

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
ZECO, Inc.)
)
Respondent.)
_____)

Docket No. CAA-04-2016-8018(b)

HEARING CLERK

2016 DEC 13 AM 7:12

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
OFFICE OF THE ADMINISTRATOR
1000 EAST AVENUE
MEMPHIS, TENNESSEE 38103

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region 4 (the "EPA"). The Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent ZECO, Inc., is a company licensed to do and doing business in the State of Tennessee. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication of any issue of law or fact herein, and agree to comply with the terms of this Consent Agreement and Final Order.

B. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this Consent Agreement are pursuant to Section 113(a)(3)(A).
6. The EPA asserts that the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

7. On September 1, 2015, the EPA issued to Respondent a notice of potential violation ("NOPV") that Respondent had potentially committed the alleged violations described in Section E of this Agreement and providing Respondent an opportunity to confer with the EPA. On October 1, 2015, October 19, 2015, and May 9, 2016, representatives of Respondent and the EPA discussed the September 1, 2015, NOPV.

8. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes settlement between Complainant and Respondent. 40 C.F.R. § 22.4(b) and 22.18(b).

9. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

10. Section 112(r) of the Act, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3). The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

11. Pursuant to Sections 112(r)(3) and 112(r)(7) of the Act, 42 U.S.C. §§ 7412(r)(3), and 7412(r)(7), the EPA promulgated rules, codified at 40 C.F.R. Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the "Risk Management Program" (RMProgram). Pursuant to Sections 112(r)(3) and 112(r)(5) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.

12. Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 C.F.R. §§ 68.10 and 68.150, require the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a "process," as defined in 40 C.F.R. § 68.3, to develop and implement a single Risk Management Plan (RMPlan) that includes the information required by Sections 68.155 through 68.185.

D. FACTUAL ALLEGATIONS

13. Respondent operates a "stationary source" as that term is defined by Section 302(z) of the Act, 42 U.S.C. § 7602(z). The Respondent's stationary source is located at 2217 Polymer Drive, Chattanooga, Tennessee 37421 (stationary source).

14. Respondent submitted and EPA has approved a single RMPlan that includes an accidental release prevention program for its stationary source.

15. EPA alleges for the purpose of this Agreement:

(a) At the time of the EPA inspection, the Respondent had an RMProgram level 2 covered process that stores or otherwise uses peracetic acid, which is a regulated substance, in an amount

exceeding its applicable threshold of 10,000 pounds.

(b) On May 8, 2014, the EPA conducted an onsite inspection of the RMProgram related records and equipment for the purpose of assessing the Respondent's compliance with the RMProgram requirements for the covered processes at its stationary source.

(c) At the time of the inspection, the Respondent had used the maximum inventory of the regulated substance to determine the worst case release scenario instead of the greatest amount held only in a single vessel.

(d) At the time of the inspection, the Respondent did not provide records satisfactory to the EPA relative to Respondent's consideration or review of the hazards associated with a regulated substance.

(e) At the time of the inspection, inventory records indicated the facility stored over 10,000 pounds of peracetic acid as part of its process beginning January 2013, however, the Respondent did not submit a RMPlan until March 3, 2014.

E. ALLEGED VIOLATIONS OF LAW

16. Based on EPA's compliance monitoring investigation, the EPA alleges that the Respondent violated the codified rules governing the Act's Chemical Accident Prevention Provisions, because Respondent did not adequately implement the provisions of 40 C.F.R. Part 68 when it:

- (a) Failed to determine the worst case release quantity using the greatest amount held only in a single vessel as required by 40 CFR § 68.25(b)(1);
- (b) Failed to conduct a review of the hazards associated with the regulated substance as required by 40 CFR § 68.50(a)(1); and
- (c) Failed to submit a single RMP as required by 40 CFR § 68.150(a), prior to March 3, 2014.

