



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

SEP 28 2004

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Francis M. Lymburner, President
LymTal International, Inc.
4150 South Lapeer Road
Lake Orion, MI 48359

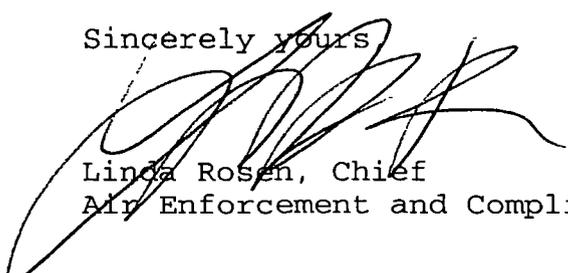
Dear Mr. Lymburner:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves violations at LymTal's Orion, Michigan facility, CAA Docket No. ~~CAA-05-2004-0050~~. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 28 2004.

Pursuant to paragraph 31 of the CAFO, LymTal must pay the civil penalty within 30 days of SEP 28 2004. Your check must display the case docket number, ~~CAA-05-2004-0050~~ and the billing document number, 050304893.

Please direct any questions regarding this case to Louise Gross, Associate Regional Counsel, (312) 886-6842.

Sincerely yours,



Linda Rosen, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Rebecca Vahle (w/enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. CAA-05- 2004 0050
)
LymTal International, Inc.) Consent Agreement and Final
Lake Orion, Michigan) Order
)
Respondent.)
)
_____)

CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTIONAL AUTHORITY

1. This is a civil administrative action commenced and concluded simultaneously pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.1(a)(2), 22.13(b), and 22.18(b).

2. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brings this administrative action seeking a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

3. The Respondent is LymTal International (LymTal or Respondent), a corporation doing business in Michigan.

US ENVIRONMENTAL
PROTECTION AGENCY
REGION 5

04 SEP 28 AM 11:58

RECEIVED
REGIONAL HEARING
CLERK

II. STATUTORY AND REGULATORY BACKGROUND

4. Under Section 183(e) of the Act, 42 U.S.C. § 7511b(e), the Administrator of U.S. EPA promulgated regulations establishing requirements regarding the manufacture of certain consumer or commercial products, the use of which may result in the release of volatile organic compounds (VOCs).

5. Pursuant to Section 183(e) of the Act, 42 U.S.C. § 7511b(e), on September 11, 1998, U.S. EPA promulgated National VOC Emission Standards for Architectural Coatings at 40 C.F.R. Part 59, Subpart D (Architectural Coatings Standards).

6. The Architectural Coatings Standards apply to each "architectural coating," as that term is defined at 40 C.F.R. § 59.401, manufactured on or after September 13, 1999 for sale or distribution in the United States.

7. The Architectural Coatings Standards, at 40 C.F.R. § 59.401, define "manufacturer" as a person that produces, packages, or repackages architectural coatings for sale or distribution in the United States.

8. The Architectural Coatings Standards, at 40 C.F.R. § 59.408(b), require each manufacturer and importer of any architectural coating subject to Subpart D to submit an initial notification report no later than September 13, 1999 or within 180 days after the date that the first architectural coating is manufactured or imported, whichever is later.

9. The Architectural Coatings Standards, at 40 C.F.R. § 59.405(a)(2), require each manufacturer and importer of any architectural coating subject to Subpart D to provide on the label or lid of the container in which they sell or distribute the coating, a statement of the manufacturer's recommendation regarding thinning of the coating. The Architectural Coatings Standards, at 40 C.F.R. § 59.405(a)(3), further require each manufacturer and importer of any architectural coating subject to Subpart D to display the VOC content of the coating on the label or lid of the container in which they sell or distribute the coating. The VOC content must be indicated either as the actual VOC content of the coating, or as the VOC content limit with which the coating is required to comply, and does comply.

10. The Architectural Coatings Standards, at 40 C.F.R. § 59.402(a), require each manufacturer and importer of any architectural coating subject to Subpart D to ensure that the VOC content of the coating does not exceed the applicable limit in Table 1 of Subpart D.

11. The Administrator of U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation, with a maximum of \$220,000, for violations of the Architectural Coatings Standards that occurred between January 31, 1997 and March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation, with a maximum of \$270,000, for violations that

occurred on and after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 13, 2004).

III. FACTUAL ALLEGATIONS

12. Lymtal owns and operates a coating manufacturing facility located at 4150 South Lapeer Road in Lake Orion, Michigan (the Lake Orion facility).

13. At the Lake Orion facility, Lymtal manufactures and distributes, among others, one coating identified as "Iso-Flex 630 Coating."

14. Since at least September 13, 1999, LymTal has manufactured and distributed "architectural coatings," as defined in 40 C.F.R. § 59.401.

