

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**CENTER FOR ENVIRONMENTAL
HEALTH**

2201 Broadway, Suite 508
Oakland, CA 94612

Plaintiff,

v.

THE LUBRIZOL CORPORATION,

29400 Lakeland Boulevard
Wickliffe, Ohio 44092

Defendant.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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INJUNCTIVE RELIEF**

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 Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629 (“TSCA”).

2. CEH is a non-profit organization striving to protect children and families from harmful chemicals in air, food, water, and everyday products. CEH protects 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 The Lubrizol Corporation (“Lubrizol”) is a manufacturer and importer of chemicals subject to reporting obligations under TSCA. Lubrizol is headquartered in Wickliffe, Ohio.

4. CEH files this complaint under TSCA’s citizen suit provision, section 20(a), 15 U.S.C. § 2619(a), seeking declaratory and injunctive relief to remedy Lubrizol’s TSCA violations and recovery of CEH’s reasonable fees and costs.

5. Lubrizol 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 imports of certain chemicals in volumes of 25,000 pounds or greater during a given year between 2016 and 2019. These violations relate to, but are not limited to, di(2-ethylexyl)amine and 2-propyleheptanol. These chemicals were imported in reportable quantities between 2016 and 2019 but were not reported by the January 29, 2021 reporting deadline as required by the CDR rule.

6. Lubrizol’s failure to report these imports undermines EPA’s efforts under TSCA to evaluate and address chemical risks. It also prevents the public from tracking the movement of unsafe chemicals in commerce as well as monitoring their presence in communities.

7. In February 2024, CEH served Lubrizol with a presuit notice of violation that identified Lubrizol’s failure to comply with the CDR rule. Over the course of the next seven months, CEH engaged in correspondence with Lubrizol’s counsel regarding the violations set forth in this complaint. However, Lubrizol has not remedied its

noncompliance for these two chemicals or demonstrated that it file reports as required by the CDR rule. Absent an order from this Court restraining Lubrizol's CDR rule violations, Lubrizol will continue to be in violation of TSCA.

TSCA Citizens Suit Provision

8. 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.” 15 U.S.C. § 2619(a).

9. 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.” 15 U.S.C. § 2619(b).

10. 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.” 15 U.S.C. § 2619(a)(2).

12. 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.” 15 U.S.C. § 2619(c)(2).

TSCA Provisions

13. 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.”

14. 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.

15. 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. It also removed the impediments to effective regulation by eliminating any consideration of costs and other non-risk factors in determining whether chemicals present an unreasonable risk of injury and directing EPA to impose requirements “necessary so that the chemical no longer presents such [unreasonable] risk.”

Chemical Data Reporting Requirements Under TSCA

16. 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.

17. 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.

TSCA Inventory Update Reporting Modifications; Chemical Data Reporting, 76 Fed. Reg. 50816-0176, 50819 (August 16, 2011).

18. 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 must report every four years. The most recent reporting cycle was completed in early 2021, with reports due on January 29, 2021. For this CDR update, activities conducted in calendar years 2016-2019 determined the application of reporting requirements and the information to be reported.

19. 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.

20. 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.” *TSCA Inventory Update Reporting Modifications; Chemical Data Reporting*, 76 Fed. Reg. 50816-01, 50823 (August 16, 2011).

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

(1) fail or refuse to comply with any requirement of this subchapter 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

15 U.S.C. § 2614.

22. A failure or refusal to comply with the CDR rule constitutes a “fail[ure] or refus[al] to . . . submit reports . . . as required by this Act or a rule thereunder” and thus is an unlawful act under section 15. 15 U.S.C. § 2614. 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. 15 U.S.C. § 2647(d).

Jurisdiction and Venue

23. 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, D.C.

24. CDR reports are reviewed and analyzed by EPA's Office of Chemical Safety and Pollution Prevention, which is located at EPA headquarters.

25. Lubrizol's violations of the CDR rule accordingly occurred in the District of Columbia.

26. 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."

27. 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."

CEH's Notice of Intent to Sue

28. On February 23, 2024, CEH sent by registered mail a notice of intent to sue under TSCA section 20(b)(1) to Lubrizol and EPA Acting Administrator Michael S. Regan.

29. The presuit notice provided sufficient information for Lubrizol to identify: (1) the specific provision of TSCA or of the rule or order under TSCA alleged to have been violated; (2) the activity alleged to constitute a violation; (3) the persons responsible for the alleged violation; (4) the location of the alleged violation; (5) the date or dates of the alleged violation as closely as the citizen is able to specify them; and (6) the full name, address, and telephone number of the citizen giving notice. *See* 40 C.F.R. § 702.62(b). The notice informed Lubrizol that CEH's investigation was ongoing and that it was likely that Lubrizol had failed to report numerous substances

in violation of the CDR rule.

30. According to the signed receipts returned to CEH, Lubrizol received its notice on March 5, 2024, and EPA received its notice on March 4, 2024.

31. For the next seven months, the parties discussed CEH's allegations. Although Lubrizol provided satisfactory explanations that some of the imports CEH identified had been duly reported to EPA, Lubrizol failed to demonstrate that its imports of di(2-ethylexyl)amine and 2-propyleheptanol had been properly reported.

32. Lubrizol has not remedied the CDR violations alleged in this complaint.

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

Lubrizol's Imports of Di(2-ethylexyl)amine and 2-Propyleheptanol During the 2016-2019 CDR Reporting Period

34. During the 2020 Reporting Period, Lubrizol received at least two shipments of 2-propylheptanol in 2017 and 2018 totaling 876,821 pounds.

35. No Form Us for the 2-propylheptanol shipments were identified in EPA's CDR database for the 2020 reporting cycle.

36. During the 2020 Reporting Period, Lubrizol received at least one shipment of di-(2-ethylhexyl)amine in 2018 totaling 32,253 pounds.

37. No Form U for the di-(2-ethylhexyl)amine shipment was identified in EPA's CDR database for the 2020 reporting cycle.

Imports Under the CDR Rule

38. State and federal agencies charged with protecting public health need complete and accurate information about the total amount of toxic substances produced and imported in the United States and how and where toxic substances are distributed and used.

39. CDR reporting is an essential tool for tracking the production and use of toxic substances and Lubrizol's failure to report large chemical imports under the CDR rule weakens the ability of EPA and local communities to evaluate and protect against serious threats to health.

Claim for Relief

40. CEH hereby incorporates by reference the allegations above 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. 15 U.S.C. § 2619(a)(1).

42. CEH provided notice to Lubrizol and the EPA Administrator more than 60 days before filing this action, as required by TSCA section 20(b)(1). 15 U.S.C. § 2619(b).

43. Lubrizol imported 876,821 pounds of 2-propylheptanol and 32,253 pounds of di-(2-ethylhexyl)amine during 2016-2019 period for which it did not report.

44. Lubrizol's 2-propylheptanol and di-(2-ethylhexyl)amine imports each exceeded the 25,000-pound threshold for CDR reporting and are therefore reportable under the CDR rule.

45. As the importer of these substances, Lubrizol was and remains in violation of the CDR reporting requirements under 40 C.F.R. § 711.8.

46. 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).

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

Request for Relief

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

- (1) Declaring that Lubrizol's failure to report 2-propylheptanol and di-(2-ethylhexyl)amine imports during 2016-2019 to EPA is a violation of the CDR reporting requirements at 40 C.F.R. 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. 15 U.S.C. §§ 2614 and 2619(a);
- (2) Declaring that CEH has met the notice requirements and other prerequisites for relief under TSCA section 20. 15 U.S.C. § 2619(b);
- (3) Ordering Lubrizol to file Form Us with EPA for its imports of these two substances in compliance with CDR reporting requirements at 40 CFR Part 711. 15 U.S.C. § 2616(1);
- (4) Ordering Lubrizol to audit its manufacturing and import activities to identify any other ongoing violations of CDR reporting requirements and remedy such violations of CDR reporting requirements pursuant to TSCA section 20. 15 U.S.C. § 2616(1);
- (5) Awarding CEH 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 CEH such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 30th day of October 2024.

/s/ Robert M. Sussman

Robert M. Sussman (DC BAR NO 226746)

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<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629, violations of the Chemical Data Reporting (CDR Rule)

VII. REQUESTED IN COMPLAINT	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ JURY DEMAND:	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
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VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form
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DATE: 10/30/2024	SIGNATURE OF ATTORNEY OF RECORD /s/ Robert Sussman
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of a action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of Columbia

CENTER FOR ENVIRONMENTAL HEALTH

Plaintiff(s)

v.

THE LUBRIZOL CORPORATION

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) THE LUBRIZOL CORPORATION,
29400 Lakeland Boulevard
Wickliffe, Ohio 44092

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: ROBERT M. SUSSMAN
SUSSMAN & ASSOCIATES
3101 GARFIELD STREET, NW
WASHINGTON, D.C. 20008

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: