

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**
1200 New Jersey Avenue SE
Washington, DC 20590

In re: _____)
)
Walter Kidde Portable Equipment Inc.)
TQ18-001)
_____)

CONSENT ORDER

This Consent Order is issued pursuant to the authority of the National Highway Traffic Safety Administration (“NHTSA”), an operating administration of the U.S. Department of Transportation. This Consent Order sets forth the requirements and performance obligations agreed to by Walter Kidde Portable Equipment Inc. (“Kidde”), under the following terms and conditions.

I. NATURE OF THE ACTION

1. The National Traffic and Motor Vehicle Safety Act of 1966, as amended and recodified (the “Safety Act”), 49 U.S.C. Chapter 301, provides for regulation of motor vehicles and motor vehicle equipment by the Secretary of Transportation. The Secretary has delegated his authorities under the Safety Act to NHTSA. 49 C.F.R. § 1.95(a); *see* 49 C.F.R. §§ 501.8(a), (d). All authorities lawfully vested and reserved to the NHTSA Administrator may be exercised by the NHTSA Deputy Administrator. *See* 49 C.F.R. § 501.5(a).

2. Under the Safety Act, “motor vehicle equipment” includes “any system, part, or component of a motor vehicle as originally manufactured,” “any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle,” and “any device ... that (i) is not a system, part, or component of a motor vehicle; and (ii) is manufactured, sold, delivered, or offered to be sold for use on public streets, roads, and highways with the apparent purpose of safeguarding users of

motor vehicles against risk of accident, injury, or death.” 49 U.S.C. § 30102(a)(8). “[O]riginal equipment’ means motor vehicle equipment ... installed in or on a motor vehicle at the time of delivery to the first purchaser.” *Id.* § 30102(b)(1)(C). “[R]eplacement equipment’ means motor vehicle equipment ... that is not original equipment.” *Id.* § 30102(b)(1)(D).

3. A manufacturer of replacement equipment that decides in good faith that the motor vehicle equipment contains a defect related to motor vehicle safety must notify NHTSA by submitting a Defect and Noncompliance Information Report (“DIR”). *Id.* § 30118(c); 49 C.F.R. § 573.6. A manufacturer of original equipment installed in the vehicles of more than one vehicle manufacturer must also file a DIR. 49 C.F.R. § 573.3. A manufacturer must submit the DIR not more than five working days after it knew or should have known of a safety-related defect in its equipment. *See* 49 C.F.R. § 573.6(b).

4. Manufacturers of replacement equipment must also provide notice of the safety defect in a specific manner compliant with NHTSA regulations to their dealers within a reasonable time and to their customers within sixty (60) days. *See* 49 U.S.C. § 30119; 49 C.F.R. §§ 577.5, 577.7, 577.13.

5. A person who violates the requirements of the Safety Act, or a regulation thereunder, is liable to the United States Government for a civil penalty. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a). A separate violation occurs for each item of motor vehicle equipment and for each failure or refusal to allow or perform a required act. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a)(1). On March 17, 2016, the maximum penalty for each violation was increased to \$21,000.¹ This maximum penalty continued and continues to be adjusted upward annually. *See* 49 C.F.R. § 578.6(a)(1).

6. Kidde is a manufacturer of both original and replacement motor vehicle

¹ *See* 81 Fed. Reg. 15413 (Mar. 22, 2016).

equipment within the meaning of the Safety Act, *see* 49 U.S.C. § 30102(a)(6), and a person within the meaning of 49 U.S.C. § 30165.

7. On or about October 20, 2017, Kidde submitted a DIR to NHTSA recalling 2.27 million fire extinguishers manufactured by Kidde (NHTSA Recall No. 17E-062) for a safety defect. On or about November 1, 2017, Kidde submitted an amended DIR to NHTSA expanding the recall to 2.5 million fire extinguishers. Kidde marketed and distributed these fire extinguishers directly to manufacturers of commercial vehicles and to consumers for use in motor vehicles.

8. The safety defect was that the fire extinguishers could become clogged or require excessive force to activate. In certain models, the nozzle could also detach from the valve assembly with enough force that it could cause injury and render the product inoperable. If a fire extinguisher does not function properly, someone may be injured or killed in a fire.

9. On July 31, 2018, NHTSA opened Timeliness Query (“TQ”) 18-001 to examine Kidde’s compliance with its Safety Act obligations. NHTSA explained in its opening resume for the TQ investigation: “Kidde notified NHTSA of its defect decision and committed to conduct a safety recall several months after the company had made a defect decision on the same and/or similar products and notified the U.S. Consumer Product Safety Commission (“CPSC”). Also, NHTSA learned that some of the millions of extinguishers Kidde is recalling through the present safety recall were subject to a [2015] field action the company reportedly conducted.”

10. NHTSA’s inquiry led it to determine that Kidde violated multiple provisions of the Safety Act and regulations thereunder, including failing to submit a timely DIR and failing to notify its dealers and customers in a timely, compliant manner. Solely for the purpose of these proceedings, and without admitting or denying the findings herein, NHTSA and Kidde have mutually agreed to this Consent Order in order to administratively resolve this matter.

11. NHTSA enters into this Consent Order pursuant to its authority under the Safety Act, 49 U.S.C. Chapter 301, as delegated by the Secretary of Transportation, 49 C.F.R. § 1.95, and NHTSA, 49 C.F.R. §§ 501.5, 501.8, including, among other things, its authority to compromise the amount of civil penalties, 49 U.S.C. § 30165(b), to ensure that defective equipment is recalled, 49 U.S.C. §§ 30118-20, and to require reports or answers to specific questions, 49 U.S.C. § 30166(e).

It is AGREED by Kidde and ORDERED by NHTSA that the following provisions shall apply.

II. TERMS AND CONDITIONS OF CONSENT ORDER

Civil Penalty

12. Subject to the terms in the remainder of this Paragraph, Kidde shall pay a civil penalty in the sum of six million dollars (\$6,000,000) (“Total Civil Penalty”) in connection with the matters addressed in this Consent Order.

- a. Of the Total Civil Penalty, two and a half million dollars (\$2,500,000) (“Non-Deferred Amount”) shall be paid in one lump-sum payment by electronic funds transfer to the U.S. Treasury in accordance with instructions provided by NHTSA, no later than thirty (30) calendar days following the Effective Date of this Consent Order.
- b. Of the Total Civil Penalty, the sum of two and a half million dollars (\$2,500,000) (“Abeyance Amount”) shall be deferred and held in abeyance by NHTSA pending Kidde’s satisfactory completion, as reasonably determined by NHTSA, of the requirements of this Consent Order. In the event that Kidde commits material violations of the Safety Act, regulations thereunder, or this Consent Order, during the term of this Consent Order, Kidde may be obligated

to pay the Abeyance Amount or a portion thereof in accordance with Paragraph 18 below, and may be liable for additional civil penalties beyond the Abeyance Amount for those violations of the Safety Act and regulations thereunder.

- c. Of the Total Civil Penalty, the sum of one million dollars (\$1,000,000) (“Performance Obligation Amount”) shall be expended by Kidde during the term of this Consent Order to fulfill the obligations identified in Paragraph 22.

13. Pursuant to this agreement and subject to Paragraph 18, Kidde admits that it owes a debt in the amount of six million dollars (\$6,000,000), as provided for in Paragraph 12, arising from activities under the jurisdiction of the U.S. Department of Transportation, due and owing to the United States under the Federal Claims Collection Act of 1966, as amended and codified at 31 U.S.C. § 3701, *et seq.* (hereinafter the “Claims Collection Act”).

14. If Kidde fails to make the payment of the Non-Deferred Amount as set forth in Paragraph 12(a) above, or any payments of the Abeyance Amount as may be imposed in accordance with this Consent Order, on or before their respective due dates, Kidde shall be in default of this Consent Order and the remaining balance of the Total Civil Penalty shall become due immediately. In that event: (i) Kidde agrees not to contest any collection action undertaken by NHTSA or the United States pursuant to applicable law, including the Claims Collection Act and the U.S. Department of Transportation’s regulations, 49 C.F.R. Part 89, either administratively or in any court and (ii) Kidde affirmatively waives any and all defenses or rights that would otherwise be available to it in any such proceeding, subject to the last sentence in this Paragraph. In addition, in such a proceeding, Kidde shall pay the United States all reasonable costs of collection and enforcement, including attorneys’ fees and expenses. This provision does not preclude Kidde from contesting the imposition of any of the Abeyance Amount in

accordance with Paragraph 20 below.

15. Upon receipt of the Non-Deferred Amount and upon expiration of the Consent Order, Kidde, including its parent company, affiliates, current and former directors, officers, employees, agents, successors, and assigns will be deemed released from liability for civil penalties pursuant to 49 U.S.C. § 30165 in connection with any and all violations of the Safety Act or regulations thereunder relating to TQ18-001 and relating to Recall 18E-101, from the inception of the Safety Act through the Effective Date of this Consent Order.

16. Nothing in this Consent Order discharges Kidde from any obligation to comply with the Safety Act or regulation thereunder.

17. This Consent Order does not release Kidde from liabilities, if any, that may be asserted by the United States, the U.S. Department of Transportation, NHTSA, or any governmental entity, other than the civil penalty liability under 49 U.S.C. § 30165 as described in Paragraph 15. This Consent Order does not release entities, including those related to Walter Kidde Portable Equipment Inc., other than those identified in Paragraph 15, from liabilities, if any.

Abeyance Amount

18. The Abeyance Amount is subject to release on the following schedule:
- a. If NHTSA does not make a determination that Kidde has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order by the end of the first year of the Consent Order, five hundred thousand dollars (\$500,000) will be deemed released.
 - b. If NHTSA does not make a determination that Kidde has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order by the end of the second year of the Consent Order, seven hundred fifty thousand

dollars (\$750,000) will be deemed released.

- c. If NHTSA does not make a determination that Kidde has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order by the end of the third year of the Consent Order, and does not exercise its option for an additional year pursuant to Paragraph 32, the remainder of the Abeyance Amount (one million two hundred fifty thousand dollars (\$1,250,000)) will be deemed released.
- d. If NHTSA exercises its option for an additional year pursuant to Paragraph 32, and if NHTSA does not make a determination that Kidde has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order by the end of the third year of the Consent Order, six hundred twenty-five thousand dollars (\$625,000) will be deemed released.
- e. If NHTSA exercises its option for an additional year pursuant to Paragraph 32, and if NHTSA does not make a determination that Kidde has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order by the end of the fourth year of the Consent Order, the remainder of the Abeyance Amount (six hundred twenty-five thousand dollars (\$625,000)) will be deemed released.

19. The Abeyance Amount shall only become due and owing in accordance with and subject to the provisions set forth in Paragraph 20 below. Kidde will be deemed released from any portion of the Abeyance Amount remaining at the expiration of this Consent Order.

20. Should NHTSA receive notice or reasonably believe that Kidde has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, NHTSA shall provide written notice to Kidde, including a statement regarding the Abeyance Amount that will

be due if NHTSA makes a determination in accordance with this Paragraph. Kidde will have thirty (30) calendar days or such other time as mutually agreed by NHTSA and Kidde, from the date on which the issue was communicated to Kidde by NHTSA (“Evaluation Period”) to respond to the notice in writing. Kidde’s response will provide its views, along with any supporting information and documentation. Should there be a reasonable dispute, the parties agree to reasonably discuss the alleged violation. If no mutually agreeable resolution is reached after discussion and NHTSA reasonably determines that Kidde has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, then Kidde will be liable for the Abeyance Amount determined by NHTSA, to be paid in accordance with instructions from NHTSA within thirty (30) calendar days of such determination.

