

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

U.S. Environmental
Protection Agency/Region 2
2016 SEP 20 PM 2:52
REGIONAL HEARINGS
CLERK

IN THE MATTER OF:

Thomas Electronics, Inc.
208 Davis Parkway
Clyde, New York 14433

Respondent

Proceeding pursuant to Section
309(g) of the Clean Water Act, 33
U.S.C. 1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

**DOCKET NO.
CWA-02-2016-3401**

I. PRELIMINARY STATEMENT

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA" or "Complainant"), issued, on October 15, 2015, a "Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing" ("Complaint") to Thomas Electronics, Inc. ("Respondent"). Complainant and Respondent (collectively, "the Parties"), having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CA/FO" or "Agreement") without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

II. PROCEDURAL AND FACTUAL FINDINGS

1. EPA initiated this proceeding to achieve compliance with the Clean Water Act ("CWA" or "Act") pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. §1319(g)(2)(A).

2. EPA is concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g), and 40 C.F.R. 22.18(b)(2) and (3) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and Revocation, Termination or Suspension of Permits” (“CROP”), which sets forth procedures for conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order.
3. The Complaint alleges violations of the federal pretreatment standards and requirements promulgated pursuant to Section 307(b) of the Act, 33 U.S.C. §1317(b), and enforceable pursuant to Section 307(d) of the Act, 33 U.S.C. §1317(d), as the violations pertain to Respondent’s facility located at 208 Davis Parkway, Clyde, NY 14433 (“Facility”). The Complaint specifically alleges Respondent’s failure to: (1) submit the required Periodic Reports for June 30, 2011, December 31, 2011, June 30, 2012, December 31, 2012, June 30, 2013, December 31, 2013, June 30, 2014, December 31, 2014, and June 30, 2015, as required by 40 C.F.R. §403.12(e); (2) meet the Cathode Ray Tubes Standard limits for lead, fluoride and zinc as required by 40 C.F.R. §469.34; (3) notify the Control Authority within 24 hours of becoming aware of the violation, repeat sampling and analysis, and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation, as required by 40 C.F.R. §403.12(g)(2); and (4) sample and analyze process wastewater discharged into the Village of Clyde’s sewer system for TTO as required by 40 C.F.R §469.31 since at least June 2010.
4. This action was public noticed between November 12, 2015 and December 14, 2015. No comments were received.
5. Respondent requested extensions of time for filing an Answer and requesting a hearing pursuant to the CROP, and a settlement was reached in the intervening time.
6. Thomas put in place new procedures to ensure timely reporting, to locate and identify the cause of the lead exceedances, and additionally agreed to acquire a new Ion Exchange Process to treat its process wastewater in order to prevent recurrence of violations. Thomas provided further lab results on June 7, 2016 which indicated that its lead limitations were within acceptable limitations.
7. On June 8, 2016, Thomas submitted its Periodic Report. The Report indicated that Respondent’s Facility is in compliance with the federal pretreatment standards.

III. CONSENT AGREEMENT

8. The Paragraphs above are re-alleged and incorporated herein by reference.
9. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in the Complaint without further litigation and the expense and effort that litigation entails.
10. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.
11. Respondent waives any defenses Respondent might have as to jurisdiction and venue, and, without admitting or denying the allegations contained in the Complaint, consents to the terms of this CA/FO.
12. Respondent hereby waives its rights to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint or on any terms of this CA/FO.

13. Based upon the foregoing and pursuant to Section 309(g) of the CWA, 33 U.S.C. §1319(g), and the CROP, it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

A. Payment of Civil Penalty

14. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), given the nature of the alleged violations, EPA has determined that **Sixty Thousand Dollars (\$60,000)** is an appropriate civil penalty to settle this action.
15. Respondent shall pay the penalty amount within 45 days from the effective Date of the Final Order. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Time to be considered received that day.
16. Payment shall be made by one of the following methods:

By cashier's or certified check. A cashier's or certified check, including the name and docket number of this case, made payable to "Treasurer, United States of America," and mailed to:

Regular Mail

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

Overnight Mail

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

By Wire Transfer: Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field tag 4200 of Fedwire message should read, "D 68010727 Environmental Protection Agency."

Online: This option is available through the Department of Treasury, at www.pay.gov. Enter "sfo 1.1" in the search field. Open the form and complete the required fields.

17. Respondent shall send a copy of the check, or record of payment if made by other means, immediately following payment, to:

Melva J. Hayden, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866;

Alia Roufaeal, Engineer
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866;

and

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


18. In the event payment is not received by the specified due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the due date of any payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within ninety (90) days of the due date. Payments are first applied to outstanding handling charges, six percent (6%) penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
19. Respondent shall not claim the penalty as a federal or other tax deduction or credit.
20. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
21. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

22. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondents' federal or State of New York taxes.

IV. GENERAL PROVISIONS

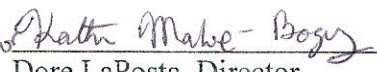
23. The provisions of this CA/FO shall apply to and be binding on Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including, but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligations to comply with the CA/FO.
24. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of the Agreement and for such other relief as may be appropriate.
25. This Agreement shall not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
26. This Agreement constitutes a final settlement by EPA of all claims for civil penalties pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in the Complaint. Nothing in this Agreement is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Agreement shall not be a defense to any enforcement actions subsequently commenced pursuant to Federal laws and regulations administered by EPA for violations other than those alleged in the Complaint.
27. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized by the party represented to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.
28. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.
29. Respondent consents to service upon it by delivery of a copy of this Agreement by mail or by an EPA employee other than the Headquarters or Regional Hearing Clerks.

RESPONDENT:

BY: 
David Ketchum, President
Thomas Electronics, Inc.

DATE: 9/6/16

COMPLAINANT:

BY: for  Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. EPA, Region 2
New York, New York 10007-1866

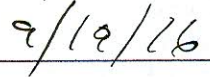
DATE: 9/8/16

V. FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the Parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, New York, NY.



Judith A. Enck
Regional Administrator
United States Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007



Date

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

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CERTIFICATE OF SERVICE

I certify that on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "CONSENT AGREEMENT AND FINAL ORDER" to the following persons at the addressees listed below:

Original and One Copy By Hand:


Karen Maples
Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Mr. David Ketchum, President
Thomas Electronics, Inc.
208 Davis Parkway
Clyde, New York 14433

Mr. Paul D. Sylvestri, Esq. - Attorney for Thomas Electronics, Inc.
Harter, Secrest & Emery, LLP
Attorneys and Counselors
1600 Bausch and Lomb Place
Rochester, New York 14604-2711

I hand carried the original and a copy of the foregoing Consent Agreement and Final Order to the Office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: September 20, 2016
New York, New York


[Signature of Sender]
[NOTE: must be over 18]