

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

_____)
In re:)
)
Toyota Motor North America, Inc.) Docket No. TSCA-HQ-2020-5013
)
)
_____)

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

Mary Kay Lynch

Mary Kay Lynch
Environmental Appeals Judge

Dated: September 25, 2020

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

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of Toyota Motor North America, Inc., Docket No. TSCA-HQ-2020-5013, were sent to the following persons in the manner indicated:

By E-Mail:

Rosemarie Kelley
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
E-mail: Kelley.Rosemarie@epa.gov

Mark Garvey
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
E-mail: Garvey.Mark@epa.gov

Julie (Julia A.) Hatcher
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, D.C. 20004-1304
E-mail: julia.hatcher@lw.com

Dated: **Sep 25 2020**



Eurika Durr
Clerk of the Board

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

In the Matter of:)	
)	
Toyota Motor North America, Inc.))	Docket No. TSCA-HQ-2020-5013
6565 Headquarters Drive)	
Plano, TX 75024)	
)	
Respondent)	
)	

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (EPA or Agency), and Respondent, Toyota Motor North America, Inc. (TMNA) (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 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 protracted and costly litigation, Respondent, 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

COUNT I

3. Respondent is a corporation located 6565 Headquarters Drive, Plano, TX 75024, and is a “person” as defined in 40 C.F.R. §720.3(x) and, as such, is subject to TSCA and its regulations.
4. Respondent uses “chemical substances” or “mixtures” or in the past has used “chemical substances” or “mixtures” addressed in this Consent Agreement as those terms are defined in TSCA section 3 (2) and (10), 15 U.S.C. § 2602 (2) and (10).
5. TSCA section 5, 15 U.S.C. § 2604, provides that “(1) Except as provided in subsection (h) of this section, no person may— (A) manufacture a new chemical substance. . . unless such person submits to the Administrator, at least 90 days before such manufacture or processing, a notice, in accordance with subsection (d) of this section. . .”
6. In a teleconference on October 8, 2019 Respondent informed EPA of a potential TSCA issue concerning a chemical substance that Respondent purchased from a chemical manufacturer. The chemical, a pigment used in coating, has been declared as Confidential Business Information by the supplier and will be referenced in this matter as Chemical A. Later on this same day, EPA informed the chemical manufacturer who informed Respondent that Chemical A was not on the confidential TSCA Inventory.
7. Respondent provided additional information to EPA on October 15, 2019, October 16, 2019 and October 22, 2019 disclosing to the Agency that it had used Chemical A for commercial purposes and that it had reason to know Chemical A was not on the TSCA Inventory as required pursuant to TSCA section 5 or subject to an exemption.
8. On October 22, 2019, Respondent informed EPA in writing that TMNA used Chemical A for commercial purposes on 9 days during the time period from October 8, 2019, to October 18, 2019, with reason to know that the chemical was not on the TSCA Inventory or subject to an exemption.
9. From October 8, 2019, to October 18, 2019, Chemical A did not appear on the TSCA Inventory nor did Chemical A meet any exemption.
10. Respondent's use of Chemical A during the period from October 8, 2019, to October 18, 2019, constitutes a violation under TSCA section 15(2), 15 U.S.C. § 2614(2).
11. Pursuant to section 15(2) of TSCA, 15 U.S.C. § 2614 (2), “[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[.]”
12. Violations of section 15(2) of TSCA subjects an entity to civil penalties pursuant to § 16(a) of TSCA, 15 U.S.C. § 2615(a).
13. Each day such violations continue shall, for purposes of TSCA § 16, 15 U.S.C. § 2615, constitute separate violations of TSCA § 15, 15 U.S.C. § 2614.

III. CIVIL PENALTY

14. The penalty agreed upon in this matter is \$273,888. 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 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).
15. 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.
16. Not more than thirty (30) calendar days after the effective date of the Final Order, respondent shall

Either:

17. Dispatch a cashier’s or certified check in the amount of \$273,888 made payable to the order of the "Treasurer of the United States of America," and bearing the case docket number TSCA HQ-2020-5013, to the following address:

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

Or

18. Effect a wire transfer in the amount of \$273,888 with the notation “**Toyota Motor North America, Inc.** Civil Penalty Docket No. TSCA-2020-5013,” 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.”]

19. 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

20. 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. Reservation of Rights and Covenant Not to Sue

21. Payment of the penalty shall only resolve Respondent's liability for federal civil penalties ~~for~~ ^{MJG} ~~violations and facts~~ alleged in this Consent Agreement. JAH
22. By executing this Consent Agreement, Respondent certifies that regarding the violations alleged herein, Respondent is in compliance with §§ 5 and 15(2) of TSCA; 15 U.S.C. §§ 2604 and 2614(2).
23. This settlement is conditioned upon the thoroughness and accuracy of Respondent's submissions to EPA in this matter.
24. 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.

25. 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

26. 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.

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

28. 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.

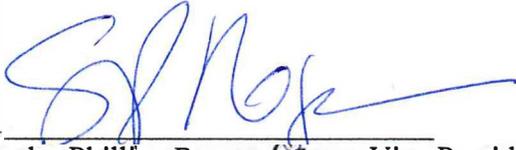
29. All of the terms and conditions of this Consent Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Consent Agreement shall be null and void if any term or condition of this Consent Agreement 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.

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

31. 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.

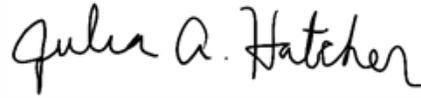
32. The Parties agree to bear their own costs and attorney's fees.

WE AGREE TO THIS:



Sandra Phillips Rogers, Group Vice President,
General Counsel, Chief Legal Officer,
Chief Diversity Officer and
Corporate Secretary
Toyota Motor North America, Inc.

Date: 9-8-20



Julia A. Hatcher, Attorney
Latham & Watkins
Counsel for
Toyota Motor North America, Inc.

Date: 9/9/20

WE AGREE TO THIS:

Digitally signed by DIANA
SAENZ
Date: 2020.09.14 22:48:17
-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=#68001003667163
Date: 2020.09.09 13:48:21 -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: 9/9/2020

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

<i>In the Matter of:</i>)	
Toyota Motor North)	
America, Inc.,)	
Respondent)	
)	

Docket No. TSCA-HQ-2020-5013

FINAL ORDER

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The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered¹.

By: _____
Environmental Appeals Board

Dated: _____

US-DOCS\117156714.3

¹ The three-member panel ratifying this matter is composed of Environmental Appeals Judges _____, _____, and _____.