

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

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**In the Matter of:**

**Kopin Display Corporation  
Westborough, MA**

**Respondent**

**Docket Number TSCA-HQ-2018-5002**

**AMENDED CIVIL COMPLAINT AND  
NOTICE OF OPPORTUNITY  
FOR HEARING**

**I. AMENDED COMPLAINT**

This Amended Complaint and Notice of Opportunity for Hearing (Amended Complaint) is filed pursuant to section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), 40 C.F.R. Part 22, a copy of which is enclosed with this Amended Complaint. The Complainant is Gregory Sullivan, Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency (EPA), who has been duly delegated the authority to institute this action.

The Respondent is the Kopin Display Corporation (Kopin), located at 125 North Drive, Westborough, MA 01581.

Complainant filed the original Complaint on November 16, 2017, alleging that Respondent violated the prohibited acts of section 15(2) of TSCA, 15 U.S.C. § 2614(2) as set forth below. Complainant amends that Complaint after receiving an email from Kopin's Counsel on December 8<sup>th</sup>, 2017, stating that the dates of violation provided to EPA were incorrect. His email stated, "my original e-mail supplying dates for the complaint was not accurate on this point due to my misunderstanding of what information was required."

### COUNT 1

1. Respondent is a corporation located at 125 North Drive, Westborough, MA 01581
2. Respondent 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.
3. Respondent uses chemical substances or mixtures or in the past has used chemical substances or mixtures addressed in this Amended Complaint as those terms are defined in TSCA § 3, 15 U.S.C. § 2602.
4. TSCA § 5, 15 U.S.C. § 2604, provides that "(1)(A) Except as provided in subparagraph (B) of this paragraph and subsection (h) of this section, no person may—(i) manufacture a new chemical substance on or after the 30th day after the date on which the Administrator first publishes the list required by section 2607 (b) of this title, . . . [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, of such person's intention to manufacture or process such substance and such person complies with any applicable requirement of, or imposed pursuant to, subsection (b), (e), or (f);"
5. In a letter dated July 14, 2016, Respondent informed EPA of a potential TSCA issue concerning a chemical substance that Respondent purchased from a chemical manufacturer. The chemical has been declared as Confidential Business Information and will be referenced in this matter by the unique "TS-number" provided by the Respondent - KC001W.
6. Respondent provided additional information to EPA on July 28, 2016 and October 27, 2016 disclosing to the Agency that it had used KC001W in commerce and that it had reason to know KC001W was not on the TSCA Inventory as required pursuant to TSCA § 5.
7. On December 8, 2017, Respondent informed EPA in writing that Respondent used KC001W for commercial purposes on 2 separate occasions during the time period from May 20, 2016 to June 7, 2016 with reason to know that the chemical was not on the TSCA Inventory.
8. From May 20, 2016 to June 7, 2016, KC001W did not appear on the TSCA Inventory.

9. Respondent's use of KC001W during the period from May 20, 2016 to June 7, 2016, constitutes a violation under TSCA § 15(2), 15 U.S.C. § 2614(2).
10. 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...of this title[.]"
11. 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).
12. 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.

## COUNT II

13. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
14. In a letter dated July 14, 2016, Respondent informed EPA of a potential TSCA issue concerning a chemical substance that Respondent purchased from a chemical manufacturer. The chemical has been declared as Confidential Business Information and will be referenced in this matter by the unique "TS-number" provided by the Respondent - KC002W.
15. Respondent provided additional information to EPA on July 28, 2016 and October 27, 2016 disclosing to the Agency that it had used KC002W in commerce and that it had reason to know KC002W was not on the TSCA Inventory as required pursuant to TSCA § 5.
16. On December 8, 2017, Respondent informed EPA in writing that Respondent used KC002W for commercial purposes on 2 separate occasions during the time period from May 20, 2016 to June 7, 2016 with reason to know that the chemical was not on the TSCA Inventory.
17. From May 20, 2016 to June 7, 2016, KC002W did not appear on the TSCA Inventory.
18. Respondent's use of KC002W during the period from May 20, 2016 to June 7, 2016, constitutes a violation under TSCA § 15(2), 15 U.S.C. § 2614(2).

19. 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...of this title[.]”
20. 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).
21. 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.

