

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

FILED

Sep 25, 2024

6:49 am

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

In the Matter of:

DyStar Carolina Chemical Corporation

Respondent.

Docket No. TSCA-04-2024-6009(b)

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 16(a) of the Toxic Substances Control Act (TSCA or the Act), 15 U.S.C. § 2615(a), and Sections 22.13(b) and 22.18 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without the Respondent's admission of violation or adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 16(a) of TSCA, 15 U.S.C. § 2615(a).
5. The Respondent is DyStar Carolina Chemical Corporation, a corporation doing business in the State of North Carolina. This proceeding pertains to the Respondent's facility located at 8309 Wilkinson Boulevard, Charlotte, North Carolina 28214 (Facility).

III. GOVERNING LAW

6. Pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for any person to, among other things, fail or refuse to comply with any rule or order promulgated pursuant to Section 12 of TSCA, 15 U.S.C. § 2611.
7. The term “person” is defined in 40 C.F.R. § 704.3, to include any individual, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government.
8. Pursuant to Section 12(b) of TSCA, 15 U.S.C. § 2611(b), and 40 C.F.R. § 707.60(a), any person who exports or intends to export a chemical substance or mixture is required to notify the EPA of such exportation to a particular country, if, among other actions taken by the EPA, an order or rule has been issued for that chemical under Section 5 of TSCA, 15 U.S.C. § 2604, or when the submission of data is required under Section 4 of TSCA, 15 U.S.C. § 2603.
9. Pursuant to Section 5(a)(2) of TSCA, 15 U.S.C. § 2604(a)(2), the EPA may, by rule, determine that use of a chemical is a significant new use with respect to which notification is required. Such significant new use rules are referred to as “SNURs.”
10. The term “exporter” is defined in 40 C.F.R. § 707.63(b), to mean the person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the chemical substance or mixture to a destination out of the customs territory of the United States.
11. Pursuant to 40 C.F.R. § 707.65(a)(1)(ii), the export notification required under Section 12(b) of TSCA and 40 C.F.R. § 707.60(a) must only be submitted to the EPA for the first export or intended export by an exporter to a particular country when the chemical substance or mixture is the subject of a SNUR that has been proposed or promulgated under Section 5(a)(2) of TSCA or when the submission of data is required under Section 4 of TSCA.
12. Pursuant to 40 C.F.R. § 707.65(a)(2), any person exporting a chemical or mixture subject to a SNUR or Section 4 of TSCA is required to submit an export notice to the EPA, postmarked within seven days of forming an intent to export or on the date of export, whichever is earlier. A notice of intent to export must be based on a definite contractual obligation, or an equivalent intra-company agreement, to export the regulated chemical.
13. Any information the Respondent has claimed as Confidential Business Information which may support or form the basis for this CAFO has been intentionally redacted. To determine the identity of the chemical substances referenced in this CAFO (Chemical C), or to identify any other information designated as CBI, the Respondent and/or Complainant should refer to the Opportunity to Show Cause letter dated March 21, 2024, sent to the Respondent identifying potential violations of TSCA and notifying the Respondent of the opportunity to show cause why the EPA should not proceed with an enforcement action.

IV. FINDINGS OF FACTS

14. The Respondent is a person as defined in 40 C.F.R. § 704.3. The Respondent engages in chemical manufacturing, processing, exporting, and importing.
15. On January 11, 2024, the Respondent voluntarily submitted certain records to the EPA pertaining to its compliance with TSCA and its implementing regulations in lieu of the EPA conducting an on-site inspection of the Respondent's Facility.
16. On March 21, 2024, based on a review of the records submitted by the Respondent, the EPA issued the Respondent an Opportunity to Show Cause letter identifying potential violations of Section 12(b) of TSCA pertaining to export notification. On April 19, 2024, the Respondent provided additional information to the EPA in response to the Opportunity to Show Cause letter.

Export of Chemical C [CBI Deleted]

17. On April 4, 2014, the EPA promulgated a final test rule pursuant to Section 4 of TSCA for Chemical C. Chemical C's final test rule is referenced at 40 C.F.R. § 799.5000.
18. The effective date of Chemical C's final test rule was [CBI deleted].
19. A review of the Facility's 2021 – 2023 export records showed that beginning on April 20, 2021, through October 19, 2023, the Respondent exported six shipments of Chemical C to [CBI deleted].
20. During the time-period that Chemical C was exported by the Respondent, it was: (1) subject to a final test rule under Section 4 of TSCA; and (2) subject to the export notification requirements of Section 12(b) of TSCA and 40 C.F.R. §§ 707.60(a), 707.65(a)(1)(ii), and 707.65(a)(2). Therefore, the Respondent was required to submit an export notice to the EPA for the first export of Chemical C, postmarked within seven days of forming an intent to export it, or on the date of export, whichever was earlier. Since no evidence has been provided by the Respondent showing that it had entered into a definite contractual obligation, or an equivalent intra-company agreement, to export the regulated chemical, the notice was required to have been submitted by April 20, 2021, the date of the first export of Chemical C. The Respondent did not submit the export notification to the EPA by April 20, 2021.
21. On December 20, 2023, the Respondent submitted to the EPA late TSCA Section 12(b) export notices for the export of Chemical C to [CBI deleted] during the 2021-2023 timeframe.

V. ALLEGED VIOLATIONS

22. Based on the EPA's review of the Respondent's records as set forth above, the EPA alleges that the Respondent violated Section 12(b) of TSCA, 15 U.S.C. § 2611, and 40 C.F.R. §§ 707.60(a), 707.65(a)(1)(ii), and 707.65(a)(2), by failing to submit an export notification to the EPA for Chemical C by April 21, 2021, the first date of export. Failure to comply with Section 12(b) and its implementing regulations constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614.

VI. STIPULATIONS

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

24. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), the Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. neither admits nor denies the specific factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- f. waives its rights to appeal the Final Order accompanying this CAFO.

25. For the purpose of this proceeding, the Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against the Respondent;
- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering the Respondent's compliance history in any subsequent enforcement actions;
- c. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- d. waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706;
- e. by executing this CAFO, certifies to the best of its knowledge that the Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- f. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or

communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and

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

26. In accordance with 40 C.F.R. § 22.5, the individuals named in the Certificate of Service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

27. The Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **EIGHT THOUSAND ONE HUNDRED-FIFTY DOLLARS (\$8,150.00)** which is to be paid within thirty (30) days of the Effective Date of this CAFO.

28. The Respondent shall pay the civil penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. In addition, the Respondent shall identify every payment with the Respondent's name and the docket number of this CAFO, Docket No. TSCA-04-2024-6009(b).

29. The Respondent shall send proof of payment electronically, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
U.S. EPA, Region 4
R4_Regional_Hearing_Clerk@epa.gov

and

Gopal Timsina
Chemical Safety and Land Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. EPA, Region 4
timsina.gopal@epa.gov

and

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

30. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or Automated Clearing House transfer, and any other

information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and Docket No. TSCA-04-2024-6009(b).

31. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if the Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require the Respondent to pay the following amounts on any amount overdue:
- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within 30 days, interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
 - b. Non-Payment Penalty. On any portion of a civil penalty more than 90 days past due, the Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
 - c. Monthly Handling Charge. The Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average costs incurred. 31 C.F.R. § 901.9(c) and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
32. In addition to what is stated in the prior Paragraph, if the Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:
- a. refer the debt to a credit reporting agency or a collection agency (*see* 40 C.F.R. §§ 13.13 and 13.14);
 - b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (*see* 40 C.F.R. Part 13, Subparts C and H);
 - c. suspend or revoke the Respondent's licenses or other privileges, or suspend or disqualify the Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (*see* 40 C.F.R. § 13.17); and/or

d. Refer the debt to the Department of Justice for litigation (see 40 C.F.R. § 13.33).

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

VIII. EFFECT OF CAFO

34. In accordance with 40 C.F.R. § 22.18(c), the Respondent's full compliance with this CAFO shall only resolve the Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Sections IV and V above.

35. Full payment of the civil penalty, as provided in Section VII (Terms of Payment) shall satisfy the requirements of this CAFO, but shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).

36. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.

37. Nothing herein shall be construed to limit the power of the EPA to undertake any action against the Respondent or any person in response to an imminent hazard as authorized under Section 7 of the Act.

38. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

39. The provisions of this CAFO shall apply to and be binding upon the Respondent and its successors and assigns. The Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO, as appropriate.

40. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter the Respondent's obligations and responsibilities under this CAFO.

41. By signing this Consent Agreement, the Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential information under Section 14 of TSCA, 15 U.S.C. § 2613, and 40 C.F.R. Part 2 and the Freedom of Information Act (FOIA), or personally identifiable information.

42. By signing this Consent Agreement, the Complainant and the undersigned representative of the Respondent each certify that one is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party one represents to this CAFO.

43. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
44. By signing this Consent Agreement, the Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. The Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
45. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by the Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give the Respondent notice of its intent to revoke, which shall not be effective until received by the Respondent in writing.
46. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
47. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE


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

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Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement In the Matter of **DyStar Carolina Chemical Corporation**, Docket No. **TSCA-04-2024-6009(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



Signature

September 20, 2024
Date

Printed Name: RON PEDEMONTE

Title: President

Address: 9844 SOUTHERN PINE BLVD, CHARLOTTE, NC 28273

The foregoing Consent Agreement In the Matter of **DyStar Carolina Chemical Corporation**, Docket No. **TSCA-04-2024-6009(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

DyStar Carolina Chemical Corporation

Respondent.

Docket No. **TSCA-04-2024-6009(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified, and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, In the Matter of **DyStar Carolina Chemical Corporation**, Docket No. **TSCA-04-2024-6009(b)**, were filed and copies of the same were emailed to the Parties as indicated below.

Via email to all Parties at the following email addresses:

To Respondent: Amanda Short
 Counsel
 Parker Poe Attorneys & Counselors at Law
 amandashort@parkerpoe.com
 704-335-9002

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

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

Shannon Richardson, Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov