

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

\_\_\_\_\_) )  
IN THE MATTER OF ) )  
 ) )  
Wilhelmsen Ships Services ) )  
9400 New Century Drive ) )  
Pasadena, TX 77507 ) **Docket No. TSCA-HQ-2017-5006**  
 ) )  
 ) )  
Respondent ) )  
\_\_\_\_\_)

**CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency (hereinafter “EPA” or the “Agency”), and Respondent, Wilhelmsen Ships Services, (hereinafter “Respondent”) (collectively, the “Parties”), hereby enter into this Consent Agreement (“Agreement” or “Consent Agreement”), and the attached propose 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 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 (2016 Act) is being simultaneously commenced and concluded pursuant to 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. 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. The Respondent waives any defenses it might have as to jurisdiction.

**II. EPA’s FINDINGS OF FACT AND LAW**

4. Respondent, a corporation with its US headquarters located at 9400 New Century Drive Pasadena, TX 77507, is a “person” as defined in 40 C.F.R. § 710.3 and 40 C.F.R. § 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” is defined by section 3(2)(A) of TSCA, 15 U.S.C. § 2602(2)(A), as “any organic or inorganic substance of a particular molecular identity...”
6. Respondent manufactures (which includes the import of) chemical substances or mixtures into the customs territory of the United States as those terms are defined in TSCA sections 3(9), 3(2), and 3(10) 15 U.S.C. § 2602(9) ,(2), and (10), respectively, and 40 C.F.R. § 711.3.
7. Respondent manufactures (including imports), distributes in commerce, uses or disposes of the chemical substances (identified in paragraph 12 and 22) 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 TSCA sections 3(9), 3(2), and 3(10), 15 U.S.C. §§ 2602(9), (2), and (10) respectively, and 40 C.F.R. §§ 720.3(e), (q), and (u). Respondent is subject to TSCA and regulations promulgated thereunder.
8. The Parties’ discussions have resulted in the agreement contained herein, which includes implementation of an Environmental Management System to handle TSCA compliance. Respondent designed this system to ensure its domestic business operations, including its warehousing operations and importation processes, comply with TSCA. This program is described in Section III of this CAFO.
9. Respondent has already taken steps to implement their Environmental Management System, prior to the Effective Date of this CAFO.

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

10. Any chemical substance which is not included in the chemical substance list (TSCA Inventory) compiled and published under TSCA section 8(b), 15 U.S.C. § 2607(b), is a “new chemical substance” pursuant to TSCA section 3(11), 15 U.S.C. § 2602(11) and 40 C.F.R. § 720.3(v).
11. TSCA section 5(a)(1), 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 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 September 24, 2014, EPA inspectors found that Respondent imported mixtures determined to contain the following substances:

CASRN	Chemical Name
85586-07-8	Sulfuric Acid, Mono-C12-14-Alkyl esters, sodium salts
84989-06-0	Tar acids, xylenol fraction, def. fraction of tar acids, rich in 2,4,- and 2,5- dimethylphenol, recovered by distillation of low temperature coal tar crude tar acids

155432-20-0	Quaternary C12-14 alkyleamine ethoxylate, chloride
1933504-72-3	B-Alanine, N-(-2-carboxyethyl-N-(2-ethylhexyl)-,potassium salt

On September 29, 2015, EPA sent a Notice of Violation, Opportunity to Show Cause letter to Respondent. In response, Respondent provided EPA with import logs on July 6, 2016 and April 12, 2017 indicating that between 2012 and 2016 Respondent manufactured (imported) chemicals from this group on least 135 occasions.

13. Chemicals listed in paragraph 12 were not included in the chemical substance list (TSCA Inventory) compiled and published under TSCA section 8(b), 15 U.S.C. § 2607(b), at the time of import and therefore are a “new chemical substance” pursuant to TSCA section 3(11), 15 U.S.C. § 2602(11) and 40 C.F.R. § 720.3(v).
14. Respondent’s failure to submit a PMN at least ninety (90) days before manufacturing (importing) the chemicals listed in paragraph 12 constitutes a failure to comply with TSCA section 5, 15 U.S.C. § 2604, which is a prohibited act under TSCA sections 15(1) and 15(3)(B), 15 U.S.C. §§ 2614(1) and (3)(B) for which penalties may be assessed.
15. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.
16. A violation of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

#### COUNT II – TSCA § 8 VIOLATIONS

17. Section 8(a)(1)(A) of TSCA, 15 U.S.C. § 2607(a)(1)(A), authorizes the promulgation of rules by EPA under which each person who manufactures (including imports) a chemical substance, as defined by Section 3(9) of TSCA, 15. U.S.C. § 2602(9) must maintain records and “submit to the Administrator such reports, as the Administrator may reasonably require...”
18. The Chemical Data Reporting Rule, (CDR), 40 C.F.R. Part 711, is a rule promulgated under authority of TSCA section 8(a), 15 U.S.C. § 2607(a).
19. Pursuant to 40 C.F.R. § 711.8(a), unless an exclusion applies, “[a]ny person who manufactured (including imported) for commercial purposes 25,000 pounds (11,340 kilograms) or more of a chemical substance [which is listed on the TSCA Master Inventory File] . . . at any single site owned or controlled by that person at any time during the principal reporting year (i.e. calendar year 2011) is subject to reporting.”
20. A person subject to 40 C.F.R. § 711.8(a) is required to electronically file using the eCDRweb submission tool to submit Form U to EPA pursuant to 40 C.F.R. § 711.35.

