



**REGION 6**

DALLAS, TX 75270

March 14, 2024

**Via Electronic Mail:**

stephanie.bergeron.perdue@bakerbotts.com

Stephanie Bergeron Perdue  
Baker Botts L.L.P.  
401 S 1st St Suite 1300  
Austin, TX 78704

Re: Consent Agreement and Final Order  
In the Matter of KYOCERA AVX Components Corporation  
Docket No.: RCRA-06-2024-0901

Dear Ms. Perdue:

Enclosed is the Consent Agreement and Final Order (CAFO) to settle KYOCERA AVX Components Corporation's (Respondent) alleged violations of Section 3008 of the Resource Conservation and Recovery Act for signature by authorized representatives of Respondent. Please return the signed CAFO within one week to Elizabeth George with the Office of Regional Counsel by electronic mail at [George.Elizabeth.A@epa.gov](mailto:George.Elizabeth.A@epa.gov) who will ensure signature by the EPA and transmittal of the final document to the service agent for Respondent.

As provided in the CAFO, Respondent will have thirty (30) days from the effective date of the CAFO to pay the civil penalty of \$57,715.20. Additionally, Respondent will have three-hundred and sixty-five (365) days from the effective date of the CAFO to purchase the emergency response equipment and hazardous materials training that it has selected for donation to the El Paso Fire Department as described in its Supplemental Environmental Projects (SEP). The total expenditure for the SEPs shall be no less than \$210,490. If you have any questions regarding this CAFO, please contact Elizabeth George, Assistant Regional Counsel, (214) 665-6751. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Cheryl T. Seager".

Digitally signed by Cheryl T.  
Seager  
Date: 2024.03.14 12:58:15 -0500

Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1201 Elm Street, Suite 500  
Dallas, Texas 75270**

**FILED**  
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REGIONAL HEARING CLERK  
EPA REGION 6

**In the Matter of** §  
§  
**KYOCERA AVX Components Corporation,** § **Docket No. RCRA-06-2024-0901**  
§  
§  
**Respondent.** §

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**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and KYOCERA AVX Components Corporation (“Respondent”) have agreed to 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 (Consolidated Rules of Practice), 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 instituted pursuant to Sections 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6928(a).

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated requirements of Subchapter III of RCRA, 42 U.S.C.

§§ 6921 – 6940.

3. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the state of Texas received authorization to administer and enforce a hazardous waste program (49 FR 48300).<sup>1</sup> Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the EPA to enforce the provisions of an authorized state program and the regulations promulgated thereunder. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), the state of Texas has been notified of this action.

### **Parties**

4. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

5. Respondent is KYOCERA AVX Components Corporation, a corporation incorporated in the state of Delaware and conducting business in the state of Texas.

### **Statutory and Regulatory Framework**

6. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from the potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

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<sup>1</sup> On December 26, 1984, the State of Texas received final authorization for its base Hazardous Waste Management Program (49 FR 48300). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the “EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program” dated December 2015, incorporated by reference under 40 C.F.R. § 272.2201(c)(1)(i) effective on April 10, 2020. 85 Fed. Reg. 20190 (April 10, 2020); 40 C.F.R. 272.2201: Texas State-Administered Program: Final Authorization. References and citations to the “EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program” may vary slightly from the State of Texas’ published version. The corresponding C.F.R. citations are also provided.

7. Subchapter III of RCRA, 42 U.S.C. §§ 6921 – 6940, commonly referred to as “Subtitle C” (Hazardous Waste Management), required the Administrator to establish a “cradle-to-grave” federal hazardous waste program that includes criteria for defining hazardous waste and regulating the activities of facilities that generate, transport, treat, store, or dispose of hazardous waste.

8. Pursuant to the authority provided in Section 3001 of RCRA, 42 U.S.C. § 6921, the EPA promulgated regulations listing hazardous wastes and providing criteria for identifying hazardous wastes, taking into account characteristics of ignitability, corrosivity, reactivity and toxicity, among other hazardous characteristics.

9. Pursuant to the authorities provided in Subtitle C, the EPA also promulgated the regulations found at 40 C.F.R. Parts 260 – 279 that provide detailed requirements governing the actions of generators and transporters of hazardous waste, and of treatment, storage, and disposal facilities. The equivalent and federally authorized Texas program is found at Title 30, Chapter 335, of the Texas Administrative Code (T.A.C.).

10. Pursuant to the regulations found at 40 C.F.R. § 270 [30 T.A.C. § 335.2], owners and operators of facilities that treat, store, or dispose of hazardous waste must have a RCRA permit, and must comply with the standard set forth in 40 C.F.R. Part 264 [30 T.A.C. § 335.152], unless otherwise exempt. Generally, these regulations prohibit the treatment, storage, and disposal of hazardous waste without a permit or equivalent “interim status.”

11. Pursuant to the generator standards found at 40 C.F.R. Part 262, Subchapter C [30 T.A.C. Chapter 335, Subchapter C], generators may accumulate (store) hazardous waste without a RCRA permit, provided the generator complies with the applicable conditions set

forth in 40 C.F.R. 262.34(a)(1) – (4) [30 T.A.C. § 335.69(a)(1) – (4)]. If at any time a generator does not meet the exemption conditions, the generator must apply for and receive a RCRA permit and adhere to the standards set forth in 40 C.F.R. Part 264 [30 T.A.C. § 335.152].

12. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes a civil penalty of not more than \$25,000 per day for violations of Subtitle C of RCRA. 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 \$37,500 for violations that occurred before November 2, 2015, and to \$117,468 for violations that occur after November 2, 2015, and are assessed after January 6, 2023.

**EPA Findings of Fact and Conclusions of Law**

13. Respondent is a “person” as defined by 40 C.F.R. § 260.10 [30 T.A.C. § 3.2(25)].

14. Respondent is the former operator of a “facility,” as defined by 40 C.F.R. § 260.10 [30 T.A.C. § 335.1(60)], located at: 7 Leigh Fisher Ste D, El Paso, TX 79906 (the “Facility”), RCRA ID No. TXD981917008.

15. Pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, the EPA conducted an investigation on February 4, 2022, through February 21, 2023, to determine Respondent’s compliance with RCRA and the implementing regulations at the Facility (the “Investigation”).

16. Respondent generated and stored waste streams at the Facility including solids containing flammable liquid (D001, F003) and cadmium, lead and silver (D006, D008, D011) which are “solid wastes” as defined by 30 T.A.C. § 335.1(140) [40 C.F.R. § 260.10], and characteristic “hazardous wastes” as defined by 30 T.A.C. § 335.1(70) [40 C.F.R. § 261.3].

17. Respondent is a “generator” of hazardous waste, as defined by 30 T.A.C. § 335.1(66) [40 C.F.R. § 260.10].

18. From the time Respondent first generated or stored hazardous waste, Respondent was subject to Subtitle C of RCRA, and the regulatory requirements promulgated thereunder and found at 40 C.F.R. Parts 260 – 279 and Title 30, Chapter 335, of the Texas Administrative Code.

**EPA Alleged Violations**

19. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

20. Complainant hereby states and alleges that Respondent has violated RCRA and the federal and state regulations promulgated thereunder, as follows, and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a):

**Count 1 – Failure to File Subsequent Notification**

21. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), and the regulation at 30 T.A.C. § 335.6, any person generating a characteristic or listed hazardous waste shall file with the Administrator (or authorized state) a notification stating the location and general description of such activity and the identified characteristic or listed hazardous waste handled by such person. No identified characteristic or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

22. Respondent did not file with the EPA or the State of Texas, an authorized state, subsequent notification of its hazardous waste activities to identify a change in location in 2018,

2019, or 2020.

23. Respondent failed to submit subsequent notification of its hazardous waste activities in violation of Section 3010(a) of RCRA, 42 U.S.C § 6930(a) and 30 T.A.C. § 335.6.

