

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94108

FILED

2012 SEP 28 AM 10: 54

U.S. EPA. REGION IX
REGIONAL HEARING CLERK

DOCKET NO: CAA (112r)-09-2012-0017

This ESA is issued to: **Aerovoe Industries Incorporated**
1191 Mark Circle
Gardnerville, NV 89410

For: Violation of Section 112(r)(7) of the Clean Air Act.
At: Aerovoe Industries Incorporated, 1191 Mark Circle, Gardnerville, NV 89410

This Expedited Settlement Agreement ("ESA") is being entered into by the United States Environmental Protection Agency ("EPA"), Region IX, by its duly delegated official, Jane Diamond, Superfund Director, and Aerovoe Industries Incorporated ("Respondent") pursuant to Section 113(a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). EPA has obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

The respondent failed to:

1) Maintain documentation of their hazard assessment as required in Section 112(r)(7) of the Act, and 40 C.F.R. §68.39(a)(b)(c)(d)(e).

The facility did not have records of their hazard assessment at the time of the inspection and records subsequently provided to EPA on April 12, 2011 also did not meet the requirements.

2) Update and revalidate the process hazard analysis (PHA) by a team every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process as required in Section 112(r)(7) of the Act, and 40 C.F.R. §68.67(f).

The facility failed to complete the 2008 revalidation of the PHA. Revalidation was not completed until April 2010.

3) Certify annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary as required in Section 112(r)(7) of the Act, and 40 C.F.R. §68.69(c).

The facility had not certified annually that the operating procedures were current and accurate. The procedures had not been certified since 2005.

4) Correct deficiencies in equipment that were outside acceptable limits defined by the process safety information before further use or in a safe and timely manner when necessary means were taken to assure safe operation as required in Section 112(r)(7) of the Act, and 40 C.F.R. §68.73(e).

The facility's records indicated the tank farm gas detectors were not operational and that all gas detectors needed calibration/replacement. In addition, facility staff confirmed that the detectors had never been calibrated, and annual function tests had never been performed. The facility's records also indicated that a Record for Procurement had been issued and that at least one quote had been received for replacement of the gas detectors.

5) Have procedures for informing the public and local emergency response agencies about accidental releases as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.95(a)(1)(i).

The facility did not have an emergency priority/call-down list that included the National Response Center (NRC), State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC). The only mentioned call list number at the time of the inspection was "911". On April 12, 2011, the facility provided documentation that partially corrected this violation. However, the NRC number was still not listed on this documentation.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history and previous penalties assessed, if any, its good faith effort to comply, the duration and seriousness of the violation, the economic impact of the penalty, and other factors as justice may require, the parties enter into this ESA in order to settle the violations described above for the total penalty amount of **\$7,450.00**.

This settlement is subject to the following terms and conditions:

The Respondent by signing below admits to jurisdiction, neither admits nor denies the specific factual allegations contained above, and consents to the assessment of the penalty as stated above. Respondent waives its rights to a hearing afforded by Section 113(d)(2)(A) of the Act, 42 U.S.C §7413(d)(2)(A), and to appeal this ESA. Each party to this action shall bear its own attorney's fees and costs, if any. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent has corrected the violations listed above and have sent an **Online Payment through the Department of Treasury: WWW.PAY.GOV** (Enter SFO 1.1 in search field. Open form and complete required fields) or **alternatively send a cashier's check or certified check** (payable to the Treasurer, United States of America) in the amount of **\$7,450.00** in payment of the full penalty amount to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The check or online payment should reference Respondent's name and a copy of this ESA must be included with the check/online payment going to the Cincinnati Finance Center.

This original ESA and a copy of the check or online receipt must also be sent by certified mail to:

Angie Proboszcz (SFD-9-3)
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region IX office at the above address in correct form by the Respondent within 30 days of the date of Respondent's

receipt of the proposed ESA, the ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

This ESA is binding on the parties signing below.

This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT – Aerove Industries Incorporated


Signature: 

Date: 8/21/2012

Name (print): Mark Williams

Title (print): Vice President and General Manager

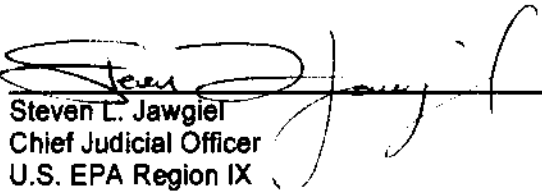
FOR COMPLAINANT:



Jane Diamond
Superfund Director
U.S. EPA Region IX

Date: 29 September 2012

It is hereby ORDERED that this ESA be entered and Respondent pays the above penalty.



Steven L. Jawgiel
Chief Judicial Officer
U.S. EPA Region IX

Date: 09/26/12

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of AERVOE INDUSTRIES, INC. (Docket #: CAA(112r)-09-2012-0017) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Mark Williams
Vice President and General Manager
AerVOE Industries, Inc.
1191 Mark Circle
Gardnerville, NV 89410

CERTIFIED MAIL NUMBER: 7011 0470 0002 9197 7494

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Thanne Cox, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Bryan K Goodwin
Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/26/12
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 9
75 Hawthorne Street, San Francisco, CA 94105

CERTIFIED MAIL NO: 7011 0470 0002 9197 7494
Return Receipt Requested

SEP 28 2012

Mr. Mark Williams
Vice President and General Manager
Aervoe Industries Incorporated
1191 Mark Circle
Gardnerville, NV 89410

Re: Aervoe Industries Incorporated, 1191 Mark Circle, Gardnerville, NV 89410
EPA Facility ID # 1000 0009 7138

Dear Mr. Williams,

This letter transmits a copy of the fully executed Expedited Settlement Agreement that resolves the alleged violations of Clean Air Act (CAA) Section 112(r)(7) at Aervoe Industries Incorporated 1191 Mark Circle, Gardnerville, NV 89410. The violations were for failure to:

1) *Maintain documentation of their hazard assessment as required in Section 112(r)(7) of the Act, and 40 C.F.R. §68.39(a)(b)(c)(d)(e).*

The facility did not have records of their hazard assessment at the time of the inspection and records subsequently provided to EPA on April 12, 2011 also did not meet the requirements.

2) *Update and revalidate the process hazard analysis (PHA) by a team every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process as required in Section 112(r)(7) of the Act, and 40 C.F.R. §68.67(f).*

The facility failed to complete the 2008 revalidation of the PHA. Revalidation was not completed until April 2010.

3) *Certify annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary as required in Section 112(r)(7) of the Act, and 40 C.F.R. §68.69(c).*

The facility had not certified annually that the operating procedures were current and accurate. The procedures had not been certified since 2005.

4) *Correct deficiencies in equipment that were outside acceptable limits defined by the process safety information before further use or in a safe and timely manner when necessary means were taken to assure safe operation as required in Section 112(r)(7) of the Act, and 40 C.F.R. §68.73(e).*

The facility's records indicated the tank farm gas detectors were not operational and that all gas detectors needed calibration/replacement. In addition, facility staff confirmed that the detectors had never been calibrated, and annual function tests had never been performed. The facility's records also indicated that a Record for Procurement had been issued and that at least one quote had been received

for replacement of the gas detectors.

5) *Have procedures for informing the public and local emergency response agencies about accidental releases as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.95(a)(1)(i).*

The facility did not have an emergency priority/call-down list that included the National Response Center (NRC), State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC). The only mentioned call list number at the time of the inspection was "911". On April 12, 2011, the facility provided documentation that partially corrected this violation. However, the NRC number was still not listed on this documentation.

Thank you for your prompt attention to this matter. If you have any questions or need additional information about the CAA Section 112(r)(7) requirements, please feel free to contact Angie Proboszcz of my staff at (415) 972-3077.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Diamond", with a stylized flourish at the end.

Jane Diamond
Director, Superfund Division

Enclosures