UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR EVIRONMENTAL HEALTH
201 Broadway, Suite 508
Oakland, CA 94612

Plaintiff,

v.

HARWICK STANDARD DISTRIBUTION CORPORATION
60 South Seiberling Street
Akron, OH 44305

Defendant.

Case No. 21-1723

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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Introductory Statement

1. This is a citizen enforcement suit brought by the Center for Environment Health ("CEH") to redress and prevent ongoing violations of reporting requirements for chemical substances under the federal Toxic Substances Control Act ("TSCA").

2. Plaintiff CEH is a non-profit organization working to protect children and families from harmful chemicals in air, food, water and in everyday products. Its vision and mission are a world where everyone lives, works, learns and plays in a healthy environment; we protect people from toxic chemicals by working with communities, businesses, and the

government to demand and support business practices that are safe for human health and the environment. CEH is headquartered in Oakland, California.

3. Defendant Harwick Standard Distribution Corporation ("Harwick Standard") is an importer of chemicals subject to reporting obligations under TSCA. Harwick Standard is headquartered in Akron, Ohio.

4. Plaintiff files this Complaint pursuant to TSCA's citizen suit provision, section 20(a), 15 U.S.C. §2619(a), seeking declaratory and injunctive relief to remedy defendant's violations of TSCA and recovery of plaintiff's reasonable fees and costs.

5. Harwick Standard has violated, and continues to violate, the Chemical Data Reporting ("CDR") rule promulgated by the Environmental Protection Agency ("EPA") under section 8(a) of TSCA by failing to report for the 2016 CDR Update. at least seven chemicals that it imported during 2013-2014.

6. These chemicals raise health and environmental concerns that warrant attention by regulatory agencies and exposed members of the public.

7. Harwick Standard's failure to report these large volume imports under the CDR rule is undermining EPA's efforts under TSCA to evaluate and address chemical risks and preventing the public from tracking the movement of unsafe chemicals in commerce and monitoring their presence in communities.

8. Harwick Standard has failed to take action in response to a notice of violation from CEH under TSCA §20(b)(1)(A). Accordingly, absent an order from this Court requiring reporting under the CDR rule, defendant will continue to be in non-compliance with TSCA.

TSCA Citizens' Suit Provisions

6. Under section 20(a)(1)(B) of TSCA, "any person may commence a civil action . . . against any person . . . who is alleged to be in violation of this Act . . . to restrain such violation."

7. Section 20(b)(1)(A) provides that no action to restrain a violation of TSCA may be commenced "before the expiration of 60 days after the plaintiff has given notice of such violation (i) to the Administrator and (ii) to the person who is alleged to have committed such violation."

8. Civil actions under section 20(a)(1)(B) of TSCA "shall be brought in the United States District Court for the district in which the alleged violation occurred or in which the defendant resides or in which the defendant's principal place of business is located . . .without regard to the amount in controversy or the citizenship of the parties."

9. Under section 20(c)(2), the court in an action to restrain a violation under section 20(a)(1) "may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate."

TSCA Provisions

10. TSCA was enacted in 1976 to create a national program for assessing and managing the risks of chemicals to human health and the environment. Among the goals stated in TSCA section 2(b), 15 U.S.C. §2601(b), are that: (1) "adequate information should be developed with respect to the effect of chemical substances and mixtures on health and the environment" and (2) "adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment."

11. The need for this comprehensive framework for managing chemical risks was described as follows in the Senate Report on the original law:

> As the industry has grown, we have become literally surrounded by a man-made chemical environment. We utilize chemicals in a majority of our daily activities. We continually wear, wash with, inhale, and ingest a multitude of chemical substances. Many of these chemicals are essential to protect, prolong, and enhance our lives. Yet, too frequently, we have discovered that certain of these chemicals present lethal health and environmental dangers.

Senate Rept. No. 94-698, 94th Cong. 2d Sess. (1976) at 3.

12. After a multi-year effort to overhaul and strengthen its key provisions, TSCA was amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act ("LCSA"), which took effect on June 11, 2016. These TSCA amendments enhance the chemical regulatory authorities in section 6 by establishing a new integrated process for (1) prioritizing chemicals, (2) conducting risk evaluations on high- priority chemicals and (3) promulgating rules under section 6(a) to eliminate unreasonable risks identified in risk evaluations. Congress set strict deadlines for each of these steps and directed EPA to address a minimum number of chemicals by these deadlines.

