



ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re Shepherd Chemical Company )
)
)
) Docket No. TSCA-HQ-2024-5008
)
)
)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA’s Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.<sup>1</sup>

ENVIRONMENTAL APPEALS BOARD

[Handwritten signature]

Ammie Roseman-Orr
Environmental Appeals Judge

Dated: September 27, 2024

1 The three-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila, Wendy L. Blake, and Ammie Roseman-Orr.

**BEFORE THE ENVIRONMENTAL APPEALS BOARD UNITED  
STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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<i>In the Matter of:</i>	)	
	)	
<b>Shepherd Chemical Company</b>	)	
<b>Norwood, OH</b>	)	
	)	<b>Docket No. TSCA-HQ-2024-5008</b>
	)	
<b>Respondent</b>	)	
_____	)	

**CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency (hereinafter “EPA” or “Agency”), and Respondent, Shepherd Chemical Company (“Shepherd”) (collectively, the “Parties”), hereby enter into this Consent Agreement and proposed Final Order before the taking of any testimony and without adjudicating of any issues of law or fact, consent to the terms of this Consent Agreement and attached Final Order.

**PRELIMINARY STATEMENT**

1. This civil administrative proceeding for the assessment of penalties pursuant to section 16(a) of 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), is being simultaneously commenced and concluded pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.
2. On or about June 29, 2023, Respondent voluntarily disclosed to the Agency potential noncompliance with TSCA requirements of a manufactured chemical substance. They discovered that chemical identity in a Pre-manufacture Notice (PMN) they had already submitted had been misidentified. Respondent has claimed the identity of the chemical as TSCA confidential business information (CBI), which is herein referred to as Chemical A. Respondent then sought authorization to release their existing stocks of Chemical A.

3. EPA has determined that the disclosure described in Count I qualifies for reductions applicable under the *TSCA Section 5 Enforcement Response Policy*, issued August 5, 1988, as amended June 8, 1989, and July 1, 1993 (TSCA ERP).
4. On or about August 15, 2023, Respondent submitted a new Premanufacture Notice (PMN) for Chemical A, which is not on the TSCA inventory.
5. The Parties' discussions have resulted in the agreement contained herein, which includes terms for the release of their existing stocks.
6. To avoid the disruption of orderly business activities and the expense of protracted and costly litigation, Respondent, for purposes of this proceeding only and as required by 40 C.F.R. § 22.18(b)(2):
  - a. admits the following jurisdictional allegations and waives any defenses to jurisdiction:
    - i. Respondent is a corporation located at 4900 Beech Street, Norwood, Ohio 45212 and is a "person" as defined in 40 C.F.R. § 720.3(x) and, as such, is subject to TSCA and its regulations; and
    - ii. Respondent manufactures, processes, and distributes in commerce, a chemical substance identified as Chemical A or mixtures containing this chemical, or in the past has manufactured, processed, and distributed in commerce Chemical A or mixtures containing this chemical as those terms are defined in sections 3(2), (5), (9), (10), and (13) of TSCA, 15 U.S.C. § 2602(2), (5), (9), (10), and (13) respectively, and 40 C.F.R. § 720.3(e), (i), (q), (u), and (aa). Respondent is subject to TSCA, and the regulations promulgated thereunder.
  - b. neither admits nor denies the specific factual allegations contained herein;
  - c. consents to the assessment of a civil penalty on the terms discussed below;
  - d. consents to any conditions specified in this Consent Agreement;
  - e. waives any right to contest the alleged violations of law set forth herein; and
  - f. waives the rights to appeal the proposed Final Order accompanying this Consent Agreement.

