UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiff,

v.

3N INTERNATIONAL, INC.
310 North Cleveland Massillon Road
Akron, OH 44333

Defendant.

Case No. 21-1720

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMPLAINT FOR DECLARATORY AND 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 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

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

3. Defendant 3N International, Inc. ("3N International"), is a manufacturer and importer of chemicals subject to reporting obligations under TSCA. 3N International 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. 3N International 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 843,047 pounds of tetrabromobisphenol A bis(2,3-dibromopropyl ether) that it imported during 2013-2015 for the 2016 CDR Update.

6. 3N International's failure to report these large volume imports 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.

7. 3N International has also filed to report five other substances imported in reportable quantities during the 2013-2015 reporting period for the 2016 CDR Update.

8. 3N International has failed to respond to a notice of violation from CEH under section 20(b)(1)(A) of TSCA. 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

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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:

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> 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. It also removed the impediments to effective regulation created 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

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.

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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.

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