**Count 2 – Failure to Meet Requirements for Large Quantity Generators**

24. Pursuant to 40 C.F.R. §§ 262.34(a) and (b), and the regulation at 30 T.A.C. § 335.69, a generator of 1000 kilograms or greater of hazardous waste in a calendar month or greater than one (1) kilogram of acute hazardous waste in a calendar month, may accumulate hazardous waste or acute hazardous waste on-site for 90 days or less without a permit or without having interim status provided that certain conditions are met.

25. Respondent, in the years 2019 and 2020, notified as “Not a Generator,” yet manifests during this period indicated that Respondent generated waste in quantities sufficient to qualify as a Large Quantity Generator (LQG).

26. Respondent failed to meet the standards for an LQG in violation of one or more of the requirements for large quantity generators storing waste pursuant to 40 C.F.R. § 262.34 (including the referenced 40 C.F.R. Part 265 Subpart C – Preparedness and Prevention, 40 C.F.R. Part 265 Subpart D – Contingency Plan and Emergency Procedures, and 40 C.F.R. 265.16 – Personnel training) and 30 T.A.C. § 335.69(a).

**Count 3 – Failure to Make a Hazardous Waste Determination**

27. Pursuant to 40 C.F.R. § 262.11, and the regulation at 30 T.A.C. § 335.62, a person who generates a solid waste, as defined in 40 C.F.R. § 261.2 and 30 T.A.C. § 335.1 must determine if the solid waste is a hazardous waste either by applying the required test method or by applying its knowledge of the hazardous characteristic of the waste in light of the materials or the

processes used.

28. Respondent failed to make a hazardous waste determination. Respondent rebutted current listing of the hazardous waste code F003 for the hazardous waste material listed on hazardous waste manifests 011187398FLE (2,800 lbs/1,270 kg of F003 and D011) and 011735465FLE (8,000 lbs/3,629 kg of F003 and D011). However, Respondent did not provide any documentation used to refute current listing of F003 nor any documentation used to make a hazardous waste determination for the material.

29. Respondent failed to make a hazardous waste determination for hazardous waste material listed on several manifests in violation of 40 C.F.R. § 262.11 and 30 T.A.C. § 335.62.

**Count 4 – Failure to Comply with Recordkeeping Requirement**

30. Pursuant to 40 C.F.R. § 262.40, and the regulation at 30 T.A.C. § 335.70, a generator must keep records of any test results, waste analyses, or other determinations made in accordance with 40 C.F.R. § 262.11 and 30 T.A.C. § 335.62 for at least three years from the date the waste was last sent to an on-site or off-site facility for treatment, storage, or disposal. Additionally, the generator shall keep a copy of each annual report and exception report required by this title for a period of at least three years from the due date of the report.

31. Respondent failed to provide copies of their hazardous waste activities, Biennial Reports, and documentation used to make hazardous waste determination for the years 2018, 2019, and 2020.

32. Respondent failed to comply with recordkeeping requirements for the years 2018, 2019, and 2020 in violation of 40 C.F.R. § 262.40 and 30 T.A.C. § 335.70.

**Count 5 – Failure to Submit Biennial Report**

33. Pursuant to 40 C.F.R. § 262.41(a), and the regulation at 30 T.A.C. § 335.71, a large quantity generator who ships any hazardous waste off-site for treatment, storage and/or disposal, must prepare and submit a Biennial Report to EPA and to the Texas Commission on Environmental Quality (TCEQ), by March 1 of each even-numbered year in addition to the annual reporting that is required under 30 T.A.C. § 335.9.

34. Respondent failed to submit a Biennial Report for shipments of hazardous waste activities during the odd years by March of 2018 and 2020.

35. Respondent failed to submit the required Biennial Reports to the EPA and TCEQ during the years 2018 and 2020 in violation of 40 C.F.R. § 262.41(a) and 30 T.A.C. §§ 335.9 and 335.71.

