



Gretchen Busterud
Acting Regional Counsel

Carol Bussey
Assistant Regional Counsel (ORC-2)
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3950

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

In the Matter of:)	Docket No. TSCA-09-2022-0083
)	
Transchem, Inc.,)	CONSENT AGREEMENT AND FINAL
)	ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 and 22.18
)	
<u>Respondent.</u>)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA"), Region IX and Transchem, Inc. ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously initiates and concludes this matter in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. §§ 22.13(b) and 22.18(b).

In the Matter of Transchem, Inc.

A. AUTHORITY AND PARTIES

1. This is a civil administrative penalty action initiated against Respondent pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for violation of Section 15 of TSCA by failing to comply with Sections 5(a)(2) and 8(a) of TSCA, 15 U.S.C. §§ 2604(a)(2) and 2607, and their implementing regulations promulgated at 40 C.F.R. Parts 711 and 721.

2. Complainant is the Manager of the Toxics Section in the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.

3. Respondent is a California corporation doing business at 5937 Darwin Court, Suite 104 in Carlsbad, California.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 8(a)(1)(A) of TSCA, 15 U.S.C. § 2607(a)(1)(A), provides that the EPA Administrator shall promulgate rules under which each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process a chemical substance shall maintain such records and shall submit to the Administrator such reports, as the Administrator may reasonably require.

5. 40 C.F.R. Part 710 establishes regulations governing reporting and recordkeeping by certain persons who manufacture, import, or process chemical substances for commercial purposes under TSCA Section

In the Matter of Transchem, Inc.

8(a) and applies to the activities associated with the compilation of the TSCA Chemical Substance Inventory ("TSCA Inventory") and the update of information on a subset of the chemical substances included on the TSCA Inventory.

6. 40 C.F.R. Part 711 specifies reporting and recordkeeping procedures under TSCA Section 8(a) for certain manufacturers (including importers) of chemical substances and applies to the activities associated with the periodic update of information on a subset of the chemical substances included on the TSCA Inventory.

7. 40 C.F.R. § 711.8(a) provides that, for the 2016 submission period, any person that is not a "small manufacturer," as defined by 40 C.F.R. § 704.3, who manufactured (including imported) for commercial purposes 25,000 lbs (11,340 kilograms [kg]) or more of a chemical substance described in § 711.5 at any single site owned or controlled by that person during calendar years 2012, 2013, 2014 and/or 2015 is subject to reporting.

8. Pursuant to 40 C.F.R. § 704.3, however, if the person had total annual sales of less than \$40 million but more than \$4 million during the principle reporting year (calendar year 2015), it is subject to reporting to EPA during the 2016 submission period only if it manufactured (including imported) for commercial purposes 100,000 lbs (45,400 kgs) or more of a chemical substance described in § 711.5 at any single site owned or controlled by that person during calendar years 2012, 2013, 2014 and/or 2015.

In the Matter of Transchem, Inc.

9. 40 C.F.R. § 711.5 provides that any chemical substance that is in the Master Inventory File at the beginning of a submission period must be reported unless exempt by § 711.6.

10. "Master Inventory File" means EPA's comprehensive list of chemical substances which constitutes the TSCA Inventory compiled under TSCA Section 8(b). 40 C.F.R. § 711.3.

11. "Person" means any natural or judicial person including any individual, corporation, partnership, or association, any State or political subdivision thereof, or a municipality, any interstate body and any department, agency, or instrumentality of the Federal Government. 40 C.F.R. §§ 710.3, 720.3 and 721.3.

12. "Manufacture or import 'for commercial purposes'" means to manufacture, produce, or import with the purpose of obtaining an immediate or eventual commercial advantage, and includes, for example, the manufacture or import of any amount of a chemical substance or mixture for commercial distribution, including test marketing, or for use by the manufacturer, including use for product research and development, or as an intermediate. 40 C.F.R. § 710.3.

13. The "site" for an importer who imports a chemical substance is the U.S. site of the operating unit within the person's organization that is directly responsible for importing the chemical substance. 40 C.F.R. § 711.3.

14. "Principal reporting year" means the latest complete calendar year preceding the submission period. 40 C.F.R. § 711.3.

15. 40 C.F.R. § 711.20 provides that all information reported to
In the Matter of Transchem, Inc.

EPA in response to the requirements of this part must be submitted during an applicable submission period. The 2016 CDR submission period is from June 1, 2016 to October 31, 2016.

