



**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

In the Matter of)
)
EnerSys Energy Products, Inc.) **Docket No. CAA-07-2024-0042**
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and EnerSys Energy Products, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action and/or the penalty amount is greater than the statutory limitation, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA’s intent to issue an order assessing penalties for alleged of violations of the National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources at 40 C.F.R. Part 63, Subpart PPPPPP, and Section 112 of the CAA.

Parties

- 3. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.
- 4. Respondent is EnerSys Energy Products, Inc., a company doing business in Missouri.

Statutory and Regulatory Background

5. The CAA was promulgated “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

6. Section 112 of the CAA, 42 U.S.C. § 7412, authorizes the EPA to develop emission standards that apply to specific categories of major sources and area sources of listed hazardous air pollutants. The National Emissions Standards for Hazardous Air Pollutants (NESHAPs) apply to specific sources that emit listed hazardous air pollutants (HAPs). The NESHAPs are developed and implemented by EPA and are delegated to the states after they submit adequate regulatory procedures for implementation and enforcement for a particular NESHAP.

7. The NESHAP for Lead Acid Battery Manufacturing Area Sources at 40 C.F.R. Part 63, Subpart P (Subpart 6P), establishes national emission standards for HAPs for owners and operators of lead acid battery manufacturing plants or lead acid battery component manufacturing plants that are an area source of hazardous air pollutant emissions. Subpart 6P has not been delegated to the State of Missouri and EPA retains sole authority over implementation and enforcement of this NESHAP in Missouri.

8. Section 112(a)(3) of the CAA and the NESHAP General Provisions at 40 C.F.R. § 63.2 define “stationary source” as any building, structure, facility, or installation which emits or may emit any air pollutant.

9. Section 112(a)(2) of the CAA and the NESHAP General Provisions at 40 C.F.R. § 63.2 define “area source” as any stationary source of HAPs that is not a major source. “Major source” is defined 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, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs, with exceptions not relevant here. 42 U.S.C. § 7412(a)(1); 40 C.F.R. § 63.2.

10. Subpart 6P defines “lead acid battery manufacturing plant” as any plant that produces a storage battery using lead and lead compounds for the plates and sulfuric acid for the electrolyte. 40 C.F.R. § 63.11426.

11. Subpart 6P requires subject owners and operators to comply with the recordkeeping requirements of the NESHAP General Provisions at 40 C.F.R. Part 63, Subpart A. *See* Table 3 to Subpart 6P.

12. Subpart 6P at 40 C.F.R. § 63.11423(b)(2)(ii) and (iv)(A) requires, for any emissions point controlled by a fabric filter, operators to maintain and operate a pressure drop monitoring device to measure the differential pressure drop across the fabric filter during all times when the process is operating. The pressure drop shall be recorded at least once per day or once per week, depending on the type of filter. If a pressure drop is observed outside of the

normal operational ranges, operators must record the incident and take immediate corrective actions. Operators must also submit a monitoring system performance report in accordance with 40 C.F.R. § 63.10(e)(3).

13. The monitoring system performance report under 40 C.F.R. § 63.10(e)(3) must include the specific identification (i.e., the date and time of commencement and completion) of each time period of parameter monitoring exceedances as defined in Subpart 6P and the corrective action taken or preventative measures adopted. 40 C.F.R. § 63.10(e)(v). These reports must be submitted semi-annually. 40 C.F.R. § 63.10(e)(i).

14. Section 112(i)(3) of CAA, 42 U.S.C. § 7412(i)(3), and 40 C.F.R. § 63.4, prohibit the owner or operator of any source from operating such source in violation of any NESHAP applicable to such source.

15. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” as an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

16. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), 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 an applicable implementation plan or any other requirement or prohibition of Title V of the CAA. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$57,617 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023.

General Factual Allegations

17. Respondent is a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. Respondent is the owner and operator of three lead acid battery manufacturing plants in Missouri, located at 617 North Ridgeview Drive in Warrensburg (Warrensburg), 4000 East Continental Way in Springfield (Springfield No. 1), and 1320 North Alliance Avenue in Springfield (Springfield No. 2) (collectively, the Facilities).

19. The Facilities are each a “stationary source” as defined by Section 302(z) of the CAA, 42 U.S.C. § 7602(z), and 40 C.F.R. § 63.2.

20. Respondent is subject to Subpart 6P because it owns and operates the Facilities, which are each a lead acid battery manufacturing plant that is an area source of HAP emissions.

21. On November 9, 2022, February 28, 2023, and March 1, 2023, EPA conducted CAA inspections at the Facilities, respectively.
22. On March 3, 2023, EPA sent an information request to the Warrensburg Facility pursuant to Section 114 of the CAA. Respondent submitted a responses to the information request on April 28, 2023 and May 15, 2023.
23. On March 1, 2023, EPA sent a records request to the Springfield Facilities. Respondent submitted responses to the records request on March 31, 2023 and April 28, 2023.
24. On June 13, 2023, EPA requested additional information relating to the Springfield Facilities. Respondent submitted the requested information on July 31, 2023.
25. On August 17, 2023, EPA requested further clarification regarding the information submitted for the Springfield Facilities. Respondent submitted a response to EPA on September 8, 2023.
26. During the investigation, EPA reviewed Respondent's monitoring records for the baghouses at the Facilities, including records documenting the pressure drop across the fabric filter and monitoring system performance reports.
27. Respondent uses baghouses with fabric filters to control lead emissions from the Facilities.
28. On February 14, 2024, the EPA issued a Finding of Violation to Respondent for alleged violations of Subpart 6P and Section 112 of the CAA.