**Count 6 – Failure to Comply with Requirements for Importers of Hazardous Waste**

36. Pursuant to 40 C.F.R. § 262.84, any person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this part and the special requirements of this subpart. Additionally, pursuant to 40 C.F.R. § 262.84, in cases where the competent authority of the country of export does not regulate the waste as hazardous waste and, thus, does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, but EPA does regulate the waste as hazardous waste and the importer is required to provide notification in English to EPA of the proposed transboundary movement of hazardous waste at least sixty (60) days before the first shipment is expected to depart the country of export.

37. Respondent failed to comply with the requirements for importers of hazardous

waste into the United States during the years 2018, 2019, 2020, and 2021. Such failure included not submitting the necessary documentation prior to shipping hazardous waste to Abington Reldan Metals for reclamation and disposal.

38. Respondent failed to comply with the requirements for importers of hazardous waste into the United States during the years 2018, 2019, 2020, and 2021 in violation of 40 C.F.R. § 262.84.

### **COMPLIANCE ORDER**

39. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within 60 calendar days of the effective date of this Consent Agreement and Final Order, Respondent shall provide in writing the following: Respondent shall identify and certify that it complies with the 40 C.F.R. § 262.84 requirements at the time said certification is delivered; and in all instances in which this Consent Agreement and Final Order requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of the Respondent and shall include the following certification:

"I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Copies of all documents required by this Consent Agreement and Final Order shall be sent to the following:

U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Enforcement and Compliance Assurance Division (ECDSR)

ATTN: Adolphus Talton  
Dallas, Texas 75270-2102

Where possible, notice shall be sent electronically by email or facsimile to Enforcement Officer Adolphus Talton, respectively at talton.adolphus@epa.gov or at 214-665-6651.

**CONSENT AGREEMENT**

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

Respondent:

- a. Admits the jurisdictional allegations set forth herein;
- b. Neither admits nor denies the specific factual allegations stated herein;
- c. Consents to the assessment of a civil penalty, as stated herein;
- d. Consent to the performance of the Supplemental Environmental Project (SEP) set forth herein;
- e. Consents to any conditions specified herein;
- f. Consents to any stated Permit Action;
- g. Waives any right to contest the allegations set forth herein; and
- h. Waives its rights to appeal the Final Order accompanying this Consent Agreement.

41. 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 and performance of the compliance actions described below.

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

**Penalty Payment**

43. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Fifty-Seven Thousand Seven Hundred Fifteen Dollars and Twenty Cents (\$57,715.20) as set forth below.

44. 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  
P.O. Box 979078  
St. Louis, Missouri 63197-9000

Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Environmental Protection Agency  
Government Lockbox 979078  
3180 Rider Trail S.  
Earth City, MO 63045

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

45. A copy of the check or other information confirming payment shall simultaneously be sent electronically by email to the following:

Lorena S. Vaughn  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500  
Dallas, Texas 75270-2102  
vaughn.loreana@epa.gov; and

Adolphus Talton  
Enforcement and Compliance Assurance Division  
Waste Enforcement Branch  
U.S. Environmental Protection Agency, Region 6

1201 Elm Street, Suite 500  
Dallas, Texas 75270-2101  
talton.adolphus@epa.gov

46. 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 percent (6%) 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).

47. 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. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. 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>;
- b. Respondent shall therein 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; Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at [chalifoux.jessica@epa.gov](mailto:chalifoux.jessica@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
- c. 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 further:
  - i. Notify EPA’s Cincinnati Finance Center of this fact, via email, within 30 days after the effective date of this Order; and
  - ii. Provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s issuance and receipt of the TIN.

**Supplemental Environmental Projects**

48. In response to the alleged violations of RCRA and in settlement of this matter, although not required by RCRA or any other federal, state, or local law, Respondent agrees to implement two SEPs as described in paragraph 49 and in Appendix A.

49. Respondent shall complete a SEP involving the purchase and donation of emergency response equipment and the purchase of third-party hazardous materials management training, consisting of: (i) purchase and donation of various emergency response equipment and supplies; and (ii) purchase and provide hazardous materials transportation training for specialists in this field. The SEPs are more specifically described in Appendix A and incorporated herein by reference.

50. Respondent shall spend no less than Two Hundred Ten Thousand Four Hundred Ninety Dollars (\$210,490) on implementing the SEPs. Respondent shall include documentation of the expenditures made in connection with the SEPs as part of the SEP Completion Report. If Respondent's implementation of the SEPs as described in Appendix A does not expend the full amount set forth in this paragraph, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response equipment, Respondent will identify, purchase, and provide additional emergency response equipment to one or more of the emergency response organizations identified in Appendix A.

51. Respondent shall complete the SEPs within three-hundred and sixty-five (365) days after the effective date of this Consent Agreement and Final Order.

52. Identification of SEP Recipient.

a. Respondent has selected the El Paso Fire Department to receive the SEPs, which will

include receipt of emergency response supplies/equipment and third-party hazardous materials transport specialist training.

- b. The EPA had no role in the selection of any SEP recipient or specific equipment identified in the SEP, nor shall this CAFO be construed to constitute EPA approval or endorsement of any SEP recipient or specific equipment identified in this CAFO.

53. The SEPs are consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy, (March 10, 2015). The SEPs advance at least two of the objectives of RCRA by addressing emergency preparedness and prevention under 40 C.F.R. Part 265, Subpart C, particularly requirements to have arrangements with local authorities, including fire departments, for emergency response activities at a facility under 40 C.F.R. § 265.37 and by addressing contingency plan and emergency procedures under 40 C.F.R. Part 265, Subpart D, particularly requirements under 40 C.F.R. §265.56 to coordinate and work with local agencies with designated response roles in emergency situations. The SEPs address these objectives by upgrading the emergency response equipment and training for the El Paso Fire Department, so that it can be an able and capable responder to hazardous materials emergency response incidents. The SEPs are not inconsistent with any provision of RCRA. The SEPs relate to the alleged violations, and is designed to reduce:

- a. The adverse impact to public health and/or the environment to which the alleged violations contribute, specifically because the equipment and training that will be provided with the SEPs will allow for more effective and comprehensive emergency responses to hazardous materials releases and threatened releases, which should result in more effective mitigation and reduced risk to onsite facility personnel,

responders, the local community, and the environment; or

- b. The overall risk to public health and/or the environment potentially affected by the alleged violations by upgrading the El Paso Fire Department's capability and effectiveness for responding to emergency situations and to assist in recovery phases of such incidents.

54. Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEPs is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEPs is Two Hundred Ten Thousand Four Hundred Ninety Dollars (\$210,490);
- b. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEPs by any federal, state, or local law or regulation and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. That the SEPs are not projects that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
- d. That Respondent has not received and will not have received credit for the SEPs in any other enforcement action;
- e. That Respondent will not receive reimbursement for any portion of the SEPs from another person or entity;
- f. That 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

SEPs;

- g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEPs described in Appendix A; and
- h. That Respondent has inquired of the El Paso Fire Department whether it is party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEPs and has been informed by the El Paso Fire Department that it is not a party to such a transaction.

55. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEPs under this CAFO from the date of execution of this CAFO 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 alleged violations of the federal laws."

56. SEP Report.

- a. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days of completion of the SEPs. The SEP (Completion) Report shall contain the following information, with supporting documentation:
  - i. A detailed description of the SEP as implemented;
  - ii. A description of any operating problems encountered and the solutions thereto;
  - iii. Itemized costs;
  - iv. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and

- v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
- b. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 58 below.
- c. Respondent shall submit all notices and reports required by this CAFO to Adolphus Talton at talton.adolphus@epa.gov.
- d. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

57. EPA Acceptance of SEP Report.

- a. After receipt of the SEP Completion Report described in paragraph 56 above, EPA will, in writing to the Respondent, either:
  - i. Identify any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to

- correct any deficiencies; or
- ii. Indicate that EPA concludes that the project has been completed satisfactorily; or
  - iii. Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 58 herein.
- b. If EPA elects to exercise option (i) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent.

58. Stipulated Penalties.

- a. Except as provided in subparagraphs (b) and (c) below, if Respondent fails to satisfactorily complete the requirements regarding the SEP specified in Appendix A by the deadline in Paragraph 51, Respondent agrees to pay, in addition to the civil penalty in Paragraph 43, the following per day per violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement:

- i. \$250 per day for days 1-30
  - ii. \$300 per day for days 31-60
  - iii. \$350 per day for 60 or more days
- b. If Respondent fails to timely submit any SEP reports, in accordance with the timelines set forth in this CAFO, Respondent agrees to the following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety:
  - i. \$100 per day for days 1-30
  - ii. \$150 per day for days 31-60
  - iii. \$200 per day for 60 or more days
- c. If Respondent does not satisfactorily complete the SEPs, including spending the minimum amount on the SEPs set forth in paragraph 50 above, Respondent shall pay a stipulated penalty to the United States in the amount of Two Hundred Thirty-One Thousand Six Hundred Seventy-Three Dollars (\$231,673). "Satisfactory completion" of the SEP is defined as Respondent spending no less than \$210,490 to purchase and donate emergency response supplies/equipment and third-party hazardous materials transportation specialist training within three-hundred and sixty-five (365) days after the effective date of this Consent Agreement and Final Order. The determinations of whether the SEPs have been satisfactorily completed shall be in the sole discretion of EPA.
- d. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.
- e. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt

of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 44 above. Interest and late charges shall be paid as stated in paragraph 46.

**Modification**

59. The terms, conditions, and compliance requirements of this Consent Agreement and Final Order may not be modified or amended except upon the written agreement of all parties and approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements between the parties modifying the SEP schedules described in Appendix A. The Waste Enforcement Branch Manager shall have the authority to extend the deadlines in Appendix A for good cause.

**Effect of Settlement and Reservation of Rights**

60. 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 RCRA or any other applicable law.

61. 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 paragraph directly below.

62. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

63. 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 RCRA and regulations promulgated thereunder. In any action by EPA or the United States to enforce the terms of this Consent Agreement and Final Order, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this Consent Agreement and Final Order and agrees not to contest the validity of this Consent Agreement and Final Order or its terms or conditions. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

#### **General Provisions**

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

65. 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 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

67. 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.

68. When Respondent believes that it has complied with all the requirements of this Consent Agreement and Final Order, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification language set forth in Paragraph 39. Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this Consent Agreement and Final Order is terminated on the basis of Respondent's certification.

69. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: [george.elizabeth.a@epa.gov](mailto:george.elizabeth.a@epa.gov)

To Respondent: [stephanie.bergeron.perdue@bakerbotts.com](mailto:stephanie.bergeron.perdue@bakerbotts.com)



**FINAL ORDER**

Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. §§ 6928(a), 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.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

\_\_\_\_\_  
Thomas Rucki  
Regional Judicial Officer

\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was filed with me, the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that I sent a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant, EPA:

george.elizabeth.a@epa.gov

Copy via Email to Respondent:

stephanie.bergeron.perdue@bakerbotts.com  
Baker Botts L.L.P.  
401 S 1st St, Suite 1300  
Austin, TX 78704

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Regional Hearing Clerk  
U.S. EPA, Region 6

**APPENDIX A**

**KYOCERA AVX Components Corporation Supplemental Environmental Projects**

KYOCERA AVX Components Corporation shall implement the following Supplemental Environmental Projects valued at a total of Two Hundred Ten Thousand Four Hundred Ninety Dollars (\$210,490):

**1. SEP No. 1—Purchase and Donation of Emergency Response Supplies and Equipment**

KYOCERA AVX has consulted with the El Paso Fire Department and intends to purchase and donate supplies and equipment for emergency response activities. The equipment and supplies will be purchased and donated three-hundred and sixty-five (365) days after the effective date of the Consent Agreement and Final Order.

One of the principal functions on the El Paso Fire Department is to safely and effectively manage and respond to emergency situations involving hazardous materials. This is done by effectively managing the mitigation, preparedness, response, and recovery phases of any hazardous materials emergency incident. The supplies and equipment to be purchased and donated was selected by the El Paso Fire Department in order to assist in performing these duties.

It is anticipated that the cost of these supplies and equipment will be at least \$196,490.

**2. SEP No. 2—Purchase and Donation of Third-Party Training for Hazardous Materials Transportation Specialists**

KYOCERA AVX has consulted with the El Paso Fire Department and intends to purchase and donate third-party training for El Paso Fire Department hazardous materials transportation specialists. The training will help the El Paso Fire Department to prevent hazardous materials

transportation incidents and better prepare El Paso Fire Department specialists to respond to such incidents. The third-party training will be purchased and donated within three-hundred and sixty-five (365) days after the effective date of the Consent Agreement and Final Order.

It is anticipated that the cost of these supplies and equipment will be at least \$14,000.

*See list of training and equipment on next page.*

Training:	Quantity	Cost
TEEX NFPA 472 Hazardous Materials Transportation Specialist Training	6	\$14,000
Equipment:		
Leak Control Kit with Offset T-Patches "A-1"	2	\$2,200
Drager X-act 7000 Multi-Gas Detector	1	\$4,500
Drager Coupler for X-act 7000 - PN 8610810	1	\$205
Drager Mark II X-am Pump 8327115	1	\$500
Drager Probes	1	\$300
Drager Hose FKM	1	\$200
Drager Micro Tubes	20	\$3,500
Large Leak Sealing Bag M1 Set	1	\$4,200
Mini Leak Sealing Bags Set	1	\$3,300
PMI Advantage Helmets	18	\$4,600
Kappler Level A and B PPE	27	\$45,500
Altair 2X Single Gas CO Detector	50	\$ 23,186.00
Responder Propane Flare	1	\$ 3,075.00
Chlorine Institute Tank Car/Truck Emergency Kit C	1	\$ 3,295.00
Hazmat Equipment Bag	18	\$ 1,800.00
Chlorine Institute Emergency Kit for Ton Containers	1	\$ 3,000.00
Hazmat Salvage/Overpack Drums	12	\$ 2,300.00
Chlorine Institute Cylinder Emergency Kit-A	1	\$ 2,750.00
Propane Specialist Response Kit	1	\$ 7,700.00
MSA ALTAIR io 4 Portable LTE Cellular Gas Detector [LEL, O2, Co, H2S	15	\$19,425
MSA io 4 Start Up Calibration System for Altair io 4 - Includes Dock, Cylinder Holder, Charger	1	\$4,995.00
MSA Calibration Gas - 1.45% CH4, 15% o2, 60 ppm CO, 20ppm H2S - 10048280	17	\$7,293.00
MSA XCell Replacement Sensors	18	\$10,301.94
MSA io Gas Cylinder Holder for Altair io 4 Automated Calibration System - 10242913	2	\$3,390.00
mPower UNI MP100 HF Single Gas Detector M001-0014-000	4	\$2,308.04
Honeywell BW Solo Single-Gas Detector with Bluetooth, CO2, 0 to 50,000 ppm	2	\$905.20
DJI Mavic 3 Thermal Drone for Hazmat Incidents	1	\$7,366
DJI Mavic 3 Enterprise Series Battery Kit	2	\$1,318
CellBlock Lined Steel Drum 30 Gallon	5	3,120.00
Total Safety Solution Emergency Plug	3	\$2,997.00
Cell Block 55 Gallon Max Drum	4	\$3,000
Call2Recycle Large DDR Li-Ion Battery Recycling Pail (5G)	18	\$3,150.00
CellBlockEX	17	1,160.25
ERK – Indian Springs ERK	1	\$9,650
	<b>Total:</b>	<b>\$210,490</b>