

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

Filed September 16, 2020 @ 4:33pm
USEPA – Region II
Regional Hearing Clerk

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In the Matter of :
: CONSENT AGREEMENT
Surpass Chemical Company, Inc., : AND
: FINAL ORDER
Respondent :
:
Proceeding under the Toxic Substances : Docket No.
Control Act, 15 USC §§ 2601-2697 et seq. : TSCA-02-2020-9244
as amended ("TSCA") :
:
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PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (hereinafter "Consolidated Rules"), provide in 40 C.F.R. § 22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 2 (hereinafter "EPA" or "Complainant"), alleges that Surpass Chemical Company, Inc. (hereinafter "Respondent"), violated Section 8(a) of TSCA, 15 U.S.C. § 2607(a), and the regulations promulgated pursuant to that Section, set forth at 40 C.F.R. Part 711, relating to requirements for Chemical Data Reporting ("CDR") and Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

EPA and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. §§ 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This Consent Agreement and Final Order is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made. The following constitute Complainant's findings of fact and conclusions of law.

FINDINGS OF FACT

1. Respondent is Surpass Chemical Company, Inc.
2. Respondent owns, operates, and/or controls a facility located at 1254 Broadway, Albany, NY 12204 ("Respondent's facility").
3. On September 19, 2019, EPA conducted an inspection of and at Respondent's facility ("the inspection").
4. As a result of the inspection, Respondent submitted to EPA certain information regarding the manufacturing, including importation, of chemical substances subject to TSCA.
5. According to the information described in paragraph 4, above, Respondent imported a chemical substance identified by the Chemical Abstracts Services Registration Number (CASRN) 7757-83-7 in volumes of 100,000 pounds or more per year during the period January 1, 2012 through December 31, 2015.
6. As a result of the inspection, EPA determined that Respondent failed to file a Form U (EPA Form 7740-8) for CASRN 7757-83-7 using EPA's eCDR web reporting tool during the time period June 1, 2016 through October 31, 2016, as required by 40 C.F.R. §§ 711.15 and 711.20.
7. On April 15, 2020, Respondent filed a Form U for CASRN 7757-83-7.
8. On June 25, 2020 and July 8, 2020, Complainant and Respondent conducted informal settlement conferences via telephone.

CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the facility which is the subject of this Consent Agreement and Final Order, is subject to the regulations and requirements pertaining to the reporting requirements promulgated pursuant to Section 8(a) of TSCA, 15 U.S.C. § 2607(a), and set forth at 40 C.F.R. Part 711.
2. Respondent is a "person" as that term is defined in 40 C.F.R. § 710.3.

3. Respondent is a “manufacturer” as that term is defined at 40 C.F.R. § 711.3.
4. Respondent’s facility is a “site” as that term is defined at 40 C.F.R. § 711.3.
5. The submission period for the 2016 CDR was June 1 through October 31, 2016.
6. CASRN 7757-83-7 was a “reportable chemical substance” as that term is defined at 40 C.F.R. § 711.3
7. Pursuant to 40 C.F.R. § 711.5, CASRN 7757-83-7 is a chemical substance for which information must be reported.
8. Failure to file a Form U (EPA Form 7740-8) for CASRN 7757-83-7 using EPA’s eCDR web reporting tool during the time period June 1, 2016 through October 31, 2016 is a violation of 40 C.F.R. §§ 711.15 and 711.20, which is a violation of TSCA Sections 8(a) and 15(3) of TSCA, 15 U.S.C. §§ 2607(a) and 2614(3), respectively.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the Consolidated Rules at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter comply with all applicable provisions of TSCA and the regulations promulgated pursuant to it.
2. For the purposes of this Consent Agreement, Respondent (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence a civil administrative proceeding for the violations alleged in the “Conclusions of Law” section, above; (b) neither admits nor denies the specific factual allegations contained in the “Findings of Fact” section, above; and (c) neither admits nor denies the assertions set forth in the “Conclusions of Law” section, above.
3. Respondent shall pay, by cashier’s or certified check, a civil penalty in the amount of **TWENTY-THREE THOUSAND FOUR HUNDRED FIFTY-THREE DOLLARS (\$23,453)** to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077

St. Louis, MO 63197-9000

Alternatively, payment may be made by Electronic Funds Transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment;
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045;
- 3) Account: 68010727;
- 4) ABA number: 021030004;
- 5) Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”;
- 6) Name of Respondent; and
- 7) Docket Number.

Payment must be received at the above address (or account of EPA) on or before **30 calendar days** from the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the “due date”).

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

3. Full payment of the penalty described in paragraph 2, above, shall fully and finally resolve Respondent’s liability for federal civil penalties for only the violation(s) and fact(s) described in the “Findings of Fact” and “Conclusions of Law” sections, above. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

4. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

5. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions contained in the “Findings of Fact” section, above, and the allegations contained in the “Conclusions of Law” section, above, or on any allegations arising thereunder.

6. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order. Respondent further waives any right it may have to appeal this Consent Agreement and the accompanying Final Order.

7. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent’s obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent’s obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

8. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

9. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA at Respondent’s facility.

10. Each party shall bear its own costs and fees in this matter.

11. Except as the parties may otherwise agree in writing, all documentation and information required to be submitted to EPA in accordance with the terms and conditions of this Consent Agreement shall be sent by electronic mail (unless not technically feasible given document type or size, then in hard copy) to:

Jesse A. Miller, Ph.D., Physical Scientist
U.S. Environmental Protection Agency, Region 2
Pesticides and Toxic Substances Compliance Branch
2890 Woodbridge Avenue, MS-105
Edison, NJ 08837
miller.jessea@epa.gov

Unless the above-named EPA contact is later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent by electronic mail at the following address:

Mr. Tyler Smith, General Manager
Surpass Chemical Company, Inc.
1254 Broadway
Albany, NY 12204
tsmith@surpasschemical.com

In cases where electronic mail is not feasible given document type or size, such correspondence will be mailed to Respondent.

12. Complainant shall send to Respondent (to the representatives designated in Paragraph 11, above), a copy of the fully executed Consent Agreement and Final Order. Respondent consents to service of the Consent Agreement and Final Order by electronic mail, and consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

13. EPA and Respondent agree that the parties may use electronic signatures for this matter.

RESPONDENT:

BY: Tyler Smith
Surpass Chemical Company, Inc.

NAME: _____
(PLEASE PRINT)

TITLE: _____

DATE: _____

COMPLAINANT:

for Dore LaPosta, Director
Enforcement and Compliance
Assurance Division
U.S. Environmental Protection
Agency, Region 2
290 Broadway
New York, New York 10007

DATE: _____

In the Matter of Surpass Chemical Company, Inc.
Docket Number TSCA-02-2020-9244

FINAL ORDER

The Regional Judicial Office of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Surpass Chemical Company, Inc., bearing Docket Number TSCA-02-2020-9244. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2 (40 C.F.R. § 22.31(b)).

DATE: _____

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007