## II. EPA'S FINDINGS OF FACT AND LAW

### COUNT I – TSCA § 5(a)(1) VIOLATIONS

7. Any chemical substance that is not included in the chemical substance list compiled and published under section 8(b) of TSCA, 15 U.S.C. § 2607(b) (“TSCA Inventory”), is a “new chemical substance,” as defined under section 3(11) of TSCA, 15 U.S.C. § 2602(11) and 40 C.F.R. § 720.3(v).
8. Section 5(a)(1) of TSCA, 15 U.S.C. § 2604(a)(1), and 40 C.F.R. §§ 720.22(a)(1) and 720.40(b), provide that no person may manufacture (import) a new chemical substance unless such person submits a PMN to EPA at least ninety (90) calendar days before manufacturing that substance.
9. On June 29, 2023, and October 17, 2023, Respondent informed EPA that it had manufactured Chemical A between 2020 and 2023 on at least 2 occasions (with relevant dates and quantities claimed as CBI) prior to submitting a new PMN for this Chemical after new information about the substance’s chemical structures was identified.
10. Chemical A was not included on the TSCA Inventory at the time of manufacture, and therefore, is a “new chemical substance” as defined under section 3(11) of TSCA, 15 U.S.C. § 2602(11) and 40 C.F.R. § 720.3(v).
11. Respondent’s failure to submit a PMN at least ninety (90) days before manufacturing Chemical A constitutes a failure to comply with section 5 of TSCA, 15 U.S.C. § 2604, which is a prohibited act under section 15(1) of TSCA, 15 U.S.C. § 2614(1), and may subject an entity to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

### III. CIVIL PENALTY

12. To avoid the disruption of orderly business activities and the expense of protracted and costly litigation, both Parties agree that the penalty for any and all allegations discussed within this Consent Agreement is \$ 29,688. The penalty is consistent with the TSCA ERP. The TSCA ERP was developed in accordance with the *Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, which sets forth a general penalty assessment policy for TSCA violations. 45 Fed. Reg. 59,770 (Sept. 10, 1980) (Penalty Policy). The TSCA ERP establishes a framework for applying the statutory factors to be considered in assessing a civil penalty, *i.e.*: “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.” 15 U.S.C. § 2615(a)(2)(B).
13. The agreed upon civil penalty in this case reflects: (1) a determination of the Gravity-based Penalty (GBP); and (2) adjustments to the GBP, taking into account the statutory factors.

14. Not more than thirty (30) calendar days after the effective date of the Final Order (“Effective Date”), 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 EPA websites: <https://www.epa.gov/financial/makepayment> and <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. These payment methods include the following:

A. Dispatch a cashier’s or certified check made payable to the order of the “Treasurer of the United States of America,” and bearing the Civil Penalty Docket No. “TSCA-HQ-2024-5008” to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Docket No. TSCA-HQ-2024-5008  
Cincinnati Finance Center  
P.O. Box 979078  
St. Louis, MO 63197-9000

*OR*

B. Pay by wire transfer with a notation of “Shepherd Chemical Company, Civil Penalty Docket No. TSCA-HQ-2024-5008” 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”

15. Concurrently with Paragraph 14, Respondent shall forward a copy of the check or documentation of a wire transfer as a PDF attachment to Philip Milton at [Milton.Philip@epa.gov](mailto:Milton.Philip@epa.gov) or to the following address:

U.S. Environmental Protection Agency  
Office of Civil Enforcement  
Waste and Chemical Enforcement Division (2249A)  
Attn: Philip Milton (Chemical Engineer)  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
E-mail: [Milton.Philip@epa.gov](mailto:Milton.Philip@epa.gov)

By written notice to Respondent, EPA may change the address and/or person listed above.

16. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.
17. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the Effective Date and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. In accordance with 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, Respondent must pay the following amounts on any amount overdue:
  - a. Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
  - b. Monthly Handling Charge. Respondent must pay a late payment handling charge of FIFTEEN dollars (\$15.00) on any late payment, with an additional charge of FIFTEEN dollars (\$15.00) for each subsequent thirty (30) day period over which an unpaid balance remains.
  - c. Non-payment Penalty. On any portion of a civil penalty more than ninety (90) days past due, Respondent must pay a non-payment penalty charge of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. 40 C.F.R. § 13.11(c). This non-payment penalty charge is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

#### IV. TERMS OF SETTLEMENT

18. Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged in this Consent Agreement.
19. This settlement is conditioned upon the thoroughness and accuracy of Respondent's submissions to EPA in this matter.
20. As a condition of this Consent Agreement, Respondent or its distributor may process, use, and distribute its existing stocks of Chemical A in accordance with the applicable terms and conditions of EPA's TSCA §5 PMN review and determination, and Respondent submitting a notice of commencement pursuant to 40 C.F.R. § 720.102.
21. If the Respondent chooses to dispose of existing stocks, the Company shall dispose of any unused portion of its existing stocks of Chemical A in accordance with applicable federal and

state requirements. The Company should coordinate with the applicable state(s) where disposal may occur to determine if additional requirements or a preferred approach (e.g., incineration) should be considered before disposing Chemical A.

22. Compliance with this CAFO shall not be a defense to any subsequent action EPA may commence pursuant to federal law or regulation for violations occurring after the date of this Consent Agreement, nor any violations of TSCA not alleged in this Consent Agreement that may have occurred prior to the date that this Consent Agreement is fully executed by both Parties.
23. Nothing in this Consent Agreement is intended to, nor shall be, construed to operate in any way to resolve any criminal liability of Respondent.
24. By executing this Consent Agreement, Respondent certifies that, to the best of its knowledge regarding the violations alleged herein, Respondent is in compliance with TSCA section 5, 15 U.S.C. § 2604.

#### **V. OTHER MATTERS**

25. Subject to the terms and conditions herein, this Consent Agreement shall be binding upon the Parties, and their respective officers, directors, employees, successors, and assigns. The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to enter into this binding Consent Agreement.
26. This Consent Agreement shall take full effect upon the signing and filing of the Final Order by the EPA's Environmental Appeals Board (EAB).
27. This Consent Agreement may be amended or modified only by written agreement executed by both the EPA and Respondent.
28. Respondent's obligations under this Consent Agreement shall end when it has paid in full the scheduled civil penalty, paid any stipulated penalties, and submitted documentation required by the Consent Agreement and Final Order.
29. All of the terms and conditions of this Consent Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Consent Agreement shall be null and void if any term or condition of this Consent Agreement is held invalid or is not executed by all of the signatory parties in identical form or is not approved in such identical form by the EAB.
30. Failure of Respondent to remit the civil penalties provided herein will result in this matter being forwarded to the United States Department of Justice for collection.
31. The Parties agree to bear their own costs and attorney's fees.

**WE HEREBY AGREE TO THIS:**

For Respondent:



Date: 6/19/2024

Lianne Mantione  
Counsel for Shepherd Chemical Company  
Squire Patton Boggs (US) LLP  
1000 Key Tower  
127 Public Square  
Cleveland, Ohio 44114



**WE HEREBY AGREE TO THIS:**

**GREGORY  
SULLIVAN** Digitally signed by  
GREGORY SULLIVAN  
Date: 2024.07.24  
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Gregory Sullivan, Director  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

**CATHERINE  
LEE** Digitally signed by  
CATHERINE LEE  
Date: 2024.06.20 09:38:11  
-04'00'

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Catherine Lee, Attorney  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance  
Assurance  
United States Environmental Protection  
Agency

**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing “Consent Agreement” and “Final Order,” in the matter of Shepherd Chemical Company, Docket No. TSCA-HQ-2024-5008, were sent to the following persons in the manner indicated:

**By E-mail:**

Catherine Lee, Attorney  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Washington, DC 20460  
lee.catherine@epa.gov

Lianne Mantione, Counsel for Shepherd Chemical Company  
Squire Patton Boggs (US) LLP  
1000 Key Tower  
127 Public Square  
Cleveland, OH 44114  
lianne.mantione@squirepb.com

Dated:     Sep 27, 2024    

*Emilio Cortes*

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Emilio Cortes  
Clerk of the Board