Performance Obligation Amount

21. This Consent Order requires Kidde to expend one million dollars (\$1,000,000) (“Performance Obligation Amount”) during the term of this Consent Order to fulfill the obligations identified in Paragraph 22. In implementing these measures, to the extent any of Kidde’s actual expenditures on those performance obligations exceed the amount described herein, such additional expenditures shall be at the sole cost and discretion of Kidde and will not result in additional credit to any monetary obligation under this Consent Order.

Performance Obligations

22. Kidde will invest in a safety program to improve the traceability of its units and help track the applications for which its units are being used. This safety program will include the development of quick response (“QR”) codes for disposable fire extinguisher units that can allow consumers to more easily register them with Kidde, creating a stock-keeping unit (“SKU”) for units specifically designed for motor vehicle applications, and upgrading its material requirements planning (“MRP”) process to improve its ability to track how many units are being

shipped to each of its different types of customers for motor vehicle applications. Kidde may identify additional elements of the safety program described in this Paragraph and, with NHTSA's consent, count the expenditures associated with such additional elements toward the Performance Obligation Amount specified in Paragraph 12.c.

23. For NHTSA Recall No. 17E-062, Kidde will continue to offer a free replacement remedy for recalled units that were manufactured as early as the 1970s, beyond the minimum requirements of the Safety Act. *See* 49 U.S.C. § 30120(g).

24. Kidde shall continue to operate under a compliance program designed to ensure compliance with the Safety Act and regulations thereunder and that, at a minimum, contains the following elements, consistent with certain requirements of the January 4, 2021 Consent Decree of Civil Penalty and Permanent Injunction entered into between Kidde and the CPSC (Dkt. No. 1:20cv208, M.D.N.C.):

- a. Written standards and policies, including those designed to ensure that information relevant to Safety Act compliance is conveyed effectively to personnel responsible for compliance and including at least the following subjects:
 - i. NHTSA's jurisdiction over fire extinguishers and other motor vehicle equipment (original and replacement);
 - ii. 49 C.F.R. Part 573 (defect and noncompliance responsibility and reports);
 - iii. 49 C.F.R. Part 576 (record retention);
 - iv. 49 C.F.R. Part 577 (defect and noncompliance notification);
 - v. 49 C.F.R. Part 579 (manufacturer communications, foreign recalls, and early warning reporting); and

- vi. Maintaining a record-keeping system to identify products sold as motor vehicle equipment (original or replacement).
- b. A mechanism for confidential and/or anonymous employee reporting of Safety Act compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
- c. Procedures for reviewing claims and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;
- d. Effective communication of company compliance-related policies and procedures to all employees through regular training programs or otherwise;
- e. Assurance that testing of motor vehicle equipment manufactured or imported by Kidde complies with the relevant protocols set out by applicable consensus standards;
- f. A process for ensuring that all testing regimens used to achieve third party certifications are fully disclosed to the certifying body;
- g. Senior manager participation and responsibility for Safety Act compliance and accountability for violations of the statutes and regulations enforced by NHTSA;
- h. Oversight of safety compliance by a Kidde or equivalent company governing body; and
- i. Retention of all records reasonably related to Safety Act compliance for at least five (5) years and the availability of such records to NHTSA staff upon reasonable request.

25. The updated written standards and policies described in Paragraph 24(a) must be reviewed by Kidde's outside counsel or a consultant with experience and expertise in motor vehicle safety and the requirements of the Safety Act and regulations thereunder. The updated policies must be submitted to NHTSA for review within ninety (90) calendar days of the Effective Date of this Consent Order. Kidde must incorporate any reasonable feedback NHTSA provides on the policies within thirty (30) calendar days of receiving it.

26. Kidde shall update its training materials regarding the Safety Act and regulations thereunder and Kidde's associated policies and procedures, including details on the subjects to be taught and individuals (identified by employee position and/or responsibilities) to be trained.

