

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:)
)
Nano-C Incorporated)
33 Southwest Park)
Westwood, MA 02090)
)
Respondent)
)

Docket Number TSCA-HQ-2025-5010

**CIVIL COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

COMPLAINT

This Complaint and Notice of Opportunity for Hearing (Complaint) is filed pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Pub. L. No. 114-182, June 22, 2016, 130 Stat 448 (2016 Act), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. The Complainant is Gregory Sullivan, Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency (EPA), who has been duly delegated the authority to institute this action. The Respondent is Nano-C Incorporated (Nano-C or Respondent), located at 33 Southwest Park Westwood, MA 02090 (the “Facility”).

As a result of an EPA inspection of the the Facility on August 22, 2022, and follow-up actions, Complainant alleges that Respondent has violated Sections 12(b) and 13 of TSCA, 15 U.S.C. §§ 2611(b) and § 2612, and the Chemical Imports and Exports requirements at 40 C.F.R. Part 707, Subparts B and D, thereby violating Section 15(1) and (3)(B) of TSCA, 15 U.S.C. § 2614(1), and (3)(B) as set forth below.

Respondent's Identity and Operations Generally

1. Respondent is a corporation located at 33 Southwest Park Westwood, MA 02090.
2. Respondent is a “person” as defined in 40 C.F.R. § 710.3 and is subject to TSCA and the regulations promulgated thereunder.
3. Respondent is an “exporter” as defined in 40 C.F.R. § 707.63(b).
4. Respondent “manufactures” (imports) a “chemical substance,” as defined respectively by Section 3(9) and (2)(A) of TSCA, 15 U.S.C. § 2602(9), (2)(A).

PRELIMINARY STATEMENT

5. On or around September 12, 2022, Nano-C submitted to EPA data exhibits, in the Chemical Data Index (CDX) system that lists the TSCA chemical substances and other products not covered by Section 5(e) of TSCA, 15 U.S.C. § 2604(e), exported by Nano-C, in response to the EPA's pre-inspection information request letter provided to Nano-C on July 22, 2022.
6. On or about November 11, 2022, EPA issued the Facility results and findings from the August 22, 2022, TSCA inspection. Nano-C responded to those findings and continued to issue responses to EPA from May 10, 2023, through February 11, 2025.
7. Between September 2022 and February 2025, Nano-C submitted to EPA information that contained the manufactured chemicals exported by the Facility that did not have the required

export certifications for the chemical substances, thereby violating Section 12(b) of TSCA, 15 U.S.C. § 2611(b).

8. On or about May 11, 2023, Nano-C submitted to EPA a list of products, including those covered by Section 5(e) of TSCA, 15 U.S.C. § 2504(e), and others that were not, exported by the Facility that did not have the required import certifications for the chemical substances, thereby violating Section 13 of TSCA, 15 U.S.C. § 2612.

COUNT I

TSCA § 12(b) Violations – FAILURE TO PROVIDE EXPORT NOTIFICATIONS

9. Paragraphs 1 through 8 of this complaint are re-alleged with the same force and effect fully set forth within.

10. Respondent exported chemical substances that are subject to the Significant New Use Rules (“SNUR”) found at 40 C.F.R. §§ 721.10272 and 721.10273 promulgated pursuant to Section 5(e) of TSCA, 15 U.S.C. § 2604(e), on thirty-one (31) occasions to thirty-one (31) countries without prior notification to the Agency as required by Section 12(b) of TSCA, 15 U.S.C. § 2611(b), and 40 C.F.R. § 707.60, and as specified in 40 C.F.R. §§ 707.65 and 707.67.

11. Respondent’s failure to comply with the required export notice requirements of Section 12(b) of TSCA, 15 U.S.C. § 2611(b), and 40 C.F.R. §§ 707.60, 65, and 67 violates Section 15(1) and (3)(B) of TSCA, 15 U.S.C. § 2614(1) and (3)(B), and is subject to a civil penalty pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT II

TSCA § 13(a)(1)(A) Violations – FAILURE TO CERTIFY IMPORTED SHIPMENTS

12. Paragraphs 1 through 11 of this complaint are re-alleged with the same force and effect fully set forth within.

13. Section 13(a)(1)(B) of TSCA, 15 U.S.C. § 2612(a)(1)(B), provides that the Treasury shall refuse entry of “any chemical substance or mixture offered for such entry if” it is offered for entry in violation of a rule or order under Section 5, 15 U.S.C. § 2604. 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].”

14. Pursuant to 40 C.F.R. § 707.20(b)(2)(i), importers must sign the following statement for each import of a chemical substance subject to TSCA: “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 under TSCA.”

15. Respondent imported nine (9) chemical substances via seventeen (17) separate and unique shipment dates between August 2019 through December 2022.

16. For the seventeen (17) imported shipments of the nine (9) chemicals between August 2019 through December 2022, Respondent failed to certify 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."

17. EPA alleges that Respondent's failure to submit proper certifications under Section 13 of TSCA prior to importing a shipment containing these nine (9) Chemicals constitutes a failure to comply with Section 13 of TSCA, which is a prohibited act under Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), and may subject the entity to civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

I. CIVIL PENALTY ASSESSMENT

Section 16 of TSCA, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty for violations of Section 15 of TSCA, 15 U.S.C. § 2614, in an amount not to exceed \$49,772 for each day of violation.

For purposes of determining the amount of a civil penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to take into account the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to pay, effect on its ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. In developing a proposed penalty, Complainant took into account the particular facts and circumstances of this case; the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), the EPA's *Enforcement Response Policy, Reporting and Recordkeeping Rules and Requirements, TSCA Sections 8, 12 and 13* (revised March 31, 1999 and effective June 1, 1999) (hereinafter referred to as the "ERP"), and the January 2025 Interim Consolidated Enforcement Response and Penalty Policy (CERPP) for the Toxic Substances Control Act (TSCA) New and Existing Chemicals Program. The ERP and CERPP were developed in accordance with the *Guidelines for Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, 45 Fed. Reg. 59770 (Sep. 10, 1980), which sets forth a general penalty assessment policy for TSCA violations. The ERP and CERPP provide a rational, consistent, and equitable calculation methodology for applying the statutory factors to cases.

Based upon the facts alleged in this Complaint, and upon the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to pay, effect on ability to continue to do business, any history of prior such violations of TSCA, the degree of

culpability, and such other matters as justice may require, the Complainant proposes that Respondent be assessed a penalty of *SIXTY-FOUR THOUSAND ONE HUNDRED AND THIRTY-EIGHT DOLLARS* (\$64,138) for the violations alleged in this Complaint.

II. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and consistent with 40 C.F.R. § 22.15, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. To request a hearing pursuant to 40 C.F.R. § 22.15, Respondent must file a written Answer to the Complaint with the Headquarters Hearing Clerk, within thirty (30) days of service of this Complaint, at the following address:

Headquarters Hearing Clerk (1900L)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice. Pursuant to 40 C.F.R. § 22.15 of the Consolidated Rules of Practice, Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which Respondent has any knowledge. The Answer should further specify any factual allegations that Respondent claims no knowledge of. The Answer should contain: (1) the circumstances or arguments that are alleged to constitute the grounds of any defense; (2) the facts that Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

If Respondent fails to file a written Answer within thirty (30) days of service of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in Complainant's filing of a Motion for Default Order imposing the penalties herein without further proceedings.

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney of record assigned to represent EPA in this matter:

Alexander N. DerGarabedian, Esq.
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
William Jefferson Clinton Building South
1200 Pennsylvania Ave., N.W. (Mail Code 2249A)
Washington, D.C. 20460
Telephone: 202-564-3989
E-mail: dergarabedian.alexander@epa.gov

III. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the facts of this case, the amount of the penalty, and the possibility of settlement. An informal settlement conference does not, however, affect Respondent's obligation to file a timely written Answer to the Complaint.

EPA has the authority, where appropriate, to modify the amount of the penalty, once determined, to reflect any settlement reached with Respondent in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement, signed by EPA and Respondent. The terms and conditions specified in the Consent Agreement are binding upon issuance of a Final Order by the Environmental Appeals Board.

Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of this action with the Administrator, the members of the Environmental Appeals Board, the assigned Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the issuance of this Complaint. *See* 40 C.F.R. § 22.8.

IV. PAYMENT OF PENALTY

Instead of filing an Answer, requesting a hearing, or requesting an informal settlement conference, Respondent may choose to pay the proposed penalty to resolve this matter pursuant to 40 C.F.R. § 22.18(a). Such payment should be made by sending either a cashier's or certified check with a notation of "Nano-C Incorporated." Penalty Docket No. "TSCA-HQ-2025-5010," payable to the order of the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2025-5010
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

or pay by wire transfer with a notation of "Nano-C Incorporated.," Penalty Docket No. "TSCA-HQ-2025-5010" by using the following instructions:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency."

A copy of the wire transfer should also be sent to the Cincinnati Finance Division.

A copy of the check or other instrument of payment must be sent to the attorney of record assigned to represent EPA in this matter.

Consistent with 40 C.F.R. § 22.18(c), full payment of the penalty proposed in this Complaint shall not affect the right of the Agency or the United States to pursue appropriate injunctive relief or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty proposed in this Complaint shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in this Complaint.

Tax Reporting

1. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to annually send to the Internal Revenue Service (“IRS”) 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, \$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). Respondent’s 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. To provide EPA with sufficient information to enable it to fulfill these obligations, Respondent shall complete the following actions as applicable.
 - 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, on or before the date that Respondent's penalty payment is due, pursuant to Section I. CIVIL PENALTY ASSESSMENT of the Complaint, or within 7 days should the Complaint be issued between December 15 and December 31 of the calendar year. EPA recommends encrypting IRS Form W-9 email correspondence.
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

U.S. ENVIRONMENTAL PROTECTION AGENCY

TSCA-HQ-2025-5010

In the Matter of: Nano-C Incorporated.

By:

_____ Date: _____

Gregory Sullivan,
Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

ATTACHMENT

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22.

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