



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 02 2008

4APT-AEEB

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Patrick M. Raher  
Hogan & Hartson, LLP  
555 13<sup>th</sup> Street  
Washington, D.C. 20004

Re: Consent Agreement and Final Order  
Docket No. CAA-04-2008-1518(b)

Dear Mr. Raher:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act matter (Docket No. CAA-04-2008-1518(b)), involving Martek Biosciences Corporation. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective when filed. Please note that the CAFO requires that payment be made within 30 days of receipt of this executed CAFO.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. If you have any questions with regard to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any other questions, please call Ms. Lornette Harvey at (404) 562-8386.

Sincerely,

A handwritten signature in black ink that reads "Beverly A. Spagg".

Beverly A. Spagg  
Chief  
Air and EPCRA Enforcement Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

2009 SEP -2 PM 2:14

RECEIVED  
EPA REGION 4  
HEARING CLERK

IN THE MATTER OF: )  
)  
Martek Biosciences Corporation )  
Winchester, Kentucky )  
)  
Respondent. )  
)

Docket No. CAA-04-2008-1518(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action/Jurisdictional Statements

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Martek Biosciences Corporation (hereinafter, "Respondent") which owns and operates a facility in Winchester, Kentucky (Winchester Facility).

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

3. The authority to take action under Section 113(d) of CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides, and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4. Respondent is a corporation doing business in the Commonwealth of Kentucky.

5. Respondent is a "person" as defined in CAA § 302(e), 42 U.S.C. § 7602(e).

6. Section 112(d) of the CAA, 42 U.S.C. § 7412(d), authorizes EPA to promulgate emission standards for categories of sources of hazardous air pollutants (HAPs), listed in Section 112(b)(1) of the CAA. Those regulations have been promulgated at 40 C.F.R. Part 63, and regulate specific categories of stationary sources that emit (or have the potential to emit) one or more HAPs. The HAP regulations

contain general provisions in Subpart A and special provisions for specific categories in the subparts to Part 63.

7. On November 10, 2003, EPA promulgated the final rule for the source category, Miscellaneous Organic Chemical Production and Processes, or "MON" (68 Fed. Reg. 63851). The MON was subsequently amended on July 1, 2005 (70 Fed. Reg. 38553), partially withdrawn on August 20, 2005 (70 Fed. Reg. 51269), and proposed on December 8, 2005 (70 Fed. Reg. 73098). The compliance date of the MON for existing sources is May 10, 2008. 40 C.F.R. 63.2445. The MON requires that if an affected source has started up before November 10, 2003, the source must submit an initial notification not later than 120 calendar days after November 10, 2003. 40 C.F.R. § 63.2515(b). One-hundred twenty calendar days after November 10, 2003, is on or about March 10, 2004.

8. On May 26, 2006, EPA issued a Notice of Violation to Respondent, alleging that Respondent failed to submit an initial notification to EPA prior to March 10, 2004 as required by 40 C.F.R. § 63.2515(b).

9. Respondent responded in writing, contending that based on its SIC and NAICS codes, no notification of applicability was required.

## II. Factual Allegations

10. EPA alleges that Respondent was an affected source that started operation at the Winchester Facility before November 10, 2003.

11. EPA alleges that Respondent failed to submit an initial notification of applicability to EPA and the Kentucky Department of Air Quality (KY DAQ) by March 10, 2004.

## III. Consent Agreement

12. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in Paragraphs 1 through 9 above, but Respondent neither admits nor denies the factual allegations set out in Paragraphs 10 and 11 above.

13. As provided in 40 C.F.R. §22.18(b)(2), for the purposes of this proceeding, Respondent waives any right to contest the allegations listed above and its right to appeal the proposed final order accompanying this consent agreement.

14. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

15. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of 40 C.F.R. Part 63, Subpart FFFF at it Winchester Facility.

16. Compliance with this CAFO shall resolve the alleged violations contained herein, and EPA hereby releases Respondent from all liability for the violations of the MON alleged herein. This CAFO shall not otherwise affect any liability of Respondent, if any, to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for

imminent and substantial endangerment, or to pursue criminal enforcement for allegations of violations not contained in this CAFO. Respondent reserves its rights and defenses regarding liability in any proceedings other than a proceeding by the Complainant to enforce this CAFO.

17. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

18. Entering into this settlement shall not constitute an admission of (i) any factual allegation contained in this CAFO or (ii) a violation of the CAA by Respondent.

#### IV. Final Order

19. Based upon an analysis of the penalty assessment criteria in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), Complainant has determined that an appropriate civil penalty to settle this matter is **TWENTY SEVEN THOUSAND AND EIGHTY DOLLARS (\$27,080)**.

20. Respondent shall pay the penalty **within 30 days** of the effective date of the CAFO by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to the following address:

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

**The check shall reference on its face the name of the Respondent and the Docket Number of the CAFO.**

21. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk U.S.  
EPA - Region 4 61 Forsyth Street,  
S.W. Atlanta, Georgia 30303

Ms. Lorette Harvey  
Air, Pesticides and Toxics Management Division  
Air and EPCRA Enforcement Branch  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Ms. Saundi Wilson (OEA)  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

22. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for the civil penalty payment made pursuant to paragraph 19.

23. 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. Interest will therefore begin to accrue on the civil penalty from the date payment is due, if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge may be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

24. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

25. This CAFO shall be binding upon the Respondent, its successors and assigns.

26. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Ms. Lornette Harvey  
Air, Pesticides and Toxics Management Division Air and  
EPCRA Enforcement Branch  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9201


27. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

V. Effective Date

28. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

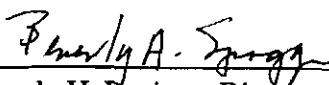
**Martek Biosciences Corporation**

By:  Date: 8-14-08

Printed Name: David M. Fitch

Title: SEVP General Counsel

**U.S. Environmental Protection Agency**

By:  Date: 7/31/08

Beverly H. Banister, Direct  
Air, Pesticides and Toxics Management Division,  
Region 4

**APPROVED AND SO ORDERED** this day of Sept. 2, 2008.



Susan B. Schub  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Martek Biosciences Corporation, Docket No. CAA-04-2008-1518(b), on the parties listed below in the manner indicated:

Patrick M. Rahe  
Hogan & Hartson, LLP  
555 13<sup>th</sup> street NW  
Washington, D.C. 20004

(Via Certified Mail)

Ellen Rouch  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, GA 30303

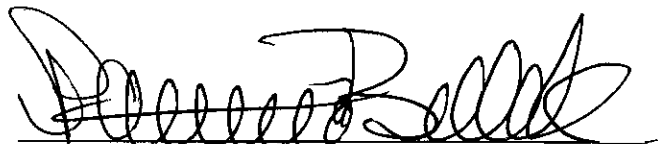
(Via EPA's internal mail)

Lornette Harvey  
Air, Pesticides and Toxics Management Division  
Air and EPCRA Enforcement Branch  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

(Via EPA's internal mail)

Date:

9-2-08



Patricia A. Bullock, Regional  
Hearing Clerk  
United States Environmental  
Protection  
Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 8/27/08  
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504  
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Martek Biosciences Corporation  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 27,080  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAA 09/2008 1578(b)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date \_\_\_\_\_

If you have any questions, please call: \_\_\_\_\_ of the Financial Management Section at: \_\_\_\_\_

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- |  |                              |
|--|------------------------------|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)  |
|  | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |                           |                              |
|---------------------------|------------------------------|
| 1. Originating Office     | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD)    |