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

In re:	)	
	)	Docket No. CAA-HQ-2022-8427
Waysmos USA, Inc.	)	
	)	
	)	
	)	

FINAL ORDER

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

Dated: August 9, 2023

Mary Kay Lynch
Environmental Appeals Judge

[1] The three-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

ENVIRONMENTAL APPEALS BOARD
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In re: Waysmos, USA, Inc.	)	Docket No. CAA-HQ-2022-8427

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" or "CAA"), 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 ("EPA"). On the EPA's behalf, Mary E. Greene, Director, Air Enforcement Division, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.

3. Respondent is Waysmos USA, Inc. ("Waysmos"), a Texas corporation headquartered in Austin, Texas. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

4. Complainant and Respondent (together, the "Parties"), having agreed that settlement of this action is in the public interest, consent to the issuance of the attached final order ("Final Order" or "Order") ratifying this consent settlement agreement ("Consent

Agreement" or "Agreement") before taking testimony and without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this 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.

6. 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).

7. 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).

8. 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

9. Section 114 of the CAA provides the EPA with broad authority to require information that will inform the EPA's implementation of various CAA provisions and programs. 42 U.S.C. § 7414. Under CAA Section 114(a)(1), the EPA may require emission sources, persons subject to the CAA, manufacturers of emission control or process equipment, or persons whom the EPA believes may have necessary information, to monitor and report emissions and to provide such other information as the EPA

requests for the purposes of carrying out any provision of the CAA (except for a provision of title II with respect to motor vehicles).

10. Pursuant to this legal authority, the EPA established the mandatory greenhouse gas reporting requirements, which have been effective since 2010. 40 C.F.R. Part 98.

11. The general provisions for the mandatory greenhouse gas reporting requirements are set forth in subpart A, 40 C.F.R. §§ 98.1 – 98.9, and Tables A-1 – A-7.

12. 40 C.F.R. § 98.1(a) establishes greenhouse gas reporting requirements for owners and operators of certain facilities that directly emit greenhouse gases as well as for certain suppliers. For suppliers, the greenhouse gases reported are the quantity that would be emitted from combustion or use of the products supplied. *Id*.

13. 40 C.F.R. § 98.1(b) provides that owners, operators, and suppliers subject to 40 C.F.R. Part 98 must follow the requirements of subpart A and all applicable subparts, and if a conflict exists between a provision in subpart A and any other applicable subpart, the requirements of the applicable subpart shall take precedence.

14. 40 C.F.R. § 98.2(a) provides that the greenhouse gas reporting requirements and related monitoring, recordkeeping, and reporting requirements of subpart A apply to the owners and operators of any supplier that meets the requirements of paragraph (a)(4) of this section.

15. 40 C.F.R. § 98.2(a)(4) provides that a supplier listed in Table A-5 of 40 C.F.R. Part 98, subpart A, must submit an annual report that covers all applicable products for which calculation methodologies are provided in the applicable subpart and subpart A.

16. 40 C.F.R. Part 98, subpart OO applies to suppliers of industrial greenhouse gases. Table A-5 of 40 C.F.R. Part 98, subpart A, lists categories of industrial greenhouse gas

suppliers subject to 40 C.F.R. Part 98, subpart OO, including: producers of industrial greenhouse gases and importers of industrial greenhouse gases with annual bulk imports of N2O, fluorinated greenhouse gas, and CO2 that in combination have greenhouse gas quantities equivalent to 25,000 metric tons CO2e or more. Table A-5 of 40 C.F.R. Part 98, subpart A, also states that suppliers are defined in each applicable subpart.

17. 40 C.F.R. § 98.418 provides that all of the terms used in 40 C.F.R. Part 98 subpart OO have the same meaning given in the Clean Air Act and 40 C.F.R. Part 98 subpart A, except the terms "isolated intermediate" and "low-concentration constituent," which are defined in § 98.418. 40 C.F.R. § 98.418 further provides that if a conflict exists between a definition provided in subpart OO and a definition provided in subpart A, the definition in subpart OO shall take precedence for the reporting requirements in subpart OO. *Id*.

