

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)

ABLE MANUFACTURING)
& ASSEMBLY, LLC)

Joplin, Missouri)

Respondent.)

) Docket No. CAA-07-2006-0165

) **CONSENT AGREEMENT and**
) **FINAL ORDER**

Preliminary Statement

This proceeding for the assessment of a civil penalty was initiated on or about May 3, 2006, pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), when the United States Environmental Protection Agency (EPA), Region VII (Complainant) issued a Complaint and Notice of Opportunity for Hearing to Able Manufacturing & Assembly, LLC (Respondent).

The Complaint charged Respondent with violating the Hazardous Air Pollutant emission limits set for Boat Manufacturers, 40 C.F.R. Part 63, Subpart VVVV, pursuant to Section 112 of the CAA, 42 U.S.C. § 7412. The Complaint proposed a civil penalty of Fifty-Three Thousand Seven Hundred Sixty Dollars (\$53,760) for this violation. The parties entered into negotiations in an attempt to settle the allegations contained in the Complaint; this Consent Agreement and Final Order are the result of such negotiations.

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.
2. Respondent admits the jurisdictional allegations set forth in the Complaint, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order.
3. Respondent neither admits nor denies the factual allegations set forth in the Complaint.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaint and waives its right to appeal the Final Order portion of this Consent Agreement and Final Order.

5. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

6. This Consent Agreement and Final Order addresses all civil and administrative claims for the Clean Air Act violations identified in the Complaint. Complainant reserves the right to take enforcement action with respect to any other violations of the Clean Air Act or other applicable law.

7. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 112 of the Clean Air Act, 42 U.S.C. § 7412, and all regulations promulgated thereunder.

8. The effect of settlement described in paragraph 6 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 7 above, of this Consent Agreement and Final Order.

9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the mitigated civil penalty and performance of the Supplemental Environmental Project (SEP) as set forth in the Final Order.

10. Respondent understands that the failure to pay any portion of the civil penalty or stipulated penalties assessed in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the amount due plus interest at the applicable statutory rate.

11. Complainant reserves the right to take enforcement action against Respondent for any future violations of the Clean Air Act (CAA) and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

12. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the Consent Agreement and Final Order and to legally bind Respondent to it.

Supplemental Environmental Project

13. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/ or public health benefits:

- a. Light Resin Transfer Molding Upgrade (Light RTM). Respondent has installed and shall implement closed-mold Light RTM manufacturing on the 72-inch Hub Cover product line for the SPX-Marley Cooling Towers

and document Hazardous Air Pollutant (HAP) reductions through use of this manufacturing process, as follows:

- i. Respondent shall document HAP emissions reductions achieved by comparing the actual HAP emissions from the closed-mold Light RTM manufacturing process to the emissions that would have resulted if Respondent were still using the open-mold manufacturing process.
- ii. Respondent shall reduce HAP emissions over three (3) years through use of the Light RTM, as follows:
 - Year one HAP reductions of at least 2,370 pounds.
 - Year two HAP reductions of at least 2,200 pounds.
 - Year three HAP reductions of at least 2,000 pounds.

14. The total expenditure for purchasing and implementing the SEP shall be not less than \$37,000. Respondent shall include documentation of expenditures made in connection with the SEP as part of the SEP Completion Report.

15. Respondent shall submit Annual SEP Reports, no later than March 15, 2008, and March 15, 2009 covering the previous twelve (12) months of SEP implementation (March 1 – February 28). The Annual SEP Reports shall contain the following:

- a. The quantity of 72" Hub Covers manufactured using the Light RTM process in the previous twelve (12) months, including documentation of resin purchases and product sales.
- b. Calculations for the HAP emissions from the Light RTM production line in the previous twelve (12) months and calculations for the emissions reductions at the facility through use of the closed-mold process over the previous open-mold process.

16. Within thirty (30) days of completion of the SEP, but no later than April 15, 2010, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. Itemized costs;
- c. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order;
- d. Calculations of the HAP reductions achieved through SEP implementation, broken down by year; and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions).

17. After receipt of the SEP Completion Report and each Annual SEP Reports, EPA will notify Respondent, in writing within sixty (60) days of any deficiencies in the SEP Report. Respondent shall have thirty (30) days to correct any deficiencies identified by the EPA and re-submit the SEP Report.

18. In addition to any other right to inspect EPA may have under federal statute or regulation, Respondent agrees that EPA may inspect the facility at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

19. Respondent shall continuously use or operate the systems installed as the SEP for not less than three (3) years subsequent to the effective date of this Consent Agreement and Final Order.

20. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in paragraphs 13 through 19 above, and/or to the extent that the actual HAP reductions for the SEP do not equal or exceed those required under paragraph 13 above, Respondent shall be liable for stipulated penalties as follows:

- i. Except as provided in subparagraph (ii) immediately below, for each year in which the HAP reductions required by paragraph 13(a)(ii) are not achieved, Respondent shall pay a stipulated penalty to the United States in the amount of \$5,000.
- ii. If the SEP is not completed in accordance with paragraphs 13 through 19 above, but the Complainant determines that Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of each annual HAP reduction required by paragraph 13 were achieved, Respondent shall not be liable for any stipulated penalty.
- iii. For failure to submit an Annual SEP Report required by paragraph 15 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report was originally due until the report is submitted.
- iv. For failure to submit the SEP Completion Report required by paragraph 16 above, Respondent shall pay a stipulated penalty in the amount of \$250 for each day after April 15, 2010, until the report is submitted.
- v. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of the EPA.
- vi. Stipulated penalties for subparagraphs (i) – (iv) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
- vii. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 2 of the Final Order.

21. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

22. Reports and notices required under this Consent Agreement shall be directed to:

Gary Bertram
Air Permitting and Compliance Branch
U.S. EPA, Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

23. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

24. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulations; nor is Respondent required to perform or develop the SEP by any other agreement, grant, or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

25. Respondent certifies that this SEP was undertaken in response to this enforcement action and had no intention of upgrading to the Light RTM for the 72-inch Hub Cover product line prior to September 2005.

26. Nothing contained in the Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits. Nor shall this Consent Agreement and Final Order be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP undertaken pursuant to this Agreement.

FINAL ORDER

Pursuant to the provisions of the Clean Air Act, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Twenty-Two Thousand Seven Hundred Dollars (\$22,700) plus interest of five hundred seventy dollars and thirty-two cents

(\$570.32) in quarterly installments over a period of one (1) year for a total payment of Twenty-Three Thousand Two Hundred Seventy Dollars and Thirty-Two Cents (\$23,270.32) to be paid in full no later than December 31, 2007.

- a. The first payment of \$5,817.58 is due within thirty (30) days of the effective date of this Consent Agreement/Final Order.
- b. Subsequent installments of \$5,817.58 are due on the following dates:
 - i. June 1, 2007;
 - ii. September 1, 2007; and
 - iii. December 1, 2007.

Pursuant to 40 C.F.R. § 13.18, failure to make any payment according to the above schedule will automatically accelerate the entire debt, including interest, which will become due and owing in full, immediately.

2. Payments of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency Region VII
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

The payments shall identify the Respondent by name and docket number (CAA-07-2006-0165). Copies of the check shall be mailed to:

Kristi Denney
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to satisfactorily complete such SEP, as specified in the Consent Agreement.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order, nor any funds expended in performance of the SEP required by this Consent Agreement and Final Order, shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. Respondent and Complainant shall bear their respective costs and attorney's fees.

RESPONDENT
ABLE MANUFACTURING AND ASSEMBLY, LLC

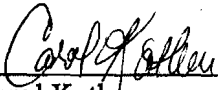
James Schwarz
Signature

Feb 15, 2007
Date

JAMES SCHWARZ
Printed Name

President
Title


COMPLAINANT
U.S. ENVIRONMENTAL PROTECTION AGENCY



Carol Kather
Acting Director
Air, RCRA, and Toxics Division

2/15/07

Date



Kristi Denney
Assistant Regional Counsel

2/20/07

Date

IT IS SO ORDERED. This Order shall become effective immediately.

Karina Borromeo
KARINA BORROMEO
Regional Judicial Officer
U.S. EPA, Region VII

Feb. 22, 2007
Date

IN THE MATTER OF Able Manufacturing & Assembly, LLC, Respondent
Docket No. CAA-07-2006-0165

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kristi Denney
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Michael P. Comodeca
Spencer Fane Britt & Browne LLP
Suite 700, 40 Corporate Woods
9401 Indian Creek Parkway
Overland Park, Kansas 66210

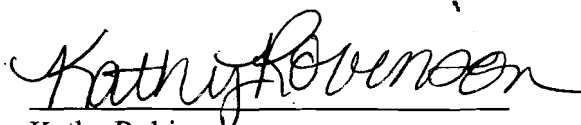
Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

and

The Honorable William B. Moran
Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

Dated: 2/22/07


Kathy Robinson
Hearing Clerk, Region 7