

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV
2013 MAR 26 PH 2:25
HEARING CLERK

IN THE MATTER OF:)
)
Boston Scientific Corporation)
One Boston Scientific Place)
Natick, Massachusetts 01760-1537)
)
)
Respondent)
_____)

Docket Number: CAA-04-2013-1501(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 the 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 Boston Scientific Corporation, (hereinafter, "Respondent").
2. Consistent with Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the requisite joint determination has been made by EPA and the United States Department of Justice that this matter is appropriate for administrative penalty action.
3. 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.
4. 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.
5. Respondent is a company incorporated in the State of Delaware.

6. Respondent is a "person" as defined in CAA § 302(e), 42 U.S.C. § 7602(e).
7. Pursuant to Sections 605 and 606 of the CAA, 42 U.S.C. §§ 7671d and 7671e, the Administrator of EPA is authorized to promulgate regulations for the phase-out of production and consumption of class II substances. The implemented regulations, set forth at 40 C.F.R. Part 82, regulate Stratospheric Ozone Protection. The regulations at 40 C.F.R. Part 82, Subpart A establish production and consumption allowances for class I and class II controlled substances.
8. Pursuant to 40 C.F.R. § 82.16(b), effective January 21, 2003, no person may import Hydrochlorofluorocarbon-141b (HCFC-141b) in excess of the quantity of unexpended HCFC-141b exemption allowances held by that person.
9. 40 C.F.R. § 82.19 includes a table that lists all persons that are apportioned baseline consumption allowances for HCFC-141b.
10. Pursuant to 40 C.F.R. § 82.24(d), persons who export class II controlled substances during a control period must comply with reporting requirements as described in that regulation, including the submission of the following information to EPA within 30 days after the end of each quarter in which the exports left the United States: the names and addresses of the exporter and the recipient of the exports; the type and quantity of each class II controlled substance exported; the date on which, and the port from which, the class II controlled substances were exported from the U.S.; and the country to which the class II controlled substances were exported.
11. Pursuant to 40 C.F.R. § 82.3, "controlled substance" is defined as any substance listed in appendix A or appendix B to 40 C.F.R. Part 82, Subpart A. Class II controlled substances are listed in appendix B to 40 C.F.R. Part 82, Subpart A.
12. Pursuant to 40 C.F.R. Part 82, Subpart A, appendix B, HCFC-141b is a class II controlled substance.
13. Pursuant to 40 C.F.R. § 82.3, "control period" is defined as the period from January 1, 1992 through December 31, 1992, and each twelve-month period from January 1 through December 31, thereafter.
14. Pursuant to Section 113(d) of the CAA, 42 U.S.C § 7413(d), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$32,500 for each day of violation of the CAA that occurred between March 15, 2004, and January 12, 2009. For each such violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed.

II. Factual Allegations

15. On or about December 15, 2011, Respondent imported 1,134 kilograms (kg) of HCFC-141b into the port of Miami, Florida and did not hold unexpended HCFC-141b exemption allowances for this quantity at that time.

16. Respondent violated 40 C.F.R. § 82.16(b) when it imported 1,134 kilograms (kg) of HCFC-141b into the port of Miami, Florida on or about December 15, 2011.
17. In 2010, Respondent exported 1,361 kg of HCFC-141b to Costa Rica.
18. Respondent did not submit information to the EPA about the 2010 export of 1,361 kg of HCFC-141b to Costa Rica within 30 days of the end of the quarter in which the export left the United States.
19. Respondent violated 40 C.F.R. § 82.24(d) when it did not timely submit required information to the EPA about the export of 1,361 kg of HCFC-141b to Costa Rica in 2010.

III. Consent Agreement

20. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in paragraphs 1 through 14 above, but Respondent neither admits nor denies the factual allegations set forth in paragraphs 15 through 19 above.
21. As provided in 40 C.F.R. § 22.18(b)(2), Respondent waives any right to contest the allegations listed above and its right to appeal the proposed final order accompanying this consent agreement.
22. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
23. Respondent certifies that, to the best of its knowledge, information and belief, as of the date of its execution of this CAFO, it is in full compliance with all the relevant requirements of 40 C.F.R. Part 82, Subpart A.
24. Compliance with this CAFO shall resolve the alleged violations contained herein. This CAFO shall not otherwise affect any liability of Respondent, if any, to the United States. Other than as expressed herein, EPA does not waive 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.
25. 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.

IV. Final Order

26. Respondent shall pay a civil penalty of SIXTY-NINE THOUSAND DOLLARS (\$69,000) which shall be paid within thirty (30) days from the effective date of the CAFO.

27. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America." **The Respondent shall note on the face of the check the Respondent's name and the Docket Number associated with this CAFO.** The penalty payment shall be sent by one of the following methods to the address indentified for the method chosen.

Address for payment submittal using the United States Postal Service:

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

Address for payment submittal using Federal Express, United Parcel Service (UPS), or Overnight Mail:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-1028

28. At the time of payment, Respondent shall send a separate copy of the check, together with a transmittal letter which shall state that the payment has been made for the civil penalty owed pursuant to the Consent Agreement and Final Order in the Matter of Boston Scientific Corporation, Docket No. CAA-04-2013-1501(b), 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. Saundi Wilson (OEA)
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

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

29. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim an expense or a deduction or a credit for the civil penalty payment made pursuant to this CAFO.
30. 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 of entry of this CAFO, 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.
31. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
32. This CAFO shall be binding upon the Respondent, its successors and assigns.
33. The following person is authorized to receive service for EPA in this proceeding:

Ms. Nicole Radford
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9099
34. 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.
35. This CAFO is applicable to all of Respondent's subsidiaries and affiliates.


The remainder of this page intentionally left blank.

V. Effective Date

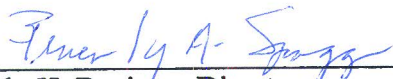
36. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:


Boston Scientific Corporation

By:  (Signature) Date: 7 March 2013
Name: LEONARD SARAPAS (Typed or Printed)
Title: CORPORATE DIRECTOR, EH&S (Typed or Printed)

U.S. Environmental Protection Agency

X By:  Date: 3/25/2013
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 26 day of March, 2013.


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 Boston Scientific Corporation, Docket Number: CAA-04-2013-1501(b), to the addressees listed below.

Leonard Sarapas
Corporate Director
Environment, Health & Safety
Boston Scientific Corporation
One Boston Scientific Place
Natick, Massachusetts 01760-1537

(via Certified Mail, Return Receipt Requested)

Len Ho, Esq.
Boston Scientific Corporation
One Boston Scientific Place
Natick, Massachusetts 01760-1537

(via Certified Mail, Return Receipt Requested)

Nicole Radford
North Air Enforcement Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

Michiko Kono
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

By:



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth St., S.W.
Atlanta, GA 30303
(404) 562-9511

Date:

3-26-13



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 26 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Leonard Sarapas
Corporate Director, Environment, Health & Safety
Boston Scientific Corporation
One Boston Scientific Way
Marlboro, MA 01752

**Re: Consent Agreement and Final Order
In the Matter of Boston Scientific Corporation
Docket No. CAA-04-2013- 1501(b)**

Dear Mr. Sarapas:

Please find enclosed a copy of the ratified Consent Agreement and Final Order (CAFO) for the above referenced matter. The original CAFO has been filed with the Regional Hearing Clerk as directed in Section 22.5(a) of the Consolidated Rules of Practice, as amended.

Please refer to Section IV (Final Order), for the terms and instructions regarding Boston Scientific Corporation's final payment on the penalty. Any questions regarding Boston Scientific Corporation's penalty may be directed to Ms. Heather Russell, Financial Management office, at (513) 487-2044.

If you have any other questions, please contact Ms. Nikki Radford of the North Air Enforcement Section at (404) 562-9099 or Ms. Michiko Kono, Associate Regional Counsel, at (404) 562-9558.

Sincerely,

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

Beverly A. Spagg
Chief
Air and EPCRA Enforcement Branch

Enclosure