March 22, 2023 @ 9:56 am
USEPA – Region II
Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the matter of: Dimmid, Inc., Respondent. Proceeding Under Section 16(a) of the Toxic Substances Control Act, as amended, 15 U.S.C. § 2615(a).	**COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING** Docket No. TSCA-02-2023-9226

COMPLAINT

Complainant, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency"), by and through her attorneys, hereby alleges as and for her complaint against Respondent:

Jurisdiction

1. This administrative proceeding is commenced pursuant to the provisions of Section 16(a) of the Toxic Substances Control Act, as amended (the "Act" or "TSCA"), 15 U.S.C. § 2615(a), for the assessment of a civil penalty for Respondent's failure to have complied with requirements mandated pursuant to TSCA.

2. This tribunal is vested with jurisdiction over this proceeding pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2), and 40 C.F.R. § 22.1(a)(5).

3. This "COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING" ("Complaint") constitutes the written notice required by Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2), for the assessment of a civil penalty for any violation of Section 15 of TSCA, 15 U.S.C. § 2614.

4. Complainant in this proceeding is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 2.

5. Complainant has been duly delegated the authority to institute this proceeding.

The Toxic Substances Control Act, General Provisions

6. Congress enacted the Toxic Substances Control Act in 1976 after finding, in part,

that "human beings and the environment are being exposed each year to a large number of chemical substances and mixtures," in order that "adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment … ." 15 U.S.C. § 2601(a)(1); 15 U.S.C. § 2601(b)(2), respectively.

7. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), states, in part, that "[i]t shall be unlawful for any person to...fail or refuse to comply with any requirement of this subchapter [15 U.S.C. §§ 2601-2629] or any rule promulgated…under this subchapter."

8. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), states, in part, that "[i]t shall be unlawful for any person to... fail or refuse to...submit reports, notices or other information...as required by this chapter [Chapter 53, 15 U.S.C. §§ 2601 to 2692] or a rule thereunder...."

9. Pursuant to the authority Congress granted the Agency in TSCA, EPA promulgated the following rules codified at each of these parts of the Code of Federal Regulations: (a) 40 C.F.R. Part 711, "TSCA Chemical Data Reporting Requirements," promulgated under authority of Section 8(a) of TSCA, 15 U.S.C. § 2607(a); (b) 40 C.F.R. Part 720, "Pre-Manufacture Notification," promulgated under authority of Sections 5, 8 and 14 of TSCA, 15 U.S.C. §§ 2604, 2607 and 2613, respectively; and (c) 40 C.F.R. Part 751, "Regulation of Certain Chemical Substances and Mixtures Under Section 6 of the Toxic Substances Control Act," promulgated under authority of Sections 6 and 26(l)(4) of TSCA, 15 U.S.C. §§ 2605 and 2625(l)(4), respectively.

10. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), any person who violates a provision of, *inter alia*, Section 15 of TSCA, 15 U.S.C. § 2614, shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation.

11. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act (Section 701 of Pub.L.114-74), 28 U.S.C. § 2461, in conjunction with the implementing regulations codified at 40 C.F.R. Part 19, increased, *inter alia*, the maximum statutory penalty EPA might obtain pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), to $46,989 for any violation of a provision under Section 15 of TSCA, 15 U.S.C. § 2614, provided such violation occurred after November 2, 2015 and that the penalty for such violation was assessed on or after January 6, 2023 88 *Fed. Reg.* 986 (January 6, 2023).
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12. In relevant part, Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), states that "[e]ach day a violation of [Section 15 of TSCA, 15 U.S.C. § 2614] continues shall, for purposes of [Section 16(a) of TSCA, 15 U.S.C. § 2615(a)], constitute a separate violation of Section 2614 [15 U.S.C. § 2614] ... ."

13. Sub-paragraph (2)(A) of Section 16(a), 15 U.S.C. § 2615(a)(2)(A), authorizes the commencement of a proceeding for the assessment of penalty sought pursuant to Section 16(a).

Respondent's Identity and Operations, Generally

14. Respondent is Dimmid, Inc.

15. For all times relevant to the matters alleged below (specifically including the entirety of each of calendar years 2016, 2017, 2018, 2019 and 2020), Respondent has been, and is presently, a corporation existing under the laws of the State of New York.

16. For all times relevant to the matters alleged below (specifically including the entirety of each of calendar years 2016, 2017, 2018, 2019 and 2020), Respondent has been, and is presently, a "person" within the meaning of 40 C.F.R. § 711.3.

17. For a period that includes the entirety of calendar years 2016, 2017, 2018, 2019 and 2020, Respondent has owned and controlled, and at present owns and controls, an office facility, the address of which is 4635 Bedford Avenue in Brooklyn, New York 11235 ("Respondent's facility").

18. As more specifically set forth below, Respondent from time to time imported into the United States dichloromethane (also known as methylene chloride) [Chemical Abstract Services Registry Number ("CASRN") 75-09-2], trichloroethylene [CASRN 79-01-6] and a chemical commercially identified as "Clerane 180."

19. Each of dichloromethane, trichloroethylene and Clerane 180 constitutes a "chemical substance" (as that term is defined in Section 3(2) of TSCA, 15 U.S.C. § 2602(2)).

20. For each of the importations of dichloromethane, trichlorethylene and Clerane 180, Respondent has been listed on official United States custom records (*i.e.,* official United States Customs and Border Protection-authorized electronic data interchange system containing information concerning importations into the United States), as: (a) the importer of record, and (b) separately, as the consignee of record.

21. The transactions to secure the importations of dichloromethane, trichloroethylene and Clerane 180, including the legal and logistical arrangements to ensure the importations occur, were made and/or finalized at Respondent's facility.

22. As a consequence of Respondent's aforementioned importations, Respondent "manufactures" (as that term is defined in Section 3(7) of TSCA, 15 U.S.C. § 2602(7), and 40 C.F.R. § 711.3) "chemical substances" (as that term is defined in Section 3(2) of TSCA, 15 U.S.C. § 2602(2)).[1]

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1 Terms that are herein defined by their statutory and/or regulatory definitions are subsequently used as so defined.

23. Beginning February 9, 2021, a duly designated representative of EPA (Jesse Miller, Ph.D.) from time to time sent e-mails to Respondent seeking information concerning its importation activities, and from time to time Respondent sent to EPA responsive e-mails.

COUNT 1: FAILURE TIMELY TO FILE 40 C.F.R. PART 711 REPORT

24. Complainant repeats and realleges each allegation contained in Paragraphs "1" through "23" with the same force and effect as if fully set forth herein.

25. Under the authority of Section 8 of TSCA, 15 U.S.C. § 2607, EPA promulgated regulations that govern the reporting of chemical data to the Agency, the regulations codified at 40 C.F.R. Part 711.

26. The regulation codified at 40 C.F.R § 711.5, requires reporting to EPA for "[a]ny chemical substance that is in the Master Inventory at the beginning of a submission period described in § 711.20, unless the chemical substance is specifically excluded by [40 C.F.R.] § 711.6."

27. The term "Master Inventory File" is defined, in part, at 40 C.F.R. § 711.3, as "EPA's comprehensive list of chemical substances which constitutes the TSCA Inventory compiled under TSCA section 8(b) [15 U.S.C. § 2607(b)]."

28. The regulation codified at 40 C.F.R. § 711.8(a) requires reporting to EPA by "[a]ny person who manufactured (including imported) for commercial purposes 25,000 lb (11,340 kg) or more of a chemical substance described in [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."

29. The regulation codified at 40 C.F.R. § 711.8(b) states, in pertinent part, "Any person who manufactured (including imported) for commercial purposes any chemical substance that is the subject of a rule proposed or promulgated under TSCA section…6…is subject to reporting as described in 40 C.F.R. § 711.8(a), except that the applicable production volume threshold is 2,500 lb (1,134 kg)."

30. The "last principal reporting year" prior to 2020 was, within the meaning of 40 C.F.R. § 711.8, 2015 (*i.e.,* the previously required quadrennial report was to have been filed in 2016), making 2016, 2017, 2018, and 2019 the years for which reporting was required in the most recent past quadrennial reporting period.

