

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY -6 AM 9:32
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
INHANCE TECHNOLOGIES LLC, formerly) Docket Nos. CAA-07-2014-0021
FLUORO-SEAL INTERNATIONAL, L.P.,) EPCRA-07-2014-0003
) EPCRA-05-2015-0003
)
) CONSENT AGREEMENT
) AND FINAL ORDER
Respondent,)
)
Proceeding under Section 113(d) of the)
Clean Air Act, 42 U.S.C. § 7413(d), and)
Section 325(c) of the Emergency Planning)
and Community Right-to-Know Act,)
42 U.S.C. § 11045(c))

PRELIMINARY STATEMENT

This proceeding for the assessment of civil penalties was initiated on July 9, 2014, pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), and Section 325(c) of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045(c), when the United States Environmental Protection Agency (“EPA” or “Complainant”) issued a Complaint and Notice of Opportunity for Hearing (“Complaint”) to Inhance Technologies LLC, formerly Fluoro-Seal International, L.P., (“Respondent”).

The Complaint charged Respondent with violations of Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r), and the implementing regulations of the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68. The Complaint also charged Respondent with violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 370.

Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations in the Complaint; this Consent Agreement and Final Order (“CA/FO”) is the result of such negotiations.

This CA/FO is proposed and entered into under the authority vested in the Administrator of the EPA by Section 113 of the CAA, as amended, 42 U.S.C. § 7413, by Section 325 of the

EPCRA, 42 U.S.C. § 11045, and under the authority of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Administrator has delegated these authorities to the Regional Administrators, who have, in turn, delegated them to the Director of the Air and Waste Management Division, Region 7, and to the Director of the Superfund Division, Region 5.

CONSENT AGREEMENT

1. The terms of this CA/FO shall not be modified except by a subsequent written agreement between the parties.
2. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.
3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and this CA/FO and agrees not to contest EPA’s jurisdiction in this proceeding or in any subsequent proceeding related to the Complaint to enforce the terms of the Final Order portion of this CA/FO.
4. Respondent neither admits nor denies the factual allegations, alleged violations and legal conclusions set forth in the Complaint.
5. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of the CA/FO.
6. Respondent and EPA agree to conciliate the matters set forth in the Complaint without the necessity of a formal hearing and to bear their respective costs and attorneys’ fees.
7. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to legally bind Respondent to it.
8. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent’s obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
9. This CA/FO addresses all civil and administrative claims for the CAA and EPCRA violations specifically alleged in the Complaint. Complainant reserves the right to take enforcement action with respect to any other violations of the CAA, EPCRA or other applicable law.

10. Respondent certifies by signing this CA/FO that, to the best of its knowledge, Respondent's facilities subject to the Complaint are in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Section 312 of EPCRA, 42 U.S.C. § 11022, and all regulations promulgated thereunder.

- a. More specifically and in addition to other CAA Section 112(r) requirements, Respondent certifies that its facilities subject to the Complaint have and will continue to have less than the threshold quantity of hydrogen fluoride in a process, and if any such facility should have present more than the threshold quantity of hydrogen fluoride in a process, Respondent will develop a Risk Management Program that complies with the appropriate Program level, as set out in the eligibility requirements in 40 C.F.R. § 68.10; submit an RMP to the EPA RMP Reporting Center that includes the information required by 40 C.F.R. §§ 68.155 through 68.185 for each covered facility; and maintain records supporting the implementation of the Risk Management Program in accordance with 40 C.F.R. § 68.200.
- b. More specifically and in addition to other EPCRA Section 312 requirements, within 30 days of the effective date of the Final Order, Respondent will update Tier II reports filed March 2014 for facilities subject to the Complaint to add unused alumina pellets (aluminum oxide) and will continue to file such Tier II reports for aluminum oxide for future years in which the facilities meet the EPCRA § 312 reporting requirements. Whether a chemical is hazardous is determined pursuant to the revised OSHA Hazard Communication Standard as promulgated on March 26, 2012 and codified at 29 C.F.R. § 1910.1200(c).