### **COUNT III**

22. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
23. In a letter dated July 14, 2016, Respondent informed EPA of a potential TSCA issue concerning a chemical substance that Respondent purchased from a chemical manufacturer. The chemical has been declared as Confidential Business Information and will be referenced in this matter by the unique “TS-number” provided by the Respondent - KC003W.
24. Respondent provided additional information to EPA on July 28, 2016 and October 27, 2016 disclosing to the Agency that it had used KC003W in commerce and that it had reason to know KC003W was not on the TSCA Inventory as required pursuant to TSCA § 5.
25. On December 8, 2017, Respondent informed EPA in writing that Respondent used KC003W for commercial purposes on 2 separate occasions during the time period from April 25, 2016 to April 26, 2016 with reason to know that the chemical was not on the TSCA Inventory.
26. From April 25, 2016 to April 26, 2016, KC003W did not appear on the TSCA Inventory.
27. Respondent's use of KC003W during the period from April 25, 2016 to April 26, 2016, constitutes a violation under TSCA § 15(2), 15 U.S.C. § 2614(2).

28. 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...of this title[.]”
29. 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).
30. 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.

#### COUNT IV

31. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
32. In a letter dated July 14, 2016, Respondent informed EPA of a potential TSCA issue concerning a chemical substance that Respondent purchased from a chemical manufacturer. The chemical has been declared as Confidential Business Information and will be referenced in this matter by the unique “TS-number” provided by the Respondent - KC004W.
33. Respondent provided additional information to EPA on July 28, 2016 and October 27, 2016 disclosing to the Agency that it had used KC004W in commerce and that it had reason to know KC004W was not on the TSCA Inventory as required pursuant to TSCA § 5.
34. On December 8, 2017, Respondent informed EPA in writing that Respondent used KC004W for commercial purposes on 2 separate occasions during the time period from April 25, 2016 to April 26, 2016 with reason to know that the chemical was not on the TSCA Inventory.
35. From April 25, 2016 to April 26, 2016, KC004W did not appear on the TSCA Inventory.
36. Respondent's use of KC004W during the period from April 25, 2016 to April 26, 2016, constitutes a violation under TSCA § 15(2), 15 U.S.C. § 2614(2).

37. 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...of this title[.]”
38. 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).
39. 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.

#### COUNT V

40. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
41. In a letter dated July 14, 2016, Respondent informed EPA of a potential TSCA issue concerning a chemical substance that Respondent purchased from a chemical manufacturer. The chemical has been declared as Confidential Business Information and will be referenced in this matter by the unique “TS-number” provided by the Respondent - KC005W.
42. Respondent provided additional information to EPA on July 28, 2016 and October 27, 2016 disclosing to the Agency that it had used KC005W in commerce and that it had reason to know KC005W was not on the TSCA Inventory as required pursuant to TSCA § 5.
43. On December 8, 2017, Respondent informed EPA in writing that Respondent used KC005W for commercial purposes on 2 separate occasions during the time period from April 25, 2016 to April 26, 2016 with reason to know that the chemical was not on the TSCA Inventory.
44. From April 25, 2016 to April 26, 2016, KC005W did not appear on the TSCA Inventory.
45. Respondent's use of KC005W during the period from April 25, 2016 to April 26, 2016, constitutes a violation under TSCA § 15(2), 15 U.S.C. § 2614(2).

46. 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...of this title[.]”
47. 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).
48. 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.

#### COUNT VI

49. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
50. In a letter dated July 14, 2016, Respondent informed EPA of a potential TSCA issue concerning a chemical substance that Respondent purchased from a chemical manufacturer. The chemical has been declared as Confidential Business Information and will be referenced in this matter by the unique “TS-number” provided by the Respondent - KC006W.
51. Respondent provided additional information to EPA on July 28, 2016 and October 27, 2016 disclosing to the Agency that it had used KC006W in commerce and that it had reason to know KC006W was not on the TSCA Inventory as required pursuant to TSCA § 5.
52. On December 8, 2017, Respondent informed EPA in writing that Respondent used KC006W for commercial purposes on 2 separate occasions during the time period from April 25, 2016 to April 26, 2016 with reason to know that the chemical was not on the TSCA Inventory.
53. From April 25, 2016 to April 26, 2016, KC006W did not appear on the TSCA Inventory.
54. Respondent's use of KC006W during the period from April 25, 2016 to April 26, 2016, constitutes a violation under TSCA § 15(2), 15 U.S.C. § 2614(2).



