

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

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In the Matter of	:
	:
BASF Corporation,	: <u>CONSENT AGREEMENT</u>
	: <u>AND</u>
Respondent	: <u>FINAL ORDER</u>
	:
Proceeding under Section 16(a) of the	: Docket No. TSCA-02-2025-9142
Toxic Substances Control Act, as	:
amended, 15 U.S.C. § 2615(a).	:
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1. This administrative proceeding for the assessment of a civil penalty is being initiated pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), as amended, 15 U.S.C. § 2615(a). The United States Environmental Protection Agency (“EPA” or “Agency”) under authority of TSCA has promulgated regulations governing, *inter alia*, the manufacture and importation of chemical substances, including requirements for reporting such activities to the EPA.
2. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of EPA to enforce against persons who violate TSCA and its implementing regulations. That provision provides, in relevant part, that “[a]ny person who violates a provision of section 2614 or 2689 of this title [Sections 15 and 49 of TSCA, 15 U.S.C. §§ 2614 and 2689, respectively] shall be liable to the United States for a civil penalty...”
3. Complainant in this proceeding, the Director of the Enforcement and Compliance Assurance Division of EPA Region 2 (“Complainant”), has been delegated the authority to prosecute this proceeding.
4. Respondent in this proceeding is BASF Corporation.
5. Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, where parties agree to a settlement of one or more causes of action prior to the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

6. It has been agreed by the parties to this proceeding – Complainant and Respondent – that settling this matter by entering into this Consent Agreement pursuant to 40 C.F.R. § 22.18(b)(2) constitutes an appropriate means of resolving the claims of EPA, Region 2, against Respondent without further litigation.

FINDINGS OF FACT

7. Respondent was at all relevant times, and continues to be, a corporation existing under Delaware law.

8. Respondent's headquarters in the United States is, and was at all relevant times, located at 100 Park Avenue, Florham Park, New Jersey 07932 (the "Facility").

9. Respondent is engaged in, and at all relevant times has been engaged in, the commercial importation into the United States of various "chemical substances" within the meaning of Section 3(2) of TSCA, 15 U.S.C. § 2602(2).

10. In one or more of the calendar years 2016, 2017, 2018, and 2019, Respondent imported for commercial purposes reportable quantities of the three hundred and thirty-four (334) chemical substances set forth in Appendix A,¹ each such chemical substance identified by name and either Chemical Abstract Services Registry Number (CASRN) or Accession Number.

11. Pursuant to 40 CFR §§ 711.3 and 711.15(b)(2), the site of import for the substances set forth in Appendix A, in calendar years 2016, 2017, 2018, and 2019, was the Facility.

12. Each of the three hundred and thirty-four (334) chemical substances listed in Appendix A was on the Master Inventory File (as defined in 40 C.F.R. § 711.3) as of June 1, 2020, and none was excluded from the 40 C.F.R. Part 711 Chemical Data Reporting ("CDR") requirements by 40 C.F.R. § 711.6.

13. As described in 40 C.F.R. § 711.20 and pursuant to 85 Fed. Reg. 19890 (April 9, 2020) (extension from September 30, 2020, through November 20, 2020) and 85 Fed. Reg. 75235 (November 25, 2020) (extension to January 29, 2021), the 2020 CDR reporting period

¹ Attachment A to this Consent Agreement contains information on these three hundred and thirty-four (334) chemicals, including the chemical name and CASRN, and is herein incorporated by reference. As Attachment A contains information claimed as TSCA CBI, it will not be filed with the Regional Hearing Clerk but will be included with the CAFO served on Respondent to the individuals designated in the Certificate of Service via EPA's Central Data Exchange (CDX) through the "TSCA Enforcement and Compliance Communications" application under the Program Service titled "CSPP: Submissions for Chemical Safety and Pesticides Programs."

was twice extended to run from June 1, 2020, to January 29, 2021.

14. On February 8, 2021, Respondent filed CDR Form U. Respondent's filing was adversely affected by technical difficulties with the required e-CDRweb reporting tool due in part to the large size of the submission. The technical difficulties were documented in multiple communications between Respondent and EPA's contractors managing the e-CDRweb reporting tool between March 11, 2021, and March 23, 2021, and again between April 28, 2021, and May 10, 2021.

15. Respondent subsequently amended its CDR Form U for the Facility on March 18, 2021, and amended it again on May 17, 2021. Respondent's March and May amendments included the addition of the three hundred and thirty-four (334) chemical substances listed in Appendix A.

16. On September 3, 2021, in lieu of conducting an on-site inspection of Respondent's Facility under Section 11 of TSCA, 15 U.S.C. § 2610, a TSCA Information Request was sent to Respondent requesting information regarding compliance with TSCA Sections 4, 5, 6, 8, 12, and 13.

17. On or about October 1, 2021, Respondent submitted certain records to EPA regarding Respondent's compliance with TSCA, including import, manufacture, and export records for the 2020 CDR submission period. BASF periodically supplemented its information submissions to EPA consistent with an agreed schedule.

18. On May 8, 2024, EPA issued a Notice of Potential TSCA Liability and Pre-Filing Opportunity to Meet to Respondent, identifying suspected violations under Section 8 of TSCA, 15 U.S.C. § 2607. On multiple occasions since that date, Respondent provided information responding to the suspected violations in the Notice.

CONCLUSIONS OF LAW

19. This is an action pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), to assess a civil penalty against Respondent for violations of provisions of Section 15 of TSCA, 15 U.S.C. § 2614. This tribunal is vested with jurisdiction over this administrative 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).

20. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), provides that it is unlawful for any person to fail or refuse to submit any reports, notices, or information required by TSCA, 15 U.S.C. § 2601 *et seq.*, or any rule promulgated thereunder. A failure or refusal to submit any such required reports, notices, or information constitutes a violation of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

21. Each of the CDR requirements codified in 40 C.F.R. Part 711 constitutes a rule promulgated under Section 8(a) of TSCA, 15 U.S.C. § 2607(a).

22. Any person who violates Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), shall be liable to the United States for a civil penalty pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

23. Respondent is, and was at all relevant times, a “person” within the meaning of 40 C.F.R. § 711.3, which adopts the definition of “person” contained in 40 C.F.R. § 704.3.

24. Respondent is, and was at all relevant times, an importer and a manufacturer of chemical substances within the meanings of 40 C.F.R. § 711.3 and 40 C.F.R. § 704.3.

25. Each of the three hundred and thirty-four (334) chemicals identified in Appendix A is a “chemical substance” within the meaning of Section 3(2)(A) of TSCA, 15 U.S.C. § 2602(2)(A), and a “reportable chemical substance” within the meaning of 40 C.F.R. § 711.3.

26. Forty C.F.R. § 711.5 requires that “information must be reported” for “[a]ny chemical substance that is in the Master Inventory File at the beginning of the submission period described in [40 C.F.R.] § 711.20, unless the chemical substance is specifically excluded by [40 C.F.R.] § 711.6.”

27. Pursuant to 40 C.F.R. § 711.8(a), “[a]ny person who manufactured (including imported) for commercial purposes 25,000 lbs. (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” is subject to the reporting requirements.

28. Pursuant to 40 C.F.R. § 711.8(a), “[a]ny person who manufactured (including imported) for commercial purposes any chemical substance that is the subject of a rule proposed or promulgated under TSCA section 5(a)(2), 5(b)(4), or 6, or is the subject of an order in effect under TSCA section 4, 5(e) or 5(f), or is the subject of relief that has been granted under a civil action under TSCA sections 5 or 7 is subject to reporting as described in § 711.8(a), except that the applicable production volume threshold is 2,500 lbs. (1,134 kg).”

29. Respondent’s importation of each of the chemical substances listed in Appendix A was subject to the 40 C.F.R. Part 711 reporting requirements for the 2020 CDR submission period.

30. The 2020 CDR submission period ended, and CDR submissions for that period were due, by January 29, 2021. 85 Fed. Reg. 75238 (November 25, 2020).

31. Respondent’s failures to timely report each of the chemical substances listed in Appendix A constitute failures to comply with the CDR requirements of 40 C.F.R. Part 711.

32. Each of Respondent’s failures to comply with the CDR Requirements constitutes an unlawful act pursuant to Section 15(3) of TSCA, 15 U.S.C. § 2614(3), for which an individual penalty may be assessed.

CONSENT AGREEMENT

33. Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 16(a), and 40 C.F.R. § 22.18, Respondent, for the purposes of this Consent Agreement and in the interest of settling this matter, knowingly and voluntarily agrees that by signing this Consent Agreement, it:

- a. Admits that EPA, Region 2 has jurisdiction under TSCA to prosecute this proceeding;
- b. Neither admits nor denies the specific factual allegations set forth above;
- c. Agrees to pay the civil penalty as set forth below in accordance with the terms of this Consent Agreement;
- d. Consents to the issuance of the Final Order incorporating all provisions of this Consent Agreement;
- e. Waives any right it might possess to obtain judicial or administrative review of the Final Order accompanying this Consent Agreement; and
- f. 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.

Certifications and Acknowledgements

34. Respondent certifies that it is in compliance with applicable requirements of 40 C.F.R. Part 711 and understands that it is obligated to maintain compliance with applicable requirements of that Part.

35. EPA considered the voluntary nature and timing of BASF's amendments in accordance with applicable penalty policies in determining the amount of the civil penalties for such alleged violations.

36. The parties acknowledge that in the 2024 reporting cycle, Respondent submitted the information required by Part 711 for the Facility through five separate Forms U using the e-CDRweb reporting tool provided by EPA at the address set forth in 40 C.F.R. § 711.35.

37. Respondent certifies that it has taken systematic measures to validate the quality of CDR data reported in the 2024 reporting cycle and that its 2024 submission is complete and accurate, consistent with the "known to or reasonably ascertainable by" standard set forth in 40 C.F.R. Part 711.

Penalty

38. Respondent agrees to pay a civil penalty in the amount of **Seven Hundred Thousand Dollars (\$700,000)** ("Assessed Penalty"). Payment shall be due thirty (30) days from the date on which the Regional Judicial Officer of EPA, Region 2 signs the Final Order accompanying this Consent Agreement ("the due date").

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

40. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, TSCA-02-2025-9142.
- b. Concurrently with any payment or within twenty-four (24) hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Karen Maples
Regional Hearing Clerk, Region 2
maples.karen@epa.gov

Jesse Miller, Ph.D.
TSCA Enforcement Officer, Region 2
miller.jessee@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Division
CINWD_AcctsReceivable@epa.gov

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

41. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the date the Regional Judicial Officer of EPA, Region 2 signs the Final Order accompanying this Consent Agreement. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the Internal Revenue Service (IRS) large corporate underpayment rate; any lower rate would fail to provide Respondent adequate incentive for timely payment.
 - b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period following the date the Regional Judicial Officer of EPA, Region 2 signs the Final Order accompanying this Consent Agreement. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
 - c. Late Payment Penalty. A late payment penalty of 6 percent per annum will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the date the Regional Judicial Officer of EPA, Region 2 signs the Final Order accompanying this Consent Agreement.
42. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - b. Collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the IRS for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.

- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

43. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

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

45. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, fifty thousand dollars (\$50,000) for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (*i.e.*, a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Division at wise.milton@epa.gov within thirty (30) days of the date the Regional Judicial Officer of EPA Region 2 signs the Final Order accompanying this Consent Agreement, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within thirty (30) days of the date the Regional Judicial Officer of EPA, Region 2 signs the Final Order accompanying this Consent Agreement, and EPA recommends encrypting IRS Form W-9 email correspondence, then Respondent, using the

same email address identified in the preceding sub-paragraph, shall further:

- i. notify EPA's Cincinnati Finance Division of this fact, via email, within thirty (30) days of the date the Regional Judicial Officer of EPA, Region 2 signs the Final Order accompanying this Consent Agreement, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- ii. provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within 5 days of Respondent's receipt of the TIN.

46. Full payment of the assessed penalty shall only resolve Respondent's liability for federal civil penalties for the alleged violations described in Paragraphs 7-32 above. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions or violations of law.

General Provisions

47. Nothing in this document is intended or construed to waive, prejudice, or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent has made any material misrepresentations or has provided materially false information in any document submitted during this proceeding.

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

49. Each party hereto agrees to bear its own costs and attorney's fees in this matter.

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

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

John Erickson
Associate General Counsel, BASF Corporation
100 Park Avenue
Florham Park, NJ 07932
john.r.erickson@basf.com

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

For Respondent, BASF Corporation:

Signature

Date

Print Name

Title

For Complainant, the U. S. Environmental Protection Agency:

Kathleen Anderson
Director
Enforcement and Compliance Assurance Division

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of BASF Corporation, Docket Number TSCA-02-2025-9142. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk of EPA, Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3).

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of BASF Corporation, Docket Number TSCA-02-2025-9142, was sent this day in the following manner to the addressees:

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, by email to the following without Attachment A:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
Maples.Karen@epa.gov

John Erickson
Associate General Counsel, BASF Corporation
100 Park Avenue
Florham Park, New Jersey 07932
john.r.erickson@basf.com

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order with Attachment A via CDX to:

Adam Bickel
Manager, Product Regulatory Center of Expertise, BASF Corporation
1609 Biddle Avenue
Wyandotte, Michigan 48192
adam.bickel@basf.com

Signed

ATTACHMENT A

Contains TSCA-CBI and accessible only as authorized