

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2025-0009
)	
Afton Chemical Corporation)	Proceeding to Assess a Civil Penalty
501 Monsanto Avenue)	Under Section 16(a) of the Toxic Substances
Sauget, Illinois 62206)	Control Act, 15 U.S.C. § 2615(a)
)	
)	
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and 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 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Afton Chemical Corporation (Afton), a corporation doing business in the State of Illinois at 501 Monsanto Avenue, Sauget, Illinois 62206.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO. Respondent 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 the consent agreement.

9. By signing this consent agreement, Respondent 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 waive any right to challenge the lawfulness of the final order accompanying the consent agreement.

Statutory and Regulatory Background

10. Section 8(a) of TSCA, 15 U.S.C. § 2607(a)(1), states, in pertinent part, that “[t]he Administrator shall promulgate rules under which each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process a chemical substance shall maintain records, and shall submit to the Administrator such reports, as the Administrator may reasonable require.” Section 8(a) of TSCA authorizes the Administrator to require reporting of information necessary for the administration of TSCA, including issuing regulations for the purpose of compiling and keeping current the TSCA Chemical Substance Inventory (TSCA Inventory) as required by Section 8(b) of TSCA, 15 U.S.C. § 2607(b).

11. Section 8(b) of TSCA, 15 U.S.C. § 2607(b), states that “[t]he Administrator shall compile, keep current, and publish a list [TSCA Inventory] of each chemical substance which is manufactured or processed in the United States.”

12. Under the authority of Section 8(a) of TSCA, 15 U.S.C. § 2607(a), EPA promulgated the Chemical Data Reporting regulations at 40 C.F.R. Part 711, which specify reporting and recordkeeping procedures for certain manufacturers (including importers) of chemical substances.

13. The term “chemical substance” is defined to mean “any organic or inorganic substance of a particular molecular identity including any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature and any element or uncombined radical.” 15 U.S.C. § 2602(2)(A) and 40 C.F.R. § 720.3(e).

14. The term “manufacture” is defined to mean “to import into the customs territory of the United States ..., produce, or manufacture.” 15 U.S.C. § 2602(9) and 40 C.F.R. § 720.3(q).

15. For purposes of Section 5 of TSCA, the terms “manufacture” and “process” mean “manufacturing or processing for commercial purposes.” 15 U.S.C. § 2604(i)(1).

16. The term “manufacture for a commercial purpose” is defined to mean “manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and includes, among other things ‘manufacture’ of any amount of a chemical substance or mixture.” 40 C.F.R. § 720.3(r).

17. The term “master inventory file” means “EPA’s comprehensive list of chemical substances which constitutes the TSCA inventory compiled under TSCA Section 8(b).” 40 C.F.R. § 711.3.

18. The term “site” means “a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. More than one manufacturing plant may be located on a single site The site for an importer who imports a chemical substance described in 40 C.F.R. § 711.5 is the U.S. site of the operating unit within the person’s organization that is directly responsible for importing the chemical substance. The import site, in some cases, may be the organization’s headquarters in the United States. If there is no such operating unit or headquarters in the United States, the site address for the importer is the U.S. address of an agent acting on behalf of the importer who is authorized to accept service of process for the importer.” 40 C.F.R. § 711.3.

19. The term “submission period” means “the period in which the manufacturing, processing, and use data are submitted to EPA.” 40 C.F.R. § 711.3.

20. The regulation at 40 C.F.R. § 711.5 provides that information must be reported for any chemical substance that is in the master inventory file at the beginning of a submission period described in 40 C.F.R. § 711.20, unless the chemical substance is specifically excluded by 40 C.F.R. § 711.6.

21. For the 2020 submission period, any person who manufactured, including imported, for commercial purposes 25,000 pounds 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 (*e.g.*, for the 2020 submission period, consider calendar years 2016, 2017, 2018, and 2019) is subject to the Chemical Data Reporting Requirements. 40 C.F.R. § 711.8.

