

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2016 AUG -3 AM 8:01

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

IN THE MATTER OF)
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Vita Craft Corporation)
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Docket No. CAA-07-2016-0034

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile/electronic filing of page 15 of the Consent Agreement and Final Order is authorized in this proceeding.

Dated: Aug. 3, 2016

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2016 AUG -3 AM 8:01

IN THE MATTER OF:

Vita Craft Corporation
11100 W. 58th Street
Shawnee, Kansas

Respondent

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. CAA-07-2016-0034

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.

2. The Complainant is the United States Environmental Protection Agency, Region 7 (“EPA”). On EPA’s behalf, the Director of the Air and Waste Management Division, EPA Region 7 is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.

3. Respondent is Vita Craft Corporation, a corporation doing business in the state of Kansas.

4. Complainant and Respondent having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (“Consent Agreement” or “Agreement”) and the attached final order (“Final Order” or “Order”) without adjudication of

any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

II. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice, 40 C.F.R. Part 22.

6. Section 113(d) of the CAA, states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Section 112(d) of the CAA, 42 U.S.C. § 7412(d). Section 113(d)(2)(B) of the CAA, 42 U.S.C. § 7413(d)(2)(B), provides that the EPA Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under Section 113(d) of the CAA. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to no more than \$32,500 per day for each violation occurring between March 15, 2004, and January 12, 2009; and no more than \$37,500 per day for each violation occurring after January 12, 2009.

7. The EPA and the United States Department of Justice have jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

8. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.4(a) and 22.18(b).

9. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. STATUTORY AND REGULATORY FRAMEWORK

10. The Clean Air Act establishes a regulatory framework designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401.

11. Section 112(d) of the Act, 42 U.S.C. § 7412(d), requires EPA to establish emission standards for each category of major sources of hazardous air pollutants (HAPs). Section 112(b) of the Act, 42 U.S.C. § 7412(b), designates perchloroethylene (PCE) as a hazardous air pollutant.

12. EPA promulgated the national emissions standards for hazardous air pollutants (NESHAPs) for halogenated solvent cleaning. These provisions are codified at 40 C.F.R. Part 63, Subpart T (Subpart T).

13. Subpart T applies to owners or operators of solvent cleaning machines that use, inter alia, perchloroethylene, in a total concentration greater than 5 percent by weight, as a cleaning or drying agent.

14. Pursuant to 40 C.F.R. § 63.2, "owner or operator" is defined as "any person who owns, leases, operates, controls, or supervises a stationary source."

15. Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3), and 40 C.F.R. § 63.2 defines a “stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant.”

16. Section 112(a)(1) of the Clean Air Act, 42 U.S.C. § 7412(a)(1), defines “major source” as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, ten (10) tons per year or more of any hazardous air pollutant or twenty-five (25) tons per year or more of any combination of hazardous air pollutants.

17. Pursuant to 40 C.F.R. § 63.2, “affected source” is defined as “the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the Act.”

18. Pursuant to 40 C.F.R. § 63.460(i), the affected source to which the provisions of the NESHAPs for halogenated solvent cleaning (40 C.F.R. Part 63, Subpart T) apply is “all solvent cleaning machines, except solvent cleaning machines used in the manufacture and maintenance of aerospace products, solvent cleaning machines used in the manufacture of narrow tubing, and continuous web cleaning machines located at a major source[.]”

19. Pursuant to 40 C.F.R. § 63.460(i)(1), each affected facility that was constructed or reconstructed on or before August 17, 2006, shall be in compliance with the provisions of this subpart no later than May 3, 2010.

20. Pursuant to 40 C.F.R. § 63.471(a), the owner or operator of an affected facility to comply with a facility-wide standards, including a 12-month rolling total emission limit.

IV. STIPULATED FACTS

21. At all times pertinent to this action, Respondent was the “owner” and/or “operator” of a metal cookware manufacturing facility located at 11100 W. 58th Street, Shawnee, Kansas 66203 (Facility) within the meaning of Section 112(a) of the Act, 42 U.S.C. § 7412(a).