16. 40 C.F.R. § 711.15 provides that, for the 2016 submission period, any person who must report under this part, as described in §§ 704.3 and 711.8, must submit the information described in this section for each chemical substance described in § 711.5 that the person manufactured (including imported) for commercial purposes in an amount of 100,000 lbs (45,400 kgs) or more at any one site during calendar years 2012, 2013, 2014, and/or 2015.

17. 40 C.F.R. § 711.15(a) provides that any person who reports information to EPA must do so using the e-CDRweb reporting tool provided by EPA at the address set forth in § 711.35 and must submit a separate "Form U" for each site for which the person is required to report.

18. 40 C.F.R. § 711.15(b)(3)(iii) provides that, for the principal reporting year, the total annual volume (in pounds) of each reportable chemical substance domestically manufactured or imported at each site must be reported; the total annual domestically manufactured volume (not including imported volume) and the total annual imported volume must be separately reported; and these amounts must be reported to two significant figures of accuracy.

19. Section 5(a)(2) of TSCA, 15 U.S.C. § 2604(a)(2), provides that "[a] determination by the Administrator that a use of a chemical substance is a significant new use with respect to which notification

In the Matter of Transchem, Inc.

is required under paragraph (1) shall be made by a rule promulgated after consideration of all relevant factors...”

20. 40 C.F.R. Part 721, Subpart A identifies uses of chemical substances that EPA has determined are significant new uses under section 5(a)(2) of TSCA and specifies procedures for manufacturers, importers, and processors to report on those significant new uses. 40 C.F.R. § 721.1(a).

21. 40 C.F.R. Part 721, Subpart E identifies chemical substances and their significant new uses. 40 C.F.R. § 721.1(a).

22. 40 C.F.R. § 721.5(a)(2) provides that a person who intends to manufacture, import, or process for commercial purposes a chemical substance identified in a specific section in subpart E of Part 721 and intends to distribute the substance in commerce must submit a significant new use notice to EPA as specified under the provisions of section 5(a)(1)(B) of TSCA, 40 C.F.R. Part 720 and 40 C.F.R. § 721.25.

23. 40 C.F.R. § 721.25(a) provides that each person who is required to submit a significant new use notice under Part 721 must submit the notice to EPA at least 90 calendar days before commencing manufacture, import, or processing of a chemical substance identified in subpart E of Part 721 for a significant new use.

24. TSCA Section 15(1)(C), 15 U.S.C. § 2614(1)(C), states that it unlawful for any person to fail or refuse to comply with any rule promulgated or order issued under section 2604 or 2605 of TSCA.

25. TSCA Section 15(3)(B), 15 U.S.C. § 2614(3)(B), states that it unlawful for any person to fail or refuse to submit reports, notices
In the Matter of Transchem, Inc.

or other information required by TSCA or a rule thereunder.

26. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation Adjustment Acts of 1990 and 2015, 28 U.S.C. § 2461, as amended, authorize civil penalties not to exceed \$43,611 per day for each violation of Section 15 of TSCA, 15 U.S.C. § 2614, that occurred after November 2, 2015 and assessed after January 12, 2022.

C. ALLEGATIONS

27. Respondent is a "person," as that term is defined at 40 C.F.R. §§ 710.3, 720.3, and 721.3.

28. At all times relevant to this CAFO, Respondent owned, operated or otherwise controlled a facility located at 2141 Palomar Airport Road in Carlsbad, California that imported and distributed chemical substances ("the Facility").

29. During calendar year 2015, the Facility was the "site" for Respondent, as that term is defined at 40 C.F.R. § 711.3.

30. At the Facility, Respondent "imported for commercial purposes," as that term is defined at 40 C.F.R. § 710.3, more than 100,000 lbs of Ethanol, 2-(2-butoxyethoxy) (CAS No. 112-34-5), Acetic Acid ethyl ester (CAS No. 141-78-6), Ethanol, 2-butoxy (CAS No. 111-76-2), Acetic Acid, butyl ester (CAS No. 123-86-4), Benzene, 1-chloro-4-(trifluoromethyl) (CAS No. 98-56-6), and Acetone (CAS No. 67-64-1) during calendar year 2015.

In the Matter of Transchem, Inc.

31. Ethanol, 2-(2-butoxyethoxy) (CAS No. 112-34-5), Acetic Acid ethyl ester (CAS No. 141-78-6), Ethanol, 2-butoxy (CAS No. 111-76-2), Acetic Acid, butyl ester (CAS No. 123-86-4), Benzene, 1-chloro-4-(trifluoromethyl) (CAS No. 98-56-6), and Acetone (CAS No. 67-64-1) are each a chemical substance that was in the Master Inventory File at the beginning of the 2016 submission period and not exempt by § 711.6, as described by 40 C.F.R. § 711.5.

32. During calendar year 2015, Respondent had total annual sales of less than \$40 million but more than \$4 million.

33. Accordingly, pursuant to 40 C.F.R. §§ 704.3, 711.8, 711.15 and 711.20, between June 1, 2016 and October 31, 2016, Respondent was required to and did submit a "Form U" to EPA for each of the chemical substances, Ethanol, 2-(2-butoxyethoxy) (CAS No. 112-34-5), Acetic Acid ethyl ester (CAS No. 141-78-6), Ethanol, 2-butoxy (CAS No. 111-76-2), Acetic Acid, butyl ester (CAS No. 123-86-4), Benzene, 1-chloro-4-(trifluoromethyl) (CAS No. 98-56-6), and Acetone (CAS No. 67-64-1), that it imported for commercial purposes during calendar year 2015.

34. For the principle reporting year, the total annual volume (in pounds) of each reportable chemical substance imported at the site must be reported to two significant figures of accuracy. 40 C.F.R. § 711.15(b)(3)(iii).

35. For calendar year 2015, Respondent submitted "Form U"s to EPA between June 1, 2016 to October 31, 2016 in which it failed to report the total annual volume (in pounds) of the chemical substances,

In the Matter of Transchem, Inc.

Ethanol, 2-(2-butoxyethoxy) (CAS No. 112-34-5), Acetic Acid ethyl ester (CAS No. 141-78-6), Ethanol, 2-butoxy (CAS No. 111-76-2), Acetic Acid, butyl ester (CAS No. 123-86-4), Benzene, 1-chloro-4-(trifluoromethyl) (CAS No. 98-56-6), and Acetone (CAS No. 67-64-1), imported at the Facility to two significant figures of accuracy.

36. Respondent's failures to report the total annual volume (in pounds of the chemical substances, Ethanol, 2-(2-butoxyethoxy) (CAS No. 112-34-5), Acetic Acid ethyl ester (CAS No. 141-78-6), Ethanol, 2-butoxy (CAS No. 111-76-2), Acetic Acid, butyl ester (CAS No. 123-86-4), Benzene, 1-chloro-4-(trifluoromethyl) (CAS No. 98-56-6), and Acetone (CAS No. 67-64-1), imported at the Facility to two significant figures of accuracy constitutes six (6) violations of 40 C.F.R. § 711.15(b) (3) (iii) and Section 15(3) (B) of TSCA, 15 U.S.C. § 2614(3) (B).

37. On or about September 5, 2017, Respondent distributed to a customer the chemical substance, 2-ethoxyethanol (CAS No. 110-80-5), that it imported with the intention to distribute the substance in commerce.

38. Pursuant to section 5(a) (2) of TSCA, 15 U.S.C. § 2604(a) (2), EPA promulgated a regulation at 40 C.F.R. § 721.10001 that identifies the chemical substance, 2-ethoxyethanol (CAS No. 110-80-5), as a chemical substance that requires notice to EPA under 40 C.F.R. § 721 for the significant new use of domestic use in a consumer product.

39. Consequently, Respondent was required to submit a significant new use notice to EPA under 40 C.F.R. §§ 721.5(a) (2) and 721.25(a)

In the Matter of Transchem, Inc.

before commencing import of the chemical substance, 2-ethoxyethanol (CAS No. 110-80-5) that it intended to distribute in commerce.

40. Respondent failed to submit a significant new use notice to EPA under 40 C.F.R. §§ 721.5(a)(2) and 721.25(a) before commencing import of the chemical substance, 2-ethoxyethanol (CAS No. 110-80-5) that it intended to distribute in commerce.

41. Respondent's failure to submit a significant new use notice to EPA under 40 C.F.R. §§ 721.5(a)(2) and 721.25(a) before commencing import of the chemical substance, 2-ethoxyethanol (CAS No. 110-80-5) that it intended to distribute in commerce constitutes one (1) violation of 40 C.F.R. §§ 721.5(a)(2) and 721.25(a) and Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

D. RESPONDENT'S ADMISSIONS

42. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C of this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

In the Matter of Transchem, Inc.

E. CIVIL ADMINISTRATIVE PENALTY

43. Respondent agrees to the assessment of a penalty in the amount of ONE HUNDRED, FORTY-SEVEN THOUSAND, SIX HUNDRED AND SEVENTEEN DOLLARS (\$147,617) as final settlement of the civil claims against Respondent arising under TSCA, as alleged in Section I.C of this CAFO.

44. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. Payment shall be made by certified or cashier's check, payable to "Treasurer, United States of America" or paid by one of the other methods listed below and sent as follows:

Regular Mail:

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

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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"

Certified or Overnight Mail:

U.S. Bank
1005 Convention Plaza

In the Matter of Transchem, Inc.

Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking
Physical location of US Treasury Facility
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

On-Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sfo 1.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

Concurrent with payment of the penalty, Respondent shall send a PDF copy of the check or the notification that payment has been made by one of the other methods listed above, including proof of the date payment was made, with a transmittal letter indicating Respondent's name, the case title, and docket number to the following email addresses:

- a) Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
r9HearingClerk@epa.gov
- b) Aisha Kennedy
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX
kennedy.aisha@epa.gov

In the Matter of Transchem, Inc.

45. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

46. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph 43 by the deadline specified in Paragraph 44, then Respondent shall pay to EPA a stipulated penalty of \$500 per day for each day that payment is late, in addition to the assessed penalty. Stipulated penalties shall accrue until the assessed penalty and all accrued stipulated penalties are paid and shall become due and payable upon written request by EPA. In addition, failure to pay the assessed penalty by the deadline specified in Paragraph 44 may lead to any or all of the following actions:

- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
- b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the

In the Matter of Transchem, Inc.

Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay in full the assessed penalty by the deadline specified in Paragraph 44. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred and will include both direct and indirect costs. 40 C.F.R. § 13.11(b).

In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. RESPONDENT'S CERTIFICATION

47. In executing this CAFO, Respondent certifies that it is now in compliance with TSCA Sections 5(a)(2) and 8(a) and federal regulations promulgated to implement Sections 5(a)(2) and 8(a) at 40 C.F.R. Parts 711 and 721.

G. RETENTION OF RIGHTS

48. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

In the Matter of Transchem, Inc.

49. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEYS' FEES AND COSTS

50. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE DATE

51. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

52. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

53. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

///

///

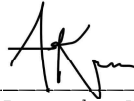
///

In the Matter of Transchem, Inc.

FOR RESPONDENT, TRANSCHEM, INC.

09/07/2022

DATE



Amada Krome
Vice-President, Operations
TRANSCHEM, INC.

FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX:

9/16/2022

DATE

MATTHEW
SALAZAR

Digitally signed by MATTHEW
SALAZAR
Date: 2022.09.16 10:09:56
-07'00'

Matt Salazar, P.E.
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION IX

In the Matter of Transchem, Inc.

II. FINAL ORDER

Complainant and Respondent, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2022-0083) be entered, and that Respondent shall pay a civil administrative penalty in the amount of ONE HUNDRED, FORTY-SEVEN THOUSAND, SIX HUNDRED AND SEVENTEEN DOLLARS (\$147,617) and comply with the terms and conditions set forth in the Consent Agreement. This Consent Agreement and Final Order shall become effective upon filing.

**STEVEN
JAWGIEL**

Digitally signed by STEVEN
JAWGIEL
Date: 2022.09.21 11:21:08
-07'00'

STEVEN L. JAWGIEL Date
Regional Judicial Officer
U.S. EPA - Region IX

In the Matter of Transchem, Inc.

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Transchem, Inc., (Docket No. TSCA-09-2022-0083) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties via electronic mail:

Respondents:

Amanda Krome
Vice President, Operations & Quality
Transchem, Inc.
5937 Darwin Court, Suite 104
Carlsbad, CA 92008
Amanda@transcheminc.com

Lisa R. Burchi
Bergeson & Campbell, P.C.
2200 Pennsylvania Avenue, NW, Suite 100W
Washington, D.C. 20037
LBurchi@lawbc.com

Complainant:

Carol Bussey
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Bussey.Carol@EPA.gov

Ponly J. Tu
Regional Hearing Clerk
U.S. EPA - Region IX