

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

IN THE MATTER OF:

**The Chemical Company  
44 Southwest Avenue  
Jamestown, RI 02835**

**Respondent**

**RECEIVED  
U.S. EPA, HEADQUARTERS**

**OCT 13 2017**

**ENVIRONMENTAL APPEALS BOARD**

**Docket No. TSCA-HQ-2017-5008**

**CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency (hereinafter "EPA" or the "Agency"), and Respondent, The Chemical Company, (hereinafter "Respondent") (collectively, the "Parties"), hereby enter into this Consent Agreement ("Agreement" or "Consent Agreement"), and the attached propose Final Order (collectively, the "CAFO") before the taking of any testimony and without adjudication of any issues of law or fact.

**I. PRELIMINARY STATEMENT**

1. This civil administrative proceeding for the assessment of penalties pursuant to section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Pub. L. No. 114-182, June 22, 2016, 130 Stat. 448, is being simultaneously commenced and concluded pursuant to Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22.
2. To avoid the disruption of orderly business activities and expense of litigation, Respondent, for purposes of this proceeding: (1) admits the jurisdictional allegations of this Consent Agreement, (2) neither admits nor denies the specific factual allegations contained in this Consent Agreement, (3) consents to the assessment of the civil penalty stated in this Consent Agreement, and (4) consents to the conditions specified in this CAFO.
3. The Respondent waives any defenses it might have as to jurisdiction.

*MB* 10/12/17

*M. G.* 10/13/17

## II. EPA's FINDINGS OF FACT AND LAW

4. Respondent, a corporation with its US headquarters located at 44 Southwest Avenue, Jamestown, RI 02835, is a "person" as defined in 40 C.F.R. § 704.3 and, as such, is subject to TSCA, 15 U.S.C. § 2601 *et seq.* and the regulations promulgated thereunder.
5. A "chemical substance" is defined by section 3(2)(A) of TSCA, 15 U.S.C. § 2602(2)(A), as "any organic or inorganic substance of a particular molecular identity...."
6. Respondent manufactures (which includes the import of) chemical substances or mixtures into the customs territory of the United States as those terms are defined in TSCA sections 3(9), 3(2), and 3(10), 15 U.S.C. §§ 2602(9), (2), and (10), respectively, and in 40 C.F.R. § 711.3.
7. Respondent manufactures, imports, processes, distributes in commerce, uses or disposes of the chemical substance identified in paragraph 13 or mixtures containing the chemical, or in the past has manufactured, imported, processed, distributed in commerce, used, or disposed of the chemical substance or mixtures containing it as the terms are defined in TSCA sections 3(9), 3(2), and 3(10), 15 U.S.C. §§ 2602(9), (2), and (10), respectively, and in 40 C.F.R. §§ 704.3 and 711.3. Respondent is subject to TSCA and regulations promulgated thereunder.

### COUNT I—TSCA § 8 VIOLATIONS

8. Section 8(a)(1)(A) of TSCA, 15 U.S.C. § 2607(a)(1)(A), requires EPA to promulgate rules under which each person who manufactures (including imports) a chemical substance, as defined by sections 3(9) and 3(2) of TSCA, 15 U.S.C. §§ 2602(9) and (2), respectively, must maintain records and "submit to the Administrator such reports, as the Administrator may reasonably require...."
9. The Chemical Data Reporting ("CDR") Rule, 40 C.F.R. Part 711, is a rule promulgated under authority of TSCA section 8(a), 15 U.S.C. § 2607(a).
10. Pursuant to 40 C.F.R. § 711.8(a), unless an exclusion applies, "[a]ny person who manufactured (including imported) for commercial purposes 25,000 pounds (11,340 kilograms(kg)) or more of a chemical substance [which is listed on the TSCA Master Inventory File] . . . at any single site owned or controlled by that person during the principal reporting year (i.e., calendar year 2011) is subject to reporting."
11. A person subject to 40 C.F.R. § 711.8(a) is required to electronically file using the eCDRweb submission tool to submit Form U to EPA pursuant to 40 C.F.R. § 711.35.
12. The deadline for Form U submissions for the 2012 CDR Rule reporting period was August 13, 2012; see 40 C.F.R. § 711.20, as amended in 77 Fed. Reg. 36,172 (June 18, 2012).

13. During calendar year 2011 (i.e., the principal reporting year under the 2012 CDR Rule), Respondent imported for commercial purposes 25,000 pounds (11,340 kilograms) or more of the following chemical substance:

| CASRN     | Chemical Name       |
|-----------|---------------------|
| 1310-58-3 | Potassium Hydroxide |

14. Respondent's failure to submit a Form U for the chemical substance listed in paragraph 13 by August 13, 2012 constitutes a failure to submit a report, notice, or other information as required by 40 C.F.R. § 711.20, which is a prohibited act under TSCA section 15(3)(B), 15 U.S.C. § 2614 (3)(B).
15. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or a rule thereunder.
16. A violation of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

### III. CIVIL PENALTY

17. Respondent agrees to pay a civil penalty of TWENTY THOUSAND FOUR HUNDRED SIXTY-EIGHT U.S. DOLLARS (\$20,468).
18. The penalty is consistent with the "*Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13*" (revised March 31, 1999; effective June 1, 1999) ("TSCA §§ 8, 12, and 13 ERP") and associated civil monetary penalty adjustments. The TSCA §§ 8, 12, and 13 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). The TSCA §§ 8, 12, and 13 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." Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).
19. Not more than thirty (30) calendar days after the Effective Date of the Final Order, Respondent shall either:
- A. Dispatch a cashier's or certified check in the amount of TWENTY THOUSAND FOUR HUNDRED SIXTY-EIGHT U.S. DOLLARS (\$20,468) made payable to the order of the "Treasurer of the United States of America", and bearing the Civil Penalty Docket No. "TSCA-HQ-2017-5008" to the following address:

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

*OR*

- B. Pay by wire transfer in the amount of \$20,468 with a notation of "The Chemical Company, Civil Penalty Docket No. TSCA-HQ-2017-5008" 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"

20. Concurrently with Paragraph 19A or 19B, Respondent shall forward a copy of the check or documentation of a wire transfer to the following address:

U.S. Environmental Protection Agency  
Office of Civil Enforcement  
Waste and Chemical Enforcement Division (2249A)  
Attn: Carolyn Bernota (Enforcement Officer)  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
Phone: (202) 564-4069  
E-mail: [bernota.carolyn@epa.gov](mailto:bernota.carolyn@epa.gov)

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

21. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.
22. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the Effective Date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. In accordance with 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, Respondent must pay the following amounts on any amount overdue:



- a. Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
  - b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen (\$15.00) on any late payment, with an additional charge of \$15.00 for each subsequent thirty (30) day period over which an unpaid balance remains.
  - c. Non-payment Penalty. On any portion of a civil penalty more than ninety (90) days past due, Respondent must pay a non-payment penalty charge of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. 40 C.F.R. § 13.11(c). This non-payment penalty charge is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).
23. Whenever this CAFO requires EPA to give notice or submit information to Respondent, such information shall be submitted to the address and to the attention of the individuals listed below:

Michael Boucher, Esq.,  
Partner  
Dentons US LLP  
1900 K Street NW  
Washington DC 20006-1102  
202-496-7729  
[Michael.Boucher@dentons.com](mailto:Michael.Boucher@dentons.com)

and

Robert N Roach, Jr., Chief Executive Officer  
The Chemical Company  
44 Southwest Avenue  
Jamestown, RI 02835

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

By written notice to EPA as specified in the address provided under Paragraph 20, Respondent may change the address and/or the person listed above.

#### **IV. RESERVATION OF RIGHTS AND COVENANT NOT TO SUE**

24. Full payment of the penalty proposed in this CAFO shall only resolve Respondent's liability for Federal civil penalties for violations alleged in this Consent Agreement.

25. 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. ✓
26. By executing this Consent Agreement, Respondent certifies, to the best of its knowledge and belief, after making reasonable inquiry that regarding the specific violations alleged above, Respondent is in compliance with section 8(a) of TSCA.
27. Compliance with this CAFO shall not be a defense to any subsequent action EPA may commence pursuant to federal law or regulation for violations occurring after the date of this Consent Agreement, or any violations of TSCA not alleged in this Consent Agreement that may have occurred prior to the date that this Consent Agreement is fully executed by both Parties.
28. 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.

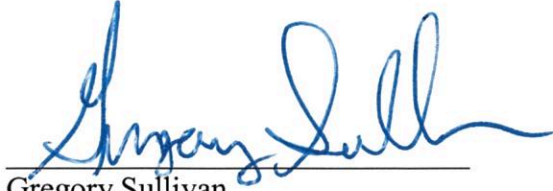
#### **V. OTHER MATTERS**

29. EPA and Respondent agree that Respondent has no obligations under this Consent Agreement should it be rejected by the Environmental Appeals Board ("EAB"); provided, however, that in the event that the EAB expresses any objections to, or its intent to reject this Consent Agreement, the Parties agree that they shall exercise their mutual best efforts to address and resolve the EAB objections. The Parties shall have the right to withdraw from this CAFO in the event they are unable to reach agreement on the EAB's proposed changes or objections.
30. This CAFO may be amended or modified only by written agreement executed by both the EPA and Respondent.
31. This Consent Agreement shall be binding upon the Parties, and their respective officers, directors, employees, successors, and assigns. The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to enter into this binding Consent Agreement.
32. This Consent Agreement shall take full effect upon the signing and filing of the Final Order by EPA's Environmental Appeals Board ("Effective Date").
33. Respondent's obligations under this Consent Agreement shall end when it has paid in full the scheduled civil penalty, paid any stipulated penalties, and submitted the documentation required by the CAFO.
34. All of the terms and conditions of this Consent Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Consent Agreement shall be null and void if any term or condition of this Consent Agreement is held invalid or is not executed by all of the signatory parties in identical form, or is not approved in such identical form by EPA's Environmental Appeals Board.

35. 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.
36. The Parties agree to bear their own costs and attorney's fees.

WE HEREBY AGREE TO THIS:

For Complainant:



Gregory Sullivan  
Director  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

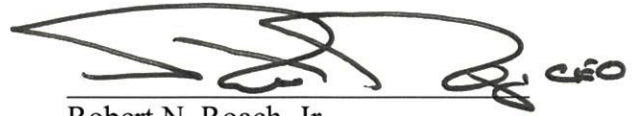
Date: 9/27/17



Mark Garvey, Attorney  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement (2249A)

9/25/17

For Respondent:



Robert N. Roach, Jr.  
Chief Executive Officer  
The Chemical Company  
44 Southwest Avenue  
Jamestown, RI 02835

Date: 9/12/17



Michael Boucher, Esq.,  
Partner  
Dentons US LLP

9/15/17



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