22. The 2020 Chemical Data Reporting submission period ran from June 1, 2020 to January 29, 2021. 40 C.F.R. § 711.20.

23. The regulation at 40 C.F.R. § 711.15 requires that any person subject to the Chemical Data Reporting Requirements must submit a “Form U” for each chemical substance described in 40 C.F.R. § 711.5 that the person manufactured (including imported) for commercial purposes in an amount of 25,000 lbs. or more at any one site during any calendar year since the last principal reporting year (*e.g.*, the principal reporting year for the 2016 submission period was calendar year 2015). The regulation further requires that, for all submission periods, a separate report must be submitted for each chemical substance at each site for which the submitter is required to report.

24. Any person subject to the Chemical Data Reporting requirements must submit the “Form U” during the applicable submission period. 40 C.F.R. § 711.20.

25. Information that must be included on each “Form U” includes, *inter alia*, a certification statement signed and dated by an authorized official of the submitter company, company and site information, chemical-specific information (*e.g.*, the Chemical Abstract Index name as used to list the chemical substance on the TSCA Inventory and the correct corresponding Chemical Abstract Service Registration Number (CASRN) for each reportable chemical substance at each site), and chemical-specific information related to processing and use. 40 C.F.R. § 711.15(b).

26. The regulation at 40 CFR 711.15(b)(3)(iii) requires that, “for the principal reporting year only, the total annual volume (in pounds) of each reportable chemical substance domestically manufactured or imported at each site. The total annual domestically manufactured volume (not including imported volume) and the total annual imported volume must be separately reported. These amounts must be reported to two significant figures of accuracy. In addition, the total annual volume (domestically manufactured plus imported volumes in pounds)

of each reportable chemical substance at each site for each complete calendar year since the last principal reporting year.”

27. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), among other things, makes it unlawful for any person to fail to comply with any requirement of TSCA, or any rule promulgated under TSCA.

28. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3), makes it unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA or any rule promulgated thereunder.

29. Section 16 of TSCA, 15 U.S.C. § 2615(a), states that any person who violates a provision of Section 15 of TSCA, 15 U.S.C. § 2614, shall be liable to the United States for a civil penalty.

Factual Allegations

30. At all times relevant to this CAFO, Respondent was a “person”, as defined at 40 C.F.R. § 710.3.

31. At all times relevant to this CAFO, Respondent owned or controlled a “site,” as defined by 40 C.F.R. § 711.3, at 501 Monsanto Avenue, Sauget, Illinois 62201 (the facility).

32. On November 16 and 17, 2021, EPA conducted an inspection of the facility under Section 11 of TSCA, 15 U.S.C. § 2610 (the November 2021 inspection).

33. During the November 2021 inspection, EPA collected, among other information, records of the manufacture of chemical substances at the facility from calendar year 2016 through 2019, which included records of the manufacture of the following four reportable chemicals from calendar years 2016 through 2019: (1) Schiff bases, benzylidene C14-24-alkyl, CASRN 68410-86-6, (2) Phosphorodithioic acid, mixed O,O-bis(2-ethylhexyl and iso-Bu and

pentyl) esters, zinc salts, CASRN 68988-45-4, (3) Phosphorodithioic acid, mixed O,O-bis(2-ethylhexyl and iso-Bu and iso-Pr) esters, zinc salts, CASRN 85940-28-9, and (4) Alkyl acids, reaction products with metal salt of an alkanol (PROVISIONAL), Accession Number 267084.

34. Pursuant to 40 C.F.R. § 711.15, Respondent was required to submit a 2020 CDR Report to the EPA for reportable chemical substances that were manufactured (including imported) for commercial purposes in quantities greater than 25,000 pounds in calendar years 2016, 2017, 2018, and 2019 by no later than the end of the 2020 Chemical Data Reporting submission period, which was January 29, 2021.

35. On or about January 30, 2021, Respondent submitted the Form U for the 2020 Chemical Data Reporting submission period (2020 Form U) for the facility for chemicals including the four chemical substances identified in Paragraph 33.

36. On its 2020 Form U, Respondent reported that it manufactured a quantity of Schiff bases, benzylidene C14-24-alkyl, CASRN 68410-86-6 that was at least two significant figures different than the quantity Respondent manufactured at the facility in calendar years 2016 and 2017 per the records collected during the November 2021 inspection.

37. On its 2020 Form U, Respondent reported that it manufactured a quantity of Phosphorodithioic acid, mixed O,O-bis(2-ethylhexyl and iso-Bu and pentyl) esters, zinc salts, CASRN 68988-45-4 that was at least two significant figures different than the quantity Respondent manufactured at the facility in calendar years 2016 and 2018 per the records collected during the November 2021 inspection.

38. On its 2020 Form U, Respondent reported that it manufactured a quantity of Phosphorodithioic acid, mixed O,O-bis(2-ethylhexyl and iso-Bu and iso-Pr) esters, zinc salts, CASRN 85940-28-9 that was at least two significant figures different than the quantity

Respondent manufactured at the facility in calendar years 2016 and 2019 per the records collected during the November 2021 inspection.

39. On its 2020 Form U, Respondent reported that it manufactured a quantity of Alkyl acids, reaction products with metal salt of an alkanol (PROVISIONAL), Accession Number 267084 that was at least two significant figures different than the quantity Respondent manufactured at the facility in calendar years 2016 and 2018 per the records collected during the November 2021 inspection.

Alleged Violations

40. Complainant incorporates paragraphs 1 through 39 of this CAFO as if set forth in this paragraph.

41. Respondent did not identify quantities of reportable chemicals manufactured at the facility between 2016 – 2019 for the four chemical substances identified in Paragraph 33 to two significant figures of accuracy on the 2020 Form U, in violation of 40 C.F.R. § 711.15.

42. Respondent's failure to identify quantities of reportable chemicals manufactured at the facility between 2016 – 2019 for the four chemical substances identified in Paragraph 33 to two significant figures of accuracy on the 2020 Form U constitutes four (4) separate violations of 40 C.F.R. § 711.15 and Sections 15(1) and 15(3) of TSCA, 15 U.S.C. § 2614(3).

Civil Penalty

43. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$63,065. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent's ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability. Complainant also

considered EPA's Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13.

44. Respondent agrees to pay a civil penalty in the amount of \$63,065 (Assessed Penalty) within thirty (30) days after the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

45. Full payment of the penalty and compliance with this CAFO resolves only Respondent's liability under TSCA, 15 U.S.C. §§ 2601-2629, for federal civil penalties for the violations alleged in the CAFO.

46. 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>.

47. When making a payment, Respondent shall:
- a. Identify every payment with Respondent's name and the docket number of this CAFO, TSCA-05-2025-0009,
 - b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Claudia Niess (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
niess.claudia@epa.gov
and
R5lecab@epa.gov

Olivia Bauer (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
bauer.olivia@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
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.

48. 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 any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. 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 IRS standard 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 after the Filing Date. 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 six percent (6%) per annum, will be assessed monthly on all debts, including any 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 Filing Date.

49. 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 CAFO, 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 pursuant to 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 Internal Revenue Service for offset against income tax refunds, 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, 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.

50. 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.

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

52. 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, \$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 Milton Wise at EPA's Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the effective date of this CAFO, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that 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 Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

General Provisions

53. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: bauer.olivia@epa.gov (for Complainant), and David.Rieser@klgates.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

54. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

55. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

56. This CAFO does not affect Respondent's responsibility to comply with TSCA and other applicable federal, state and local laws.

57. Respondent certifies that it is complying with TSCA, 15 U.S.C. §§ 2601-2629, and the regulations at 40 C.F.R. § 711.

58. The terms of this CAFO bind Respondent, its successors and assigns.

59. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

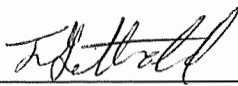
60. Each party agrees to bear its own costs and attorney's fees, in this action.

61. This CAFO constitutes the entire agreement between the parties.

Afton Chemical Corporation, Respondent

12/4/24

Date



Thomas Gottwald
Vice President, EHS
Afton Chemical Corporation

United States Environmental Protection Agency, Complainant

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

**In the Matter of:
Afton Chemical Corporation
Docket No. TSCA-05-2025-0009**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5