

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

In the Matter of:

Borealis Compounds, Inc,

Respondent.

Proceeding under Section 16(a) of the Toxic  
Substance Control Act, as amended, 15  
U.S.C. § 2615(a)

CONSENT AGREEMENT AND FINAL ORDER

Docket No. TSCA-02-2025-9126

**PRELIMINARY STATEMENT**

1. This civil administrative enforcement proceeding for the assessment of a civil penalty is being initiated pursuant to Section 16(a) of the Toxic Substances Control Act, as amended, 15 U.S.C. § 2615(a) (“TSCA”). The United States Environmental Protection Agency (“EPA” or “Agency”) has authority under the TSCA promulgated regulations governing, inter alia, the manufacture, processing, and use of chemical substances and mixtures in commerce.

2. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of EPA to enforce against persons who violate TSCA and its implementing regulations. It provides, in relevant part, that, “[a]ny person who violates a provision of Section 2614 or 2689 of this title [Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, respectively] shall be liable to the United States for a civil penalty....”

3. Complainant in this proceeding is the Director of the Enforcement and Compliance Assurance Division of EPA Region 2 and has been delegated the authority on behalf of the Administrator to enter into this Agreement.

4. Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, where the parties agree to settlement of 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 (“CAFO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

5. It has been agreed by the parties in this proceeding that settling this matter by entering into this Consent Agreement pursuant to 40 C.F.R. § 22.18(b)(2) constitutes an appropriate means of resolving EPA Region 2’s claims against Respondent without adjudication

of any issues of law or fact herein or further litigation.

### **STATUTORY BACKGROUND**

6. Pursuant to Section 15(1) of TSCA, 15 U.S.C. § 2614(1), it is unlawful for any person to fail to comply with the requirements of any rule promulgated, order issued, or consent agreement entered into under Subchapter I of TSCA (Control of Toxic Substances, 15 U.S.C. §§ 2601-2629). This includes compliance with the requirements of TSCA §§ 5 and 8, 15 U.S.C. §§ 2604 and 2607 (Manufacturing and Processing Notices and Reporting and Retention of Information, respectively) and the regulations promulgated thereunder.

7. Section 15(3) of TSCA, 15 U.S.C. § 2614(3) states that it is unlawful for any person to “fail or refuse to (A) establish or maintain records, (B) submit reports, notices, or other information, or (C) permit access to or copying of records,” as required by TSCA.

8. Section 5 of TSCA, 15 U.S.C. § 2604, and the associated regulations at 40 C.F.R. Part 721 establish the requirements for EPA approval to manufacture or process a chemical substance for a significant new use. Pursuant to 40 C.F.R. § 721.5(a), a person who intends to manufacture, import, or process for commercial purposes a chemical substance identified in a specific section in Subpart E of 40 C.F.R. Part 721 and intends to engage in a significant new use of the substance or distribute the substance in commerce (with certain exceptions) must submit a significant new use notice to EPA.

9. Section 8 of TSCA, 15 U.S.C. § 2607, and the associated regulations at 40 C.F.R. Part 711 establish the requirements that govern the reporting of chemical data. Pursuant to 40 C.F.R. § 711.8(a), any person who manufactured (including imported) for commercial purposes 25,000 pounds or more of a chemical substance in the Master Inventory File, see 40 C.F.R. § 711.5, at any single site owned or controlled by that person during any calendar year since the last principal reporting year as specified in 40 C.F.R. § 711.15 must report those chemicals to EPA. As published in 85 FR 75238, 2020 CDR submissions were due January 29, 2021.

10. Pursuant to § 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 19.4, any act in violation of TSCA § 15 constitutes a separate and distinct violation for which a person might be found liable to the United States for a civil penalty in an amount not to exceed \$46,989 for each such violation and each day such a violation continues.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11. Respondent is Borealis Compounds, Inc., a corporation existing under the laws of the State of Delaware. Respondent has been the owner and/or operator of a facility located at 176 Thomas Road, Port Murray, NJ 07865 (“Facility”) since 1997.

12. Operations at the Facility include polyethylene compounding for wire and cable products whereby materials are pelletized, packaged, and sold to customers.

13. For the period including calendar years 2016 through 2019 and continuing to the present, Respondent has been and continues to be a “person,” “manufacturer,” and “processor” as defined in 40 C.F.R. § 704.3.

14. On or about February 24, 2022, duly credentialed EPA staff conducted an inspection of the Facility in accordance with Section 11 of TSCA, 15 U.S.C. § 2610, to determine Respondent’s compliance with the reporting, recordkeeping, and notification requirements of TSCA. Following the inspection, Respondent provided EPA additional information that had been requested prior to and during the inspection.

### **Significant New Use Rule Violations**

15. From information provided during and following the inspection, EPA determined that between May 26, 2019 and August 18, 2021, Respondent processed a chemical substance for commercial purposes, herein referred to as “Chemical A”<sup>1</sup> (to protect Respondent’s claim that the identification of the chemical is TSCA confidential business information within the meaning of Section 14 of TSCA, 15 U.S.C. § 2613), on at least 10 occasions.

16. Chemical A is identified in a specific subsection of 40 C.F.R. Part 721 Subpart E and is subject to the significant new use reporting regulations at 40 C.F.R. § 721.5(a)(2).

17. The significant new uses identified in the specific subsection of Subpart E for Chemical A are, among others, Protection in the workplace (40 C.F.R. § 721.63) and Hazard communication program (40 C.F.R. § 721.72).

18. Respondent did not submit a significant new use notice to EPA prior to processing Chemical A at the Facility on 10 occasions between May 26, 2019 and August 18, 2021 and did not provide the necessary personal protective equipment and training to its employees for handling Chemical A.

19. Respondent’s failure to submit a significant new use notice prior to processing Chemical A at the Facility constitutes multiple violations of Section 15 of TSCA, 15 U.S.C. § 2614, for which a penalty may be assessed.

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<sup>1</sup> Attachment A to this Consent Agreement contains information on Chemical A, including the chemical name and CASRN, and is herein incorporated by reference. As Attachment A contains information claimed as TSCA CBI, it will not be filed with the Regional Hearing Clerk but will be included with the CAFO served on Respondent (to the individuals designated in Paragraph 25 below) via EPA’s Central Data Exchange (CDX) through the “TSCA Enforcement and Compliance Communications” application under the Program Service titled “CSPP: Submissions for Chemical Safety and Pesticides Programs.”

## Chemical Data Reporting (“CDR”) Violations

20. In one or more of the calendar years 2016 through 2019, Respondent manufactured (imported) at the Facility the following chemical substances, all listed on the Master Inventory, in reportable quantities:

	CASRN	Chemical Name
1	10081-67-1	Benzenamine, 4-(1-methyl-1-phenylethyl)-N-[4-(1-methyl-1-phenylethyl)phenyl]-
2	108-78-1	1,3,5-Triazine-2,4,6-triamine
3	1333-86-4	Carbon black
4	16415-12-6	Silane, hexadecyltrimethoxy-
5	593-85-1	Carbonic acid, compd. with guanidine (1:2)
6	6362-80-7	Benzene, 1,1'-(1,1-dimethyl-3-methylene-1,3-propanediyl)bis-
7	1309-42-8	Magnesium hydroxide (Mg(OH) <sub>2</sub> )
8	1592-23-0	Octadecanoic acid, calcium salt (2:1)
9	31570-04-4	Phenol, 2,4-bis(1,1-dimethylethyl)-, 1,1',1''-phosphite
10	6683-19-8	Benzenepropanoic acid, 3,5-bis(1,1-dimethylethyl)-4-hydroxy-, 1,1'-[2,2-bis[[3-[3,5-bis(1,1-dimethylethyl)-4-hydroxyphenyl]-1-oxopropoxy]methyl]-1,3-propanediyl] ester
11	68610-51-5	Phenol, 4-methyl-, reaction products with dicyclopentadiene and isobutylene
12	80-43-3	Peroxide, bis(1-methyl-1-phenylethyl)

21. At the time of EPA’s inspection at the Facility in February 2022, Respondent had not submitted the required 2020 Chemical Data Reporting information to EPA for the chemical substances listed above. Following EPA’s Facility inspection, Respondent submitted the required information.

22. Respondent’s manufacture and/or importation of each of the 12 chemical substances at its Facility in the calendar years 2016 through 2019 was subject to the reporting requirements of 40 C.F.R. Part 711.

23. Respondent’s failure to timely file a 2020 CDR for these 12 chemical substances constitutes 12 independently assessable violations of Section 15 of TSCA, 15 U.S.C. § 2614, for which a penalty may be sought.

### **CONSENT AGREEMENT**

24. Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the provisions of 40 C.F.R. Part 22, it is hereby agreed by and between Complainant and Respondent, and accepted by Respondent, for the purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense, or uncertainty of a formal adjudicatory hearing on the merits, that:

- a. Respondent admits that EPA Region 2 has jurisdiction under TSCA to prosecute this proceeding;
- b. Respondent neither admits nor denies the specific factual allegations set forth in the Findings of Fact and Conclusions of Law section above;
- c. Respondent consents to the assessment of the civil penalty as set forth below;
- d. Respondent agrees to comply with all applicable provisions of TSCA and its promulgated regulations;
- e. Respondent consents to the issuance of the Final Order incorporating all provisions of this Consent Agreement;
- f. Respondent waives any right it might possess to obtain judicial or administrative review of the Final Order accompanying this Consent Agreement; and
- g. Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

25. Respondent hereby certifies that, as of the date of its signature of this Consent Agreement and to the best of its knowledge and belief, the operations at the Facility are in full compliance with applicable TSCA requirements.

### **Penalty**

26. Respondent agrees to pay a civil penalty to EPA in the total amount of \$450,000 ("Assessed Penalty"). Payment shall be due 30 calendar days from the date on which the Regional Administrator of EPA Region 2 signs the Final Order accompanying this Consent Agreement ("the due date").

27. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

28. When paying the Assessed Penalty Respondent shall:

- a. Identify the payment with Respondent's name and the docket number of this Consent Agreement, TSCA-02-2025-9126.
- b. Concurrently with payment or within twenty-four (24) hours of payment, Respondent shall serve proof of such payment by email to the following persons:

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
[CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov)

Jesse Miller, Ph.D.  
EPA Region 2  
Enforcement and Compliance Assurance Division  
[Miller.JesseA@epa.gov](mailto:Miller.JesseA@epa.gov)

29. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

30. Interest, Charges, and Penalties on Late Payments. Pursuant to 15 U.S.C. § 2615, 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts:

- a. Interest: Interest begins to accrue from the date on which the Regional Administrator of EPA Region 2 signs the Final Order accompanying this Consent Agreement. If the Assessed Penalty is paid in full within 30 days, interest accrued is waived. If the Assessed Penalty is not paid in full within 30 days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the IRS large corporate underpayment rate, as any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges: Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to

cover the costs of handling any unpaid amounts for the first 30 day period after the date on which the Regional Administrator of EPA Region 2 signs the Final Order accompanying this Consent Agreement. Additional handling charges will be assessed each subsequent 30 days, or any portion thereof, until the unpaid portion of the Assessed Penalty, as well as any accrued interest penalties, and other charges are paid in full.

- c. Late Penalty Charge: A late penalty charge of six percent (6%) per year will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, or other charges, that remains delinquent more than ninety (90) calendar days.

31. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service ("IRS") for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Per 15 U.S.C. § 2615(a), the Attorney General will bring civil action in the appropriate district court to recover the full remaining balance of the debt plus interest. In such an action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

32. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

33. Form W-9. Pursuant to 26 U.S.C. § 6050X and 26 U.S.C. § 1.6050X-1, EPA is required to send to the IRS, annually, a completed Form 1098-F (Fines, Penalties), and Other Amounts" with respect to any court order or settlement agreement reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or the inquiry into the payor's potential violation of any law, including amounts paid for "restitution or

remediation of property” or to “come into compliance” with a law. EPA is further required to furnish a written statement, which represents the same information provided to the EPA, to each payor (*i.e.*, a copy of Form 1098-F). Failure to comply with providing IRS Form W-9, or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724 (d)(3) and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>.
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN.
- c. Respondent shall email its completed IRS Form W-9 to EPA’s Cincinnati Finance Center at [Wise.Milton@epa.gov](mailto:Wise.Milton@epa.gov) within 30 days after the Regional Administrator signs the Final Order ratifying this Agreement, and EPA recommends encrypting IRS Form W-9 email correspondence; and,
- d. In the event Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address, identified in the preceding subparagraph, shall further:
  - i. notify EPA’s Cincinnati Finance Center of this fact, via email, within 30 days from the date of the Regional Administrator’s signature of the Final Order, and
  - ii. provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s issuance and receipt of the TIN.

34. Full payment of the Assessed Penalty shall only resolve Respondent’s liability for federal civil penalties for the violations alleged in Paragraphs 15-23 herein. 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.

### **General Provisions**

35. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk via email to the following designated representatives:



David Paul  
Senior Legal Counsel, N.A., Borealis Compounds, Inc.  
2050 Sam Houston Pkwy, Ste. 1450  
Houston, TX 77042  
[Ajit.Paul@borealisgroup.com](mailto:Ajit.Paul@borealisgroup.com)

Gregory Mikut  
Head, Operations & HSE  
Borealis Compounds Inc.  
176 Thomas Road  
Port Murray, NJ 07865  
[Gregory.Mikut@borealisgroup.com](mailto:Gregory.Mikut@borealisgroup.com)

36. Receipt of the fully executed CAFO by Respondent's designated representative shall constitute Respondent's receipt and acceptance of the CAFO. Except as the parties may otherwise in writing agree, EPA shall send any future written communications related to this matter (including any correspondence related to payment of the penalty) to this designated representative.

37. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted to EPA in accordance with the terms and conditions of this CAFO shall be sent by email to:

Jesse Miller, Ph.D.  
U.S. Environmental Protection Agency, Region 2  
[Miller.JesseA@epa.gov](mailto:Miller.JesseA@epa.gov)

38. Respondent has read this Consent Agreement, understands its terms, and agrees that the provisions herein shall be binding upon Respondent and its successors and assigns. The signatory for Respondent certifies that: (a) they are duly and fully authorized to enter into and ratify this Consent Agreement and to accept the accompanying Final Order and all the terms, provisions, and requirements set forth in this CAFO, and (b) they are duly and fully authorized to bind the party on behalf of which they are entering this CAFO to comply with and abide by all the terms, provisions, and requirements of this CAFO.

39. This CAFO is not intended, and shall not be construed, to waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local laws or regulations, nor shall it be construed to be a ruling on or determination of any issue related to any federal, state, or local permit. The CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

40. Nothing in this document is intended or construed to waive, prejudice, or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy,

sanction or penalty prescribed by law against Respondent, if Respondent has made any material misrepresentations or has provided materially false information in any document submitted during this proceeding.

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

RESPONDENT:

DocuSigned by:  
*Eide Garcia*  
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Eide Garcia, President  
Borealis Compounds Inc.

COMPLAINANT:

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Kathleen Anderson, Director  
Enforcement and Compliance Assurance Division  
US EPA Region 2  
290 Broadway  
New York, NY 10007  
Anderson.Kate@epa.gov

## **FINAL ORDER**

The Regional Administrator of the United States Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Borealis Compounds, Inc.* bearing Docket No. TSCA-02-2025-9126. The Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under authority of Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

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Lisa F. Garcia  
Regional Administrator  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 26<sup>th</sup> Floor  
New York, New York 10007-1866

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, by email to the following without Attachment A:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency- Region 2  
[Maples.Karen@epa.gov](mailto:Maples.Karen@epa.gov)

David Fotouhi  
Counsel for Respondent  
Gibson, Dunn & Crutcher LLP  
[DFotouhi@gibsondunn.com](mailto:DFotouhi@gibsondunn.com)

David Paul  
Senior Legal Counsel, N.A.  
Borealis Compounds, Inc.  
[Ajit.Paul@borealisgroup.com](mailto:Ajit.Paul@borealisgroup.com)

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER with Attachment A via CDX to:

Gregory Mikut  
Head, Operations & HSE  
Borealis Compounds Inc.  
[Gregory.Mikut@borealisgroup.com](mailto:Gregory.Mikut@borealisgroup.com)

Signature: \_\_\_\_\_

ATTACHMENT A

Contains TSCA-CBI and accessible only as authorized