

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2
2014 SEP 12 AM 10: 50
REGIONAL HEARING
CLERK

In the Matter of:

INyX USA, Ltd.
Manati, Puerto Rico
Respondent

In a proceeding under Section 113(d)
of the Clean Air Act, 42 U.S.C. § 7413(d)

**CONSENT AGREEMENT
AND
FINAL ORDER**

CAA-02-2007-1221

Preliminary Statement

This Consent Agreement and Final Order (CAFO) resolves an administrative penalty proceeding commenced in September 2007 by the Director of the Caribbean Environmental Protection Division for the United States Environmental Protection Agency (EPA) Region 2 (the Complainant), against Respondent INyX USA, Ltd (INyX or Respondent), pursuant to Section 113(d), 42 U.S.C. § 7413(d), of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 *et seq.*, and EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP), 40 C.F.R. Part 22.

The Consent Agreement portion of this CAFO is entered into by the Complainant and Respondent while the Final Order portion is executed by the EPA Region 2 Regional Judicial Officer. Pursuant to EPA Region 2 Delegation of Authority 7-6-A, the Complainant, the Director of the Caribbean Environmental Protection Division (CEPD), is delegated the authority, in Region 2, to issue CAA Section 113(d) administrative penalty complaints, and to agree to settlements and sign consent agreements memorializing those settlements.

Pursuant to EPA Delegation of Authority 7-6-C, Regional Judicial Officer of EPA Region 2 is delegated the authority, in Region 2, to execute CAA Section 113(d) Final Orders, for CAA violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands, and that involve less than \$37,500 in civil penalties.

Consent Agreement

General Provisions

1. The Complainant and Respondent enter into this Consent Agreement and propose the attached Final Order to resolve an administrative civil penalty proceeding that was commenced by the filing of EPA's Complaint on September 19, 2007.

2. Respondent has informed EPA that operations at INyX's Manati, Puerto Rico facility ceased in late-2008.

3. Consistent with CROP 22.18(c), this Consent Agreement and the attached Final Order only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint.

4. As required by CROP 22.18(b), for the purposes of this Consent Agreement and administrative civil penalty proceeding, and to avoid the expense of protracted litigation,

Respondent:

- a. Admits the jurisdictional allegations of the Complaint;
- b. Neither admits nor denies the factual allegations found in the Complaint;
- c. Consents to the payment of the civil penalty specified below in the "Settlement" section of this Consent Agreement, on the terms specified in that section;
- d. Consents to the issuance of the attached Final Order; and

- e. Waives any right to contest the Complaint's allegations and any right to appeal the attached Final Order.

Settlement

5. Pursuant to Section 113(d) of the Act, Respondent shall pay a civil penalty of \$2,000 and shall pay that penalty by no later than the Due Date, which is thirty days after the date of the signature on the attached Final Order. Respondent shall have the option of paying the \$2,000 either by corporate, cashiers' or certified check. Respondent shall: (1) clearly type or write the docket number (CAA 02-2007-1221) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America" and (3) send the check to:

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

Respondent shall send notice of payment to the following:

Ramon Torres
Acting Chief, Multimedia, Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency Region 2
City View Plaza II, Suite 7000
#48 RD. 165 km 1.2
Guaynabo, PR 00968-8069

and

Evans J. Stamatakis
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007

6. If Respondent fails to make full, complete and timely payment of the **\$2,000** penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

- a. Interest. If Respondent fails to make payment, or make partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

7. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations of the Act set forth herein.

8. Nothing in this Consent Agreement and attached Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Clean Air Act and other environmental laws and it is the responsibility of the Respondent to comply with such laws and regulations.

9. This Consent Agreement, attached Final Order, and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CAFO or any of its terms and conditions.

10. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives its right to appeal the attached Final Order.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

12. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in this action resolved by this Consent Agreement and attached Final Order.

13. The Consent Agreement and attached Final Order shall be binding on Respondent and its successors and assignees.

14. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

Signatures

For Complainant:

Date:



9-8-14

Jose Font
Director, Caribbean Environmental Protection Division

For Respondent:



9/20/14

Stephen S. Gray
As Chapter 11 Trustee for INyX USA, LTD. and not individually

In the Matter of INyX USA, Ltd
CAA 02-2007-1221

FINAL ORDER

The Regional Judicial officer of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of INyX USA, Ltd. The Consent Agreement, entered into by Complainant and Respondent INyX USA, Ltd, is hereby approved and issued, as a Final Order, effective upon filing with the Regional Hearing Clerk.

DATE: September 9, 2014

Helen Ferrara

Helen Ferrara
Regional Judicial Officer
United States Environmental
Protection Agency, Region 2

Certificate of Service

I certify that on September 12, 2014, I caused the foregoing Consent Agreement and Final Order in the matter of INyX USA, Ltd. CAA-02-2007-1221, to be served on the following people in the manner listed below:

One Original and One Copy, by hand delivery to:

✓ Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

One Copy, by hand delivery to:

Evans J. Stamatakis
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

One Copy, by Overnight Delivery to:

Peter Keane
Pachulski Stang Ziehl & Jones LLP
919 North Market Street, 17th Floor
Wilmington, DE 19899-8705
Direct Dial: 302-778-6462

Dated: September 12, 2014



Katherine Zuckerman
Air Branch Secretary
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 2