Chemical Data Reporting Requirements under TSCA

13. TSCA section 8(a)(1) provides that EPA "shall promulgate rules" that require each person who manufactures or processes a chemical substance to submit such reports as the "Administrator may reasonably require." 15 U.S. C. § 2607(a). Because section 3(9) defines "manufacture" to include "importation," reports must be submitted by importers of chemical substances subject to these rules. The rulemaking authority under section 8 is a critical tool to collect the information on chemical use and exposure necessary for informed and effective risk evaluation and risk management.

14. In 2011, EPA promulgated the Chemical Data Reporting ("CDR") rule using its authority under TSCA section 8(a)(1). 40 C.F.R. Part 711. The rule is intended to support EPA's risk assessment and reduction efforts by providing basic information about the manufacturing,

use and exposure profiles of chemicals in commerce. As the Agency explained in 2011, the new reporting requirements --

> will enhance the capabilities of the Agency to ensure risk management actions are taken on chemical substances which may pose the greatest concern. More in-depth reporting of the processing and use data, more careful consideration of the need for confidentiality claims, and adjustments to the specific data elements are important aspects of this action. By enhancing the data supplied to the Agency, EPA expects to more effectively and expeditiously identify and address potential risks posed by chemical substances and provide improved access and information to the public.

76 Federal Register 50818, 30819 (Aug. 16, 2011).

15. Under the rule, reporting is required for all chemicals manufactured or imported at a site in volumes of 25,000 pounds or more per facility in a given reporting year. For chemicals already regulated under certain TSCA provisions, the reporting threshold is set at 2,500 pounds per reporting year. Manufacturers and importers subject to the CDR requirements must report every four years. A reporting cycle was completed in the fall of 2016, with reports due on October 31, 2016. For this CDR update, activities conducted in calendar years 2012-2015 determined the application of reporting requirements and the information to be reported.

16. Under the CDR rule, reports must be submitted using a "Form U." Separate forms must be filed for each manufacture or import site. The Form U must include import/manufacture volume for each of the last four years, the number of workers exposed and basic information about site operations. It must also include information about industrial, commercial and consumer uses of the substance at other sites and the potential for exposure associated with these downstream activities.

17. In expanding the scope of reporting to capture these data elements, EPA emphasized that this "exposure information is an essential part of developing risk evaluations and, based on its experience in using this information, the Agency believes that collecting this

exposure information is critical to its mission of characterizing exposure, identifying potential risks, and noting uncertainties for [reportable] chemical substances." 76 Federal Register 50823.

18. Section 15 of TSCA provides that it is unlawful for any person to

> "(1) fail or refuse to comply with any requirement of this title or any rule promulgated ... under this title; or ..... "(3) fail or refuse to ... submit reports, notices, or other information; ... as required by this Act or a rule thereunder;"

19. Persons who do not comply with the CDR rule "fail or refuse to . . . submit reports . . . as required by this Act or a rule thereunder" and thus act unlawfully under section 15. Non-compliance with the CDR rule therefore constitutes a "violation of this Act" subject to a citizens' suit under section 20(a)(1) of TSCA.

Jurisdiction and Venue

20. CDR reports must be reported through EPA's Central Data Exchange (CDX), an electronic site used for submission of reports to the Agency which is maintained at EPA headquarters at 1200 Pennsylvania Avenue NW in Washington DC.

21. CDR reports are reviewed and analyzed by EPA's Office of Chemical Safety and Pollution Prevention ("OCSPP"), which is located at EPA headquarters.

22. Defendant's violations of the CDR rule accordingly occurred in the District of Columbia.

23. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. §2619(a), under which citizens' suits to restrain violations of TSCA "shall be brought in the United States District Court for the district in which the alleged violation occurred."

24. Venue is proper in the District of Columbia under 28 U.S.C. §1391(b)(2) and 15 U.S.C. §2619(a), which provides that the district courts "shall have jurisdiction over suits brought under this section, without regard . . . to the citizenship of the parties" and "process may

be served on the defendant in any judicial district in which the defendant resides or may be found."

Plaintiff's Notices of Intent to Sue

25. On February 17, 2021, plaintiff CEH sent by registered mail a notice of intent to sue under TSCA section 20(b)(1) to defendant Harwick Standard and a similar notice to EPA Acting Administrator Jane Nishida.

26. These notices described defendant's violations of CDR requirements and provided the information called for in 40 CFR §702.62(b).

27. According to the signed receipts returned to plaintiff CEH, defendant Harwick Standard received its notice on February 26, 2021 and EPA received its notice on March 1, 2021.

