

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Atotech USA, LLC

Respondent.

Docket No. **TSCA-04-2023-3002(b)**

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 16(a) of the Toxic Substances Control Act (TSCA or the Act), 15 U.S.C. § 2615(a), and Sections 22.13(b) and 22.18 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 16(a) of TSCA, 15 U.S.C. § 2615(a).
5. Respondent is Atotech USA, LLC, a limited liability company doing business in the State of South Carolina. This proceeding pertains to Respondent's facility located at 1750 Overview Drive, Rock Hill, South Carolina 29730 (Facility).

III. GOVERNING LAW

6. Pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for any person to, inter alia: (1) fail or refuse to comply with any rule or order promulgated pursuant to Sections 4 and 8 of TSCA, 15 U.S.C. §§ 2603 and 2607; or (2) fail or refuse to establish or maintain records, submit reports, notices, or other information, or permit access to or copying of records, as required by TSCA or a rule thereunder.
7. Pursuant to Section 8(a) of TSCA, 15 U.S.C. § 2607(a), the EPA promulgated rules pertaining to general recordkeeping and reporting requirements at 40 C.F.R. Part 704. According to 40 C.F.R. § 704.3, “Definitions,” in addition to the definitions set forth in 40 C.F.R. § 704.3, all definitions set forth in Section 3 of TSCA also apply to 40 C.F.R. Part 704 rules.
8. The term “person” is defined in 40 C.F.R. § 704.3, to include any individual, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government.
9. The term “importer” is defined in 40 C.F.R. § 704.3, to mean any person who imports any chemical substance or any chemical substance as part of a mixture or article into the customs territory of the United States.
10. The term “import” is defined in 40 C.F.R. § 704.3, to mean to import for commercial purposes.
11. The term “import for commercial purposes” is defined in 40 C.F.R. § 704.3, to mean to import with the purpose of obtaining an immediate or eventual commercial advantage for the importer and includes the importation of any amount of a chemical substance or mixture.
12. The term “manufacturer” is defined in 40 C.F.R. § 704.3, to mean a person who imports, produces, or manufactures a chemical substance. A person who extracts a component chemical substance from a previously existing chemical substance or a complex combination of substances is a manufacturer of that component chemical substance.
13. The term “manufacture” is defined in 40 C.F.R. § 704.3, to mean to manufacture for commercial purposes.
14. The term “manufacture for commercial purposes” is defined in 40 C.F.R. § 704.3, to mean to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and includes among other things, such “manufacture” of any amount of a chemical substance or mixture: (i) for commercial distribution, including for test marketing; or (ii) for use by the manufacturer, including use for product research and development, or as an intermediate.
15. Pursuant to Section 8(a) of TSCA, 15 U.S.C. § 2607(a), the EPA promulgated rules pertaining to Chemical Data Reporting (CDR) found at 40 C.F.R. Part 711. According to 40 C.F.R. § 711.3, “Definitions,” in addition to the definitions specified in 40 C.F.R. § 711.3, all definitions in Section 3 of TSCA and in 40 C.F.R. Part 704 apply to 40 C.F.R. Part 711 rules.
16. Section 8(b) of TSCA, 15 U.S.C. § 2607(b), requires the EPA to compile, keep current and publish a list of each chemical substance that is manufactured or processed, including imports, in the United

States for uses under TSCA. The list is known as the “TSCA Inventory” or the TSCA “Master Inventory File” as that term is defined in 40 C.F.R. § 711.3.

17. Pursuant to 40 C.F.R. § 711.5, any chemical substance that is in the TSCA Master Inventory File at the beginning of a submission period described in 40 C.F.R. § 711.20 must be reported pursuant to the CDR requirements under Section 8(a) of TSCA and 40 C.F.R. Part 711, unless the chemical substance is specifically excluded by 40 C.F.R. § 711.6.
18. 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 described in 40 C.F.R. § 711.5, at any single site owned or controlled by that person, in any of the calendar years 2016, 2017, 2018, or 2019, is subject to the CDR requirements for the 2020 submission period.
19. As referenced in 40 C.F.R. § 711.15, any person who is subject to 40 C.F.R. § 711.8 must submit the information described in 40 C.F.R. § 711.15(a) for each chemical substance described in 40 C.F.R. § 711.5 that the person manufactured (including imported) for commercial purposes in an amount of 25,000 lbs (11,340 kgs) or more, or in an amount of 2,500 lbs (1,134 kgs) or more for chemical substances subject to the rules, orders, or actions described in 40 C.F.R. § 711.8(b), at any one site during any calendar year since the last principal reporting year.
20. The term “principal reporting year” is defined in 40 C.F.R. § 711.3 to mean the latest complete calendar year preceding the submission period.
21. Pursuant to 40 C.F.R. § 711.20, the 2020 submission period ran from June 1, 2020, until January 29, 2021, and 2020 CDR Reports were required to have been submitted to the EPA during that time period.
22. Pursuant to Section 4 of TSCA, 15 U.S.C. § 2603, and 40 C.F.R. Part 799, manufacturers, importers, or processors must either (1) submit to the EPA a letter of intent to test chemical substances and mixtures and submit the results to the EPA, or (2) apply to and obtain from the EPA an exemption from testing for the chemical substances and mixtures that are subject to TSCA Section 4 and for which EPA has promulgated test rules set forth in Part 799.
23. Any information Respondent has claimed as Confidential Business Information (CBI) which may support or form the basis for this CAFO has been intentionally left out. To determine the identity of the chemical substances (Chemical C and Chemical E) referenced in this CAFO or to identify other information designated as CBI, Respondent and/or Complainant should refer to the letter dated September 16, 2022, sent to Respondent identifying violations of TSCA and notifying Respondent of the opportunity to show cause why the EPA should not proceed with an enforcement action.

IV. FINDINGS OF FACTS

24. Respondent is a person as defined in 40 C.F.R. § 704.3. Respondent engages in chemical manufacturing, processing, exporting, and importing.
25. On February 12, 2021, the EPA sent Respondent a letter requesting Respondent submit certain records to the EPA in lieu of the EPA conducting an inspection of Respondent’s Facility for the purpose of determining whether the Facility was in compliance with Sections 4, 5, 8, 12, and 13 of the TSCA.
26. On May 19, 2021, and June 16, 2021, Respondent submitted certain records to the EPA in response

to EPA's request, including import, manufacture, and export records. Following its review of Respondent's records, the EPA contacted Respondent on January 24, 2022, via email, requesting additional information. Respondent submitted a letter to the EPA on March 15, 2022, providing the requested information.

27. Based on a review of Respondent's records, the EPA issued Respondent an Opportunity to Show Cause on September 16, 2022 identifying potential violations of TSCA Section 4 pertaining to the intent to test or exemption from testing requirements and TSCA Section 8 pertaining to CDR reporting. On October 28, 2022, Respondent provided additional information to the EPA in response to the Show Cause letter. On December 16, 2022, Respondent provided a letter to the EPA supplementing its October 28, 2022 letter.

Chemical Data Reporting for Chemical C (CBI Deleted)

28. A review of Respondent's 2016 - 2019 manufacturing records revealed that Respondent manufactured a reportable quantity (greater than 25,000 pounds) of Chemical C for commercial purposes in 2016.
29. Chemical C was in the TSCA Master Inventory File at the beginning of a submission period described in 40 C.F.R. § 711.20 and is not specifically exempted from some or all the CDR reporting requirements by 40 C.F.R. § 711.6.
30. Pursuant to 40 C.F.R. § 711.15, Respondent was required to submit a 2020 CDR Report to the EPA for reportable chemical substances that were manufactured (including imported) for commercial purposes in quantities greater than 25,000 pounds in calendar years 2016, 2017, 2018, and 2019 by no later than the end of the 2020 CDR submission period, which was January 29, 2021. Chemical C is a reportable chemical substance subject to the 2020 CDR.
31. During the 2020 CDR period, Respondent submitted to the EPA a 2020 CDR Report for certain other chemicals that were imported and manufactured for commercial purposes but failed to include Chemical C in the 2020 CDR Report.
32. On October 28, 2022, Respondent submitted an amended 2020 CDR Report that included Chemical C.

Intent to test or exemption from testing for Chemical E (CBI Deleted)

33. A review of the Facility's 2016 - 2019 import records showed that Respondent imported three shipments of Chemical E in 2016, 2017, 2018.
34. Chemical E is subject to a test rule promulgated by the EPA on [CBI deleted] pursuant to Section 4 of TSCA and 40 C.F.R. Part 799.[CBI Deleted]. The effective date of Chemical E's final test rule was [CBI deleted].
35. During the import period, Chemical E was subject to a test rule as indicated in paragraph 34.
36. Based on the import dates, Respondent was required to submit to the EPA either a letter of intent to test or an application for an exemption from testing for Chemical E no later than September 7, 2016 (first import date).
37. Respondent failed to submit the letter or application by no later than September 7, 2016 but

submitted an application for an exemption from testing on October 28, 2022.

V. ALLEGED VIOLATIONS

38. Based on the EPA's investigation, including a review of Respondent's records as set forth above, the EPA alleges that Respondent failed to:
- a. Include Chemical C in its 2020 CDR Report in violation of 40 C.F.R. § 711.15; and
 - b. Submit a letter of intent to test or an application for an exemption from testing Chemical E by no later than September 7, 2016 (the first import date) in violation of 40 C.F.R. Part 799.

VI. STIPULATIONS

39. Pursuant to 40 C.F.R. § 22.13(b), the issuance of this CAFO simultaneously commences and concludes this proceeding.
40. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
 - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the conditions specified in this CAFO;
 - e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
 - f. waives its rights to appeal the Final Order accompanying this CAFO.
41. For the purpose of this proceeding, Respondent:
- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
 - b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - c. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
 - d. certifies that as of the date of Respondent's signature on this CAFO, Respondent has corrected the violations alleged in this CAFO and is now, to the best of its knowledge after reasonable inquiry, operating in compliance with all relevant requirements of TSCA and its implementing regulations;

- e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
- f. agrees to comply with the terms of the CAFO.

42. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

43. Respondent is assessed a civil penalty of **FORTY-SIX THOUSAND DOLLARS (\$46,000.00)**, which shall be paid within thirty (30) days of the Effective Date.

44. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and Docket Number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Environmental Protection Agency
Government Lockbox 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: Environmental Protection Agency

If paying by ACH, Respondent shall remit payment to:

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, Maryland 20737
Remittance Express (REX): 1-877-372-2457

45. Respondent shall send proof of payment electronically, within twenty-four (24) hours of payment of the civil penalty, to:

Regional Hearing Clerk
U.S. EPA Region 4
R4_Regional_Hearing_Clerk@epa.gov

and

Gopal Timsina
Chemical Safety and Land Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. EPA Region 4
timsina.gopal@epa.gov

46. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the Facility name and Docket No. TSCA-04-2023-3002(b).

47. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require Respondent to pay the following amounts on any amount overdue:

- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within thirty (30) days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within thirty (30) days of the Effective Date of this CAFO, interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
- b. Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment

as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).

- c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(c) and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.

48. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- a. refer the debt to a credit reporting agency or a collection agency, 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 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 Internal Revenue Service for offset against income tax refunds, 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 the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
- d. request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above. In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review, Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

49. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

50. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

51. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law, 40 C.F.R. § 22.18(c).

52. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 16(a) of the Act, 42 U.S.C. § 2615(a), as well as criminal sanctions as provided in Section 16(b) of the Act, 42 U.S.C. § 2615(b). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

53. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to

seek compliance with any applicable 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, except as expressly provided herein.

54. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
55. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
56. 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.
57. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
58. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential information under Section 14 of TSCA, 42 U.S.C. § 2613, and 40 C.F.R. Part 2 and the Freedom of Information Act (FOIA), or personally identifiable information.
59. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
60. By signing this Consent Agreement, both Parties agree that each Party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
61. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
62. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
63. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other party or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
64. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees,

costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE

65. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

[Remainder of the Page Intentionally Left Blank

Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement in the Matter of **Atotech USA, LLC**, Docket No. **TSCA-04-2023-3002(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



Signature

06/15/2023

Date

Printed Name: John Kochilla

Title: VP Americas & Managing Director North America

Address: 1750 Overview Drive, Rock Hill SC, 29730

The foregoing Consent Agreement in the Matter of **Atotech USA, LLC**, Docket No. **TSCA-04-2023-3002(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

for

Keriema S. Newman
Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Atotech USA, LLC

Respondent.

Docket No. **TSCA-04-2023-3002(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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.

Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **Atotech USA, LLC**, Docket No. **TSCA-04-2023-3002(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all Parties at the following email addresses:

To Respondent: Gregory Wall
Partner
Hunton Andrews Kurth LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
gwall@hunton.com

To EPA: Gopal Timsina
Case Development Officer
timsina.gopal@epa.gov

Ximena Vasquez
Assistant Regional Counsel
vasquez.maria-ximena@epa.gov

Robert Caplan
Senior Attorney
caplan.robert@epa.gov

Shannon L. Richardson
Regional Hearing Clerk
U.S. Environmental Protection Agency,
Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960