



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 24 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Jill Hyman Kaplan, Esquire
Manko, Gold, Katcher & Fox LLP
401 City Avenue
Suite 500
Bala Cynwyd, Pennsylvania 19004

Re: EnerSys Delaware Inc.
Consent Agreement and Final Order
EPCRA-04-2014-2008(b)

Dear Ms. Kaplan:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Emergency Planning and Community Right-to-Know Act of 1986 matter (Docket No. EPCRA-04-2014-2008(b)) involving EnerSys Delaware Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the U.S. Environmental Protection Agency. If you have any questions with regards to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Ms. Deanne Grant at (404) 562-9291.

Sincerely,

A handwritten signature in blue ink that reads "Caron B. Falconer".

Caron B. Falconer
Chief
EPCRA Enforcement Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV
2014 JUN 24 PM 4:07
HEARING CLERK

IN THE MATTER OF:)
)
EnerSys Delaware Inc.) Docket Number: EPCRA-04-2014-2008(b)
)
Respondent.)
_____)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is EnerSys Delaware Inc.

2. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent, EnerSys Delaware Inc., is a corporation doing business in the Commonwealth of Kentucky.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

6. Respondent owns and operates a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 761 Eastern Bypass, Richmond, Kentucky 40475.

III. EPA's Allegations of Violations

8. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30, require the owner or operator of a facility that (a) has 10 or more full-time employees; (b) is in a Standard Industrial Classification (SIC) major group or industry listed in 40 C.F.R. § 372.23(a) for which the corresponding North American Industry Classification System subsector and industry codes are listed in 40 C.F.R. §§ 372.23(b) and 372.23(c); and (c) manufactured, processed, or otherwise used a toxic chemical listed in Section 313(c) and 40 C.F.R. § 372.65, in excess of an applicable threshold quantity established under EPCRA Section 313(f) and set forth in 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory reporting Form R (EPA Form 9350-1) to the Administrator of EPA and to the State in which the facility is located, by July 1 for the preceding calendar year for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in quantities exceeding the established threshold quantity during the preceding calendar year.

9. As set forth under Section 313(f) of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds per calendar year. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds.

10. Respondent has 10 or more full-time employees, as defined at 40 C.F.R. § 372.3 at its facility.

11. Respondent's facility is classified in a covered SIC code as described at 40 C.F.R. § 372.22 and in a covered NAICS code as described at 40 C.F.R. § 372.23.

12. Respondent's facility is classified under SIC code 3691 and NAICS code 335911.

13. Antimony compounds, arsenic, lead compounds, and propylene are toxic chemicals referenced at Section 313(c) of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.65.

14. Respondent's facility manufactured, processed, or otherwise used the toxic chemicals listed in Paragraph 13 and referenced at Section 313(c) of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.65, and listed under 40 C.F.R. § 372.65, in excess of the 25,000/10,000 pound threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.25, during calendar years 2011, 2010, and 2009, which correspond to reporting years 2012, 2011, and 2010 respectively.

15. Respondent failed to submit Form R's for antimony compounds, arsenic, lead compounds, and propylene to the Administrator of EPA and to the official designated by the Governor of the Commonwealth of Kentucky by July 1 of the reporting year.

16. Respondent violated the reporting requirements of Section 313(f) of EPCRA, 42 U.S.C. § 11023, at its facility for reporting years 2012, 2011, and 2010, and is therefore subject to the assessment of penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045.

17. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 for each violation of Section 313 that occurred after January 12, 2009. Each day a violation of Section 313 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by an Administrative Order.

IV. Consent Agreement

18. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

19. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

20. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

21. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

22. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

23. Compliance with the CAFO shall resolve the allegations of violations contained herein. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or the U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Compliance with this CAFO is not a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by the EPA, and it is the responsibility of Respondent to comply with EPCRA and other applicable federal, state, and local laws and regulations.

24. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of EPCRA.

V. Final Order

25. Respondent shall pay a civil penalty of FORTY FOUR THOUSAND SEVEN HUNDRED EIGHT DOLLARS (\$44,708), for the violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

26. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to the following address:

BY MAIL

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
(314) 425-1818

The check shall reference on its face the name and the Docket Number of the CAFO.

27. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Deanne Grant
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

28. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

29. Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Respondent shall expend no less than ONE HUNDRED SIXTY SIX THOUSAND NINE HUNDRED SEVENTY SEVEN DOLLARS (\$166,977) for the purchase of the following equipment for donation to the City of Richmond Fire Department:

<u>Quantity</u>	<u>Description</u>
5	Class 1 NFPA 1994 Ensemble Level A Rear Entry Tychem TK. (X-Large)
5	Class 1 NFPA 1994 Ensemble Level A Rear Entry Tychem TK. (2X-Large)
10	Airpak 75, SCBA w/optional buddy breather
10	AV-3000 Facepiece. Kevlar head Harness, LG, LG Nosecap
10	HAZMAT Radiocom Communication System
20	Replacement Cylinders (60 min)
20	Replacement Cylinders (30 min)
5	SKA-PAK Plus
10	4 point Nylon Suspension Hard Hat- white
15 pairs	Lined, chemical resistant Nitrile Gloves
15	Chemical boots
10	Cooling Vest w/Pack. Dark blue, Extra Large.
1	HAZMAT Simultest Kit
1	Clandestine Lab Investigation (CLIK)
1	Pressure Test Kit
14	Vulcan flashlights
5	30 inch one-piece poly shovels
2	40 inch non-sparking, chemical resistant shovels
1	Chlorine A Kit
1	Chlorine B Kit
36	5 Gal. Pail of Fire Aid 2000
45	8D Hose, 1 3/4"
15	8D Hose, 2"
30	8D Hose, 2 1/2"
4	Ventis MX4 multi-gas monitor
2	4-in-1 calibration gas, 58 liters
1	V-Cal calibration station for pumped Ventis monitor
1	Demand flow regulator for use with V-Cal
2	MultiRAE Unit
1	AutoRae 2, MultiRae Starter Kit
2	Regulator, Demand Flow (fits 34/58/100/116 GAL)
2	Regulator, Demand Flow (Fits 17 DS & 34 DS)
2	Teflon Tubing 1/16" ID
2	4-in-1 Calibration Gas (58 liter)
2	Isobutylene 100ppm/Air Calibration Gas, 34 L

- 1 RV082 Router
- 1 HP LaserJet Pro Printer
- 3 Dell OptiPlex 3020 Mobile Command w/ Monitors and Stands
- Taxes on Purchases

This Consent Agreement and Final Order shall not be construed to constitute EPA endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.

30. Respondent certifies that neither it, nor, to the best of its knowledge, the recipient of the Emergency Planning and Preparedness SEP, is a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.

31. Respondent has obtained and presented to EPA a separate written Certification from the recipient of the SEP, the City of Richmond Fire Department, stating that it is not a party to any open federal financial assistance transaction as stated in paragraph 30.

32. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 29.

33. For purposes of paragraph 32, the determination whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

34. If Respondent fails to timely and fully complete any part of the SEP, including failure to spend the minimum amount of ONE HUNDRED SIXTY SIX THOUSAND NINE HUNDRED SEVENTY SEVEN DOLLARS (\$166,977), Respondent shall pay to the United States a stipulated penalty of the difference between \$166,977 and the actual amount spent on the SEP.

35. No later than sixty (60) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Deanne Grant at the address provided above. The Report shall include the following:

(a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

(b) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of no less than \$166,977, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 29.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

36. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late. Any stipulated penalties accrued and due and owing under this Section shall be separate from any stipulated penalties assessed and due and owing under Paragraph 34 of this CAFO.

37. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

38. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

39. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental protection Agency for violation of Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).”

40. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

41. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

42. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
43. This CAFO shall be binding upon the Respondent, its successors and assigns.
44. The following individual is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8451

45. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

THIS SECTION INTENTIONALLY LEFT BLANK

VII. Effective Date

46. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

EnerSys Delaware Inc.

By: *Dennis Brumbaugh* Date: *May 14, 2014*
Dennis Brumbaugh, Plant Manager

U.S. Environmental Protection Agency

By: *Beverly H. Banister* Date: *5/30/14*
Beverly H. Banister, Director
Air, Pesticides & Toxics
Management Division

APPROVED AND SO ORDERED this *24* day of *June* 2014

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

I hereby certify that I have this day served a true and correct copy of the foregoing
Consent Agreement and Final Order, in the Matter of EnerSys Delaware Inc., Docket Number:
EPCRA-04-2014-2008(b), on the parties listed below in the manner indicated:

Caron B. Falconer (Via EPA's internal mail)
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, GA 30303

Deborah Benjamin (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Jill Hyman Kaplan (Via Certified Mail - Return Receipt
Requested)
Manko, Gold, Katcher & Fox LLP
401 City Avenue
Suite 500
Bala Cynwyd, PA 19004

Date: 6-24-14



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511