18. 40 C.F.R. § 98.6 defines "exporter" as any person, company, or organization of record that transfers for sale or for other benefit, domestic products from the United States to another country or to an affiliate in another country, excluding any such transfers on behalf of the United States military or military purposes including foreign military sales under the Arms Export Control Act. An exporter is not the entity merely transporting the domestic products, rather an exporter is the entity deriving the principal benefit from the transaction.

19. 40 C.F.R. § 98.6 defines "importer" as any person, company, or organization of record that for any reason brings a product into the United States from a foreign country, excluding introduction into United States jurisdiction exclusively for United States military purposes. An importer is the person, company, or organization primarily liable for the payment of any duties on the merchandise or an authorized agent acting on their

behalf. The term includes, as appropriate: (1) the consignee, (2) the importer of record, (3) the actual owner, and (4) the transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

20. 40 C.F.R. § 98.6 defines "industrial greenhouse gases" as nitrous oxide or any fluorinated greenhouse gas.

21. 40 C.F.R. § 98.6 defines "operator" as any person who operates or supervises a facility or supplier.

22. 40 C.F.R. § 98.6 defines "owner" as any person who has legal or equitable title to, has a leasehold interest in, or control of a facility or supplier, except a person whose legal or equitable title to or leasehold interest in the facility or supplier arises solely because the person is a limited partner in a partnership that has legal or equitable title to, has a leasehold interest in, or control of the facility or supplier shall not be considered an "owner" of the facility or supplier.

23. 40 C.F.R. § 98.6 defines "supplier" as a producer, importer, or exporter in any supply category included in Table A-5 to this subpart, as defined by the corresponding subpart of this part.

24. 40 C.F.R. § 98.410 defines source categories for suppliers of industrial greenhouse gases.

25. 40 C.F.R. § 98.410(a) provides that "the industrial gas supplier source category consists of any facility that produces fluorinated greenhouse gases or nitrous oxide; any bulk importer of fluorinated greenhouse gases or nitrous oxide; and any bulk exporter of fluorinated greenhouse gases or nitrous oxide. Starting with reporting year 2018, this source category also consists of any facility that produces fluorinated heat transfer fluids

(HTFs); any bulk importer of fluorinated HTFs; any bulk exporter of fluorinated HTFs; and any facility that destroys fluorinated greenhouse gases or fluorinated HTFs."

26. 40 C.F.R. § 98.411 specifies the applicable reporting threshold for 40 C.F.R. Part 98 subpart OO and requires any supplier of industrial greenhouse gases, as defined by 40 C.F.R. § 98.410, and meets the requirements of 40 C.F.R. § 98.2(a)(4) to report greenhouse gas emissions.

27. 40 C.F.R. § 98.2(f) provides the methodology to calculate industrial greenhouse gas quantities for comparison to the 25,000 metric ton CO2e per year threshold under 40 C.F.R. § 98.2(a)(4) for importers and exporters of industrial greenhouse gases, and states that the imported quantities and the exported quantities must be compared separately to the 25,000 metric ton CO2e per year threshold.

28. 40 C.F.R. § 98.2(i) provides that once a supplier is subject to the requirements of 40 C.F.R. Part 98, the supplier must for each year thereafter comply with all requirements of 40 C.F.R. Part 98, including the requirement to submit annual greenhouse gas reports, even if the supplier does not meet the applicability requirements in 40 C.F.R. § 98.2(a) in a future year.

29. 40 C.F.R. § 98.2(i)(1) – (3) provide limited exceptions to 40 C.F.R. § 98.2(i):

    (a) If the reported quantity of greenhouse gases supplied are less than 25,000 metric tons CO2e per year for five consecutive years, then the owner or operator may discontinue reporting, provided that the owner or operator submits a notification to the EPA no later than March 31 of the year immediately following the fifth consecutive year that announces the cessation of reporting that explains the reasons for the reduction in quantity of greenhouse gases supplied and the owner

or operator maintains the corresponding records required under § 98.3(g) for each of the five consecutive years prior to such notification and for three years following the year that reporting was discontinued. *See* 40 C.F.R. § 98.2(i)(1). The owner or operator must resume reporting if the annual quantity of greenhouse gases supplied in any future calendar year increases to 25,000 metric tons CO2e per year or more. *Id.*

(b) If the reported quantity of greenhouse gases supplied are less than 15,000 metric tons CO2e per year for three consecutive years, then the owner or operator may discontinue reporting, provided that the owner or operator submits a notification to the EPA no later than March 31 of the year immediately following the third consecutive year that announces the cessation of reporting that explains the reasons for the reduction in the quantity of greenhouse gases supplied and the owner or operator maintains the corresponding records required under § 98.3(g) for each of the three consecutive years prior to such notification and for three years following the year that reporting was discontinued. *See* 40 C.F.R. § 98.2(i)(2). The owner or operator must resume reporting if the annual quantity of greenhouse gases supplied in any future calendar year increases to 25,000 metric tons CO2e per year or more. *Id*.

(c) If the operations of a supplier are changed such that all applicable processes and operations cease to operate, then the owner or operator may discontinue complying with this part for the reporting years following the year in which cessation of such operations occurs, provided that the owner or operator submits a notification to the Administrator that announces the cessation of reporting and

certifies to the closure of all applicable processes and operations no later than March 31 of the year following such changes. 40 C.F.R. § 98.2(i)(3). Additional requirements apply in the event of a partial cessation of operation. *Id*.

30. 40 C.F.R. § 98.3(b) requires the owner or operator of suppliers subject to 40 C.F.R. Part 98 to submit annual reports to the EPA no later than March 31 of each calendar year for greenhouse gas emissions in the previous calendar year, with the exception of the report for calendar year 2010, which was due no later than September 30, 2011.

31. 40 C.F.R. § 98.3(c) specifies the content of each annual report, other than as provided in 40 C.F.R. § 98.3(d) for reporting year 2010, and includes any other data specified in the "Data reporting requirements" section of each applicable subpart of 40 C.F.R. Part 98.

32. 40 C.F.R. § 98.416 provides a list of information, in addition to the information required by §§ 98.3(c)(1) – (3) and (5) – (13), that must be included in each annual report.

33. 40 C.F.R. § 98.412 requires reporting of greenhouse gas emissions that would result from the release of the nitrous oxide and each fluorinated greenhouse gas that is produced, imported, exported, transformed, or destroyed during the calendar year. Starting with reporting year 2018, this section of the regulations also requires reporting of the emissions that would result from the release of each fluorinated HTF that is not also a fluorinated greenhouse gas and produced, imported, exported, transformed, or destroyed during the calendar year.

34. 40 C.F.R. § 98.5 requires each annual report to be submitted electronically through the "Electronic Greenhouse Gas Reporting Tool" ("e-GGRT"). Each report must be submitted by a designated representative. *See* 40 C.F.R. § 98.4.

35. Any violation of 40 C.F.R. Part 98 is a violation of the CAA, including Section 114, 42 U.S.C. § 7414. A violation includes but is not limited to failure to report greenhouse gas emissions, failure to collect data needed to calculate greenhouse gas emissions, failure to continuously monitor and test, failure to retain records needed to verify the amount of greenhouse gas emissions, and failure to calculate greenhouse gas emissions following the methodologies specified in this part. Each day of violation constitutes a separate violation. 40 C.F.R. § 98.8. *See also* 74 Fed. Reg. 56395 (Oct. 30, 2009).

D. STIPULATED FACTS

36. Waysmos did not submit annual reports of its industrial greenhouse gas import quantities to the EPA by March 31 of 2018, 2019, 2020, and 2021 for greenhouse gas emissions in calendar years 2017, 2018, 2019, and 2020.

37. On June 21, 2021, Waysmos submitted reports for its industrial greenhouse gas import quantities for calendar years 2017, 2018, 2019, and 2020.

38. Based on the reports described in Paragraph 37, Waysmos imported quantities of industrial greenhouse gases equaling 25,000 or more metric tons CO_2e per year in calendar years 2017, 2018, 2019, and 2020.

E. ALLEGED VIOLATIONS OF LAW

39. Waysmos is an industrial greenhouse gas supplier subject to the mandatory greenhouse gas reporting requirements.

40. Waysmos' industrial greenhouse gas import quantities exceeded the mandatory greenhouse gas reporting threshold of 25,000 metric tons CO_2e per year in one or more calendar years from 2010 to 2020.

41. Waysmos did not timely report to the EPA its industrial greenhouse gas import quantities for at least calendar years 2017, 2018, 2019, and 2020, in violation of 40 C.F.R. Part 98, subparts A and OO.

