



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 19 2017

CERTIFIED MAIL RETURN RECEIPT

Jill Hyman Kaplan
MANKO | GOLD | KATCHER | FOX LLP
401 City Avenue, Suite 901
Bala Cynwyd, Pennsylvania 19004

Re: Enersys Delaware, Inc., EPA ID # KYD070219571
Consent Agreement and Final Order, Docket No. RCRA-04-2017-4012(b)

Dear Ms. Kaplan:

Enclosed, please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk in the above-referenced matter. Please note that payment of the civil penalty is due within thirty (30) days of the effective date of the CA/FO, which is the date the CA/FO is filed with the Regional Hearing Clerk.

Thank you for your assistance in resolving this matter. If you have any questions, please contact Joan Redleaf Durbin, Senior Attorney, at (404) 562-9544 or by email at redleaf-durbin.joan@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth
Chief, Enforcement and Compliance Branch
Resource Conservation and Restoration Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
 EnerSys Delaware Inc.)
 761 Eastern Bypass)
 Richmond, Kentucky 40475)
 EPA ID No.: EPA ID # KYD070219571)
)
 Respondent)
 _____)

DOCKET NO.: RCRA-04-2017-4012(b)

Proceeding Under Section 3008(a) of the
 Resource Conservation and Recovery Act
 42 U.S.C. § 6928(a)

2017 SEP 19 AM 7:31
 HEARING CLERK
 USEPA REGION 4
 OFFICE OF REGIONAL
 COUNSEL

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of Kentucky Revised Statutes (KRS) Title XVIII, Chapter 224, Subchapter 46-Hazardous Waste *et seq.* (2006), [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939g], and the regulations promulgated pursuant thereto and set forth at Title 401 of the Kentucky Administrative Regulations (K.A.R.) Chapters 30 through 38, 43 and 44 (2006) [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270, 273, & 279]. This action seeks the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of KRS 224.46-520(1) (2006) [Section 3005 of RCRA, 42 U.S.C. § 6925] and 401 K.A.R. Chapters 30 through 38, and 43 (2006) [40 C.F.R. Parts 260 through 270, & 273].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b) (2) and (3).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Chief, Enforcement and Compliance Branch, Resource Conservation and Restoration Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.
5. Respondent is EnerSys Delaware Inc., a corporation incorporated under the laws of Delaware. Respondent is the owner and operator of a business that manufactures batteries for motive power located at 761 Eastern Bypass, Richmond, Kentucky (the Facility).

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Commonwealth of Kentucky (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at 401 K.A.R. Chapters 30 through 38, 43 and 44 (2006).
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. Kentucky has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CA/FO.
11. KRS 224.46-510(1) (2006) [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at 401 K.A.R. Chapter 32 (2006) [40 C.F.R. Part 262].
12. KRS 224.46-520(1) (2006) [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at 401 K.A.R. Chapter 34 (2006) (permitted) and 401 K.A.R. Chapter 35(2006) (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].

13. Pursuant to 401 K.A.R. 31:010 Section 2 (2006) [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations.
14. Pursuant to 401 K.A.R. 31:010 Section 3 (2006) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in 401 K.A.R. 31:010 Section 3(b) (2006) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by 401 K.A.R. 31:010 Section 4(2) (2006) [40 C.F.R. § 261.4(b)].
15. Pursuant to 401 K.A.R. 31:010 Section 3(b) 1. (2006) [40 C.F.R. §§ 261.3(a)(2)(I) and 261.20], solid wastes that exhibit any of the characteristics identified in 401 K.A.R. 31:030 Sections 2-5 (2006) [40 C.F.R. §§ 261.21-24] are characteristic hazardous waste and are provided with the EPA Hazardous Waste Numbers D001 through D0043.
16. Pursuant to 401 K.A.R. 31:030 Section 2 (2006) [40 C.F.R. §§ 261.20 and 261.21], a solid waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
17. Pursuant to 401 K.A.R. 31:030 Section 3 (2006) [40 C.F.R. §§ 261.20 and 261.22], a solid waste that exhibits the characteristic of corrosivity is a hazardous waste and is identified with the EPA Hazardous Waste Number D002.
18. Pursuant to 401 K.A.R. 31:030 Section 4 (2006) [40 C.F.R. §§ 261.20 and 261.23], a solid waste that exhibits the characteristic of reactivity is a hazardous waste and is identified with the EPA Hazardous Waste Number D003.
19. Pursuant to 401 K.A.R. 31:030 Section 4 (2006) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of cadmium is a hazardous waste and is identified with the EPA Hazardous Waste Number D006.
20. Pursuant to 401 K.A.R. 31:030 Section 4 (2006) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of chromium is a hazardous waste and is identified with the EPA Hazardous Waste Number D007.
21. Pursuant to 401 K.A.R. 31:030 Section 4 (2006) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of lead is a hazardous waste and is identified with the EPA Hazardous Waste Number D008.
22. Pursuant to 401 K.A.R. 31:030 Section 4 (2006) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of mercury is a hazardous waste and is identified with the EPA Hazardous Waste Number D009.
23. Pursuant to 401 K.A.R. 31:030 Section 4 (2006) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of silver is a hazardous waste and is identified with the EPA Hazardous Waste Number D011.
24. Pursuant to 401 K.A.R. 31:005 Section 1(111) (2006) [40 C.F.R. § 260.10], “generator” means any person, by site, whose act or process produces waste. (See KRS § 224.01-010(13)).

25. Pursuant to 401 K.A.R. 30:005 Section 1(93)(a) (2006) [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.”
26. Pursuant to 401 K.A.R. 31:005 Section 1(22) (2006) [40 C.F.R. § 260.10], a “person” means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth of Kentucky, or any interstate body. (See KRS § 224.01-010(17)).
27. Pursuant to 401 K.A.R. 30:005 Section 1(20) (2006) [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility.”
28. Pursuant to 401 K.A.R. 30:005 Section 1(19) (2006) [40 C.F.R. § 260.10], an “operator” is “the person responsible for the overall operation of a facility.”
29. Pursuant to 401 K.A.R. 31:005 Section 1(28) (2006) [40 C.F.R. § 260.10], “storage” means the containment of wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such wastes. (See KRS § 224.01-010(28))
30. Pursuant to 401 K.A.R. 43:005 Section 1(254) (2006) [40 C.F.R. § 273.9], a “Small Quantity Handler of Universal Waste” (SQHUW) is a universal waste handler who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.
31. Pursuant to 401 K.A.R. 32:030 Section 5(1) [40 C.F.R. § 262.34(a)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a large quantity generator (LQG) and may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, as required by KRS § 224.46-520(1) (2006) [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the management requirements listed in 401 K.A.R. 32:030 Section 5(1)(a)-(d) (2006) [40 C.F.R. § 262.34(a)(1)-(4)] (hereinafter referred to as the “LQG Permit Exemption”).
32. Pursuant to 401 K.A.R. 32:030 Section 5(1) (2006) [40 C.F.R. § 262.34(a)(4)], which incorporates 401 K.A.R. 35:030 Section 6 (2006) [40 C.F.R. § 265.35], and is a condition of the LQG Permit Exemption, a generator is required to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.
33. Pursuant to 401 K.A.R. 32:030 Section 5(1)(d) (2006) [40 C.F.R. § 262.34(a)(4)], which incorporates 401 K.A.R. 35:030 Section 2 (2006) [40 C.F.R. § 265.31] and is a condition of the LQG Permit Exemption, a generator is required to maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
34. Pursuant to 401 K.A.R. 32:030 Section 5(2) (2006) [40 C.F.R. § 262.34(b)], an LQG who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is

subject to the requirements of 401 K.A.R. Chapters 34 and 35 (2006) [40 C.F.R. Parts 264 and 265] and the permit requirements of 401 K.A.R. Chapter 38 [40 C.F.R. Part 270].

