RECEIVED
U.S. EPA, HEADQUARTERS

AUG 29 2019

ENVIRONMENTAL APPEALS BOARD

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

In the Matter of: Lexington Container Company Jessamine County, Nicholasville, Kentucky Respondent.	Docket No. CAA-HQ-18-8378

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil 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 the 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 (the "EPA"). On the EPA's behalf, Phillip A. Brooks, Director, Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized by lawful delegation to institute and settle civil administrative penalty proceedings under Section 113(d) of the Act.

3. Respondent is Lexington Container Company, a sole proprietorship doing business in the state of Kentucky. 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 issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

5. By signing this Consent Agreement, Respondent certifies that it is in compliance with requirements of 40 C.F.R. Part 59, Subpart F, and that it has ceased all activities prohibited by that Subpart.

B. JURISDICTION

6. 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).

7. The EPA may administratively assess a civil penalty if the penalty sought is less than $320,000 for violations that occurred after December 6, 2013 through November 2, 2015, and less than $378,852 for violations that occurred after November 2, 2015 and are assessed a penalty on or after February 6, 2019. 42 U.S.C. § 7413(d)(1); 40 C.F.R. § 19.4. The statutory maximum penalty amount for administrative penalty orders has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701).

8. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d)(1).

9. The Environmental Appeals Board is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.4(a) and 22.18(b).

10. 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

11. This proceeding arises under Part D of Title I of the Act, CAA §§ 171-193, 42 U.S.C. §§ 7501-7515, and the regulations promulgated thereunder. In pertinent part, these laws aim to reduce ozone in areas that do not meet the national ambient air quality standards for ozone, or "nonattainment areas."

12. As used in this Consent Agreement, the term "portable fuel container" or "PFC" means any reusable container designed and marketed (or otherwise intended) for use by consumers for receiving, transporting, storing, and dispensing gasoline, diesel fuel, or kerosene. For the purpose of this subpart, all utility jugs that are red, yellow, or blue in color are deemed portable fuel containers, regardless of how they are labeled or marketed. 40 C.F.R. § 59.680.

13. Under Section 183(e)(3) of the Act, 42 U.S.C. § 7511b(e)(3), EPA must identify and regulate categories of consumer or commercial products that account for at least 80 percent of volatile organic compound emissions from consumer or commercial products in ozone nonattainment areas.

14. On May 16, 2006, EPA added PFCs to the list of products that it would regulate under Section 183(e). *See* 71 Fed. Reg. 28,320.

15. On February 26, 2007, EPA promulgated regulations for the Control of Evaporative Emissions from New and In-Use Portable Fuel Containers. *See* 40 C.F.R. Part 59 Subpart F ("Subpart F"). Among other things, Subpart F establishes emission standards, labeling requirements, and procedures for obtaining a certificate of conformity. EPA issues a certificate of conformity to PFC manufacturers to certify that a particular line of PFCs with similar emission characteristics conforms to the requirements of Subpart F.

16. Subpart F prohibits the sale, distribution, or importation of PFCs unless they are labeled, comply with the emissions standards and other Subpart F requirements, and are covered by an EPA certificate of conformity. 40 C.F.R. § 59.602.

17. Persons violating Subpart F are treated, for enforcement purposes, as having violated a requirement of Section 111(e) of the Act, 42 U.S.C. § 7411(e).

18. Persons violating Section 111(e) or rules promulgated under Section 183(e) are subject to a civil penalty of up to $37,500 for each violation that occurred after December 6, 2013, through November 2, 2015, and up to $47,357 for each violation that occurred after November 2, 2015 and is administratively assessed a penalty on or after February 6, 2019. CAA § 113(d)(1), 42 U.S.C. § 7413(d)(1); 40 C.F.R. § 19.4.

D. STIPULATED FACTS

19. Respondent is located in Nicholasville, Kentucky and sells food grade containers, prepping supplies, survival supplies, and other items on its website, www.lexingtoncontainercompany.com.

20. Between January 1, 2012 and June 1, 2016, Respondent imported 20 liter, 10 liter, and 5 liter PFCs from Valpro Ltd and Swiss-Link Inc. that were not covered by a certificate of conformity issued under Subpart F.

