

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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In the Matter of:)
)
Andover Healthcare, Inc.)
9 Fanaras Drive)
Salisbury, Massachusetts 01952)
)
Respondent)
_____)

Docket Nos. CAA 01-2010-0025
EPCRA 01-2010-0024

CONSENT AGREEMENT AND FINAL ORDER

The Complainant, United States Environmental Protection Agency, Region 1 ("EPA"), alleges that Andover Healthcare, Inc. ("Respondent" or "AHC") violated certain sections of the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq., and certain requirements contained within a conditional approval (the "Permit") issued by the Massachusetts Department of Environmental Protection ("MA DEP") pursuant to regulations approved by EPA under the CAA. EPA also alleges that Respondent violated Sections 312 and 313 of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c) (also known as the Emergency Planning and Community Right-to-Know Act of 1986, hereinafter "EPCRA"), 42 U.S.C. §§ 11022 and 11023, and the implementing regulations at 40 C.F.R. Parts 370 and 372 that set forth reporting and notification requirements applicable to toxic chemicals at subject facilities.

EPA and Respondent agree to settlement of this matter through this Consent Agreement and Final Order (“CAFO”) without the filing of an administrative complaint, as authorized under 40 CFR § 22.13(b).

EPA and Respondent agree that settlement of this matter is in the public interest, and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

Therefore, before taking 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:

I. Statutory and Regulatory Authority

1. This is an administrative action for the assessment of monetary penalties and other relief pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), Section 325(c) of EPCRA, 42 U.S.C. § 11025(c), and 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, 40 C.F.R. Part 22.

A. EPCRA Statutory and Regulatory Authority

2. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation for violations of Section 312 and 313 of EPCRA, 42 U.S.C. §§ 11022 and 11023, and regulations promulgated thereunder. The Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19, as mandated by the Debt Collection Improvement Act, 31 U.S.C. §3701, authorizes the assessment of civil administrative penalties of up to \$32,500 per

day for each violation of Section 312 and 313 of EPCRA that occurred after March 15, 2004 through January 12, 2009.

3. Under Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20 and 370.25, any facility that is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970 ("OSHA"), 29 U.S.C. §§ 651 et. seq., and regulations promulgated thereunder must prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II form) to the State Emergency Response Commission ("SERC"), the Local Emergency Planning Committee ("LEPC"), and the local fire department. The Tier I or Tier II form must be submitted annually on or before March 1 and is required to contain information reflecting the preceding calendar year.

4. Under Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372, subject facilities must submit to EPA timely, complete, and correct Toxic Chemical Release Inventory Reporting Forms. Those forms require a facility that manufactures, processes, or otherwise uses chemicals listed under 40 C.F.R. § 372.65 in quantities exceeding established thresholds, to report, among other things, the activities and uses of the chemical at the facility, the maximum amount of the chemical on site at any point during a reporting year, and information on releases of the chemical to the environment. The reported information is primarily intended to inform the general public and the communities surrounding subject facilities about the presence and releases of toxic chemicals in their neighborhoods, hold companies accountable for such

releases, assist research, and aid in the development of regulations, guidelines and emissions standards.

B. CAA Statutory and Regulatory Authority

5. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes the assessment of a civil administrative penalty of up to \$25,000 per day for each violation. The Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19, as mandated by the Debt Collection Improvement Act, 31 U.S.C. §3701, authorizes the assessment of civil administrative penalties of up to \$32,500 per day for each violation that occurred after March 15, 2004 through January 12, 2009.

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator of EPA and the Attorney General of the United States jointly determined to waive the statutory limitations relating to penalty amount and period of violation in Section 113(d) because this case is appropriate for administrative penalty action.

6. The MA DEP issued the Permit to AHC's predecessor Andover Coated Products, Inc. on or about June 2, 1997. In 2006, Andover Coated Products, Inc. changed its name to Andover Healthcare, Inc. The Permit was issued under 310 CMR 7.02 of the Massachusetts state implementation plan approved by EPA under the CAA, and the Permit is therefore federally enforceable. The Permit was designed to ensure the capture and control of VOCs emitted from Respondent's adhesive coating line #4 at the Facility.

II. GENERAL ALLEGATIONS

7. Respondent is a corporation organized under the laws of the Commonwealth of Massachusetts that owns and operates a facility (the

"Facility") with a usual place of business located at 9 Fanaras Drive, Salisbury, Massachusetts, and is therefore a "person," as that term is defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. 370.2.

