

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2020-0036
)	
Kalsec, Inc.)	Proceeding to Assess a Civil Penalty
Kalamazoo, Michigan)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Kalsec, Inc., a corporation doing business in Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. The CAA is designed to, among other things, protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1).

National Emission Standards for Hazardous Air Pollutants

10. Section 112 of the Act, 42 U.S.C. § 7412, requires EPA to promulgate a list of all categories and subcategories of major sources and area sources of hazardous air pollutants (HAPs) and establish emissions standards for the categories and subcategories. These emission standards are known as the National Emission Standards for Hazardous Air Pollutants (NESHAP).

11. The NESHAPs in 40 C.F.R. Part 63 are national technology-based performance standards for HAP sources in each category that become effective on a specified date. The purpose of these standards is to ensure that all sources achieve the maximum degree of reduction in emissions of HAPs that EPA determines is achievable for each source category.

12. Pursuant to Section 112(b) of the CAA, 42 U.S.C. § 7412(b), EPA designates HAPs, which present or may present a threat of adverse effects to human health or the environment.

13. Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), defines “major source” 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 (PTE) considering controls, in the aggregate, 10 tons per year (TPY) or more of any single HAP or 25 TPY or more of any combination of HAPs.

14. Section 112(a)(2) of the CAA, 42 U.S.C. § 7412(a)(2), defines “area source” as any stationary source of HAPs that is not a major source.

15. 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.

16. The NESHAP, at 40 C.F.R. Part 63, Subpart A, contains general provisions applicable to the owner or operator of any stationary source that contains an affected source subject to the NESHAP at Part 63. These general provisions include definitions at 40 C.F.R. § 63.2.

17. The NESHAP, at 40 C.F.R. § 63.2, defines “affected source” as the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a CAA Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the CAA.

18. The NESHAP, at 40 C.F.R. § 63.2, defines “existing source” as any affected source that is not a new source.

19. The NESHAP, at 40 C.F.R. § 63.2, defines “new source” as any affected source the construction or reconstruction of which is commenced after EPA first proposes a relevant

emission standard under 40 C.F.R. Part 63 establishing an emission standard applicable to such source.

NESHAP for Miscellaneous Organic Chemical Manufacturing at 40 C.F.R. Part 63,
Subpart FFFF

20. On November 10, 2003, EPA promulgated the NESHAP for Miscellaneous Organic Chemical Manufacturing (Miscellaneous Organic NESHAP or MON), codified at 40 C.F.R. Part 63, Subpart FFFF (§§ 63.2430 through 63.2550). 68 Fed. Reg. 63888.

21. 40 C.F.R. § 63.2445(b) provides that owners and operators of existing sources subject to the MON must comply with the requirements for existing sources no later than May 10, 2008.

22. 40 C.F.R. § 63.2435(a) provides that owners and operators are subject to the MON if they operate miscellaneous organic chemical manufacturing process units (MCPU) that are located at, or are part of, a major source of HAP emissions as defined in Section 112(a) of the CAA.

23. 40 C.F.R. § 63.2435(b) provides that an MCPU includes equipment necessary to operate a miscellaneous organic chemical manufacturing process that, among other things, processes, uses or generates any of the organic HAPs listed in Section 112(b) of the CAA. An MCPU also includes any assigned storage tanks and transfer racks; equipment in open systems that is used to convey or store water having the same concentration and flow characteristics as wastewater; and components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open ended valves or lines, valves, connectors, and instrumentation systems that are used to manufacture any material or family of materials, including but not limited to, an organic chemical with a North American Industry Classification Number (NAICS) code listed in 40 C.F.R. § 63.2435(b)(1)(ii).

24. The NAICS was developed under the direction and guidance of the Office of Management and Budget as the standard for use by Federal statistical agencies in classifying business establishments for the collection, tabulation, presentation, and analysis of statistical data describing the U.S. economy.

25. 40 C.F.R. § 63.2550 defines “miscellaneous organic chemical manufacturing process” as all equipment which collectively functions to produce a product or isolated intermediate that is “material” described in 40 C.F.R. § 63.2435(b). Process includes any, all, or a combination of reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment which is used to produce a product or isolated intermediate.

26. 40 C.F.R. § 63.2435(b)(1)(ii) provides that an MPCU produces material or family of materials classified using NAICS code 325.

27. NAICS 325 covers the transformation of organic and inorganic raw materials by a chemical process and the formulation of products.

28. The MON sets forth applicable requirements for facilities that are subject to the MON, including, but not limited to, emission limits, work practice standards, compliance requirements (40 C.F.R. §§ 63.2450 through 63.2493), notification requirements (40 C.F.R. § 63.2515), and reporting and recordkeeping requirements (40 C.F.R. §§ 63.2520 and 63.2525) associated with miscellaneous organic chemical manufacturing.

29. On January 25, 2018, EPA issued a guidance memorandum, “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act.” (“2018 Memo”).

30. The 2018 Memo allows for a major source of HAPs to be reclassified as an area source of HAPs “at such time that the source takes an enforceable limit on its potential to emit (PTE) hazardous air pollutants (HAP) below the major source thresholds... In such

circumstances, a source that was previously classified as major, and which so limits its PTE, will no longer be subject either to the major source MACT or other major source requirements that were applicable to it as a major source under CAA section 112.”

31. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015 and \$48,192 per day of violation up to a total of \$385,535 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

32. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

33. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

34. Respondent operates a manufacturing facility at 3713 West Main Street in Kalamazoo, Michigan (“Facility”) and has been operating the Facility at this location since at least 1967.

35. At the Facility, Respondent processes spices, herbs, and hops to produce oleoresins, essential oils, miscella (as an isolated intermediate), and other isolated intermediates

in the hops product production process. These products or isolated intermediates fall under NAICS 325 or NAICS 311.

- a. Oleoresins derived from plant materials are one of Respondent's final food products. Respondent's oleoresin production process begins with miscella, an organic raw material. Some of this material undergoes a chemical process, specifically solvent recovery through distillation. This process results in the recovery of various oleoresins from plant material which Respondent produces.
 - b. Miscella is an isolated intermediate, as defined in 40 C.F.R. § 63.2550, created in the process of oleoresin production. Miscella begins with ground plant material, which is an organic raw material. The ground plant material is processed through solvent extraction and solvent recovery by distillation. These processes result in the recovery of the final product—oleoresins.
 - c. The hops product production process also involves the creation of isolated intermediates. The production process begins with carbon dioxide extracted hops, an organic raw material, which undergoes chemical processing, resulting in the final hops products.
 - d. Respondent also produces natural essential, or "volatile," oils derived from plant material for incorporation into its final products. Essential oils are a by-product of the desolvenization of herbs, spice miscella or hops through solvent extraction. Some essential oils are listed in 1997 NAICS Code 325998H103.
36. Respondent uses the solvents methanol and n-hexane, both of which are HAPs, in solvent extraction and distillation processes.

37. Respondent has the PTE 10 TPY or more of a single HAP and 25 TPY or more of combinations of HAPs.

38. Respondent has been a major source of HAPs and engaged in miscellaneous organic chemical manufacturing processes and has been required to comply with the requirements of the MON since May 10, 2008.

39. Respondent owns or operates an “emission source” within the meaning of Section 114 (a)(1) of the CAA, 42 U.S.C. § 7414(a)(1) and is subject to the requirements of Section 114(a)(1) of the CAA.

40. Based on a June 10, 2015 inspection of the facility, subsequent conversation with Kalsec representatives, and a review of documents, EPA determined that Kalsec had failed to implement emission limits, work practice standards, and compliance requirements, failed to submit notifications and reports to EPA, and failed maintain required records associated with miscellaneous organic chemical manufacturing.

41. On August 13, 2015, EPA issued to Respondent a Finding of Violation alleging that Respondent had been and continued to be a major source of HAPs and had violated the applicable requirements of the MON.

42. On October 6, 2015 and subsequent dates, representatives of Respondent and EPA discussed the August 13, 2015 Finding of Violation.

43. As of the date of filing of this CAFO, Respondent has not complied with the applicable provisions of the MON; however, in accordance with the 2018 Memo, and in accordance with the Administrative Consent Order, EPA-5-20-113(a)-MI-06, entered on September 9, 2020, the facility will be reclassified as an area source and will no longer be subject to the MON.

44. Respondent violated the MON and Section 112 of the CAA, 42 U.S.C. §7412, by failing to comply with the following applicable requirements:

- a. the emission limits, work practice standards, and compliance requirements 40 C.F.R. §§ 63.2450 through 63.2493;
- b. the notification requirements of 40 C.F.R. § 63.2515; and
- c. the reporting and recordkeeping requirements of 40 C.F.R. §§ 63.2520 and 63.2525.

Civil Penalty

45. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and cooperation by the Respondent during pre-filing investigation, Complainant has determined that an appropriate civil penalty to settle this action is \$75,000.

46. Within 30 days after the effective date of this CAFO, Respondent must pay a \$75,000 civil penalty by Automated Clearinghouse (ACH) electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

47. Respondent must send a notice of payment that states Respondent’s name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Jamie D. Getz
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
getz.jamie@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

48. This civil penalty is not deductible for federal tax purposes.

49. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

50. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

51. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: getz.jamie@epa.gov (for Complainant), and Ian Kennedy, Kalsec General Counsel (ikennedy@kalsec.com), and Steven Kohl, Kalsec Outside Counsel (skohl@wnj.com) (for Respondent).

52. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

53. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

54. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 52, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

55. Respondent certifies that by one year from the effective date of the Administrative Consent Order issued under Sections 113(a) and 114(a) of the CAA (EPA-5-20-113(a)-MI-06) which was effective on September 9, 2020, Kalsec will no longer be a major source of HAPs and therefore will no longer be subject to any major source requirements under CAA Section 112.

56. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

57. The terms of this CAFO bind Respondent, its successors and assigns.

58. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

59. Each party agrees to bear its own costs and attorney's fees in this action.

60. This CAFO constitutes the entire agreement between the parties.

Kalsec, Inc., Respondent

9/24/2020
Date

Scott M. Nykaza
Scott M. Nykaza, CEO
Kalsec, Inc.

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2020.09.25
11:18:51 -05'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Kalsec, Inc.
Docket No. CAA-05-2020-0036

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2020.09.25
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Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5