



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

In re:)
)
TASR, Inc.) Docket No. TSCA-HQ-2021-5001
)
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.¹

ENVIRONMENTAL APPEALS BOARD

Dated: Aug 24, 2021



Mary Kay Lynch
Environmental Appeals Judge

¹ The three-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

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

IN THE MATTER OF)	
)	
TASR, Inc.)	
288 Mayville Road)	
P.O. Box 1622)	Docket No. TSCA-HQ-2021-5001
Bethel, ME 04217)	
)	
Respondent)	

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (hereinafter "EPA" or the "Agency"), and Respondent, TASR, Inc. (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 21st 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 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 Final Order accompanying this Consent Agreement.

II. EPA's FINDINGS OF FACT AND LAW

3. Respondent is a corporation located at 288 Mayville Road, Bethel, ME 04217. Respondent 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. The term "PFAS" refers to per- and polyfluoroalkyl substances where perfluorinated substances are defined as man-made chemicals of which all the carbon atoms are fully fluorinated carbon atoms. Polyfluoroalkyl substances are defined as man-made chemicals containing a mix of fully fluorinated carbon atoms, partially fluorinated carbon atoms, and nonfluorinated carbon atoms.
6. There are four PFAS 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," and "Chemical D" (collectively, "the Chemicals").
7. Respondent in the past has imported, distributed in commerce, and used mixtures containing the Chemicals as those terms are defined in Sections 3(2), (8), and (9) of TSCA, 15 U.S.C. § 2602(2), (8) and (9), respectively, and 40 C.F.R. § 720.3(e), (q), and (u). Respondent therefore is subject to TSCA and the regulations promulgated thereunder. TSCA includes "import" of chemicals in the definition of "manufacturing."
8. Upon learning of TSCA's possible application to Respondent's import of ski waxes, Respondent in January of 2019 voluntarily self-disclosed to the EPA that it may have imported products containing the Chemicals. As of December 20, 2018, Respondent ceased importing all ski waxes, including those that contain the Chemicals. Respondent quarantined the products containing the Chemicals, which remain in quarantine today, more than two years later ("the Existing Stocks").
9. Absolute Ski was formed as a corporate entity in May 2019 and is not a party to this proceeding, but is the purchaser of certain assets of Respondent associated with the domestic business activities located at 288 Mayville Road, Bethel, ME 04217 and with several other retail ski shops in Maine.
10. Respondent informed the EPA on February 19, 2021 of its intent to formally dissolve as a corporate entity with the Maine Secretary of State's Office.

COUNT I – TSCA § 5(a)(1) VIOLATIONS

11. Any chemical substance that 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).
12. 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 the EPA at least ninety (90) calendar days before manufacturing that substance.

13. On March 22, 2019 and May 30, 2019, Respondent further informed the EPA that it had manufactured (imported) products containing at least one of the Chemicals as follows: Chemical A between August 21, 2016 and December 20, 2018 at least one time; Chemical B between December 28, 2016 and December 20, 2018 at least one time; Chemical C between December 28, 2016 and December 20, 2018 at least one time; and Chemical D between December 28, 2016 and December 20, 2018 at least one time.
14. None of the Chemicals are listed on the TSCA Inventory and therefore each 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).
15. Respondent’s failure to submit PMNs at least ninety (90) days before manufacturing (importing) each of the Chemicals constitute separate violations of Section 5 of TSCA, 15 U.S.C. § 2604. A violation of Section 5 of TSCA is a prohibited act under Section 15(1) of TSCA, 15 U.S.C. § 2614(1).
16. A violation of Section 15 of TSCA, 15 U.S.C. § 2614 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

17. 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 of TSCA, 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.”
18. On March 22, 2019 and May 30, 2019, Respondent further informed the EPA that it had imported products containing at least one of the Chemicals as follows: Chemical A between August 21, 2016 and December 20, 2018 at least one time; Chemical B between December 28, 2016 and December 20, 2018 at least one time; Chemical C between December 28, 2016 and December 20, 2018 at least one time; and Chemical D between December 28, 2016 and December 20, 2018 at least one time.
19. Respondent’s failure to submit proper certifications under Section 13 of TSCA, 15 U.S.C. § 2612, prior to importing each of the Chemicals, constitutes separate violations of Section 13 of TSCA, 15 U.S.C. § 2612. A violation of Section 13 of TSCA is a prohibited act under Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).
20. A violation of Section 15 of TSCA, 15 U.S.C. § 2614, may subject an entity to civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

