

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY WASHINGTON, D.C.**

IN THE MATTER OF)
)
OSRAM SYLVANIA, Inc.)
Wilmington, MA)
)
Respondent)
_____)

Docket No. TSCA-HQ-2016-5007

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (hereinafter "EPA" or the "Agency"), and Respondent, OSRAM SYLVANIA Inc. (hereinafter "Respondent"), located at 200 Ballardvale Street, Wilmington, Mass. 01887, (collectively, the "Parties"), having consented to the entry of this Consent Agreement and proposed Final Order before the taking of any testimony and without adjudication of any issues of law or fact, consent to the terms of this Consent Agreement and attached Final Order.

I. PRELIMINARY STATEMENT

1. This civil administrative proceeding for the assessment of penalties pursuant to § 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), is being simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).
2. To avoid the disruption of orderly business activities and expense of litigation, Respondent, for purposes of this proceeding admits that EPA has jurisdiction over the subject matter alleged in this Consent Agreement. Without admitting or denying the allegations herein, Respondent consents to the terms of this Consent Agreement and Final Order ("CAFO"). Except for those rights specifically waived in this CAFO, Respondent reserves all

constitutional, statutory, and regulatory rights and all rights under common law, both legal and equitable.

3. For purposes of this CAFO, including any further action to enforce the terms of this CAFO, the Respondent waives any defenses it might have as to jurisdiction.

II. EPA's FINDINGS OF FACT AND LAW

4. The Complainant hereby alleges that Respondent has violated TSCA as follows:
5. Respondent, a corporation that owns or controls a facility located at 200 Ballardvale Street, Wilmington, Mass. 01887 is subject to the requirements of TSCA, 15 U.S.C. § 2601 *et seq.* and the regulations promulgated thereunder.
6. Pursuant to section 12(c) of TSCA, 15 U.S.C. § 2611(c) (Mercury Export Ban Act (MEBA) amendments, effective January 1, 2013), it is unlawful to export elemental mercury from the United States without the grant of an essential use exemption pursuant to section 12(c)(4) of TSCA, 15 U.S.C. § 2611(c)(4).
7. Between August 13, 2013 and September 2, 2015, Respondent exported elemental mercury from the United States (El Paso, Texas) to Juarez, Mexico on ten (10) separate occasions. The total amount of mercury exported was ~5.4 gallons and weighed ~610 pounds. The elemental mercury was sent for purposes of use at a manufacturing facility, owned and operated by an affiliate of Respondent. The facility makes lighting products (*i.e.*, lamps) primarily for shipment back to the United States for sale within the domestic market.
8. On October 6, 2015, Respondent received correspondence from the United States Census Bureau indicating that export of elemental mercury from the United States is prohibited under MEBA. Respondent promptly ceased export and within 30 days notified Complainant of the exports.
9. Pursuant to section 12(c)(4)(D) of TSCA, 15 U.S.C. § 2611(c)(4)(D), a violation of section 12(c) shall be considered a prohibited act under 15 U.S.C. § 2614 and subject to civil penalties pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

III. CIVIL PENALTY

10. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, and in light of the nature, circumstances and extent of the ten alleged violations, Respondent agrees to pay ONE HUNDRED EIGHTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$187,500).
11. Not more than forty-five (45) calendar days after receiving notice that EPA's Environmental Appeals Board has signed and filed the Final Order, Respondent shall either:

- A. Dispatch a cashier's or certified check in the amount of ONE HUNDRED EIGHTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$187,500) made payable to the order of the "Treasurer of the United States of America", and bearing the Civil Penalty Docket No. "TSCA-HQ-2016-5007" to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2016-5007
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

OR

- B. Pay by wire transfer in the amount of \$187,500 with a notation of "OSRAM SYLVANIA, Inc., Civil Penalty Docket No. TSCA-HQ-2016-5007" by using the following instructions:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

12. Within five business days of making the payment under Paragraph 11A or 11B, Respondent shall forward a copy of the check or documentation of a wire transfer or proof of online payment to the following address.

U.S. Environmental Protection Agency
Office of Civil Enforcement
Waste and Chemical Enforcement Division (2249A)
Attn: Tony R. Ellis (Case Development Officer)
1200 Pennsylvania Ave., NW
Washington, DC 20460
Phone: (202) 564-4167
E-mail: Ellis.Tony@epa.gov

By written notice to Respondent, EPA may change the address and/or person listed above.

