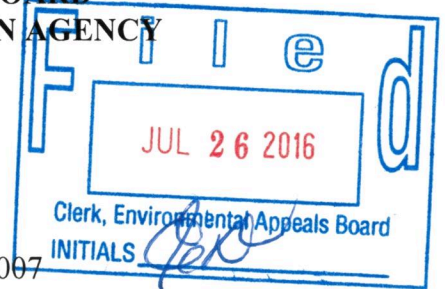


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



In re:)
)
OSRAM SYLVANIA, Inc.)
Wilmington, Massachusetts)
)
)

Docket No. TSCA-HQ-2016-5007

FINAL ORDER

Before the Environmental Appeals Board (“Board”) is the attached Consent Agreement resolving this matter. The parties to the Consent Agreement seek the Board’s ratification of the Consent Agreement pursuant to 40 C.F.R. § 22.18(b) and (c). Based on the parties’ representations about the limited scope of matters resolved, the Board ratifies the Consent Agreement.

In the Consent Agreement, the parties include language to describe the scope of matters resolved. In Paragraph 15, the parties agree that: “Payment of the penalty resolves all civil claims with respect to the allegations set forth in this Consent Agreement.” In Paragraph 21, the parties agree that: “Nothing in this Consent Agreement or the Final Order is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent.” And in Paragraph 2, the parties agree that: “Except for those rights specifically waived in this [Agreement], Respondent reserves all constitutional, statutory, and regulatory rights and all rights under common law, both legal and equitable.”

The Consolidated Rules of Practice expressly require that the scope of matters resolved by consent agreement be limited to only respondent’s liability for federal civil penalties:

Full payment of the penalty proposed in a * * * settlement pursuant to paragraph (b) of this section shall not in any case affect the right of the Agency or the United States to pursue appropriate *injunctive or other equitable relief* or criminal sanctions for any violations of law. Full payment of the penalty proposed in a * * * settlement pursuant to paragraph (b) of this *section shall only resolve respondent’s liability for Federal civil penalties* for the violations and facts alleged in the complaint.^[1]

40 C.F.R. § 22.18(c) (emphasis added).

¹ Where, as here, the parties agree to a settlement before the filing of a complaint, the Agency may simultaneously commence and conclude the matter by issuance of a consent agreement. In that instance, the reference in 40 C.F.R. § 22.18(c) to violations and facts alleged “in the complaint” is properly read to refer to the consent agreement resolving the matter. See 40 C.F.R. §§ 22.13(b), .18(b)(2).

But here the Consent Agreement does not state that it resolves only Respondent's liability for federal civil penalties. Nor does it state that it will not affect the Agency's or the United States' right to pursue appropriate injunctive or other equitable relief. And it includes language reserving Respondent's rights not expressly waived.

After Board staff consulted with the parties, the parties represented jointly that their mutual intent in Paragraph 15 (quoted above) is to convey that "[f]ull payment of the penalty specified in the Consent Agreement shall only resolve respondent's liability for federal civil penalties for violations and facts alleged in this Consent Agreement." See E-mails from Aaron H. Goldberg, Principal, Beveridge & Diamond, P.C., and from Mark Seltzer, Attorney, Office of Enforcement & Compliance Assurance, U.S. EPA, to Eurika Durr, Clerk of the Board (July 18, 2016).

Based on the parties' representations about the limited scope of matters resolved, the Board incorporates by reference the attached Consent Agreement into this Final Order and ratifies the Agreement.

The Board cautions the parties, however, and particularly EPA counsel, to ensure that the terms of and language in all future consent agreements executed under the Consolidated Rules expressly conform to the Rules' requirements, including those set forth at 40 C.F.R. § 22.18.

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

So ordered.²

ENVIRONMENTAL APPEALS BOARD

Dated: 7/26/2016

By: Mary Beth Ward
Mary Beth Ward
Judge, Environmental Appeals Board

² The three-member panel ratifying this matter is composed of Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward.

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of *OSRAM SYLVANIA, Inc.*, Docket No. TSCA-HQ-2016-5007, were filed and copies of the same were mailed to the parties as indicated below:

Via Interoffice Mail:

Mark Seltzer, Attorney Advisor
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (Mail Code 2249A)
Washington, D.C. 20460

Via U.S. Certified Mail:

OSRAM SYLVANIA, Inc.
Attn: Robert J. O'Keefe, Senior Legal Counsel
200 Ballardvale Street
Wilmington, Massachusetts 01887

Dated: JUL 26 2016



Annette Duncan, Secretary
U.S. Environmental Protection Agency
Environmental Appeals Board