21. The deadline for Form U submissions for the 2012 CDR period was August 13, 2012, see 40 C.F.R. § 711.20 as amended in 77 FR 36172 (June 18, 2012).
22. During calendar year 2011 (i.e., during the period covered by the 2012 CDR reporting requirement) Respondent imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substances:

CASRN	Chemical Name
112-34-5	Ethanol, 2-(2-butoxyethoxy)-
6153-56-6	Ethanedioic acid, dihydrate
5329-14-6	Sulfamic acid
7664-38-2	Phosphoric acid
7647-01-0	Hydrochloric acid
7632-00-0	Nitrous acid, sodium salt (1:1)
7647-14-5	Sodium chloride (NaCl)
1310-58-3	Potassium hydroxide (K(OH))
64742-47-8	Distillates (petroleum), hydrotreated light
64475-85-0	Petroleum spirits
64742-65-0	Distillates (petroleum), solvent-dewaxed heavy paraffinic
1303-96-4	Borax (B <sub>4</sub> Na <sub>2</sub> O <sub>7</sub> ·10H <sub>2</sub> O)
8028-48-6	Orange, sweet, ext.
127-18-4	Ethene, 1,1,2,2-tetrachloro-
64742-48-9	Naphtha (petroleum), hydrotreated heavy
3710-84-7	Ethanamine, N-ethyl-N-hydroxy-
8002-26-4	Tall oil
64742-94-5	Solvent naphtha (petroleum), heavy arom.
29797-40-8	Benzene, dichloromethyl-

23. Respondent's failure to submit a Form U for each of the chemical substances listed in paragraph 22 by August 13, 2012 constitutes a failure to submit a report, notice, or other information as required by 40 C.F.R. § 711.20, which is a prohibited act under TSCA section 15(3)(B), 15 U.S.C. § 2614 (3)(B).
24. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.
25. A violation of section 15(3)(B) of TSCA 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) VIOLATION

26. TSCA section 13(a)(1)(B), 15 U.S.C. § 2612(a)(1)(B), provides that Treasury shall refuse entry of “any chemical substance or mixture offered for such entry if” it is offered for entry in violation of section 5 or 6, a rule or order under section 5 or 6, or an order issued in a civil action brought under section 5 or 7.
27. For each of the chemical substances identified in paragraph 12, Respondent failed to submit a TSCA certification statement as required by TSCA section 13, 15 U.S.C. § 2612.
28. Respondent’s failure to submit a proper certification under TSCA section 13 prior to importing the chemicals identified in paragraph 12, constitutes a failure to comply with TSCA section 13, which is a prohibited act under TSCA section 15(3)(B), 15 U.S.C. § 2614 (3)(B).
29. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.
30. A violation of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

### III. TERMS OF SETTLEMENT

31. As a condition of settlement, Respondent agreed to implement an enhanced TSCA Environmental Management Program to ensure that Respondent’s domestic business activities comply with TSCA. Such activities include, among other activities, the manufacture (including importation) of chemical substances. The program is designed to ensure that past TSCA non-compliance is corrected. The program also includes steps to ensure Respondent complies with TSCA requirements that apply during any future TSCA manufacture (including import) of chemical substances as well as any subsequent processing, distribution in commerce, use or disposal of the chemical substances.
32. Respondent has begun to implement TSCA compliance training for each of the dedicated compliance managers in each of Respondent’s divisions to facilitate TSCA regulatory compliance moving forward.
33. Within three months of the effective date of CAFO and quarterly for a total period of six months (i.e., two quarterly reports), Respondent must submit a report to EPA that describes any substantive changes to the implementation of Respondent’s Environmental Management System (identified in paragraph 31), including but not limited to its implementation progress, staffing, staff training, and any enhancements or amendments to the system, including those resulting from relevant regulatory enactment, and a list of any chemicals manufactured

(including imported) by Respondent during the quarterly time period. The quarterly report will be marked as and considered Confidential Business Information pursuant to 40 C.F.R. Part 2.

34. For all instances in which this CAFO requires written submission to EPA, each submission must be signed by the Area Operations Director - Americas of the Respondent and include the following certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all documents submitted herewith; and that, to the best of my knowledge and belief, the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment.

35. As a condition of settlement, Respondent is authorized to export or dispose a total of approximately 3140 gallons of chemicals associated with CAS numbers: 85586-07-8, 84989-06-0 and 1933504-72-3 (as described in Count I) in its control on the Effective Date, provided export or disposal conforms to any other applicable federal, state, or local laws, statutes, regulations and rules. If the chemical substances or a portion of the substances are exported, the export must take place within ninety (90) calendar days of Effective Date.

#### IV. CIVIL PENALTY

36. Respondent agrees to pay a civil penalty of One MILLION, THREE HUNDRED THREE THOUSAND, THREE HUNDRED FIFTEEN U.S. DOLLARS (\$1,303,315).
37. 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) (“TSCA § 5 ERP”), the “Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13” (revised March 31, 1999; effective June 1, 1999) (“TSCA § 8, 12, and 13 ERP”) and associated civil monetary penalty adjustments. Hereinafter the TSCA § 5 ERP and the TSCA § 8, 12, and 13 ERP are referred to collectively as the “TSCA ERPs”). The TSCA ERPs were 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). The TSCA ERPs establish 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.” Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).
38. Not more than thirty (30) calendar days after the Effective Date of the Final Order, Respondent shall either:

- A. Dispatch a cashier's or certified check in the amount of One MILLION, THREE HUNDRED THREE THOUSAND, THREE HUNDRED FIFTEEN U.S. DOLLARS (\$1,303,315) made payable to the order of the "Treasurer of the United States of America", and bearing the Civil Penalty Docket No. "TSCA-HQ-2017-5006" to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Docket No. TSCA-HQ-2017-5006  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

OR

- B. Pay by wire transfer in the amount of \$1,303,315 with a notation of "Wilhelmsen Ships Service, Civil Penalty Docket No. TSCA-HQ-2017-5006" 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"

39. Concurrently with Paragraph 38A or 38B, Respondent shall forward a copy of the check or documentation of a wire transfer 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  
Phone: (202) 564-4167  
E-mail: Ellis.Tony@epa.gov

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

40. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.



41. 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 of the CAFO 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 (\$15.00) on any late payment, with an additional charge of \$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).
42. Whenever this CAFO requires EPA to give notice or submit information to Respondent, such information shall be submitted to the address and to the attention of the individuals listed below:

Marian E. Ladner  
Ladner & Associates PC  
420 Heights Boulevard  
Houston, Texas 77007

and

Tim Ryan  
Area Operations Director- Americas  
Wilhelmsen Ships Services  
9400 New Century Drive  
Pasadena, TX 77507

Respondent agrees that the notification may be issued *via* first class mail (including by certified mail or return receipt requested, Overnight Express, and Priority Mail), or any reliable commercial delivery service.

By written notice to EPA as specified in the address provided under Paragraph 39, Respondent may change the address and/or the person listed above.



**V. RESERVATION OF RIGHTS AND  
COVENANT NOT TO SUE**

43. Full payment of the penalty proposed in this CAFO shall only resolve Respondent's liability for Federal civil penalties for violations alleged in this Consent Agreement.
44. Failure to comply with requirements of submission of two quarterly reports as described in paragraph 33-34 will void the releases and covenants not to sue granted by the Agreement as provided for in paragraph 43.
45. 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.
46. For the sole purpose of establishing Respondent's compliance history in any future enforcement proceeding that EPA may bring against Respondent within five (5) years of the date of the execution of the Final Order, Respondent agrees not to challenge the violations alleged in this Consent Agreement. Otherwise, Respondent neither admits nor denies the allegations, but consents to the terms and conditions of this CAFO.
47. By executing this Consent Agreement, Respondent certifies, to the best of its knowledge and belief, after making reasonable inquiry that regarding the specific violations alleged above, Respondent is in compliance with section 4, section 5, section 8(a) and section 13 of TSCA.
48. 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, 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.
49. 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.

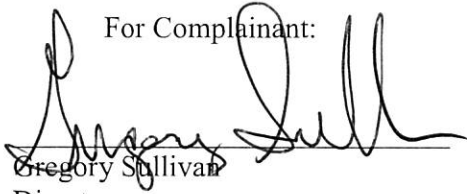
**VI. OTHER MATTERS**

50. EPA and Respondent agree that Respondent has no obligations under this Consent Agreement should it be rejected by the 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 CAFO in the event they are unable to reach agreement on the EAB's proposed changes or objections.
51. This CAFO may be amended or modified only by written agreement executed by both the EPA and Respondent.

52. 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.
53. This Consent Agreement shall take full effect upon the signing and filing of the Final Order by EPA's Environmental Appeals Board ("Effective Date").
54. 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 the documentation required by the CAFO and completed the exportation or destruction of chemicals identified in section III.
55. 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 EPA's Environmental Appeals Board.
56. 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.
57. The Parties agree to bear their own costs and attorney's fees.

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: Aug 3, 2017



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

Date: Aug 7, 2017

For Respondent:



Tim Ryan  
Area Operations Director- Americas  
Wilhelmsen Ships Services  
9400 New Century Drive  
Pasadena, TX 77507

Date: July 24, 2017

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