8. Respondent owns and operates a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. §§ 370.2 and 372.3.

9. The facility has 10 or more "full-time employees," as that term is defined by 40 C.F.R. § 372.3.

10. The facility is classified in Standard Industrial Classification code 2295.

11. During the calendar years 2005, 2006 and 2007, Respondent manufactured, processed or otherwise used toluene, a toxic chemical listed under 40 C.F.R. § 372.65, in quantities exceeding the established reporting threshold.

12. During calendar year 2007, Respondent stored more than 4,500 pounds of sulfuric acid, more than 49,500 pounds of Aquatac 6085, more than 70,500 pounds of Dispercoll C-74, more than 62,000 pounds of Latex cohesive base, and more than 49,500 pounds of Tacolyn 5002 at the Facility.

13. Respondent's facility is a "stationary source," as that term is defined in Sections 302(z) of the CAA, 42 U.S.C. § 7602(z).

III. VIOLATIONS

EPCRA VIOLATIONS

14. Paragraphs 1 through 13 , above, are incorporated by reference as if fully set forth herein.

15. During calendar year 2007, Respondent stored more than 4,500 pounds of sulfuric acid, more than 49,500 pounds of Aquatac 6085, more than 70,500 pounds of Dispercoll C-74, more than 62,000 pounds of Latex cohesive base, and more than 49,500 pounds of Tacolyn 5002 at the Facility.

16. Sulfuric acid, Aquatac 6085, Dispercoll C-74, Latex cohesive base, and Tacolyn 5002 are considered "hazardous chemicals" as defined by OSHA, 29 U.S.C. §§ 651 et seq., and pursuant to the regulations promulgated thereunder at 29 C.F.R. § 1910.1200(c). Sulfuric acid is also considered an "extremely hazardous substance," as defined at 40 C.F.R. § 370.2.

17. Respondent was required, pursuant to OSHA and the regulations promulgated thereunder, to prepare or have available a material safety data sheet ("MSDS") for the sulfuric acid, Aquatac 6085, Dispercoll C-74, Latex cohesive base, and Tacolyn 5002 at the Facility.

Failure to Submit Tier II Form

18. Pursuant to 40 C.F.R. § 370.20(b)(1), the minimum threshold level for Tier I or Tier II reporting for sulfuric acid, an "extremely hazardous substances," is 500 pounds or the Threshold Planning Quantity ("TPQ") as defined in 40 C.F.R. Part 355, whichever is lower. The TPQ for sulfuric acid is 1,000 pounds.

19. During calendar year 2007, the amount of sulfuric acid present at the Facility at any one time exceeded 500 pounds.

20. Pursuant to 40 C.F.R. § 370.20(b)(4), the minimum threshold level for Tier I or Tier II reporting for all other hazardous chemicals, including sulfuric acid, Aquatac 6085, Dispercoll C-74, Latex cohesive base, and Tacolyn 5002 is 10,000 pounds.

21. Accordingly, on or before March 1 of 2008, Respondent was required to prepare and submit to the SERC, LEPC and the local fire department Tier II forms for calendar year 2007 containing chemical information for sulfuric acid, Aquatac 6085, Dispercoll C-74, Latex cohesive base, and Tacolyn 5002.

22. Based on information obtained during an EPA inspection of the Facility on or about September 11, 2008, Respondent failed to submit by March 1, 2008 a Tier II form to the SERC, LEPC and local fire department for calendar year 2007, containing chemical information for sulfuric acid, Aquatac 6085, Dispercoll C-74, Latex cohesive base, and Tacolyn 5002.

23. Respondent's failure to prepare and submit a Tier II form on or before the reporting deadline of March 1 of 2008 for calendar year 2007 constitutes a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20 and 370.25.

Failure to Submit Toxic Release Inventory Forms

24. Paragraphs 1 through 13 , above, are incorporated by reference as if fully set forth herein.

25. In February 2009, EPA conducted an EPCRA inspection of Respondent's Facility. Based on that inspection and based upon information

subsequently submitted by Respondent to EPA, Respondent was required to submit a Toxic Chemical Release Inventory Form for toluene for calendar years 2005, 2006 and 2007, pursuant to Section 313 of EPCRA and 40 C.F.R. § 372.65.

26. For each of the calendar years 2005, 2006 and 2007, Respondent failed to submit to EPA by July 1 of the following year, a Toxic Chemical Release Inventory Form for toluene, which is a chemical listed under 40 C.F.R. § 372.65 and which Respondent manufactured, processed or otherwise used in quantities exceeding the established reporting threshold, in violation of Section 313 of EPCRA and 40 C.F.R. § 372.65.

CAA VIOLATIONS

27. Paragraphs 1 through 13 , above, are incorporated by reference as if fully set forth herein.

28. On or about March 20, 2009, EPA conducted an inspection of Respondent's facility in Salisbury, Massachusetts.

29. At all times relevant to this CAFO, one of the Facility's adhesive coating lines ("Coater # 4") emitted volatile organic compounds ("VOCs") and hazardous air pollutants ("HAPs") that were required by the Permit to be controlled by a catalytic oxidizer.

30. Based on EPA's inspection and information subsequently submitted by Respondent to EPA, EPA alleges that Respondent violated the Permit in the following ways.

31. Section D(12) of the Permit required that operations at Coater # 4 be discontinued upon the occurrence of any upset that lasts for more than 15 minutes and prevents the proper operation of Coater # 4's catalytic oxidizer (i.e. a 98 percent by weight VOC destruction efficiency and a 99 percent by weight VOC capture efficiency for the enclosure around the adhesive loading area, coating head and the drying oven). Section D(12) also provided that there be no VOC gas stream by-pass around the catalytic oxidizer during operations at Coater # 4.

32. EPA alleges that on five different days in the year 2008 Respondent operated Coater #4 without operating its catalytic oxidizer, for durations of time ranging from approximately 4.5 hours to approximately 17 hours on each day, in violation of the Permit.

33. Section D(5) of the Permit required Respondent to maintain temperature recordings of the catalytic oxidizer inlet and outlet temperatures. Section D(5) of the Permit required that the temperature records show continuous compliance with a minimum inlet temperature to the catalyst bed of 600⁰F and with minimum outlet temperature from the catalyst bed of 700⁰F.

34. EPA alleges that strip chart recordings for the years 2007 and 2008 show that the outlet temperature from the oxidizer's catalyst bed was consistently below 700⁰F, in violation of the Permit.

35. Section D(11) of the Permit required AHC to take and analyze annual core samples of the oxidizer's catalyst and submit the results to the MA DEP.

36. EPA alleges that AHC did not take and analyze annual core samples of the oxidizer's catalyst in 2006, 2007, and 2008 and did not provide any records of such sampling to the MA DEP, in violation of the Permit.

37. Section D(15) of the Permit requires AHC to maintain on-site adequate monthly records to document compliance with the VOC and HAP emission limits contained in the Permit. In addition, an annual compendium of such information, for the preceding twelve month period, must be submitted to the MA DEP by the 31st of January of each year. Such records must be maintained on-site for a period of at least five years and shall be made available upon request.

38. EPA alleges that AHC did not prepare and maintain for the last five years on-site monthly records or annual compendia of its compliance status with the VOC and HAP emission limits contained in the Permit, and/or did not maintain the above-referenced records on site such that they were available upon request, in violation of the Permit. AHC also failed to submit the required annual compendia to the MA DEP for any year during the last five year period, in violation of the Permit.

IV. CONSENT AGREEMENT

Conditions of Settlement

39. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states a claim upon which relief can be granted against Respondent.

40. Respondent neither admits nor denies the specific factual allegations contained in this CAFO and consents to the assessment of the penalty stated herein.

41. Respondent waives any defenses it might have as to jurisdiction and venue and consents to the terms of this CAFO.

42. Respondent waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO.

43. Respondent waives its right to appeal any Final Order in this matter and consents to the issuance of a Final Order without further adjudication.

44. Respondent certifies that it is currently operating the Facility described in this CAFO in compliance with the CAA and EPCRA and the federal regulations promulgated thereunder.

45. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and taking into account the relevant statutory penalty criteria, the facts recounted in this CAFO and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of two hundred fifteen thousand three hundred forty dollars (\$215,340) for the violations alleged in this CAFO. The penalty shall be apportioned in the following manner: Fifty-six thousand four hundred seventy-four dollars (\$56,474) for the EPCRA violations and one hundred fifty-eight thousand eight hundred sixty-six dollars (\$158,866) for the CAA violations.