55. 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...of this title[.]”
56. 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).
57. 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.

#### **COUNT VII**

58. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
59. In a letter dated July 14, 2016, Respondent informed EPA of a potential TSCA issue concerning a chemical substance that Respondent purchased from a chemical manufacturer. The chemical has been declared as Confidential Business Information and will be referenced in this matter by the unique “TS-number” provided by the Respondent - KC007W.
60. Respondent provided additional information to EPA on July 28, 2016 and October 27, 2016 disclosing to the Agency that it had used KC007W in commerce and that it had reason to know KC007W was not on the TSCA Inventory as required pursuant to TSCA § 5.
61. On December 8, 2017, Respondent informed EPA in writing that Respondent used KC007W for commercial purposes on 2 separate occasions during the time period from April 25, 2016 to April 26, 2016 with reason to know that the chemical was not on the TSCA Inventory.
62. From April 25, 2016 to April 26, 2016, KC007W did not appear on the TSCA Inventory.
63. Respondent's use of KC007W during the period from April 25, 2016 to April 26, 2016, constitutes a violation under TSCA § 15(2), 15 U.S.C. § 2614(2).



64. 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...of this title[.]”
65. 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).
66. 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.

#### **COUNT VIII**

67. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
68. In a letter dated July 14, 2016, Respondent informed EPA of a potential TSCA issue concerning a chemical substance that Respondent purchased from a chemical manufacturer. The chemical has been declared as Confidential Business Information and will be referenced in this matter by the unique “TS-number” provided by the Respondent - KC008W.
69. Respondent provided additional information to EPA on July 28, 2016 and October 27, 2016 disclosing to the Agency that it had used KC008W in commerce and that it had reason to know KC008W was not on the TSCA Inventory as required pursuant to TSCA § 5.
70. On December 8, 2017, Respondent informed EPA in writing that Respondent used KC008W for commercial purposes on 2 separate occasions during the time period from May 20, 2016 to June 7, 2016 with reason to know that the chemical was not on the TSCA Inventory.
71. From May 20, 2016 to June 7, 2016, KC008W did not appear on the TSCA Inventory.
72. Respondent's use of KC008W during the period from May 20, 2016 to June 7, 2016, constitutes a violation under TSCA § 15(2), 15 U.S.C. § 2614(2).

73. 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...of this title[.]”
74. 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).
75. 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.

#### **COUNT IX**

76. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
77. In a letter dated July 14, 2016, Respondent informed EPA of a potential TSCA issue concerning a chemical substance that Respondent purchased from a chemical manufacturer. The chemical has been declared as Confidential Business Information and will be referenced in this matter by the unique “TS-number” provided by the Respondent - KC009W.
78. Respondent provided additional information to EPA on July 28, 2016 and October 27, 2016 disclosing to the Agency that it had used KC009W in commerce and that it had reason to know KC009W was not on the TSCA Inventory as required pursuant to TSCA § 5.
79. On December 8, 2017, Respondent informed EPA in writing that Respondent used KC009W for commercial purposes on 2 separate occasions during the time period from May 20, 2016 to June 7, 2016 with reason to know that the chemical was not on the TSCA Inventory.
80. From May 20, 2016 to June 7, 2016, KC009W did not appear on the TSCA Inventory.
81. Respondent's use of KC009W during the period from May 20, 2016 to June 7, 2016, constitutes a violation under TSCA § 15(2), 15 U.S.C. § 2614(2).

82. 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...of this title[.]”
83. 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).
84. 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.

#### COUNT X

85. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
86. In a letter dated July 14, 2016, Respondent informed EPA of a potential TSCA issue concerning a chemical substance that Respondent purchased from a chemical manufacturer. The chemical has been declared as Confidential Business Information and will be referenced in this matter by the unique “TS-number” provided by the Respondent - KC010W.
87. Respondent provided additional information to EPA on July 28, 2016 and October 27, 2016 disclosing to the Agency that it had used KC010W in commerce and that it had reason to know KC010W was not on the TSCA Inventory as required pursuant to TSCA § 5.
88. On December 8, 2017, Respondent informed EPA in writing that Respondent used KC010W for commercial purposes on 2 separate occasions during the time period from May 20, 2016 to June 7, 2016 with reason to know that the chemical was not on the TSCA Inventory.
89. From May 20, 2016 to June 7, 2016, KC010W did not appear on the TSCA Inventory.
90. Respondent's use of KC010W during the period from May 20, 2016 to June 7, 2016, constitutes a violation under TSCA § 15(2), 15 U.S.C. § 2614(2).