21. Between January 1, 2014 and June 1, 2016, Respondent sold in the United States 12,887 uncertified PFCs that Respondent had imported from Valpro Ltd. and Swiss-Link Inc.

22. On or about June 1, 2016, Respondent stopped offering uncertified PFCs for sale in the United States.

E. ALLEGED VIOLATIONS OF LAW

23. EPA alleges that between January 1, 2014 and June 1, 2016, Respondent sold, offered for sale, introduced into commerce, and imported 12,887 new PFCs manufactured after December 31,

2008, that were subject to Subpart F, but were not covered by a valid certificate of conformity, were not labeled as required by Subpart F, and did not comply with the requirements of Subpart F. In doing so, Respondent committed 12,887 violations of Subpart F and the Act.

F. TERMS OF CONSENT AGREEMENT

24. 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) admits to the stipulated facts stated above;

(c) neither admits nor denies the alleged violations of law stated above;

(d) consents to the assessment of a civil penalty as stated below;

(e) consents to the issuance of any specified compliance or corrective action order;

(f) consents to any conditions specified in this Agreement;

(g) consents to any stated Permit Action;

(h) waives any right to contest the alleged violations of law set forth in Section E of this Consent Agreement; and

(i) waives its rights to appeal the Order accompanying this Agreement.

25. For the purpose of this proceeding, Respondent:

(a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;

(b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

(c) waives any and all remedies, claims for relief and otherwise available rights to 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 Clean Air Act, 42 U.S.C. § 7607(b)(1);

(d) 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 Kentucky; and

(e) 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.

26. Penalty Payment. Respondent agrees to:

(a) pay the civil penalty of $110,000 ("EPA Penalty") within 30 calendar days of the Effective Date of this Agreement.

(b) pay the EPA Penalty using any method, or combination of methods, provided on the website http://www2.epa.gov/financial/additional-instructions-making-payments-epa, and identifying each and every payment with "Docket No. CAA-HQ-18-8378." Within 24 hours of payment of the EPA Penalty, send proof of payment to Providence Spina at 1200 Pennsylvania Ave NW, Mail Code 2201A, Washington, DC 20004 and spina.providence@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with "Docket No. CAA-HQ-18-8378").

27. 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) (i) suspend or revoke Respondent's licenses or other privileges, or (ii) 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.

28. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Agreement until the completion of penalty payment obligations, as set out in Paragraph 26, Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Respondent. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.

29. 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.

30. 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 the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

31. By signing this Agreement, Respondent certifies 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.

32. Except as qualified by Paragraph 27, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

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

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

35. 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.

36. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of Environmental Appeals Board.

37. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to $99,681 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and 40 C.F.R. § 19.4, as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

38. 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.

39. 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.

40. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent 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 violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

H. EFFECTIVE DATE

41. 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 Environmental Appeals Board on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of Lexington Container Company, Docket No. CAA-HQ-18-8378, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Signature

6-7-19
Date

Printed Name: BASILIO GIANGERUSO

Title: OWNER

Address: 140 DEWEY DR, NICHOLASVILLE KY 40356

Respondent's Federal Tax Identification Number: 266-88-0726

The foregoing Consent Agreement In the Matter of Lexington Container Company, Docket No. CAA-HQ-18-8378, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

7/13/2019
DATE

Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460-0001

7/18/2019
DATE

Providence Spina, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460-0001

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

In the Matter of: Lexington Container Company Jessamine County, Nicholasville, Kentucky Respondent.	Docket No. CAA-HQ-18-8378

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, 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.[1]

ENVIRONMENTAL APPEALS BOARD

_____
DATE

_____
[Name of Judge]
Environmental Appeals Judge

[1] The three-member panel ratifying this matter is composed of Environmental Appeals Judges _____, _____, and _____.

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of Lexington Container Company, Docket No. CAA-HQ-18-8378, were filed and copies of the same were mailed to the parties as indicated below.

Via Interoffice Mail:

Providence Spina, U.S. EPA, Air Enforcement Division
1200 Pennsylvania Ave., NW
Mail Code 2242A
William Jefferson Clinton South Federal Building, Room 2100
Washington, D.C. 20460

Copy by First Class Mail to Respondent:

Lexington Container Company
140 Dewey Dr.
Nicholasville, KY 40356

_____
DATE

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