22. At all times pertinent to this action, the Facility was a “stationary source” as that term is defined in Section 112(a)(3) of the Act, 42 U.S.C. § 7412(a)(3).

23. The Facility is a “major source” of “hazardous air pollutants” as those terms are defined by Section 112(a) of the Act, 42 U.S.C. § 7412(a).

24. Respondent processes, uses, or produces the HAP perchloroethylene, in a total concentration greater than 5 percent by weight, as a cleaning or drying agent.

25. Pursuant to 40 C.F.R. § 63.460(i)(1), the Facility is an affected source because it operates a solvent cleaning machine not used in the manufacture and maintenance of aerospace products, narrow tubing, and/or continuous web cleaning and is therefore subject to the requirements of 40 C.F.R. Part 63, Subpart T.

26. Respondent was required to comply with the provisions of Subpart T no later than May 3, 2010.

27. EPA conducted an inspection of the Facility on September 9, 2015.

V. ALLEGED VIOLATIONS OF LAW

28. Pursuant to 40 C.F.R. § 63.471(b)(2), Respondent is required to ensure that the total emissions of perchloroethylene is equal to or less than the applicable facility-wide 12-month rolling total emission limit of 4,800 kilograms (10,582 pounds).

29. Respondent’s alleged total annual perchloroethylene emissions for 2014 were 17,707 pounds, and are therefore greater than the facility-wide 12-month rolling total emission

limit. Therefore, through 2014, Respondent is alleged to have violated the requirement of 40 C.F.R. § 63.471(b)(2).

30. Respondent's failure to comply with 40 C.F.R. § 63.471(b)(2) is a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

VI. TERMS OF CONSENT AGREEMENT

31. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement and Final Order;
- b. neither admits nor denies the alleged violations of law stated above;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to the conditions specified in this Agreement;
- f. consents to any stated Permit Action;
- g. waives any right to contest the alleged violations of law set forth in Section V of this Consent Agreement; and
- h. waives its rights to appeal the Final Order portion of this Consent Agreement.

32. For the purpose of this proceeding, Respondent:

- a. agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- b. acknowledges that this Agreement constitutes an enforcement action for

purposes of considering Respondent's compliance history in any subsequent enforcement actions;

- c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- d. consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court; and
- e. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

33. Penalty Payment. Respondent agrees that, in settlement of the claims alleged in this Agreement, Respondent shall pay the compromised civil penalty of \$16,625 within 30 calendar days of the Effective Date of this Agreement.

- a. Payment of the penalty may be submitted on-line at www.pay.gov by entering "SFO 1.1" in the "Search Public Forms" field. Open the on-line form and complete required fields to complete payment. Respondent shall print a copy of each payment receipt and mail a copy of each receipt to EPA's representative identified in this paragraph:

Regional Hearing Clerk
Enforcement Coordination Office
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219

and to:

Karen T. Johnson
AWMD/ACES
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219.

Payments may also be made by cashier or certified check made payable to

“Treasurer of the United States” and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties - CFC
P.O. Box 979077
St. Louis, Missouri 63197-9000.

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall be provided to EPA’s representatives identified in this paragraph.

34. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:
- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States’ enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
 - b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;

- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- d. suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

35. Conditions. As a condition of settlement and in compromise of the civil penalty that EPA could otherwise impose herein, and in exchange for Respondent's agreement to enter into this Consent Agreement without challenging the alleged violations of law, Respondent agrees to the following:

- a. By no later than October 31, 2016, Respondent shall disconnect and remove the existing vapor degreaser (Finishing Equipment Inc., Model AE-SSO-SP and AS-LD-SP) and install an Atlantis Cleaning System Model AT-5-4030 aqueous degreaser which consists of a spray wash tank, agitation, ultrasonic cleaning tank, cascading rinses, and a recirculating hot air dryer.
- b. By no later than November 30, 2016, Respondent shall submit a completion report which includes the following:
 - i. photographs of the installed AT-5-4030;
 - ii. a statement of the costs of completing the requirements of paragraph 35(a); and

iii. a verification, stating that Respondent has complied with the requirements of paragraph 35(a).

c. All documents required to be submitted to EPA by this Agreement shall contain the following certification, signed by an officer of the company:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

d. The submissions required by the above paragraphs and subparagraphs shall be made to:

Karen T. Johnson
U.S. Environmental Protection Agency, Region 7
AWMD/APCO/ACES
11201 Renner Blvd.
Lenexa, KS 66219
Johnson.karent@epa.gov

36. Respondent agrees that the time period from the Effective Date of this Agreement until all of the conditions specified in Paragraph 35 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in Section V of this Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

37. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 36, Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.

38. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

39. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to it.

40. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations. Additionally, both parties agree that Complainant's covenant not to sue Respondent (stated in Paragraph 44) during the time period between the issuance of the Final Order and the deadline (stated in Paragraph 35) for Respondent to complete the non-penalty conditions of this Agreement constitutes sufficient consideration for Respondent's obligation to

completely perform the non-penalty conditions of this Consent Agreement as stated in Paragraph 35, regardless of whether the covenant not to sue subsequently terminates.

41. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission to be true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

42. Except as qualified by Paragraph 34, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER

43. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

44. Complainant covenants not to sue Respondent for injunctive or other equitable relief for the violations and facts alleged in this matter, but such covenant automatically terminates if and when Respondent fails to timely and satisfactorily complete every condition stated in Paragraph 35. If and when such covenant terminates, the United States at its election may seek to compel performance of the conditions stated in Paragraph 35 in a civil judicial action under the CAA or as a matter of contract. The covenant not to sue becomes permanent upon satisfactory performance of the conditions stated in Paragraph 35.

45. The \$16,625 compromised Penalty Payment as set forth in Paragraph 33 above shall not be deductible for purposes of federal taxes. The costs of the aqueous degreaser as set forth in Paragraph 35 above is not an EPA Supplemental Environmental Project.

46. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

47. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

48. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

49. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

50. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

51. This Consent Agreement shall automatically terminate upon the latest date of the following events: (a) payment by Respondent of the EPA Penalty described in Paragraph 33; and (b) completion by Respondent of the Conditions described in Paragraph 35.

VIII. EFFECTIVE DATE

52. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of Vita Craft Corporation, Docket No. CAA-07-2016-0034, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Gary E. Martin
Signature

7-22-2016
Date

Printed Name: GARY E. MARTIN

Title: PRESIDENT VITA CRAFT CORPORATION

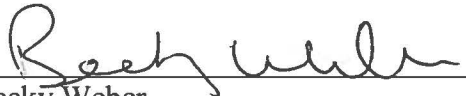
Address: 11100 W 59TH ST SHAWNEE, KANSAS 66203

Respondent's Federal Tax Identification Number: 48 07 56 44 8

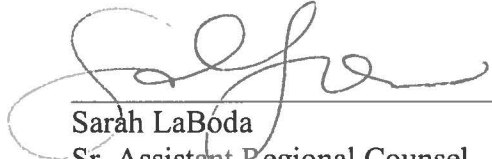
The foregoing Consent Agreement In the Matter of Vita Craft Corporation, Docket No. CAA-07-2016-0034, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

8/11/16
DATE


Becky Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

7/29/16
DATE


Sarah LaBoda
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
BEFORE THE ADMINISTRATOR

In the Matter of:

Vita Craft Corporation,

Respondent.

Docket No. CAA-07-2016-0034

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.

Aug. 3, 2016
DATE

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
EPA Region 7

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of Vita Craft, Docket No. CAA-07-2016-0034, were filed and copies of the same were mailed to the parties as indicated below.

Copy emailed to Attorney for Complainant:

Laboda.sarah@epa.gov

Copy by First Class Mail to Respondent:

Gary Martin
Vita Craft Corporation
11100 West 58th Street
Shawnee, Kansas 66203-2238

Brian W. Fields, Esq.
Lathrop & Gage LLP
2345 Grand Blvd., Suite 2200
Kansas City, Missouri 64108

8/3/16
DATE

Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7