



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

In re: MP Mine Operations LLC
Respondent
Docket No. TSCA-HQ-2021-5004

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: Jul 20, 2021

[Signature]
Aaron P. Avila
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.**

_____)	
<i>In the Matter of:</i>)	
)	
MP Mine Operations LLC)	Docket No. TSCA-HQ-2021-5004
67750 Bailey Road)	
HC-1 Box 224)	
Mountain Pass, CA 92366)	
)	
Respondent)	
_____)	

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (EPA or Agency), and Respondent, MP Mine Operations LLC (MPMO) (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 September 24, 2020 and on February 5, 2021, Respondent voluntarily disclosed to EPA potential noncompliance with TSCA requirements of a manufactured (imported) chemical. Respondent has claimed the identity of the chemical as 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 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 67750 Bailey Road, HC-1 Box 224, Mountain Pass, CA 92366, 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), distributes in commerce, uses, or disposes of Chemical A or mixtures containing this chemical, or in the past has manufactured, imported, processed, distributed in commerce, used, or disposed of mixtures containing this chemical 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.
 - 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)(1) VIOLATIONS

- 7. 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).
- 8. 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.
- 9. On November 23, 2020, Respondent voluntarily informed EPA that it had manufactured (imported) a product containing Chemical A between 2017 and 2020 (with relevant dates and quantities claimed as CBI).
- 10. Chemical A was not included on the TSCA Inventory at the time of import and therefore is a "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).
- 11. 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

12. 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.”
13. On November 23, 2020, Respondent voluntarily informed EPA that it had imported a product containing Chemical A between 2017 and 2020 (with relevant dates claimed CBI).
14. 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

15. Paragraphs 7 and 8 are incorporated and realleged herein.
16. 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[.]”
17. On February 5, 2021, and as later clarified, Respondent voluntarily informed EPA that it used existing stock of the product containing Chemical A on seven (7) days in 2021 (with dates and quantities claimed as CBI).
18. Respondent's use of existing stock of the product containing Chemical A during the disclosed time period, 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 of 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. Alleged violations listed in Count III do not qualify for 100% gravity component reduction under the Audit Policy.
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 \$19,964. 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).

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

Either:

23. Dispatch a cashier’s or certified check in the amount of \$19,964 made payable to the order of the "Treasurer of the United States of America," and bearing the case docket number TSCA HQ-2021-5004, to the following address:

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

Or

24. Effect a wire transfer in the amount of \$19,964 with the notation “**MP Mine Operations LLC, Civil Penalty Docket No. TSCA-2021-5004,**” 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.”]

25. 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. 4102-D)
Washington, DC 20460
(202) 564-4167

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

26. 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

27. 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.
28. 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(2), 15 U.S.C. §§ 2604, 2612, and 2614(2).
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 and in accordance with the TSCA § 5(e) Consent Order applicable to Chemical A, Respondent entered into with EPA (the "5(e) Consent Order"), Respondent is authorized to use its existing stock of product containing Chemical A. Use of its existing stock must conform with all applicable requirements of the 5(e) Consent Order.
31. 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.

32. 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.

V. OTHER MATTERS

33. 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.

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

35. 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.

36. 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 EPA Environmental Appeals Board.

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

38. 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.

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

WE AGREE TO THIS:

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

Andrew R. Stewart, Attorney
Sidley Austin LLP
Counsel for
MP Mine Operations LLC

Date: 5/10/21

WE AGREE TO THIS:

DIANA SAENZ Digitally signed by DIANA SAENZ
Date: 2021.06.09 18:31:35 -04'00'

Diana Saenz, Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: _____

MARK GARVEY Digitally signed by MARK GARVEY
DN: c=US, o=U. S. Government,
ou=Environmental Protection Agency,
cn=MARK GARVEY,
0.9.2342.19200300.100.1.1=68001003667
163
Date: 2021.05.21 12:59:51 -04'00'

Mark Garvey, Attorney
Waste and Chemicals 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 MP Mine Operations LLC, Docket No. TSCA-HQ-2021-5004, were sent to the following persons in the manner indicated:

By E-mail:

Andrew R. Stewart, Attorney
Sidley Austin LLP, Counsel for MP Mine Operations LLC
1501 K St. N.W.
Washington, DC 20005
Email: AStewart@Sidley.com

Mark Garvey
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: Garvey.Mark@epa.gov

Dated: Jul 20, 2021

Emilio Cortes

Emilio Cortes
Clerk of the Board