11. The effect of settlement described in Paragraphs 12 and 13 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 10 of this Consent Agreement.

12. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 325(c) of the EPCRA, 42 U.S.C. § 11045(c), the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project ("SEP") and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of Fifty-Nine Thousand Dollars (\$59,000).

13. Respondent consents to the issuance of the Final Order hereinafter recited, consents to the payment of a civil penalty as set forth in the foregoing paragraph and in Paragraph 1 of the Final Order, and consents to the performance of the Supplemental Environmental Project.

14. 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. Within 30 days of the effective date of the Final Order, Respondent shall begin to design a hydrogen fluoride recovery system that will be installed and implemented at each of Respondent’s facilities covered by the Complaint, which will recycle hydrogen fluoride, reducing the amount of residual hydrogen fluoride directed to the aluminum oxide scrubbers, as described more specifically in the Scope of Work (attached hereto as Attachment A and incorporated herein by reference). Design, installation, and implementation of the SEP shall be completed no later than 18 months from the effective date of the Final Order.

15. The total expenditure for the SEP shall be no less than One Hundred Eighty Thousand Dollars (\$180,000) in costs external to Respondent, in accordance with the specifications set forth in the Scope of Work. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

16. Within 60 days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA as follows:

- a. The SEP Completion Report shall contain the following:
 - i. a detailed description of the SEP as implemented;
 - ii. itemized costs, documented by copies of purchase orders, receipts, or canceled checks;
 - iii. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible); and
 - iv. certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO.
- b. Respondent shall submit all notices and reports required by this CA/FO by first class mail to the following:

Christine Hoard
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

- c. In itemizing its costs in the SEP Completion Report, Respondent shall clearly

identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

17. Respondent agrees to the payment of stipulated penalties as follows:
 - a. In the event Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP as set forth in Paragraphs 14 and 15 of this CA/FO and/or to the extent that the actual expenditures of the SEP do not equal or exceed the cost of the SEP described in Paragraph 15 of this CA/FO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. Except as provided in subparagraph a.ii. and a.iii. of this paragraph, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in Paragraphs 14 and 15 of this CA/FO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of One Hundred Seventy-Two Thousand and Eight Hundred Dollars (\$172,800) (120% of the amount by which the settlement penalty was mitigated on account of the SEP), minus any documented expenditures determined by EPA to be acceptable for the SEP.
 - ii. If Respondent fails to timely and completely submit the SEP Completion Report required by Paragraph 16, Respondent shall be liable and shall pay a stipulated penalty in the amount of One Hundred Dollars (\$100) per day. This stipulated penalty shall begin to accrue on the first day after the SEP Completion Report is due and continue to accrue through the day the SEP Completion report is submitted.
 - iii. If the SEP is not completed in accordance with Paragraphs 14 and 15, of this CA/FO, but EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90% of the

amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

- b. The determinations 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 EPA. If EPA determines that the SEP has not been satisfactorily completed or that Respondent has not made a good faith, timely effort to implement the SEP, the provisions of Paragraph 17(a)(i) apply.
- c. Respondent shall pay stipulated penalties not more than thirty days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 1 of the Final Order portion of this CA/FO. Interest and late charges shall be paid as stated in Paragraph 22 herein.

18. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

19. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

20. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct the \$180,000 credited as part of this settlement for performing the SEP.

21. 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." For purposes of this paragraph, the term "public statement" does not include communications to customers and potential customers describing

the process, provided that such communications are not provided in brochures, signage, videos, or radio or tv ads.

22. Late Payment Provisions. 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. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full.

FINAL ORDER

Pursuant to the provisions of Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and of Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), 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 Fifty-Nine Thousand Dollars (\$59,000) within thirty days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to "United States Treasury," and shall be remitted to:

United State Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

This payment shall reference docket numbers CAA-07-2014-0021, EPCRA-07-2014-0003, and EPCRA-05-2015-0003.