15. LymTal did not submit an initial notification report until October 13, 2003.

16. The VOC content of "Iso-Flex 630 Coating" exceeded the applicable limits in Table 1 of Subpart D until January 1, 2003.

17. Labels used by LymTal did not contain the information on thinning requirements for the product or the actual VOC content or VOC content limit until April 14, 2004.

18. On March 29, 2004, U.S. EPA issued a Finding of Violation to LymTal.

IV. VIOLATIONS

19. As set forth above, LymTal failed to submit an initial notification report by September 13, 1999, constituting a violation of 40 C.F.R. § 59.408(b) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

20. As set forth above, LymTal failed to provide a statement of its recommendation on thinning on its containers of architectural coatings, and of the actual VOC content or VOC content limit, constituting a violation of 40 C.F.R. § 59.405(a) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

21. As set forth above, LymTal exceeded the VOC limit for "Iso-Flex 630 Coating" without paying exceedance fees or submitting tonnage exemption reports, constituting a violation of 40 C.F.R. § 59.402(a) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

V. STIPULATIONS

22. LymTal admits the jurisdictional allegations and neither admits nor denies the factual allegations described herein.

23. LymTal consents to the issuance of this CAFO and the assessment of a civil penalty, as outlined in Section VI of this CAFO.

24. LymTal consents to all of the terms and conditions in

this CAFO.

25. LymTal waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c).

26. LyTal waives its right to contest the allegations in this CAFO, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

27. LymTal certifies that it is complying fully with the Architectural Coatings Standards at its coating manufacturing facility in Beloit, Wisconsin.

28. LymTal and U.S. EPA agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

VI. CIVIL PENALTY

29. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to such other factors as justice may require), the size of LymTal's business, the economic impact of the penalty on LymTal's business, LymTal's full compliance history and good faith efforts to comply, the duration of the violations, payments by LymTal of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations.

30. Based on an analysis of the above factors, including LymTal's cooperation and prompt return to compliance, U.S. EPA

has determined that an appropriate civil penalty to settle this action is \$53,400.

31. LymTal must pay the \$53,400 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," in accordance with paragraphs 32 and 33 below, within 30 days of the effective date of this CAFO.

32. LymTal must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

33. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Louise Gross, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

34. This civil penalty is not deductible for federal tax purposes.

35. If LymTal does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

36. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. LymTal will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Mule-Hide will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

VII. General Provisions

37. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Sections 111(e) and 113 of the Act, 42 U.S.C. §§ 7411(e) and 7413, for the violations alleged in Section IV of this CAFO. Nothing in this CAFO is

intended to, nor shall be construed to, operate in any way to resolve any criminal liability of LymTal arising from the violations alleged in this CAFO or liability related to other violations of the Act. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA, and it is the responsibility of LymTal to comply with such laws and regulations.

38. Nothing in this CAFO restricts U.S. EPA's authority to seek LymTal's compliance with the Act and other applicable laws and regulations.

39. This CAFO does not affect LymTal's responsibility to comply with the Act and other applicable federal, state, and local laws and regulations.

40. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine LymTal's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

41. The terms of this CAFO bind LymTal, its officers, directors, servants, employees, agents, successors, and assigns, including, but not limited to, subsequent purchasers.

42. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO

and to execute and legally bind that party to it.

43. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

44. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

45. This CAFO constitutes the entire agreement between the parties.

**U.S. Environmental Protection Agency,
Complainant**

Date: 9/24/2004

By: 

Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

**LymTal International, Inc.,
Respondent**

Date: Sept 21, 2004

By: 

Francis M. Lyburner, President
LymTal International, Inc.

CAA-95-2004 0050

CONSENT AGREEMENT AND FINAL ORDER

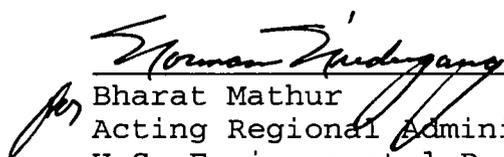
LymTal International, Inc., Lake Orion, Michigan
Docket No.

CAA-05- 2004 0050

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Dated: 9/24/04


Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number ~~CAA-05-2004~~ 0050 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a correct copy by first-class, postage prepaid, certified mail, return receipt requested, to Lymtal International, Inc. by placing it in the custody of the United States Postal Service addressed as follows:

Francis M. Lymburner
LymTal International, Inc.
4150 South Lapeer Road
Orion, MI 48359

on this 28th day of September, 2004

US ENVIRONMENTAL
PROTECTION AGENCY
REGION V

04 SEP 28 AM 1:58

RECEIVED
REGIONAL HEARING
CLERK

Shanee Rucker

Shanee Rucker

AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0295 3376