27. The updated training materials described in Paragraph 26 must be reviewed by Kidde's outside counsel or a consultant with experience and expertise in motor vehicle safety and the requirements of the Safety Act and regulations thereunder.

28. No later than one hundred fifty (150) calendar days after the Effective Date of this Consent Order, Kidde shall submit a report to NHTSA describing Kidde's updated training plan. NHTSA may provide feedback if it reasonably determines that revisions to the training plan are warranted. If such feedback is provided, Kidde shall revise its training plan to incorporate NHTSA's feedback, and Kidde shall provide a copy of the revised training materials to NHTSA no later than thirty (30) calendar days after receiving any such feedback from NHTSA.

29. During the term of this Consent Order, Kidde, including an executive official with responsibility for product compliance and recalls, shall meet with NHTSA biannually to discuss the actions it has taken to satisfy the terms of this Consent Order and any issues or concerns from either party. The first meeting shall take place no later than ninety (90) calendar days after the Effective Date of this Consent Order.

30. Within thirty (30) calendar days after the Effective Date of this Consent Order,

Kidde shall provide a copy of this Consent Order to each and all of its directors, officers, and in-house attorneys with responsibilities that pertain to the testing, manufacture, or quality of fire extinguishers. Within thirty (30) calendar days after the Effective Date of this Consent Order, Kidde shall make accessible a copy of this Consent Order to all of Kidde's employees involved in the testing, manufacture, or quality of fire extinguishers. Kidde shall ensure that the Consent Order remains accessible for no less than twelve (12) months. Within thirty (30) business days of the Effective Date of this Consent Order, Kidde shall provide to NHTSA an affidavit of compliance, stating the fact and manner of compliance with the provisions of this Paragraph.

31. Kidde represents that it has informed its affiliate, Kidde-Fenwal, Inc., of the terms of this Consent Order. A declaration from an official of Kidde-Fenwal, Inc. is an attachment to this Consent Order. In that declaration, Kidde-Fenwal voluntarily agrees to be subject to the same performance obligations related to training described in Paragraphs 24.d, 26, and 27 of this Consent Order.

III. TERM OF THE CONSENT ORDER

32. Unless otherwise specified, the term of this Consent Order and Kidde's performance obligations is three years from the Effective Date; provided, however, that NHTSA may extend the term of this Consent Order for an additional year if NHTSA reasonably finds that an extension is warranted and notifies Kidde in writing with the reasons for the extension.

IV. AMENDMENT

33. This Consent Order cannot be modified, amended or waived except by an instrument in writing signed by all parties, and no provision may be modified, amended, or waived other than by a writing setting forth such modification, amendment or waiver.

34. The parties may agree, without need for an amendment as specified in Paragraph 33, to reasonable changes to specified report or meeting dates.

V. MISCELLANEOUS

35. Kidde shall provide written notice of each required submission under this Consent Order by electronic mail to Michael Kuppersmith, Trial Attorney, NHTSA at michael.kuppersmith@dot.gov. For any matter requiring notice to Kidde under this Consent Order, such notice shall be by electronic mail to Kevin M. Nalu, Esq., Associate Director, Legal Affairs and Privacy Professional, 8985 Town Center Parkway, Bradenton, FL 34202 at ConsentOrderNotices@KiddeUS.com. The parties shall provide notice if the individuals currently holding these positions or their addresses change.

36. Kidde shall use its best efforts to take all actions and to do all things necessary to comply with this Consent Order, and to cooperate with NHTSA in carrying out the requirements of this Consent Order.

37. Nothing in this Consent Order shall be interpreted or construed in a manner inconsistent with, or contravening, any federal law, rule, or regulation at the time of the execution of this Consent Order, or as amended thereafter.

38. None of the specific reporting obligations described in this Consent Order relieve Kidde of its obligations to submit any other reports required by the Safety Act or its corresponding regulations, or otherwise comply with existing laws and regulations.