Allegations of Violation

29. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:
 30. The facts stated in Paragraphs 17 through 28 above are herein incorporated.
 31. Warrensburg Facility: From January 1, 2020 to December 31, 2022, Respondent recorded the differential pressure across the fabric filter outside of the normal operating range on at least 227 instances. Respondent failed to appropriately report these instances and associated corrective actions in the four semi-annual monitoring system performance reports covering that timeframe, in violation of 40 C.F.R. §§ 63.11423(b)(2) and 63.10(e)(3), and Section 112 of the CAA.
 32. Springfield Facility No. 1: From August 18, 2022 to December 31, 2022, Respondent recorded the differential pressure across the fabric filter outside of the normal operating range on at least 46 instances. Respondent failed to appropriately report these instances and associated corrective actions in the semi-annual monitoring system performance report covering that timeframe, in violation of 40 C.F.R. §§ 63.11423(b)(2) and 63.10(e)(3), and

Section 112 of the CAA.

33. Springfield Facility No. 2: From August 18, 2022 to December 31, 2022, Respondent recorded the differential pressure across the fabric filter outside of the normal operating range on at least 10 instances. Respondent failed to appropriately report these instances and associated corrective actions in the semi-annual monitoring system performance report covering that timeframe, in violation of 40 C.F.R. §§ 63.11423(b)(2) and 63.10(e)(3), and Section 112 of the CAA.

CONSENT AGREEMENT

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

- i. admits the jurisdictional allegations set forth herein;
- ii. neither admits nor denies the specific factual allegations and allegations of violation stated herein;
- iii. consents to the assessment of a civil penalty, as stated herein;
- iv. consents to the issuance of any compliance or corrective action order specified herein;
- v. consents to any conditions specified herein;
- vi. consents to any stated Permit Action;
- vii. waives any right to contest the allegations set forth herein; and
- viii. waives its rights to appeal the Final Order accompanying this Consent Agreement.

35. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

36. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

37. The parties consent to service of this Consent Agreement and Final Order electronically at the following e-mail addresses: barton.kasey@epa.gov (for Complainant) and CMcCabe@mankogold.com (for Respondent). Respondent understands that the Consent Agreement and Final Order will become publicly available upon filing.

Penalty Payment

38. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of \$430,500.

39. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

40. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Kasey Barton, Attorney
barton.kasey@epa.gov.

41. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

42. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to

the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- i. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- ii. Respondent shall certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- iii. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at weidner.lori@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- iv. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall notify EPA of this fact within 30 days after the Effective Date of this Consent Agreement and Final Order, and email EPA with Respondent’s TIN within 5 days of Respondent’s issuance and receipt of the TIN.

Effect of Settlement and Reservation of Rights

43. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent’s liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law. Respondent reserves the right to contest any such action and preserves all defenses thereto.

44. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent’s representations to the EPA, as memorialized in the paragraph directly below.

45. Respondent certifies by the signing of this Consent Agreement that to the best of its belief after reasonable inquiry it is presently in compliance with all requirements of the NESHAP for Lead Acid Battery Manufacturing Area Sources at 40 C.F.R. Part 63, Subpart PPPPPP, at the Facilities.

46. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other

equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

47. The allegations in this Consent Agreement and Final Order constitute "prior violations" as that term is used in EPA's Clean Air Act Stationary Source Civil Penalty Policy to determine Respondent's "history of noncompliance" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

48. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

49. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and have the legal capacity to bind the party they represent to this Consent Agreement.

50. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

51. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

52. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT:

ENERSYS ENERGY PRODUCTS, INC.

DocuSigned by:
Mark Matthews
274832505DAB4F5...

May 20, 2024

Signature

Date

Mark Matthews

Printed Name

President

Title



COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Jodi Bruno
Acting Director
Enforcement and Compliance Assurance Division

Date

Kasey Barton
Assistant Regional Counsel

Date

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE
(to be completed by EPA)

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of EnerSys Energy Products, Inc., EPA Docket No. CAA-07-2024-0042, was sent this day in the following manner to the addressees:

Copy via E-mail to Complainant:

Kasey Barton
Office of Regional Counsel
barton.kasey@epa.gov

Luke Rodriguez
Enforcement and Compliance Assurance Division
rodriguez.luke@epa.gov

Milady Peters
EPA Region 7
peters.milady@epa.gov

Copy via E-mail to Attorney for Respondent:

Carol F. McCabe
Manko, Gold, Katcher & Fox LLP
Three Bala Plaza East, Suite 700
Bala Cynwyd, PA 19004
Indianapolis, IN 46282
CMcCabe@mankogold.com

Dated this _____ day of _____, 2024.

Signed