F. TERMS OF CONSENT AGREEMENT

17. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
 - (b) neither admits nor denies the factual allegations stated above;
 - (c) consents to the assessment of and agrees to pay the civil penalty in the amount stated in this Agreement;
 - (d) waives any rights to contest the alleged violations of law set forth in Section E of this Agreement;
 - (e) waives its rights to appeal the Order accompanying this Agreement, and
 - (f) certifies to the best of Respondent's knowledge after a good faith inquiry that as of its execution of this Agreement it is in compliance with all relevant requirements of 40 C.F.R. Part 68.
18. For the purpose of this Agreement, Respondent:
- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;

- (b) 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 Order, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1);
- (c) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Eastern District of Tennessee; and
- (d) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

19. Penalty Payment. Respondent agrees to:

- (a) pay a civil penalty of **FIFTY NINE THOUSAND EIGHT HUNDRED FIFTY DOLLARS (\$59,850.00)** ("EPA Penalty") within thirty (30) calendar days of the Effective Date of this Agreement;
- (b) pay the EPA Penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America" to either the first or second address identified below; or by electronically transferring payment using the third address, also identified below.

For payment sent via standard delivery via the United States Postal Service
 U.S. Environmental Protection Agency
 Cincinnati Finance Center Box 979077
 St. Louis, MO 63197-9000

For payment sent for signed receipt confirmation (FedEx, DSL, UPS, USPS Certified)
 U.S. Environmental Protection Agency
 Cincinnati Finance Center Box 979077
 1005 Convention Plaza
 SL-MO-C2GL
 St. Louis, MO 63101
 Delivery Location Phone Number: 314-425-1819

For payment sent via electronic transfer via Fedwire:
 Federal Reserve Bank of New York
 ABA = 021030004
 Account = 68010727
 SWIFT address = FRNYUS33
 33 Liberty Street
 New York, New York 10045
 Beneficiary: "U.S. Environmental Protection Agency"

The check shall reference on its face the name and the Docket Number of the CAFO. Within 24 hours of payment of the EPA Penalty, Respondent shall send a separate copy of the check or confirmation of electronic transfer, and a written statement that payment has been made in accordance with this Agreement, to the following persons at the following addresses:

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

Deanne Grant
Chemical Management and Emergency
Planning Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

20. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

21. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

22. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into terms and conditions of this Agreement and legally bind the party he or she represents to this Agreement.

23. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other

party's obligations.

24. By signing this Agreement, Respondent certifies to the best of Respondent's knowledge after a good faith inquiry that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

25. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this preceding.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

26. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

27. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

28. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

29. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon written agreement of both parties, and approval of the Regional Judicial Officer.

30. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2).

31. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

32. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

33. The EPA reserves the right to revoke this Agreement if and to the extent, after signing this Agreement, it is determined by the EPA that any information provided by Respondent for any violation described herein was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil

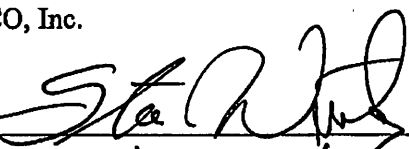
penalties for any alleged violation described herein. The EPA shall give Respondent notice of its intent to revoke this Agreement, which shall not be effective until received by Respondent in writing.

H. EFFECTIVE DATE

34. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk. The foregoing Consent Agreement in the Matter of ZECO, Inc., Docket No. CAA-04-2016-8018(b), is Hereby Stipulated, Agreed, and Approved for Entry.

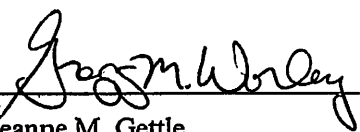
FOR RESPONDENT:

ZECO, Inc.

By:  Date: 11/2/2016
Name: Steve Wirtz (Typed or Printed)
Title: Vice President - HR (Typed or Printed)

FOR COMPLAINANT:

U.S. Environmental Protection Agency

By:  Date: 12/9/2016
for Jeaneanne M. Gettle
Acting Division Director
Air, Pesticides and Toxics Management Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)

ZECO, Inc.)

Respondent.)
_____)

Docket No.

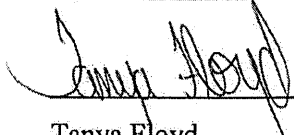
CAA-04-2016-8018(b)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

SO ORDERED this 12th day of December, 2016.



Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of ZECO, Inc., CAA-04-2016-8018(b), on the parties listed below in the manner indicated:

Robert W. Bookman
U. S. EPA, Region 4
Air, Pesticides and Toxics
Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Lynda Crum
U. S. EPA, Region 4
Office of Regional Counsel
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

David Higney
Grant Konvalinka & Harrison, PC
633 Chestnut Street
Suite 900, Republic Centre
Chattanooga, Tennessee 37450-0900

(Via Certified Mail -
Return Receipt Requested)

Date: 12-13-16



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511