2. Copies of the check shall be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Erin Weekley
Assistant Regional Counsel

United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. Respondent and Complainant shall bear their respective costs and attorneys' fees incurred as a result of this matter.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.


5. This Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CA/FO.

6. The effective date of this Order shall be the date on which it is filed with the Regional Hearing Clerk, Region 7.


7. This Order shall terminate thirty (30) days after Respondent submits the SEP Completion Report to EPA.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 7

Date 12/30/2014

for 
Becky Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

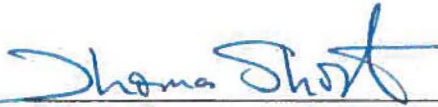
Date 12/30/2014


Erin Weekley
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 5

Date

12/30/2014



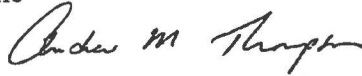
Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

RESPONDENT:
INHANCE TECHNOLOGIES LLC

Date December 29, 2014

Andrew M. Thompson

Name




Signature

President & CEO

Title

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

Date 12/30/14



Karl Brooks
Regional Administrator
U.S. Environmental Protection Agency
Region 7

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

Date 1-5-2015



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Consent Agreement and Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further 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 following addressees:

Copy hand delivered to Attorney for Complainant:

Erin Weekley
Assistant Regional Counsel
United States Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66215

Copy by certified mail, return receipt requested to:

C T Corporation System
120 South Central Ave
Clayton, Missouri 63105

C T Corporation System
400 E Court Ave
Des Moines, Iowa 50309

C T Corporation System
208 SO Lasalle Street, Ste 814
Chicago, Illinois 60604

and

Ragna Henrichs
Porter Hedges LLP
1000 Main Street, 36th Fl.
Houston, Texas 77002.

Dated: 1/6/14

By: Kathy Robinson
Kathy Robinson
Hearing Clerk
United States Environmental Protection Agency
Region 7

ATTACHMENT A

INHANCE TECHNOLOGIES

16223 Park Row, Suite 100

Houston, TX 77084

T: 281-572-1440 F: 281-572-3159

inhanceproducts.com

INHANCE

Supplemental Environmental Project Scope of Work

This SEP is a pollution reduction project to be implemented at five INHANCE plant locations, Mount Pleasant, Centerville, St. Louis, Kansas City and Chicago. INHANCE has voluntarily agreed to undertake this project and is not otherwise legally required to do so. The project will be completed in two phases. First, an engineering design package will be prepared laying out the equipment needed, construction plan and operating parameters. The second phase is to procure, install and start-up the process at each plant.

Currently, plant emissions are abated using a series of aluminum oxide scrubbers. Completion of this SEP will recycle hydrogen fluoride to the process, further reducing the amount of residual hydrogen fluoride directed to the aluminum oxide scrubbers.

The project is expected to include a small gas collection tank, a small air compressor, two sodium fluoride absorbent towers, equipment to heat the absorbent towers, a cooling loop to cool the recovered hydrogen fluoride and a cylinder to capture the recovered hydrogen fluoride and feed it back continually into the process. The listed equipment is a preliminary expectation, the exact list and installation plan will be developed during the engineering design phase of the SEP.

The specific timeline for each phase of the project will be determined in the engineering and design phase. The estimated timeline for the engineering and design phase is approximately five months. INHANCE will complete the entire project within 18 months from the effective date of the CAFO. The estimated external cost to complete this SEP is a minimum of \$180,000.

After completion of this SEP project and termination of the CAFO, Inhance intends to operate the equipment installed as the SEP at the covered facilities during all periods that such facilities operate their hydrogen fluoride processes, giving due consideration to the SEP's continued compatibility with the underlying process, malfunctions, the development and implementation of more efficient recycling or scrubbing technology, plant shutdown and the like.