31. Pursuant to 40 C.F.R. § 711.9, while a person who qualifies as a "small manufacturer" (as defined in 40 C.F.R. § 704.3) is, pursuant to 40 C.F.R. § 711.9, excluded from the reporting requirements of 40 C.F.R. Part 711, that regulation further provides, in pertinent part, that "a person who qualifies as a small manufacturer…is subject to this part with respect to any chemical substance that is the subject of a rule proposed or promulgated under TSCA

section…6….”

32. For the period including the time from June 1, 2020 through January 29, 2021, Respondent qualified as a “small manufacturer” within the meaning of 40 C.F.R. § 711.9.

33. Pursuant to 40 C.F.R. § 711.15(a), any person obligated to report the importation of chemical substances under 40 C.F.R. § 711.8 was required to submit the necessary information to EPA using the Chemical Data Report (“CDR”) electronic submittal format.

34. Between May 5, 2016 and October 17, 2018, Respondent imported into the United States eleven (11) shipments (on ten [10] separate days) of dichloromethane, more particularly as follows: (a) in five separate shipments in calendar year 2016; (b) in two separate shipments in calendar year 2017; and (c) in four separate shipments in calendar year 2018.

35. Between January 7, 2016 and February 13, 2019, Respondent imported into the United States nineteen (19) shipments of trichloroethylene, more particularly as follows: (a) in eight separate shipments in calendar year 2016; (b) in five separate shipments in calendar year 2017; (c) in five separate shipments in calendar year 2018; and (d) in one shipment in calendar year 2019.

36. For the aforementioned importations of dichloromethane and trichloroethylene, Respondent imported each in a volume greater than 2,500 pounds in at least one of the four calendar years (2016, 2017, 2018 and 2019).

37. The aforementioned importations of dichloromethane and trichloroethylene were for commercial purposes.

38. Each of dichloromethane and trichloroethylene was on EPA’s Master Inventory File as of June 1, 2020.

39. For a period of time including (but not limited to) June 1, 2020, dichloromethane was subject to a TSCA Section 6 rule (40 C.F.R. Part 751, Subpart B).

40. For a period of time including (but not limited to) June 1, 2020, trichloroethylene was subject to a proposed rule under TSCA Section 6 (81 *Fed*. *Reg*. 91592) [December 16, 2016].

41. The period during which the required reporting for the four calendar years (2016, 2017, 2018 and 2019) was to have occurred was June 1, 2020 through January 29, 2021 (40 C.F.R. § 711.20; 85 *Fed*. *Reg*. 75235 (November 25, 2020)).

42. Because dichloromethane was subject to a TSCA Section 6 rule (40 C.F.R. Part 751, Subpart B), as alleged above, and because trichloroethylene was subject to a proposed rule under TSCA Section 6 (81 *Fed*. *Reg*. 91592) [December 16, 2016], as alleged above, Respondent

was not excluded from the reporting requirement pursuant to 40 C.F.R. § 711.9.

43. Because Respondent was not, for the reasons set forth above (Paragraphs 39 and 40, above) excluded from the 40 C.F.R. Part 711 reporting requirement pursuant to 40 C.F.R. § 711.9, Respondent was required during the June 1, 2020 through January 29, 2021 period to file a CDR for its importation of dichloromethane and trichloroethylene for any of the four calendar years (2016 through 2019) during which its importation of either exceeded the regulatorily-prescribed 2,500-pound reporting threshold.

44. Respondent did not file a CDR for either dichloromethane or trichloroethylene during the prescribed June 1, 2020 through January 29, 2021 reporting period.

45. As of March 15, 2023, Respondent had not filed a CDR for either dichloro-methane or trichloroethylene for its importation of these two chemical substances during calendar years 2016 through 2019.

46. Neither dichloromethane nor trichloroethylene was excluded pursuant to 40 C.F.R. § 711.6 from the CDR requirement under 40 C.F.R. Part 711.

47. Respondent's failure to report its importation of dichloromethane for any calendar year (2016 through 2019) in which its importation of such chemical substance exceeded the 2,500-pound threshold constitutes a failure or refusal to comply with 40 C.F.R. § 711.5, and thereby constitutes an unlawful act pursuant to, and thus a violation of, Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

48. Respondent's failure to report its importation of trichloroethylene for any calendar year (2016 through 2019) in which its importation of such chemical substance exceeded the 2,500-pound threshold constitutes a failure or refusal to comply with 40 C.F.R. § 711.5, and thereby constitutes an unlawful act pursuant to, and thus a violation of, Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

49. Respondent's failures to have reported its 2016-2019 importations of each of dichloromethane and trichloroethylene during the June 1, 2020 through January 29, 2021 reporting period subjects it to liability to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 2: FAILURE TO PROVIDE REQUIRED "DOWNSTREAM" NOTIFICATION

50. Complainant repeats and realleges each allegation contained in Paragraphs "1" through "23" with the same force and effect as if fully set forth herein.

51. The regulation codified at 40 C.F.R. § 751.107 provides, in relevant part, that "[e]ach person who manufactures [which includes imports] … methylene chloride for any use after August 26, 2019, must, prior to or concurrent with the shipment, notify companies to whom

methylene chloride is shipped, in writing, of the restrictions described in this subpart."

52. Forty C.F.R. § 751.107 further prescribes the specific notification that must be provided and that it must be provided in a "Safety Data Sheet" ("SDS") [formerly known as a "Material Safety Data Sheet" or "MSDS"].

53. The prescribed notification requirement that must be included in the text of the SDS states, in relevant part, that the methylene chloride "is not and cannot be distributed in commerce…or processed… for consumer paint or coating removal."

54. An April 30, 2021 e-mail from EPA (Jesse Miller, Ph.D.) to Respondent requested information, *inter alia*, concerning Respondent's distribution of methylene chloride since August 26, 2019.

55. EPA's April 30, 2021 e-mail included a request for "copies of the…SDS supplied to each company to whom methylene chloride was shipped."

56. In its May 18, 2021 e-mail response (sent by Leo Vernovsky, identified as Dimmid's President) to EPA's April 30th e-mail, Respondent admitted having "sold out one container with 19.98 MT [metric tons, *i.e.*, 19,980 kilograms or 43,956 lbs.] … [of methylene chloride] to another company" since August 26, 2019.

57. Respondent's May 18th e-mail included an attached SDS (therein identified as an MSDS) for the sale of the methylene chloride that had been provided to the "[]other company."

58. The SDS Respondent provided to the company to which it sold 19.98 metric tons of methylene chloride lacked the prescribed notification provisions specified in and required by 40 C.F.R. § 751.107.

59. Respondent's failure to provide to the company to which it sold the 19.98 metric tons of methylene chloride an SDS containing the notification provisions specified in and required by 40 C.F.R. § 751.107 constitutes a failure or refusal to comply with said regulation, and thereby constitutes an unlawful act pursuant to, and thus a violation of, Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

60. Respondent's failure to have provided an SDS with the prescribed 40 C.F.R. § 751.107 notification subjects Respondent to liability to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 3: PRE-MANUFACTURE NOTIFICATION VIOLATIONS

61. Complainant repeats and realleges each allegation contained in Paragraphs "1" through "23" with the same force and effect as if fully set forth herein.

62. The regulation codified at 40 C.F.R. § 720.22(b)(1) provides that "[a]ny person who intends to import a new chemical substance into the United States for commercial purposes must submit a notice, unless the substance is excluded under [40 C.F.R.] § 720.30 or unless the substance is imported as part of an article."

63. A "new chemical substance" is defined pursuant to 40 C.F.R. § 720.3(v) as "any chemical substance which is not included on the [TSCA Master] Inventory" (the TSCA Inventory EPA has compiled under TSCA Section 8(b), 15 U.S.C. § 2607(b)).

64. For purposes of 40 C.F.R. Part 720, a "chemical substance" is defined in 40 C.F.R. § 720.3(e).

65. Respondent, in calendar year 2018, imported into the United States Clerane 180 in ten (10) separate shipments occurring on eight separate days between April 5, 2018 and May 18, 2018.

66. Each of the ten (10) imported shipments of Clerane 180 was in excess of 7,500 pounds.

67. Respondent's May 18, 2021 e-mail included an SDS for Clerane 180.

68. The SDS provided by Respondent identified Clerane 180 by the chemical name "hydrocarbons, C10-C13, n-alkanes, isoalkanes, cyclics, [less than] 2% aromatics" with a "chemical nature" of "[a] complex and variable combination of paraffinic and cyclic hydrocarbons having a carbon number range predominantly of C10 to C13 and boiling in the range of approximately 160°C to 245°C" and a REACH registration number of 01-2119457273-39.

69. The European Chemicals Agency (ECHA) has identified hydrocarbons, C10-C13, n-alkanes, isoalkanes, cyclics, [less than] 2% aromatics with the European Community (EC) number 918-481-9.

70. At no time during Respondent's 2018 importations of Clerane 180 was it listed on the TSCA Inventory.

71. Respondent imported Clerane 180 for commercial purposes.

72. Clerane 180 was not excluded from the 40 C.F.R. § 720.22(b)(1) notice requirement under 40 C.F.R. § 720.30, nor was it excluded therefrom because it was not imported as an "article" (as defined in 40 C.F.R. § 720.3(b)).

73. Clerane 180 constitutes a new chemical substance.

74. Respondent was required to file a 40 C.F.R. § 720.22 pre-manufacture notice

prior to its importation of Clerane 180.

75. Respondent never filed a pre-manufacture notice for its importation of Clerane 180.

76. Respondent's failure to have filed a pre-manufacture notice for its importation of Clerane 180 constitutes a failure or refusal to comply with 40 C.F.R. § 720.22, and thereby an unlawful act pursuant to, and thus a violation of, Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

77. Respondent's failure to have filed a pre-manufacture notice for its importation of Clerane 180 subjects Respondent to liability to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 4: TSCA CERTIFICATION VIOLATIONS

78. Complainant repeats and realleges each allegation contained in Paragraphs "1" through "23" and "65" through "77" with the same force and effect as if fully set forth herein.

79. Section 13(a) of TSCA, 15 U.S.C. § 2612(a), provides, in relevant part, "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 [ ] it fails to comply with any rule in effect under this chapter [Chapter 53, 15 U.S.C. §§ 2601 to 2692] .... ."

80. Section 13(b) of TSCA, 15 U.S.C. § 2612(b), states, "The Secretary of the Treasury, after consultation with the [EPA] Administrator, shall issue rules for the administration of subsection (a) of this section."

81. The *Federal Register* notice of December 27, 2016, issued by U.S. Customs and Border Protection, the Department of Homeland Security and the Department of the Treasury, "amend[ed] the U.S. Customs and Border Protection (CBP) regulations regarding the requirement to file a Toxic Substances Control Act (TSCA) certification when importing into the customs territory of the United States chemicals in bulk form or as part of mixtures and articles containing a chemical or mixture." 81 *Fed. Reg.* 94980.

82. The aforementioned amendment "was prepared in consultation with EPA, the agency with primary responsibility for implementing TSCA." 81 *Fed. Reg.* 94980 (December 27, 2016).

83. The regulations codified at 19 C.F.R. §§ 12.118 through 12.127 have been issued under authority of, in part, TSCA, 15 U.S.C. § 2601 *et seq.*

84. The regulation codified at 19 C.F.R. § 12.118 provides, in pertinent part, that TSCA "governs the importation into the customs territory of the United States of a chemical substance in bulk form…. Such importations are also governed by these regulations which are issued under the authority of section 13(b) of TSCA (15 U.S.C. 2612(b))."

85. The regulation codified at 19 C.F.R. § 12.119 provides, in pertinent part, the provisions set forth in 19 C.F.R. §§ 12.120 through 12.127 "apply to the importation into the customs territory of the United States of…[c]hemical substances in bulk form…."

86. Pursuant to 19 C.F.R. § 12.120(b), the phrasing "TSCA chemical substance in bulk form" is defined to mean "a chemical substance as set forth in section 3(2) of TSCA, (15 U.S.C. 2602(2)) (other than as part of an article) in containers used for purposes of transportation or containment, provided that the chemical substance is intended to be removed from the container and has an end use or commercial purpose separate from the container."

87. Pursuant to 19 C.F.R. § 12.120(d), the phrasing "TSCA-excluded chemical" is defined to mean "any chemicals that are excluded from the definition of TSCA chemical substance by section 3(2)(B) (ii)-(vi) of TSCA, (15 U.S.C. 2602(2) (B) (ii)-(vi)) (other than as part of a mixture), regardless of form."

