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Dec 11, 2024

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**U.S. EPA REGION 4
HEARING CLERK**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

DyStar L.P.

Respondent.

Docket No. TSCA-04-2024-6010(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 Respondent's admission of violation or 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 (EPA), 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 DyStar L.P., a limited partnership doing business in the State of North Carolina. This proceeding pertains to Respondent's facility located at 209 Watlington Industrial Drive, Reidsville, North Carolina 27320 (Facility).

III. GOVERNING LAW

6. 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 commonly known as the “TSCA Inventory” but is also referred to as the TSCA “Master Inventory File” as defined in 40 C.F.R. § 711.3.
7. Pursuant to Section 15(1) of TSCA, 15 U.S.C. § 2614(1), it is unlawful for any person to fail or refuse to comply with any rule or order promulgated pursuant to Sections 5 and 13 of TSCA, 15 U.S.C. §§ 2604 and 2612. Pursuant to Section 15(3) of TSCA, 15 U.S.C. § 2614(3), it is unlawful to fail to submit notices as required by TSCA or a rule issued thereunder.
8. Pursuant to Section 5(a)(1) of TSCA, 15 U.S.C. § 2604(a)(1), and 40 C.F.R. §§ 720.22 and 720.40(b), any person who intends to manufacture a new chemical substance in the United States for commercial purposes must submit a premanufacturing notice (PMN) at least 90 calendar days before the manufacture or import of the new chemical substance for commercial purposes begins, unless the substance is excluded under 40 C.F.R. § 720.30 or exempted at 40 C.F.R. Part 723.
9. 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.
10. The term “manufacturer” is defined in 40 C.F.R. § 704.3, to mean a person who imports, produces, or manufactures a chemical substance.
11. The term “manufacture” is defined in 40 C.F.R. § 704.3, to mean to manufacture for commercial purposes.
12. 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.
13. 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.
14. The term “import” is defined in 40 C.F.R. § 704.3, to mean to import for commercial purposes.
15. 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.

16. Pursuant to 40 C.F.R. § 720.3(v) and 40 C.F.R. § 720.25(a), a chemical substance that is not listed on the TSCA Inventory is classified as a new chemical substance.
17. Pursuant to 40 C.F.R. 720.120(b), a person who manufactures a new chemical substance before a PMN is submitted and the PMN review period expires is in violation of Section 15 of the Act even if that person was not required to submit the PMN under 40 C.F.R. § 720.22.
18. Section 13(a)(1)(B) of TSCA, 15 U.S.C. § 2612(a)(1)(B), provides that the Secretary of the Treasury shall refuse entry into the customs territory of the United States of any chemical substance, mixture, or article containing a chemical substance or mixture offered for such entry if: (i) it fails to comply with any rule in effect under TSCA; or (ii) it is offered for entry in violation of Section 5 of TSCA, 15 U.S.C. § 2604, or a rule or order issued under Section 5 of TSCA.
19. Pursuant to Section 13(b) of TSCA, 15 U.S.C. § 2612(b), the Secretary of the Treasury, in consultation with the Administrator of the EPA, promulgated rules for the administration of Section 13(a) of TSCA concerning the importation of chemicals, codified at 19 C.F.R. §§ 12.118 – 12.127.
20. Pursuant to 19 C.F.R. § 12.121(a)(1), the importer or the authorized agent of such an importer of a TSCA chemical substance in bulk form or as part of a mixture, must certify in writing or electronically that the chemical shipment complies with all applicable rules and orders under TSCA, by filing with Customs and Border Protection (CBP) the following statement: “I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.”
21. At 40 C.F.R. § 707.20, the EPA sets forth its policy statement regarding importation of chemical substances, mixtures, and articles under Section 13 of TSCA and includes further explanation of the import regulations promulgated at 19 C.F.R. § 12.118 *et seq.* pursuant to Section 13(b) of TSCA.
22. Any information Respondent has claimed as Confidential Business Information which may support or form the basis for this CAFO has been intentionally redacted. To determine the identity of the chemical substance referenced in this CAFO (Chemical A), or to identify any other information designated as CBI, Respondent and/or Complainant should refer to the Opportunity to Show Cause letter dated March 21, 2024, sent to Respondent identifying potential 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

23. Respondent is a person as defined in 40 C.F.R. § 704.3. Respondent engages in chemical manufacturing, processing, exporting, and importing.

24. On February 2, 2024, Respondent voluntarily submitted certain records to the EPA at the request of the EPA in lieu of the EPA conducting an on-site inspection of Respondent's Facility.
25. On March 21, 2024, after reviewing the records submitted by Respondent, the EPA issued Respondent an Opportunity to Show Cause letter identifying potential violations of Sections 5, 13, and 15 of TSCA, 15 U.S.C. §§ 2604, 2612, and 2614, arising from Respondent's apparent failure to comply with the PMN regulations under 40 C.F.R. Part 720, and the import certification requirements found under 19 C.F.R. § 12.121, as restated in 40 C.F.R. § 707.20. On April 19, 2024, Respondent provided additional information to the EPA in response to the Opportunity to Show Cause letter.