28. Defendant did not take action to comply with CDR requirements in response to plaintiff's notice of intent to sue.

29. EPA has not commenced an action under TSCA to require defendant to comply with CDR requirements under TSCA section 20(b)(1)(B).

Defendant's Imports of DEHP during the 2011-2015 CDR Reporting Period

30. From February 2013 to September 2014 Harwick Standard received at least 15 shipments of di-2-ethylhexyl phthalate (DEHP) from a supplier in China. These shipments totaled 846,839 pounds.

31. Broken down by year, the DEHP shipments were as follows:

DEHP 15 shipments, 846,839 pounds

Year	Exporter	Country	Importer	Pounds	Ports
2013	China Specialty Chemicals	China	Harwick Standard	584,864	Long Beach, California; New York, New York; Newark, New Jersey

2014	China Specialty Chemicals	China	Harwick Standard	261,975	Long Beach, California; New York, New York; Newark, New Jersey

32. No Form Us filed by Harwick Standard for these DEHP shipments were identified in EPA's CDR database for the 2016 reporting cycle.

Public Health Impacts of Failure to Report DEHP Imports under the CDR Rule

33. The Department of Health and Human Services (DHHS) has determined that DEHP may reasonably be anticipated to be a human carcinogen. EPA has similarly determined that DEHP is a probable human carcinogen. Studies on DEHP have shown a wide range of other toxic effects, including damage to fertility and fetal development and harm to the liver, testes, thyroid, ovaries, kidneys, and blood.

34. DEHP is present in many plastics, especially vinyl materials, which may contain up to 40% DEHP. The plastic products that contain DEHP include wall coverings, tablecloths, floor tiles, furniture upholstery, shower curtains, garden hoses, swimming pool liners, rainwear, baby pants, dolls, some toys, shoes, automobile upholstery and tops, packaging film and sheets, sheathing for wire and cable, medical tubing, and blood storage bags..

35. State and federal agencies charged with protecting public health need complete and accurate information about the total amount of DEHP produced and imported in the United States and how and where DEHP is distributed and used. This information is also critical for communities exposed to DEHP emissions and releases from industrial facilities.

36. EPA designated DEHP as a high-priority substance under TSCA on December 20, 2019 and is now conducting a risk evaluation on this substance under section 6(b)(4) of the law.

Accurate information on import volumes and uses of DEHP under the CDR rule is critical for a complete and health-protective risk evaluation.

37. For this reason, Harwick Standard's failure to report large import shipments of DEHP under the CDR rule weakens the ability of EPA and local communities to evaluate and protect against serious threats to health.

Other Imported Chemicals Not Reported by Harwick Standard under the CDR Rule

38. CEH and its consultants also reviewed publicly available data on Harwick Standard's imports of other chemicals from China during 2013-2015 and identified six substances that were not reported for the 2016 CDR Update: diisononyl cyclohexane-1,2-dicarboxylate (DHIN), di-isononyl phthalate (DINP), di-octyl adipate (DOA), di-octyl sebacate (DOS), di-octyl terephthalate (DOTP), and tri-octyl trimellitate (TOTM). Import volumes for these substances exceeded CDR reportable quantities.

39. Import shipments and volumes for the six substances were as follows:

Diisononyl cyclohexane-1,2-dicarboxylate (DHIN) Imports: 1 shipment, 174,922 pounds

Year	Exporter	Country	Importer	Pounds	Ports
2014	China Specialty Chemical Co.	Hong Kong/ Taiwan	Harwick Standard Dist (Akron)	173,922	New York, New York; Newark, New Jersey

Di-isononyl phthalate (DINP) Imports: 3 shipments, 1.14 million pounds

Year	Exporter	Country	Importer	Pounds	Ports
2013	China Specialty Chemical Co.	China/ Hong Kong	Harwick Standard Dist (Akron)	526,530	Long Beach, California; New York, New York; Newark, New Jersey; Savannah, Georgia

2014	China Specialty Chemical Co./ Not Declared	China/ Hong Kong	Harwick Standard Dist (Akron)	577,963	Houston, Texas; Long Beach, California; Los Angeles, California; New York, New York; Newark, New Jersey
2015	China Specialty Chemical Co.	Hong Kong	Harwick Standard Dist (Akron)	43,607	Los Angeles, California

Di-octyl adipate (DOA) Imports: 2 shipments, 853,992 pounds

Year	Exporter	Country	Importer	Pounds	Ports
2013	Not Declared/ China Specialty Chemical Co.	China/ Hong Kong	Harwick Standard Dist (Akron)	235,784	Long Beach, California; New York, New York; Newark, New Jersey
2014	Not Declared/ China Specialty Chemical Co.	China/ Hong Kong	Harwick Standard Dist (Akron)	617,206	Long Beach, California; New York, New York; Newark, New Jersey; Savannah, Georgia

Di-octyl sebacate (DOS) Imports: 3 shipment, 147,201 pounds

Year	Exporter	Country	Importer	Pounds	Port
2013	China Specialty Chemical Co.	Hong Kong	Harwick Standard Dist (Akron)	73,369	Long Beach
2014	China Specialty Chemical Co.	Hong Kong	Harwick Standard Dist (Akron)	36,618	Long Beach
2015	China Specialty Chemical Co.	Hong Kong	Harwick Standard Dist (Akron)	37214	Long Beach

Di-octyl terephthalate (DOTP) Imports: 1 shipment, 44,902 pounds

Year	Exporter	Country	Importer	Pounds	Ports
2014	China Specialty Chemical Co.	Hong Kong	Harwick Standard Dist (Akron)	44,092	Los Angeles, California

Tri-octyl trimellitate (TOTM) Imports: 1 shipment, 44,092 pounds

Year	Exporter	Country	Importer	Pounds	Ports
2014	China Specialty Chemical Co.	Hong Kong	Harwick Standard Dist (Akron)	44,092	Newark, New Jersey; New York, New York

Claim for Relief

40. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 39 as if fully set forth herein.

41. Section 20(a)(1)(B) of TSCA authorizes any person to file suit in a United States district court against any person alleged be in violation of the Act to restrain such violation.

42. Plaintiff CEH provided notice to defendant Harwick Standard and the EPA Administrator more than 60 days before filing this action, as required by TSCA section 20(b)(1).

43. As described in this notice, defendant Harwick Standard imported 846,839 pounds of DEHP during 2013-2014 but failed to report these imports to EPA for the 2016 CDR Update in accordance with 40 CFR Part 720.

44. Defendant's DEHP imports exceeded the 25,000-pound threshold for CDR reporting and are therefore reportable under the CDR rule.

45. Defendant also imported reportable quantities of diisononyl cyclohexane-1,2-dicarboxylate (DHIN), di-isononyl phthalate (DINP), di-octyl adipate (DOA), di-octyl sebacate (DOS), di-octyl terephthalate (DOTP), and tri-octyl trimellitate (TOTM) during 2013-2015 but

failed to report these imports to EPA for the 2016 CDR Update in accordance with 40 CFR Part 720.

46. As the importer of these substances, defendant was and remains in violation of the CDR reporting requirements under 40 CFR §711.8.

47. These violations comprise "prohibited acts" under TSCA section 15 and represent "violations of this Act" for purposes of citizens' suits section 20(a)(1)(B).

48. The Court should order defendant to report its imports of the seven unreported substances to EPA in compliance with the CDR rule and restrain defendant from any other ongoing violations of CDR reporting requirements.

Request for Relief

WHEREFORE, Plaintiff respectfully requests judgment in its favor and against defendant upon its claims and, further, requests that this Honorable Court enter judgment against defendant:

(1) Declaring that defendant's failure to report DEHP, diisononyl cyclohexane-1,2-dicarboxylate (DHIN), di-isononyl phthalate (DINP), di-octyl adipate (DOA), di-octyl sebacate (DOS), di-octyl terephthalate (DOTP), and tri-octyl trimellitate (TOTM) imports during 2013-2015 to EPA in 2016 was a violation of the CDR reporting requirements at 40 CFR Part 711, a "prohibited act" under section 15 of TSCA and a "violation of this Act" actionable in a citizen's suit under section 20(a)(1)(B) of TSCA;

(2) Declaring that plaintiff has met the notice requirements and other prerequisites for relief under TSCA section 20;

(3) Ordering defendant to file Form Us with EPA for its imports of these seven substances in compliance with CDR reporting requirements at 40 CFR Part 711;

(4) Ordering defendant to audit its imports to identify other ongoing violations of CDR reporting requirements and to remedy these violations pursuant to TSCA section 20;

(5) Awarding plaintiff its costs of suit and reasonable fees for attorneys and expert witnesses in this action pursuant to 15 U.S.C. § 2619(c)(2); and

(6) Granting plaintiff such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 28th day of June 2021.

/s/*Robert M. Sussman*
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