F. TERMS OF CONSENT AGREEMENT

42. 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 the facts stipulated in Section D;

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

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

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

43. 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 related to the Respondent;

(c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to anyissue 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 District of Columbia; 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 this Agreement or Order, or both, and to seek an additional penalty for noncompliance with this Agreement or Order, and agrees that federal law shall govern in any such civil action.

44. Civil Penalty. The EPA has:

(a) determined, based on information provided by Respondent and use of the Economic Benefit (BEN) computer model, that Respondent obtained an economic benefit below $5,000 as a result of its noncompliance in this matter and the case team has exercised its discretion not to pursue the economic benefit;

(b) reduced the civil penalty on the basis of information produced by Respondent demonstrating its inability to pay a higher civil penalty.

45. Penalty Payment. Within 30 days of the Effective Date, Respondent shall pay a civil penalty of $209,000 ("EPA Penalty") to EPA in accordance with the requirements below:

(a) Pay the EPA Penalty using any method, or combination of methods, provided on the website https://www.epa.gov/financial/additional-instructions-making-payments-epa#Pay.gov.

(b) Identify each and every payment with the docket number of this Agreement and Final Order, No. CAA-HQ-2022-8427.

(c) Within 24 hours of payment of the EPA Penalty, send proof of payment via electronic mail to Lauren Tozzi at tozzi.lauren@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 the docket number.

46. If Respondent fails to timely pay any portion of the EPA Penalty, 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; or

(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 (1) suspend or revoke Respondent's licenses or other privileges, or (2) 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.

47. By signing this Agreement, Respondent acknowledges that this Agreement and Order,

including identifying information such as name, federal tax identification number, mailing and e-mail address, will be available to the public when the Agreement and Certificate of Service are filed and uploaded to a searchable database and agrees that this Agreement does not contain any confidential business information or other personally identifiable information.

48. 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.

49. By signing this Agreement, Respondent agrees to acceptance of the Complainant's (a) digital or an original signature on this Agreement; and (b) service of the fully executed Agreement on the Respondent by mail or electronically by e-mail. Complainant agrees to acceptance of the Respondent's digital or an original signature on this Agreement.

50. 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.

51. Except as qualified by Paragraph 46(a), 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

52. 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 listed in Section E of this Agreement.

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

54. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understandings among the Parties with respect to the subject matter hereof.

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

56. Any violation of this Order may result in a civil judicial action for an injunction, or civil penalties of up to $109,024 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), 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.

57. 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 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.

58. 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.

59. 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

60. Respondent and Complainant agree to the Environmental Appeals Board's issuance of the attached Final Order. The EPA will transmit a copy of the Final Order and ratified Consent Agreement to the Respondent.

The foregoing Consent Agreement In the Matter of Waysmos USA, Inc., Docket No. CAA-HQ-2022-8427, is Hereby Stipulated, Agreed, and Approved.

FOR RESPONDENT:

Mike Kiamanesh

Digitally signed by Mike Kiamanesh
DN: cn=Mike Kiamanesh, o=Waysmos USA Inc, ou, email=mike@waysmosusa.com, c=US
Date: 2023.06.26 10:14:26 -05'00'

Signature

6/26/2023
Date

Michael Kiamanesh
Printed Name

President
Title

2032 Robert Browning St, Austin, Texas 78723
Address

27-2867155
Federal Tax Identification Number

The foregoing Consent Agreement In the Matter of Waysmos USA, Inc., Docket No. CAA-HQ-2022-8427 is Hereby Stipulated, Agreed, and Approved.

FOR COMPLAINANT:

Greene, Mary E

Digitally signed by Greene, Mary E
Date: 2023.07.19 17:45:41 -04'00'

Mary E. Greene
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of Waysmos USA, Inc., Docket No. CAA-HQ-2022-8427, were sent to the following persons in the manner indicated:

By Electronic Mail:
Lauren Tozzi, Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
e-mail: tozzi.lauren@epa.gov

Michael Kiamanesh
Waysmos, USA, Inc.
2032 Robert Browning St
Austin, TX 78723
e-mail: mike@waysmosusa.com

Dated: _____

_____
Emilio Cortes
Clerk of the Board