Premanufacture Notice for Chemical A [CBI Deleted]

26. The information submitted by Respondent established that Respondent failed to submit a PMN at least 90 calendar days before the first date of import of Chemical A for commercial purposes in 2019, and that Respondent imported Chemical A on eight occasions between 2019 and 2023 for commercial purposes.
27. At the time Respondent imported Chemical A between 2019 and 2023, the chemical substance was not included in the TSCA Inventory, and therefore was a "new chemical substance" pursuant to 40 C.F.R. § 720.3(v). At the time of import, Chemical A was neither excluded under 40 C.F.R. § 720.30 nor exempted pursuant to 40 C.F.R. Part 723.

Certification Requirements for Chemical A [CBI Deleted]

28. On each occasion when Respondent imported Chemical A between 2019 and 2023, Respondent filed a written certification that the import complied with all applicable rules under TSCA. Respondent asserts it made these certifications in reliance on documentation provided by the supplier of Chemical A. However, because the imported chemical substance had in fact been subject to PMN requirements, and Respondent had not submitted a PMN as required by the rules found at 40 C.F.R. Part 720, Respondent's certification was incorrect and was not in compliance with the requirements of 19 C.F.R. § 12.121.

V. ALLEGED VIOLATIONS

29. Based on the EPA's review of Respondent's records as set forth above, the EPA alleges that Respondent violated TSCA by:
- a. Failing to submit a PMN at least 90 calendar days before importing Chemical A, a new chemical substance, in violation of 40 C.F.R. §§ 720.22, 720.40(b), and 720.120(b), and Sections 5(a)(1) and 15(3) of TSCA, 15 U.S.C. §§ 2604(1)(1) and 2614(3); and
 - b. Submitting incorrect certifications that its importations of Chemical A were in compliance with TSCA, in violation of 19 C.F.R. § 12.121(a)(1), and Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

VI. STIPULATIONS

30. Pursuant to 40 C.F.R. § 22.13(b), the issuance of this CAFO simultaneously commences and concludes this proceeding.

31. 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 specific 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.

32. 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. 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;
- e. 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 this Consent Agreement;

f. by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected; and

g. agrees to comply with the terms of this CAFO.

33. 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

34. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **FORTY-THREE THOUSAND EIGHT HUNDRED DOLLARS (\$43,800)**, which is to be paid within thirty (30) days of the Effective Date of this CAFO.

35. Respondent shall pay the civil penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the following EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. In addition, Respondent shall identify every payment with Respondent's name and the docket number of this CAFO, Docket No. TSCA-04-2024-6010(b).

36. 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

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
cinwd_acctsreceivable@epa.gov

37. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or Automated Clearing House 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 Facility name and Docket No. TSCA-04-2024-6010(b).

38. Pursuant to 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, 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 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 costs 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.

39. 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 (see 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 (see 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 (see 40 C.F.R. § 13.17); and/or
- d. refer the debt to the Department of Justice for litigation (see 40 C.F.R. § 13.33).

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

VIII. EFFECT OF CAFO

- 41. 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 in Sections IV and V above.
- 42. In accordance with 40 C.F.R. § 22.18(c), full payment of the civil penalty, as provided in Section VII (Terms of Payment) shall satisfy the requirements of this CAFO, but 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.
- 43. 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.
- 44. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to an imminent hazard as authorized under Section 7 of the Act.
- 45. 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.
- 46. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO, as appropriate.
- 47. 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.
- 48. 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, 15 U.S.C. § 2613, and 40 C.F.R. Part 2 and the Freedom of Information Act (FOIA), or personally identifiable information.
- 49. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that one is fully authorized to execute and enter into the terms and

conditions of this CAFO and has the legal capacity to bind the party one represents to this CAFO.

50. 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.
51. 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.
52. 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.
53. 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 parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
54. 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

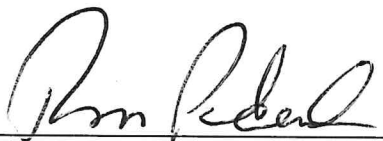
55. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

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Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement, In the Matter of **DyStar L.P.**, Docket No. **TSCA-04-2024-6010(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:


Signature

11/21/2024
Date

Printed Name: Ron Pedemonte

Title: President

Address: 9844A SOUTHERN PINE BLD., CHARLOTTE, NC 28273

The foregoing Consent Agreement, In the Matter of **DyStar L.P.**, Docket No. **TSCA-04-2024-6010(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

DyStar L.P.

Respondent.

Docket No. **TSCA-04-2024-6010(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 **DyStar L.P.**, Docket No. **TSCA-04-2024-6010(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: Amanda Short
 Counsel
 Parker Poe Attorneys & Counselors at Law
 amandashort@parkerpoe.com
 704-335-9002

 Drew Hargrove
 Counsel
 Parker Poe Attorneys & Counselors at Law
 drewhargrove@parkerpoe.com
 919-835-4548

To EPA: Gopal Timsina
 Case Development Officer
 timsina.gopal@epa.gov
 404-562-9017

 Roberto Buso
 Attorney
 buso.roberto@epa.gov
 404-562-8530

 Robert Caplan
 Senior Attorney
 caplan.robert@epa.gov
 404-562-9520

Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov