



October 21, 2022

Andrew Thompson
CEO
Inhance Technologies USA
22008 N. Berwick Drive
Houston, Texas 77095

Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Re: Notice of Intent to File Suit Regarding Alleged Violation of TSCA

Dear Mr. Thompson and Administrator Regan:

This is a notice of intent to sue to restrain alleged ongoing violations by Inhance Technologies USA (“Inhance”) of the Toxic Substances Control Act (“TSCA”) pursuant to section 20(a)(1) of TSCA. The notice is being submitted by the Center for Environmental Health (“CEH”), a non-profit organization headquartered in Oakland, California, and Public Employees for Environmental Responsibility (“PEER”), a non-profit organization headquartered in Silver Spring, Maryland.

As required by 40 C.F.R. § 702.62(b), the details of the alleged violations are as follows:

(1). Specific TSCA Provisions Violated. 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;"

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 or any rule promulgated under section 4, 5, or 6 . . . to restrain such violation.”

Section 5(a)(2) of TSCA authorizes the U.S. Environmental Protection Agency (“EPA”) to designate by rule certain uses of chemical substances as “significant new uses.” Under EPA’s significant new use rules (“SNUR”), manufacturing and processing of these uses are prohibited unless the firm seeking to conduct these activities has submitted a Significant New Use Notice (or “SNUN”) to EPA at least 90 days before their initiation. EPA must review the SNUN and determine whether the new use may present an unreasonable risk of injury under section 5(a)(3). Unless it concludes that an unreasonable risk is not likely, EPA must restrict the use under an order under section 5(e) of TSCA.

Under section 15 of TSCA, manufacture (including import) of substances subject to a SNUR without complying with its notification requirements is an unlawful act and, as a violation of a rule promulgated under section 5, is subject to a citizens' civil action under section 20 seeking to restrain the violation.

(2). Activity Constituting an Alleged Violation. On July 27, 2020, EPA finalized a SNUR for long-chain perfluoroalkyl carboxylate ("LCPFAC") chemical substances. This SNUR "requires persons to notify EPA at least 90 days before commencing the manufacture (including import) or processing of these chemical substances for the significant new uses described in this notice." As EPA states, "[m]anufacturing (including import) or processing [of LCPFAC's] for the significant new use are prohibited from commencing until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination." 85 Fed. Reg. 45109.

EPA explains that the "term LCPFAC refers to the long-chain category of perfluorinated carboxylate chemical substances with perfluorinated carbon chain lengths equal to or greater than seven carbons and less than or equal to 20 carbons. The category of LCPFAC chemical substances also includes the salts and precursors of these perfluorinated carboxylates." *Id.* at 45112. The rule provides several non-exclusive examples of LCPFAC substances, including perfluorooctanoic acid ("PFOA").

The inside and outside walls of many high-density polyethylene ("HDPE") and other plastic containers are treated by "fluorination," a process in which fluorine gas is applied to the container in varying concentrations under high temperatures. This process imparts barrier properties to the container that prevents changes in the chemical composition of products stored and distributed in the container, protecting against product loss or contamination during transport or end-use. Among the products stored in fluorinated containers are "substances" and "mixtures" subject to TSCA. As a result of fluorination, these products are likely to contain LCPFACs to which product users are exposed.

We understand that Inhance is a leading developer of fluorination technology. It receives plastic containers from their manufacturers and fluorinates them in special chambers at its facilities in the U.S. and abroad. Following fluorination, Inhance returns the containers to distributors who sell them to suppliers of numerous industrial and consumer products, including many products subject to TSCA. We understand that Inhance performs the fluorination process for all or nearly all fluorinated HDPE containers sold or used in the U.S.

The presence of LCPFACs in fluorinated containers has been demonstrated in multiple analytical studies conducted by EPA and others. The results of the EPA studies can be found at [US EPA - EPA's Analytical Chemistry Branch PFAS Testing - Rinses from Selected Fluorinated and Non-Fluorinated HDPE Containers](#) and [EPA PFAS Container Leaching Study 08122022_0.pdf](#). The PFAS detected in fluorinated containers include PFOA and other LCPFACs subject to EPA's SNUR. The formation of these PFAS appears to result from chemical reactions occurring during the fluorination process and, to our knowledge, has no other cause. The SNUR contains no exemption for LCPFACs produced during the fluorination of plastic containers.

(3). Person or Persons Responsible for the Alleged Violation. As the company performing fluorination, Inhance has been engaged in the “manufacture for commercial purposes” of LCPFACs under TSCA as EPA defines these terms in 40 C.F.R. § 720.3(r). Inhance was therefore responsible for complying with the SNUR and violated TSCA by failing to do so.

(4). Location of Alleged Violation. The LCPFAC SNUR was developed and promulgated at EPA headquarters in Washington, D.C. SNUNs required to be submitted under the SNUR must be filed with EPA’s Central Data Exchange (“CDX”) in Washington, D.C. Accordingly, we believe that EPA headquarters in Washington, D.C. was the site of the alleged violations. Inhance’s fluorination facilities in Houston, Texas, and other locations would be sites of the alleged violations as well.

(5). Dates of Alleged Violations. The LCPFAC SNUR took effect on September 25, 2020. As of that date, manufacture of LCPFACs subject to the SNUR without complying with the rule’s notification requirements violated TSCA. This violation continued for each subsequent day on which Inhance performed fluorination activities that resulted in the formation of LCPFACs and, we believe, is continuing now.

(6). Citizen and Legal Counsel Giving Notice. The citizens giving notice are:

Center for Environmental Health
2201 Broadway, Suite 508
Oakland, CA 94612
510-655-3900

Public Employees for Environmental Responsibility
762 Wayne Avenue, Suite 610
Silver Spring, MD 20910
202-265-7337

CEH is represented by:

Robert M. Sussman
Sussman and Associates
3101 Garfield St, NW
Washington DC 20008
bobsussman1@comcast.net
202-716-0118

PEER is represented by:


Paula Dinerstein
General Counsel
Public Employees for Environmental Responsibility
762 Wayne Avenue, Suite 610
Silver Spring, MD 20910

202-265-7337
pdinerstein@peer.org

Please contact Mr. Sussman directly with your response to this notice.

LCPFACs raise serious health and environmental concerns because of their persistence, mobility, accumulation in people and the bio-sphere, and serious toxicity. Fluorinated plastic containers are widely distributed in commerce and come into contact with large numbers of workers and consumers. As a result, the presence of LCPFACs in these containers has the potential for widespread exposure and significant harm. We strongly recommend that Inhance cease all fluorination of TSCA-regulated containers and comply with the SNUR requirements. Our teams would be pleased to consult with you about the steps that must be taken in accordance with TSCA.

Sincerely yours,



Tim Whitehouse
Executive Director
Public Employees for Environmental
Responsibility

Regina Jackson
Interim Chief Executive Officer
Center for Environmental Health

cc: Attorney General of the United States: 10th and Constitution Avenue, NW., Washington, D.C. 20530

C T Corporation System: 1999 Bryan Street, Suite 900, Dallas, TX 75201