35. Pursuant to 401 K.A.R. 43:020 Section 4(4) (2006) [40 C.F.R. § 273.13(d)], a SQHUW must manage universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.
36. Pursuant to 401 KAR 32:030 Section 5(1) (2006) [40 C.F.R. § 262.34(a)(4)], which incorporates 401 KAR 35:040 Section 5 (2006) [40 C.F.R. § 265.54(d)], and is a condition of the LQG Permit Exemption, a generator is required to review and immediately amend, its contingency plan whenever the list of emergency coordinators changes.

IV. EPA ALLEGATIONS AND DETERMINATIONS

37. Respondent is a “person” as defined in 401 K.A.R. 31:005 Section 1(22) (2006) [40 C.F.R. § 260.10].
38. Respondent is the “owner” and “operator” of a “facility” located at 761 Eastern Bypass in Richmond City, Madison County, Kentucky, as those terms are defined in 401 K.A.R. 30:005 Section 1 (2006) [40 C.F.R. § 260.10].
39. Respondent is a “generator” of “hazardous waste” as those terms are defined in 401 K.A.R. 31:005 Section 1(111) (2006) [40 C.F.R. § 260.10] and 401 K.A.R. 31:010 Section 3 [40 C.F.R. § 261.3].
40. Respondent is a manufacturer of batteries for motive power, reserve power, aerospace, and defense applications.
41. Respondent, as a result of its practices and operations at the Facility, is a LQG, as that term is defined in 401 K.A.R. 32:030 Section 5(1) (2006) [40 C.F.R. § 262.34(a)], at all times relevant to this CA/FO.
42. Respondent, as a result of its practices and operations at the Facility, is a SQHUW, as that term is defined in 401 K.A.R. 43:005 Section 1(254) (2006) [40 C.F.R. § 273.9], at all times relevant to this CA/FO.
43. On August 25, 2016, the EPA and the Kentucky Department for Environmental Protection (KYDEP) conducted a compliance evaluation inspection (CEI) at the Respondent’s Facility. The findings of the CEI were documented in a report mailed to Respondent, dated June 7, 2017.
44. During the CEI, the EPA and KYDEP observed inadequate aisle space in the hazardous waste storage area. The pallets were aligned in a manner that limited the aisle space in the storage area.
45. The EPA therefore alleges that Respondent violated KRS § 224.46-520(1) (2006) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 K.A.R. 32:030 Section 5(1) (2006) [40 C.F.R. § 262.34(a)(4)], by not complying with the aisle space requirements of 401 K.A.R. 35:030 Section 6 (2006) [40 C.F.R. § 265.35].

46. During the CEI, the EPA and KYDEP observed two 55-gallon containers of hazardous waste that were marked with the accumulation start dates of May 5, 2016, and May 23, 2016, respectively. These containers of hazardous waste had been accumulated approximately 2 days and 21 days over the 90-day storage limit.
47. The EPA therefore alleges that Respondent violated KRS § 224.46-520(1) (2006) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste in excess of 90 days without a permit or interim status, in violation of 401 K.A.R. 32:030 Section 5(2) (2006) [40 C.F.R. § 262.34(b)].
48. During the CEI, the EPA and KYDEP observed two fiberboard boxes that contained universal waste lamps that were closed, but had a hole or gap in them.
49. The EPA therefore alleges that Respondent violated 401 K.A.R. 43:030 Section 4(4) (2006) [40 C.F.R. § 273.33(d)], by failing to manage spent universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.
50. During the CEI, the EPA and KYDEP observed hazardous waste paint from the puncturing of aerosol containers on the floor, on the sides of a 55-gallon container of hazardous waste, and on the pallet below the 55-gallon container.
51. The EPA therefore alleges that Respondent violated KRS § 224.46-520(1) (2006) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in 401 K.A.R. 32:030 Section 5(1) (2006) [40 C.F.R. § 262.34(a)(4)], by not complying with the maintenance and operation requirements of 401 K.A.R. 35:030 Section 6 (2006) [40 C.F.R. § 265.31].
52. During the CEI, the EPA and KYDEP reviewed the Facility's contingency plan and observed that the contingency plan did not contain a current emergency coordinator contact list.
53. The EPA therefore alleges that Respondent violated KRS § 224.46-520(1) (2006) [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in [401 K.A.R. 32:030 Section 5(1) (2006) [40 C.F.R. § 262.34(a)(4)], by not complying with the contingency plan amendment requirements of 401 K.A.R. 35:040 Section 5 [40 C.F.R. § 265.54].

V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations, the parties agree to the following:

54. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
55. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.

56. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
57. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*
58. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to the EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
59. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
60. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
61. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized State hazardous waste program.
62. The parties agree that compliance with the terms of this CA/FO shall resolve the violations alleged and the facts alleged in this CA/FO.
63. Each party will pay its own costs and attorneys' fees.

VI. PAYMENT OF CIVIL PENALTY

64. Respondent consents to the payment of a civil penalty in the amount of FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00), which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
65. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court

Riverdale, Maryland 20737
Contact: John Schmid, (202) 874-7026
REX (Remittance Express): 1-866-234-5681

66. Respondent shall submit a copy of the payment to the following individuals:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

And to:

Houston Gilliland Jr.
Environmental Scientist
Hazardous Waste Compliance and Enforcement Section
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
US EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

67. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement or, if paying in installments, not paid in accordance with the installment schedule provided above. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:
- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
 - b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
 - c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

68. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

VII. PARTIES BOUND

69. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
70. No change in ownership, partnership, corporate or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
71. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

VIII. RESERVATION OF RIGHTS

72. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.
73. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
74. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's Facility.

IX. OTHER APPLICABLE LAWS

75. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

X. SERVICE OF DOCUMENTS

76. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in this proceeding:

Joan Redleaf Durbin
Associate Regional Counsel
Office of RCRA/CERCLA Legal Support
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9544

77. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Jill Hyman Kaplan
MANKO | GOLD | KATCHER | FOX LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
(w) 484.430.2315
(f) 484.430.5711

XI. SEVERABILITY

78. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

XII. EFFECTIVE DATE

79. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

(Signatures contained on next page)

In the matter of EnerSys Delaware Inc., Docket No. RCRA-04-2017-4012(b):

AGREED AND CONSENTED TO:

For the Respondent, EnerSys Delaware Inc.

By:  Dated: 9/8/17

Troy Baxter
Plant Manager
EnerSys Delaware Inc.

United States Environmental Protection Agency

By:  Dated: 09/14/17
Larry L. Lamberth
Chief, Enforcement and Compliance Branch
Resource Conservation and Restoration Division

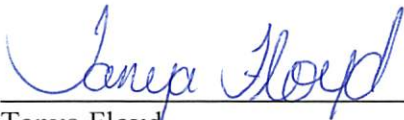
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	DOCKET NO.: RCRA-04-2017-4012(b)
)	
EnerSys Delaware Inc.)	
761 Eastern Bypass)	
Richmond, Kentucky 40475-5060)	Proceeding Under Section 3008(a) of the
EPA ID No.: KYD070219571)	Resource Conservation and Recovery Act,
)	42 U.S.C. § 6928(a)
Respondent)	
)	
_____)	

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 14th day of September, 2017.

BY: 
Tanya Floyd
Regional Judicial Officer
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of EnerSys Delaware Inc. Docket Number: RCRA-04-2017-4012(b), and have served the parties listed below in the manner indicated:

Joan Redleaf Durbin
Associate Regional Counsel
Office of RCRA/CERCLA Legal Support
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Quantindra Smith
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Jill Hyman Kaplan
MANKO | GOLD | KATCHER | FOX LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
(w) 484.430.2315
(f) 484.430.5711

(Via Certified Mail-Return
Receipt Requested)

Date:

9-19-17



Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511