III. TERMS OF SETTLEMENT

21. Prior to dissolving with the State of Maine, as noted in paragraph 10, Respondent will complete the terms of settlement as detailed in paragraphs 22–27. Respondent will provide the EPA with documentation of notice of its dissolution within five (5) business days of final action by the State.
22. Respondent agrees to develop a TSCA Compliance Management Plan to assist Absolute Ski as part of its operations of the business activities located at 288 Mayville Road, Bethel, ME 04217. Absolute Ski will implement Respondent’s TSCA Compliance Management Plan, which will address, at a minimum, the importation of chemical substances subject to TSCA and future compliance with Sections 5 and 13 of TSCA, 15 U.S.C. §§ 2604 and 2612, as well as any subsequent distribution in commerce, use, or disposal of the chemical substances subject to TSCA.
23. Respondent’s Compliance Management Plan, as implemented by Absolute Ski, will incorporate standard operating procedures into a TSCA compliance manual (the “manual”) to ensure that chemicals imported into the United States are compliant with TSCA. The manual will include procedures to: a) review each product’s Material Safety Data Sheets (“MSDS”) and contact manufacturers and suppliers for additional chemical identity information where it is unclear whether a chemical is on the TSCA Inventory or subject to restrictions under TSCA; b) review such information prior to any import, export, or sale of TSCA regulated materials, to verify that all imported, exported, or sold chemicals are compliant with TSCA; c) contact the EPA in the event that there still is uncertainty whether certain chemicals are on the TSCA Inventory; d) verify that all appropriate and relevant import certifications are completed for imported chemicals subject to TSCA; and e) implement a process for the prompt and appropriate correction of any violations and any necessary modifications to the regulated entity's compliance management system to prevent future violations.
24. Respondent shall submit a copy of the TSCA Compliance Management Plan to the EPA within sixty (60) days of the Effective Date.
25. Respondent is authorized to export the Existing Stocks in Respondent’s control to the manufacturer Holmenkol GMBH or other appropriate Holmenkol entity in Germany after the Effective Date, provided such return conforms with all applicable federal, state, and local laws, statutes, regulations and rules. Any Existing Stocks must be exported within ninety (90) days from the date that payment of the penalty is due under paragraph 28 and Respondent shall notify the EPA by sending documentation of the exportation. EPA is aware of Respondent’s intention to export Existing Stocks by ship back to Holmenkol GMBH or other appropriate Holmenkol entity and agrees that such method of export is acceptable.
26. For all instances in which this CAFO requires written submission to EPA, each submission must be signed by an official of 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.

27. The TSCA Compliance Management Plan, Respondent's notification of dissolution with the State of Maine, and notification of any export of Existing Stocks must be submitted electronically to Tony R. Ellis at Ellis.Tony@epa.gov.

IV. CIVIL PENALTY

28. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and in light of the nature, circumstances, and extent of the alleged violations, the EPA determined that a final penalty of TWELVE-THOUSAND AND FOUR-HUNDRED AND FORTY-FIVE DOLLARS (\$12,445) is appropriate.
29. The EPA assessed the penalty pursuant to 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.
30. Not more than thirty (30) calendar days after the Effective Date, Respondent shall either:
- 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-2021-5001" to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2021-5001
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

OR

- B. Pay by wire transfer with a notation of "TASR, Inc., Civil Penalty Docket No. TSCA-HQ-2021-5001" 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"

31. Concurrently with payment pursuant to Paragraph 30A or 30B, Respondent shall forward an electronic copy of the Check or documentation of a wire transfer to Tony Ellis at

Ellis.Tony@epa.gov. By written notice to Respondent, the EPA may change the address and/or person listed above prior to disbursement of the payment.

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, the 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 the 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 shall 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.

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).

V. GENERAL MATTERS

34. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.
35. Complainant and Respondent, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CAFO, by e-mail, at: jjacobs@jacobsllf.com and dharmalaw@icloud.com. Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.
36. This Consent Agreement shall not dispose of the proceeding without a final order from the Environmental Appeals Board ratifying the terms of this Consent Agreement. This Consent Agreement shall be effective upon the filing of the Final Order by EPA's Environmental Appeals

Board. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

37. The 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.
38. This Consent Agreement shall apply to, and be binding upon, Respondent and Respondent's agents, successors, and/or assigns.
39. Respondent and the EPA agree to settle this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.
40. By executing this Consent Agreement, Respondent certifies that, to the best of its knowledge and belief, it is presently in compliance with TSCA.
41. Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for violations alleged in this Consent Agreement.
42. This settlement is conditioned upon the thoroughness and accuracy of Respondent's submissions to the EPA in this matter and upon the veracity of Respondent's certified statement that it ceased importing the Chemicals as of December 20, 2018 and quarantined all products containing the Chemicals as of February 22, 2019 and that such products remain in quarantine today. 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.
43. Compliance with this Consent Agreement shall not be a defense to any subsequent action the 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.
44. Nothing in this Consent Agreement is intended to, nor shall be, construed to operate in any way to resolve any criminal liability of Respondent.
45. This Consent Agreement may be amended or modified only by written agreement executed by both the EPA and Respondent.
46. Respondent's obligations under this Consent Agreement shall end when it has completed and notified the EPA of the completion of the conditions set forth in Section III *above* and has paid in full the scheduled civil penalty set forth in Section IV *above* of this Consent Agreement.

47. 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.
48. 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.

WE HEREBY AGREE TO THIS:

For Complainant:

DIANA SAENZ Digitally signed by DIANA SAENZ
Date: 2021.08.05 23:04:53 -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: August 5, 2021

**NICOLE
SIMMONS** Digitally signed by NICOLE
SIMMONS
Date: 2021.06.30 07:56:22
-04'00'

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

Date: June 30, 2021

For Respondent:

Jon Jacobs Digitally signed by Jon
Jacobs
Date: 2021.06.29 15:53:44
+01'00'

Jon Jacobs
Counsel for TASR, Inc.

Date: June 29, 2021

Jane Gardner Digitally signed by Jane
Gardner
Date: 2021.06.29 15:49:42
+01'00'

Jane Gardner
Counsel for TASR, Inc.

Date: June 29, 2021

CERTIFICATE OF SERVICE

I certify that copies of the foregoing “Consent Agreement” and “Final Order” in the matter of *TASR, Inc.*, Docket No. TSCA-HQ-2021-5001, were filed and copies of the same were sent to the following persons in the manner indicated:

By Electronic Mail:

Jon Jacobs, Esq.
Counsel for TASR, Inc.
Jacobs Law Firm P.L.L.C.
1455 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20004
e-mail: jjacobs@jacobsllf.com

Jane Gardner, Esq.
Counsel for TASR, Inc.
288 Mayville Road
Bethel, Maine 04217
e-mail: dharmalaw@icloud.com

Nicole Simmons, Esq.
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Dated: Aug 24, 2021

Emilio Cortes

Emilio Cortes
Clerk of the Board