39. The parties shall each bear their own respective attorneys' fees, costs, and expenses, except as provided in Paragraph 14 above.

40. The parties who are the signatories to this Consent Order have the legal authority to enter into this Consent Order, and each party has authorized its undersigned to execute this Consent Order on its behalf.

41. This Consent Order shall be binding upon Kidde, and inure to the benefit of, Kidde and its current and former directors, officers, employees, agents, parents, subsidiaries,

affiliates, successors, and assigns. Kidde agrees to waive any and all defenses that may exist or arise in connection with any person or entity succeeding to the interests or obligations herein, including as a result of any changes to the corporate structure or relationships among or between Kidde and any of its parents, subsidiaries, or affiliates.

42. Should any condition or other provision contained herein be held invalid, void or illegal by any court of competent jurisdiction, it shall be deemed severable from the remainder of this Consent Order and shall in no way affect, impair or invalidate any other provision of this Consent Order.

43. This Consent Order shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Order.

44. This Consent Order may be executed in counterparts, each of which shall be considered effective as an original signature.

45. This Consent Order shall be effective upon its full execution by all individuals and parties listed as signatories below (“Effective Date”). Any breach of the obligations under this Consent Order may, at NHTSA’s option, be immediately enforceable in any United States District Court. Kidde agrees that it will not raise any objection as to venue.

46. In the event of Kidde’s breach of, or failure to perform, any term of this Consent Order, NHTSA reserves the right to pursue any and all appropriate administrative and/or judicial remedies, including, but not limited to, assessing interest for untimely civil penalty payments and/or commencing litigation to enforce this Consent Order in any United States District Court.

47. Kidde reserves its existing rights to anything not expressly waived herein.

48. This Consent Order was negotiated and prepared by both NHTSA and Kidde. If any of the provisions in this Consent Order require a court’s interpretation, no ambiguity shall be construed against the drafter.

49. This Consent Order is a fully integrated agreement and shall in all respects be interpreted, enforced and governed under the federal law of the United States. This Consent Order, which is fully incorporated hereto by reference, sets forth the entire agreement between the parties with regard to the subject matter hereof. There are no promises, agreements, or conditions, express or implied, other than those set forth in this Consent Order.

[SIGNATURE PAGES FOLLOW]

APPROVED AND AGREED:

NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION

Dated: May 11, 2022

By: _____

Steven S. Cliff, Ph.D.
Deputy Administrator

Dated: May 11, 2022

By: _____

Ann Carlson
Chief Counsel

Dated: May 11, 2022

By: _____

Kerry E. Kolodziej
Assistant Chief Counsel for
Litigation and Enforcement

Dated: May 11, 2022

By: _____

Jeffrey Eyres
Senior Trial Attorney

Dated: May 11, 2022

By: _____

Michael Koppersmith
Trial Attorney

DocuSign Envelope ID: B354C40F-5ED6-431C-A305-2ECB22828A95

AGREED:

WALTER KIDDE PORTABLE
EQUIPMENT INC.

Dated: May 9, 2022

By: Brad Nohr

Brad Nohr
General Manager

Dated: May 9, 2022

By: Erika Z. Jones

Erika Z. Jones
Mayer Brown LLP
Counsel to Walter Kidde Portable Equipment Inc.

DECLARATION

I am Arumugam Balakrishnan, President of Kidde-Fenwal Inc. I affirm that Kidde-Fenwal Inc. has been informed of the contents of the Consent Order agreed to by our affiliate company, Walter Kidde Portable Equipment Inc.

I also affirm that Kidde-Fenwal Inc. agrees voluntarily to undertake the same performance obligations related to training described in Paragraphs 24.d, 26, and 27 of the Consent Order and agreed to by Walter Kidde Portable Equipment. Inc.

Executed on May 9, 2022

Arumugam Balakrishnan

Arumugam Balakrishnan
President, Kidde-Fenwal, Inc.