46. Respondent shall pay the total penalty of two hundred fifteen thousand three hundred forty dollars (\$215,340), plus accrued interest, in installments according to the following schedule:

a. within thirty (30) calendar days of the effective date of this CAFO as set forth in the Final Order, Respondent shall pay sixty thousand dollars (\$60,000); and

b. within two hundred and ten (210) days of the effective date of this CAFO as set forth in the Final Order, Respondent shall pay one hundred fifty-five thousand three hundred forty dollars (\$155,340), plus accrued simple interest at the rate of 4 % per annum beginning thirty (30) days after the effective date of this CAFO through the date of payment.

47. Respondent shall make each payment by submitting a certified or cashier's check to the order of the "Treasurer, United States of America," to:

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

48. Respondent shall note the case name and CAA and EPCRA docket numbers of this action on the checks and in an accompanying cover letter, and shall provide copies of the check and letter to:

Ms. Wanda Santiago

Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 1, Suite 100, Mail Code ORA18-1
5 Post Office Square
Boston, MA 02109-3912

and

Gregory Dain
Senior Enforcement Counsel
U.S. Environmental Protection
Agency, Region 1, Suite 100, Mail Code OES042
5 Post Office Square
Boston, MA 02109-3912

49. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim.

50. In the event that the civil penalty amount relating to the EPCRA violations (which shall be deemed to be twenty-six percent (26%) of the payment amounts set forth in paragraph 46 , above), plus interest thereon, is not paid when due without demand, the penalty plus accrued interest shall be payable with additional interest from the original due date to the date of payment, at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. §901.9(b)(2). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. §901.9(d).

51. In the event that the civil penalty amount relating to the CAA violations (which shall be deemed to be seventy-four percent (74%) of the payment amounts set forth in paragraph 47, above), plus interest thereon, is not paid when due without demand, pursuant to §113(d)(5) of the CAA Respondent will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid within 30 calendar days of Respondent's receipt of this CAFO signed by the Regional Judicial Officer. In that event, interest will accrue from the date this CAFO was signed by the Regional Judicial Officer, at the "underpayment rate" established pursuant to 26 U.S.C § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorneys fees and collection costs. And a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter.

52. The civil penalty under this CAFO, and any interest, nonpayment penalties and charges described in this CAFO, shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use these

payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

53. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA and Section 113(d) of the CAA for the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

54. This CAFO shall not be construed to limit the rights of EPA or the United States to obtain penalties or injunctive relief under the CAA or EPCRA, or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in this CAFO. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive relief, civil penalties, or other appropriate relief relating to AHC's Facility or AHC's violations, AHC shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA or the United States in the subsequent proceeding were or should have been brought in the instant

case, except with respect to claims that have been specifically identified in this CAFO and have been specifically resolved pursuant to this CAFO.

55. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, successors and assigns.

56. The parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

57. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

FOR RESPONDENT ANDOVER HEALTHCARE, INC.

Thomas S. Murphy
Thomas S. Murphy

President
President

April 26th, 2010
Date

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

Susan Studlien

Date: 05/07/10

Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

FINAL ORDER

In accordance with 40 C.F.R. Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of the referenced Consent Agreement. This Final Order shall become effective upon filing, in accordance with 40 C.F.R. § 22.31(b).

U.S. ENVIRONMENTAL PROTECTION AGENCY


Jill T. Metcalf
Regional Judicial Officer
U.S. EPA, Region 1

Date: May 19, 2010

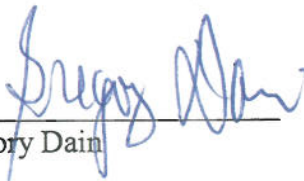
Docket No. CAA-01-2010-0025; EPCRA 01-2010-0024

CERTIFICATE OF SERVICE

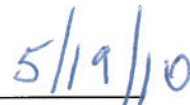
I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order has been hand-delivered to the EPA Region 1 Regional Hearing Clerk and that a copy has been mailed and sent electronically to the following person on May 19, 2010:

By Certified Mail, Return Receipt Requested:

Tina Wu, Esq.
WilmerHale
60 State Street
Boston, MA 02109 USA



Gregory Dain



Date