forth in Section IV, EPA will give Respondent written notice or notices of deficiencies. The written notice or notices of deficiency(ies) shall specify the specific condition(s) set forth in Section IV that are deficient and include a written explanation of how Respondent has failed to comply with the identified condition(s). Respondent shall be provided at least ninety (90) days to respond to each notice of deficiency.
- q. If, after reviewing Respondent's response to the notice of deficiencies, EPA determines that Respondent has failed to comply with the conditions set forth in Section IV, EPA may issue a non-remittance Order requiring Respondents to pay the remaining Six Hundred Fifty-Five Thousand One Hundred Eighty-four Dollars (\$655,184) referenced in paragraph 28, or a lesser amount, plus interest accrued from the effective date of this CAFO as described in paragraph 33. Such Order to pay all or part of the Remittance shall include a written explanation of the deficiencies identifying how Respondent has failed to comply with the conditions set forth in Section IV and provide Respondent with at least 30 days after Respondent's receipt of the that Order to make payment. The EPA will take into consideration all actions set forth in Section IV successfully performed by Respondent and deduct the costs incurred by Respondent (as documented in the Final Report submitted by Respondent) in calculating the amount of remittance. Respondent waives its right to a hearing under 16(a)(2) of TSCA.

V. CIVIL PENALTY

- 25. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, and in light of the nature, circumstances, and extent of the alleged violations, EPA determined that a Gravity Based Penalty of One Million Two Hundred Twelve Thousand Seven Hundred and Sixteen Dollars (\$1,212,716) is appropriate.
- 26. EPA used the “TSCA Section 5 Enforcement Response Policy” (issued August 5, 1988, as amended June 8, 1989 and July 1, 1993), and the *Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13 Response Policy* (Effective June 1, 1999) in order to be consistent with the statutory factors.
- 27. EPA reduced the Gravity Based Penalty by 15% (\$ 181,907) to reflect the cooperation of Swix. Thus, a civil penalty in the amount of One Million, Thirty Thousand Eight Hundred and-Nine Dollars (\$1,030,809) is assessed against Respondents for the violations of TSCA alleged herein.
- 28. Pursuant to Section 16(a)(2)(C) of TSCA, 15 U.S.C. § 2615(a)(2)(C), and 40 C.F.R. § 22.31, EPA agrees to remit Six Hundred Fifty-Five Thousand One Hundred Eighty-four Dollars (\$655,184) of the civil penalty, for the TSCA violations alleged herein through the effective date of this CAFO, conditioned upon Respondents’ compliance with all the terms and Conditions set forth in Section IV, of this CAFO, to EPA’s satisfaction.
- 29. Respondent agrees to pay a civil penalty of THREE HUNDRED AND SEVENTY-FIVE THOUSAND, SIX HUNDRED AND TWENTY-FIVE U.S. DOLLARS (\$375,625).
- 30. ~~Not more than thirty (30) calendar days after~~ The “Effective Date” of this CAFO is the effective date of the Final Order. (~~“Effective Date”~~), **In light of the significant financial impact caused by the COVID-19 public health emergency, payment of the penalty in this matter is delayed until January 29, 2021. By January 29, 2021, Respondent shall either:**

MJG  
TAH

- 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-2020-5005” to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Docket No. TSCA-HQ-2020-5005  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

OR

- B. Pay by wire transfer with a notation of “Swix Sport USA, Civil Penalty Docket No. TSCA-HQ-2020-5005” 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”

31. Concurrently with Paragraph 30A or 30B, Respondent must forward a copy of the Check or documentation of a wire transfer to Tony Ellis at [Ellis.Tony@epa.gov](mailto: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](mailto:Ellis.Tony@epa.gov)

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

32. 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.
33. 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~~ **on January 29, 2021**, 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: MJG  
TAH
- 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).

## VI. GENERAL MATTERS

34. By executing this Consent Agreement, Respondent certifies that, to the best of its knowledge and belief, it is presently in compliance with sections 5 and 13 of TSCA, 15 U.S.C. §§ 2604 and 2612.
35. ~~Full payment of the agreed upon penalty proposed in~~ Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties alleged in this CAFO. MJG  
TAH
36. Respondent is authorized to return to its parent company in Norway the existing stocks of products containing Chemicals A, B, C, D, E and F in its control on the date of Respondent's signature on this CAFO, provided such return conforms with all applicable laws. Any existing stocks must be exported within ninety (90) days from the ~~Effective Date~~ **the date that payment of the penalty is due under paragraph 30** and Respondent shall notify EPA by sending documentation of the export, such as a shipping document (bill of lading), with the following certification to Tony Ellis at [Ellis.Tony@epa.gov](mailto:Ellis.Tony@epa.gov): MJG  
TAH
- I certify that, based on my inquiry of those individuals responsible for obtaining the information, that the existing stocks of products containing Chemicals A, B, C, D, E and F subject to the Consent Agreement and Final Order pursuant to Docket No. TSCA-HQ-2020-5003 have been exported.
37. 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.
38. 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.
39. Nothing in this Consent Agreement is intended to, nor shall be, construed to operate in any way to resolve any criminal liability of Respondent.
40. 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.

41. This Consent Agreement may be amended or modified only by written agreement executed by both the EPA and Respondent.
42. 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.
43. This Consent Agreement shall take full effect upon the signing and filing of the Final Order by the EAB.
44. 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 completion of the conditions set forth in Section IV of this CAFO.
45. 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.
46. The Parties agree to bear their own costs and attorney's fees.
47. 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.
48. 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

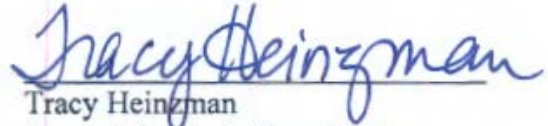
Date: Feb 10, 2020

  
\_\_\_\_\_  
Mark Garvey, Attorney

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

Date: Feb. 10, 2020

For Respondent:

  
\_\_\_\_\_  
Tracy Heinzman

Counsel for Swix Sport USA  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

Date: February 7, 2020

MJG TAH

**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing “Consent Agreement” and “Final Order” in the matter of *Swix Sport USA*, Docket No. TSCA-HQ-2020-5005, were filed and copies of the same were sent to the following persons in the manner indicated:

**By Electronic Mail:**

Tracy Heinzman, Esq.  
Wiley Rein LLP  
1776 K Street, N.W.  
Washington, D.C. 20006  
telephone: (202) 719-7106  
e-mail: [theinzman@wiley.law](mailto:theinzman@wiley.law)

Mark Garvey, Esq.  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
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e-mail: [garvey.mark@epa.gov](mailto:garvey.mark@epa.gov)

Diana Saenz, Acting Director  
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e-mail: [saenz.diana@epa.gov](mailto:saenz.diana@epa.gov)

Dated: May 13 2020



Eurika Durr  
Clerk of the Board