13. If Respondent fails to make the payment in a timely manner as required by Paragraph 11, then Respondent shall pay a stipulated penalty of ONE THOUSAND U.S. DOLLARS (\$1,000.00) per calendar day for every day the penalty payment is late, unless EPA in writing excuses or mitigates the stipulated penalty. EPA may excuse or mitigate the stipulated penalty if EPA determines that the failure to comply occurred despite Respondent's exercise of good faith and due diligence.
14. Whenever this CAFO requires EPA to give notice or to submit information to Respondent, such information shall be submitted to the address and to the attention of the individual listed below:

OSRAM SYLVANIA, Inc.
Attn: Jonathan A. Stringer, Senior Counsel
200 Ballardvale Street
Wilmington, MA 01887
E-mail: Jonathan.Stringer@sylvania.com

Respondent agrees that the notification may be issued *via* facsimile, e-mail, first class mail (including by certified mail or return receipt requested, Overnight Express, and Priority Mail), or any reliable commercial delivery service.

By written notice to EPA as specified in the address provided under Paragraph 12, Respondent may change the address and/or the person listed above.

IV. RESERVATION OF RIGHTS AND COVENANT NOT TO SUE

15. Payment of the penalty resolves all civil claims with respect to the allegations set forth in this Consent Agreement.
16. Pursuant to 40 C.F.R. § 22.18(b)(2), and for purposes of this proceeding only (including any further action to enforce the terms of this CAFO), Respondent waives its right to contest the allegations herein, its right to appeal the Final Order, and its right to request a judicial or administrative hearing on any issue of law or fact set forth in, and resolved by, this Consent Agreement.
17. Respondent neither admits nor denies the allegations, but consents to the terms and conditions of this CAFO.
18. By executing this Consent Agreement, Respondent certifies that Respondent has halted all exports of elemental mercury from the United States and is in compliance with Section 12(c) of TSCA, 15 U.S.C. § 2611(c).

19. This settlement is conditioned upon the thoroughness and accuracy of Respondent's representations to EPA in this matter.
20. Compliance with this CAFO shall not be a defense to any subsequent action EPA may commence pursuant to federal law or regulation for violations occurring after the date of this Consent Agreement, or any violations of TSCA not alleged in this Consent Agreement that may have occurred prior to the date that this Consent Agreement is fully executed by both Parties.
21. Nothing in this Consent Agreement or the Final Order is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent.

V. OTHER MATTERS

22. This Consent Agreement shall be binding upon the Parties and their respective officers, directors, employees, successors and assigns. The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to enter into this binding Consent Agreement.
23. This Consent Agreement shall take full effect upon the signing and filing of the Final Order by EPA's Environmental Appeals Board.
24. Respondent's obligations under this Consent Agreement shall end when it has paid in full the specified civil penalty, paid any stipulated penalties, and submitted the documentation required by the CAFO.
25. All of the terms and conditions of this Consent Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Consent Agreement shall be null and void if any term or condition of this Consent Agreement is held invalid or is not executed by all of the signatory parties in identical form, or is not approved in such identical form by EPA's Environmental Appeals Board.
26. The penalty, including any stipulated penalties, specified above represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.
27. Failure of Respondent to remit the civil penalties provided herein will result in this matter being forwarded to the United States Department of Justice for collection of the amount due, plus stipulated penalties and interest at the statutory judgment rate provided in 28 U.S.C. § 1961.
28. The Parties agree to bear their own costs and attorney's fees.

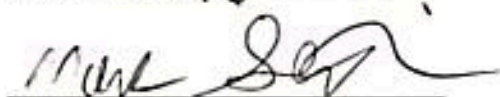
WE HEREBY AGREE TO THIS:

For Complainant:



Gregory Sullivan
Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency


Date: 5/20/16



Mark Seltzer, Attorney
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: April 14, 2016

For Respondent:



Jonathan A. Stringer
Senior Counsel
OSRAM SYLVANIA, Inc.
200 Ballardvale Street
Wilmington, MA 01887

Date: April 12, 2016