88. The regulation codified at 19 C.F.R. § 12.121(a)(1) provides, "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 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 any chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.

89. The regulation codified at 19 C.F.R. § 12.121(a)(2) provides, "The importer or the authorized agent of such an importer of any TSCA-excluded chemical not clearly identified as such must certify in writing or electronically that the chemical shipment is not subject to TSCA by filing with CBP the following statement": "I certify that all chemicals in this shipment are not subject to TSCA."

90. Each of the ten (10) shipments of the Clerane 180 was imported into, within the meaning of 19 C.F.R. § 12.121, the "customs territory of the United States."

91. For each of the ten (10) imported shipments of Clerane 180, Respondent was, within the meaning of 19 C.F.R. § 12.121, the: (a) "importer"; or (b) "authorized agent of such importer."

92. The Clerane 180 in each of the ten (10) imported shipments of said chemical substance constituted "a TSCA chemical substance in bulk form" within the meaning of 19 C.F.R. § 12.121(a)(1).

93. At no time during the course of the ten (10) imported shipments of the Clerane 180 did it constitute "a TSCA-excluded chemical" within the meaning of 19 C.F.R. § 12.121(a)(1).

94. For the ten (10) imported shipments of Clerane 180 between April 5, 2018 and May 18, 2018, Respondent certified that each such shipment complies with all applicable TSCA provisions (including rules promulgated under TSCA) and, further, that it was "not offering any chemical substance for entry in violation of TSCA or any applicable rule or order thereunder."

95. Each of the ten (10) imported shipments of the Clerane 180 failed to comply with all applicable TSCA provisions (including rules promulgated thereunder).

96. Each of the ten (10) imported shipments of Clerane 180 constituted Respondent "offering [a] chemical substance for entry in violation of" a rule promulgated under TSCA.

97. Each of the ten (10) certifications Respondent made was incorrect inasmuch as the imported chemical substance (the Clerane 180) was subject to the pre-manufacture notification requirement, a requirement with which Respondent had failed to comply (as alleged in Paragraphs "61" through "77," above).

98. For each of the ten (10) importations of Clerane 180, Respondent failed to truthfully and accurately comply with the certification requirement set forth in 19 C.F.R. § 12.121(a)(1).

99. Nineteen C.F.R. § 12.121 constitutes a rule under Chapter 53, 15 U.S.C. §§ 2601 to 2692.

100. Each such failure to have truthfully and accurately complied with the certification requirement set forth in 19 C.F.R. § 12.121(a)(1) regarding Respondent's importations of Clerane 180 constitutes a failure or refusal to comply with said regulation, and thereby constitutes an unlawful act pursuant to, and thus a violation of, Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

101. For each such failure to comply truthfully and accurately with the 19 C.F.R. § 12.121(a) (1) certification requirement, Respondent is subject to liability to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § U.S.C. § 2615(a).

PROPOSED CIVIL PENALTY

For purposes of determining the amount of any penalty to be assessed, Section 16(a)(2)(B) of

TSCA, 15 U.S.C. § 2615(a)(2)(B), provides, "In determining the amount of a civil penalty, the Administrator [of EPA] shall take into account the nature, circumstances, extent, and gravity of the violation or violations, and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require." This Complaint does not specify a proposed penalty. EPA will do so pursuant to 40 C.F.R. § 22.19(a)(4), which provides:

> If the proceeding is for the assessment of a penalty and complainant has not specified a proposed penalty, each party shall include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. Within fifteen (15) days after respondent files its prehearing information exchange, complainant shall file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in [TSCA].

At such time as it proposes a specified penalty for the violations alleged in this Complaint, EPA will consider the above-listed statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and such consideration will include any credible documentary information Respondent has introduced into the litigation or has otherwise provided EPA for settlement purposes. In developing a specified penalty for each of the set of violations alleged in this Complaint, EPA will utilize the guidance set forth in EPA's Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13 (revised March 31, 1999 and effective June 1, 1999) (hereinafter the "TSCA Section 8 ERP") and the TSCA Section 5 Enforcement Response Policy, as amended ("TSCA Section 5 ERP"). These policies are available upon request to EPA or may be obtained from the Internet, at https://www.epa.gov/sites/production/files/documents/erp8_12r.pdf.

Each of EPA's penalty policy guidance documents (each denominated an "Enforcement Response Policy") provides guidance to effect rational, consistent, and equitable calculation methodologies for applying the statutory penalty criteria (enumerated above) to particular cases.

As set forth above in Paragraphs 10 and 11 of the allegations, above, at the time of TSCA's passage in 1976, $25,000 represented the maximum amount per violation EPA could seek and obtain for any violation of Section 15 of TSCA, 15 U.S.C. § 2614; that amount has been increased to $46,989 for any such violation occurring after November 2, 2015 and for which a penalty has been assessed after January 6, 2023. 88 *Fed. Reg.* 986 (January 6, 2023). Accordingly, this $46,989 amount constitutes the maximum penalty authorized under the Inflation Adjustment Act for each of the aforementioned alleged violations. *See* 40 C.F.R. Part 19.

Complainant thus sets forth the following:

Count 1: TSCA Section 8(a): Failure to Submit Chemical Data Report for Two Reportable Chemical Substances

Requirement: The applicable requirements regarding the relevant provisions have been alleged above (40 C.F.R. §§ 711.5; 711.8(a); 711.8(b); 711.15(a); and 711.20 together with 85 *Fed. Reg.* 75235 (November 25, 2020)).

Violation: Respondent failed to file a 2020 CDR within the prescribed reporting period (June 1, 2020 through January 29, 2021) for two chemical substances (dichloromethane and trichloroethylene) that are subject to rules promulgated or proposed pursuant to Section 6 of TSCA (15 U.S.C. § 2605) and that were on EPA's Master Inventory File on June 1, 2020 (as of March 15, 2023, Respondent has not filed a 2020 CDR); each such chemical substance had been imported in excess of 2,500 pounds in at least one of the four pertinent calendar years for this reporting cycle (2016, 2017, 2018 and/or 2019).

Number of Violations: Two violations. One violation per chemical.

Severity of Violation: Respondent's failure to comply with the requirement thwarts EPA's ability properly and comprehensively to track chemical substances in commerce, a central mission of the Agency.

Statutory Authority for Penalty: 15 U.S.C. §§ 2614, 2615(a)(1).

Count 2: TSCA Section 6: Failure to Include Appropriate Downstream Notification

Requirement: The applicable requirement is set forth in 40 C.F.R. § 751.107 as to what specific notification language must be included in the SDS sent prior to or with each shipment.

Violation: Respondent imported one shipment of methylene chloride after August 26, 2019 and then sent the shipment to a company without the accompanying SDS including the text of the notification required by 40 C.F.R. § 751.107.

Number of Violations: One violation.

Severity of Violation: Respondent's failure to comply with the requirement thwarts EPA's efforts to ensure the safe, lawful and proper use of chemical substances.

Statutory Authority for Penalty: 15 U.S.C. §§ 2614, 2615(a)(1).

Count 3: Pre-Manufacture Notification Violations for the Importation of Clerane 180

Requirement: 40 C.F.R. § 720.22(b)(1).

Violation: Respondent imported into the United States a new chemical substance (ten (10)

shipments on eight separate days) without having filed the required pre-manufacture notification.

Number of Violations: Eight violations. One violation per day of import.

Severity of Violation: Respondent's failure to comply with the requirement thwarts EPA's ability properly and comprehensively to track chemical substances in commerce, a central mission of the Agency.

Statutory Authority for Penalty: 15 U.S.C. §§ 2614, 2615(a)(1).

Count 4: Inaccurate and incorrect TSCA certifications for imported new chemical substance

Requirement: 19 C.F.R. § 12.121(a)(1)

Violation: Respondent provided incorrect and inaccurate certifications for its ten (10) importations (on eight separate days) of Clerane 180.

Number of Violations: Eight violations. One violation per day of import.

Severity of Violation: Respondent's failure to comply with the requirement thwarts EPA's ability properly and comprehensively to track chemical substances in commerce, a central mission of the Agency.

Statutory Authority for Penalty: 15 U.S.C. §§ 2614, 2615(a)(1).

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this administrative litigation, originally published in the Federal Register on July 23, 1999 (64 *Fed. Reg.* 40138), are entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS" ("Consolidated Rules") and are codified at 40 C.F.R. Part 22. These rules were recently amended to simplify the administrative processing of cases by expanding the availability of electronic filing and service procedures and eliminating inconsistencies. 82 *Fed. Reg.* 2230 (January 9, 2017). These amendments became effective on May 22, 2017 and apply to all new Part 22 case filings after that date. A copy of the current version of the Consolidated Rules, incorporating these recent amendments, accompanies service of this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to

judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within thirty (30) calendar days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7. The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

(NOTE: any documents that are filed after the Answer has been filed should be filed as specified in "D" below.)

The accompanying Standing Order issued by the Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, dated August 3, 2020, authorizes electronic service of certain Part 22 documents, including Respondent's Answer to this Complaint (see Attachment A). Respondent may therefore electronically serve its Answer to this Complaint upon the Regional Hearing Clerk, at the following address: maples.karen@epa.gov

A copy of Respondent's Answer, including any request for a hearing, must also be sent to Complainant. 40 C.F.R. § 22.15(a). Complainant has designated Assistant Regional Counsel (ARC) Lee Spielmann to receive service on her behalf. Pursuant to the accompanying Consent from Complainant, dated March 6, 2023, Respondent may electronically send documents filed in this matter to ARC Spielmann at spielmann.lee@epa.gov (as noted above, Respondent's Answer must be separately sent, either electronically or in hard copy, to the Regional Hearing Clerk) (see Attachment B).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent requests a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. §22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22. *See* Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), which states, in part, "A civil penalty for a violation of section 2614 of this title [15 U.S.C. § 2614] shall be assessed by the Administrator [of EPA] by an order made on the record after opportunity…for a hearing in accordance with section 554 of Title 5 [5 U.S.C. § 554]."

If Respondent fails to request a hearing, such failure may operate to preclude Respondent from obtaining judicial review of an adverse EPA final order. *See* Section 16(a)(2)(A)of TSCA, 15 U.S.C. § 2615(a)(2)(A), which states, in part, "Any person who requested in accordance with paragraph (2)(A) [15 U.S.C. § 2615(a)(2)(A)] a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business."

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely (*i.e.,* in accordance with the thirty (30) day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 calendar days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting for

the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service, address to:

Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900R
Washington, DC 20460

If filing by UPS, FedEx, DHL or other courier, or personal delivery, address to:

Headquarters Hearing Clerk
Office of Administrative Law Judges
Ronald Reagan Building, Rm M1200
1300 Pennsylvania Avenue, N.W.
Washington, DC 20460

Alternatively, Respondent may register to use the EPA e-filing system:
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf/HomePage?ReadForm

E. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the EPA's Environmental Appeals Board ("EAB," 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives the right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served upon the parties." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these [rules] for the filing of a responsive pleading or document." Note that the forty-five (45) day period provided for in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of TSCA and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes to be relevant to the disposition of this matter, including:

(1) actions Respondent has taken to correct any or all of the violations herein alleged, and/or (2) any other special facts or circumstances Respondent wishes to raise. At any such conference, EPA will have counsel present, and, if it so elects, Respondent may be represented by counsel.

Section 16(a)(2)(C) of TSCA, 15 U.S.C. § 2615(a)(2)(C), provides, in part, "The Administrator [of EPA] may compromise, modify, or remit, with or without conditions, any civil penalty which shall be imposed under this sub-section." Accordingly, Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is also referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Lee A. Spielmann
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866
212-637-3222
spielmann.lee@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's request for a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives the right to contest the allegations in the Complaint and waives the right to seek administrative or judicial review of the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation arising out of the allegations made in the Complaint. Respondent entering into a settlement does not extinguish, waive, satisfy, or otherwise affect its obligation and responsibility to comply with all applicable TSCA statutory and regulatory requirements in its operation of its importing business, and to maintain such compliance, including the obligation pertaining to the required quadrennial submission of the CDR.

Dated: March , 2023
New York, New York

COMPLAINANT:

for
____
Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, New York 10007-1866

To: Leo Vernovsky, President
Dimmid, Inc.
4635 Bedford Avenue
Brooklyn, New York 11235

Attachment A: Standing Order issued by the Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, dated August 3, 2020

Attachment B: Consent from Complainant, dated March 6, 2023