91. 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...of this title[.]”
92. 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).
93. 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.

#### COUNT XI

94. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
95. In a letter dated July 14, 2016, Respondent informed EPA of a potential TSCA issue concerning a chemical substance that Respondent purchased from a chemical manufacturer. The chemical has been declared as Confidential Business Information and will be referenced in this matter by the unique “TS-number” provided by the Respondent - KC011W.
96. Respondent provided additional information to EPA on July 28, 2016 and October 27, 2016 disclosing to the Agency that it had used KC011W in commerce and that it had reason to know KC011W was not on the TSCA Inventory as required pursuant to TSCA § 5.
97. On December 8, 2017, Respondent informed EPA in writing that Respondent used KC011W for commercial purposes on 2 separate occasions during the time period from May 20, 2016 to June 7, 2016 with reason to know that the chemical was not on the TSCA Inventory.
98. From May 20, 2016 to June 7, 2016, KC011W did not appear on the TSCA Inventory.
99. Respondent's use of KC011W during the period from May 20, 2016 to June 7, 2016, constitutes a violation under TSCA § 15(2), 15 U.S.C. § 2614(2).

100. 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...of this title[.]”
101. 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).
102. 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.

#### **COUNT XII**

103. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
104. In a letter dated July 14, 2016, Respondent informed EPA of a potential TSCA issue concerning a chemical substance that Respondent purchased from a chemical manufacturer. The chemical has been declared as Confidential Business Information and will be referenced in this matter by the unique “TS-number” provided by the Respondent - KC012W.
105. Respondent provided additional information to EPA on July 28, 2016 and October 27, 2016 disclosing to the Agency that it had used KC012W in commerce and that it had reason to know KC012W was not on the TSCA Inventory as required pursuant to TSCA § 5.
106. On December 8, 2017, Respondent informed EPA in writing that Respondent used KC012W for commercial purposes on 2 separate occasions during the time period from May 20, 2016 to June 7, 2016 with reason to know that the chemical was not on the TSCA Inventory.
107. From May 20, 2016 to June 7, 2016, KC012W did not appear on the TSCA Inventory.
108. Respondent's use of KC012W during the period from May 20, 2016 to June 7, 2016, constitutes a violation under TSCA § 15(2), 15 U.S.C. § 2614(2).

109. 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...of this title[.]”
110. 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).
111. 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.

### COUNT XIII

112. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
113. In a letter dated July 14, 2016, Respondent informed EPA of a potential TSCA issue concerning a chemical substance that Respondent purchased from a chemical manufacturer. The chemical has been declared as Confidential Business Information and will be referenced in this matter by the unique “TS-number” provided by the Respondent - KC013W.
114. Respondent provided additional information to EPA on July 28, 2016 and October 27, 2016 disclosing to the Agency that it had used KC013W in commerce and that it had reason to know KC013W was not on the TSCA Inventory as required pursuant to TSCA § 5.
115. On December 8, 2017, Respondent informed EPA in writing that Respondent used KC013W for commercial purposes on 2 separate occasions during the time period from May 20, 2016 to June 7, 2016 with reason to know that the chemical was not on the TSCA Inventory.
116. From May 20, 2016 to June 7, 2016, KC013W did not appear on the TSCA Inventory.
117. Respondent's use of KC013W during the period from May 20, 2016 to June 7, 2016, constitutes a violation under TSCA § 15(2), 15 U.S.C. § 2614(2).

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118. 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...of this title[.]”
119. 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).
120. 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.



## II. CIVIL PENALTY ASSESSMENT

Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty for violations of TSCA section 15, 15 U.S.C. § 2614, up to the maximum amount of \$37,500 for each day of violation.

For purposes of determining the amount of a civil penalty to be assessed, TSCA section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B) requires EPA to take into account the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's 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. In developing a proposed penalty, Complainant took into account the particular facts and circumstances of this case; the statutory factors set forth in TSCA section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B) and EPA's *TSCA Section 5 Enforcement Response Policy* (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 at 45 Fed. Reg. 59,770 (Sept. 10, 1980). The TSCA ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory factors to particular cases.

Based upon the facts alleged in this Amended Complaint, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's ability to pay, effect on ability to continue to do business, any history of prior such violations of TSCA, the degree of culpability, and such other matters as justice may require, the Complainant proposes that Respondent be assessed a penalty of *FORTY SEVEN THOUSAND AND SEVENTY THREE DOLLARS* (\$47,073) for the violation alleged in this Amended Complaint.

### **III. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

As provided in TSCA § 16(a)(2)(A), 15 U.S.C. § 2615(a)(2)(A), and consistent with 40 C.F.R. § 22.14, Respondent has the right to request a formal hearing to contest any material fact set forth in this Amended Complaint or to contest the appropriateness of the proposed penalty. To request a hearing pursuant to 40 C.F.R. § 22.15, Respondent must file a written Answer to the Amended Complaint with the Headquarters Hearing Clerk, within thirty (30) days of service of this Amended Complaint, at the following address:

Headquarters Hearing Clerk (1900L)  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice. Pursuant to the Consolidated Rules of Practice, 40 C.F.R. § 22.15, Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Amended Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

If Respondent fails to file a written Answer within thirty (30) days of service of this Amended Complaint, such failure shall constitute an admission of all facts alleged in the Amended Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in Complainant's filing of a Motion for Default Order imposing the penalties herein without further proceedings.

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney of record assigned to represent EPA in this matter:

Mark Garvey, Attorney-Advisor  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W. (Mail code 2249A)  
Washington, D.C. 20460

Telephone: (202) 564-4168  
E-mail: Garvey.Mark@epa.gov

#### **IV. INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the facts of this case, or amount of the penalty, and the possibility of settlement. An informal settlement conference does not, however, affect Respondent's obligation to file a timely written Answer to the Amended Complaint.

EPA has the authority, where appropriate, to modify the amount of the penalty, once determined, to reflect settlement reached with Respondent in an informal conference. The terms of such an agreement will be embodied in a Consent Agreement. A Consent Agreement signed by EPA and Respondent is binding. The terms and conditions specified in the Consent Agreement are binding upon issuance of a Final Order by the Environmental Appeals Board.

Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of this action with the Administrator, the members of the Environmental Appeals Board, the assigned Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the issuance of this Amended Complaint. See 40 C.F.R. § 22.8.

## **V. PAYMENT OF PENALTY**

Instead of filing an Answer, requesting a hearing, or requesting an informal settlement conference, Respondent may choose to pay the proposed penalty to resolve this matter pursuant to 40 C.F.R. § 22.18(a). Such payment should be made by sending either a cashier's or certified check with a notation of "**Kopin Display Corporation**," Penalty Docket No. "TSCA-HQ-2018-5002," payable to the order of the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Docket No. TSCA-HQ-2018-5002  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of "Kopin Display Corporation", Penalty Docket No. "TSCA-HQ-2018-5002" 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

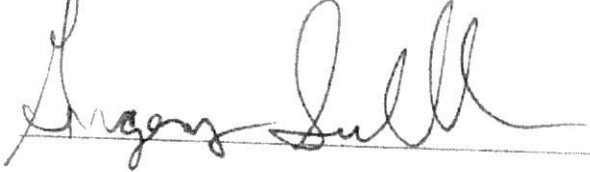
Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency." A copy of the check or other instrument of payment must be sent to the attorney of record assigned to represent EPA in this matter.

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

**TSCA-HQ-2018-5002**

**In the Matter of: Kopin Display Corporation**

By:

A handwritten signature in black ink, appearing to read "Gregory Sullivan", written over a horizontal line.

Date:

12/18/17

Gregory Sullivan, Director  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

**ATTACHMENT**

*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22.*


**CERTIFICATION**

I hereby certify that the original of the foregoing Amended Complaint and Notice of Opportunity for Hearing, Docket No. TSCA-HQ-2018-5002, has been filed with the Headquarters Hearing Clerk and that a copy was sent certified mail, return receipt requested to:

**Counsel authorized to receive service:**

Ronald J. Tenpas, Esq.  
Morgan. Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004-2541

Ronald.tenpas@morganlewis.com  
Direct Phone: 202-739-5435

  
\_\_\_\_\_  
Tony R. Ellis, Case Development Officer  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
U.S. Environmental Protection Agency (Mail Code 2249A)  
1200 Pennsylvania Avenue, NW, Room 4102D – WJC S.  
Washington, DC 20460

12-19-17  
\_\_\_\_\_  
Date