

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2010 JUN 10 PM 3:26
REGIONAL HEARING
CLERK

In the Matter of:

Philadelphia Furniture, LLC
Salamanca, NY

Respondent

In a proceeding under Section 113(d)
of the Clean Air Act 42 U.S.C. § 7413(d)

CONSENT AGREEMENT
AND
FINAL ORDER

CAA-02-2009-1215

PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA) issues this Consent Agreement and Final Order (CAFO) under the authority of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 et seq., 42 U.S.C. § 7413(d), Section 113(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in this matter is the Director of the Division of Enforcement and Compliance Assistance (DECA), EPA Region 2. The Complainant is delegated the authority to issue CAA Section 113(d) Complaints and Consent Agreements on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the

U.S. Virgin Islands. The Regional Administrator of EPA Region 2 is duly delegated the authority to execute CAA Section 113(d) Final Orders.

On July 24, 2009, the United States Department of Justice (DOJ) granted the EPA Region 2's request for a waiver of the CAA § 113(d) one year time limitation on EPA's authority to initiate an administrative action in this matter against Philadelphia Furniture, LLC (Respondent).

On August 13, 2009, EPA issued a Complaint and Notice of Opportunity to Request a Hearing CAA-02-2009-1215 (Complaint) to Respondent for violations at the Philadelphia Furniture, LLC located at 100 Rochester Street, Salamanca, Cattaraugus County New York (Facility). In the Complaint, EPA alleges that Respondent violated the Facility's Title V Permit to Operate, issued pursuant to 40 C.F.R. Part 71, the Federal Title V Operating Permit Program, promulgated pursuant to Section 502(b) of the Act.

On September 14, 2009, Respondent submitted an Answer, Affirmative Defenses and Request for Hearing in which Respondent denied all allegations set forth in the Complaint except those which were affirmatively and explicitly admitted.

Pursuant to 40 C.F.R. § 22.18(b), EPA is authorized to settle administrative enforcement actions provided they are commenced in accordance with 40 C.F.R. § 22.13(a) or (b). Where an action is commenced pursuant to 40 C.F.R. § 22.13(b), the Consent Agreement shall also contain the information described in § 22.14(a)(1) - (3) and (8). In accordance with 40 C.F.R. § 22.18(b), EPA and Respondents enter into this Consent Agreement and propose the attached Final Order to resolve the violations alleged in the Complaint, filed pursuant to 40 C.F.R. § 22.13(a).

Complainant and Respondent have agreed to resolve the Complaint by entering into this Consent Agreement and by the issuance of a Final Order.

For purposes of this proceeding, and to avoid the expense of protracted litigation, Respondent: (1) admits that EPA has jurisdiction over the subject matter as alleged in this Consent Agreement; (2) neither admits nor denies specific factual allegations contained in the Complaint and in this Consent Agreement, as required by 40 C.F.R. § 22.18(b)(2); (3) consents to the terms of agreement set forth in this Consent Agreement; and (4) consents to the issuance of the attached Final Order.

Consent Agreement

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Pursuant to Section 113(d) of the Act, Respondent shall pay a civil penalty of five thousand dollars (\$5,000) either by cashiers' check or certified check, thirty (30) days from the date of issuance of the attached Final Order (Effective Date).
2. Payment of the above penalty by a third party shall not be construed as evidence of control of Respondent by such third party; nor shall it be construed as giving rise to any rights with regard to or against such third party in any actions subsequently commenced by EPA pursuant to Federal laws and regulations administered by EPA for such third party's actions.
3. Respondent shall: (1) clearly type or write the docket number (CAA-02-2009-1215) on the checks to ensure proper payment; (2) make the checks payable to the order of "Treasurer, United States of America;" and (3) send the checks to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

4. Respondent shall send notice of the payment and a copy of the check to the following individuals:

Kenneth Eng, Air Compliance Branch Chief
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 21st Floor
New York, New York 10007

and

Flaire Mills, Air Branch Chief
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007

5. If Respondent fails to make full and complete payment of the \$5,000 penalty that is required by this CAFO, this case may be referred by EPA to the United States DOJ and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondents shall pay the following amounts:

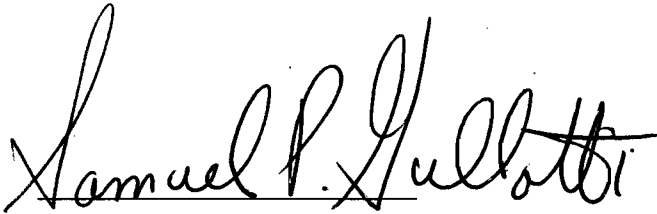
- a. Interest. If Respondents fail to make payment, or make partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondents fail to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondents shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondents' outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

6. This CAFO shall not relieve Respondent of its obligations to comply with all applicable provisions of federal state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
7. This Consent Agreement and attached Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Air Act for violations alleged in the Complaint. Nothing in this Consent Agreement and attached Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and attached Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of the Respondent to comply with such laws and regulations.
8. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations of the Act set forth herein.
9. Respondent has read the Consent Agreement, finds it reasonable and consents to the terms and issuance as a Final Order.
10. Respondent explicitly waives its rights to request a hearing and/or contest allegations in this Consent Agreement and explicitly waive its rights to appeal the Final Order.
11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion,

memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

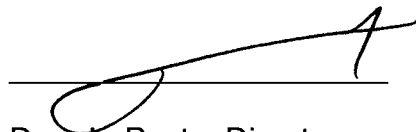
12. Each party to this Consent Agreement shall bear its own costs and attorneys fees in this action resolved by this Consent Agreement and attached Final Order.
13. This Consent Agreement and attached Final Order shall be binding on Respondent and its successors and assignees.
14. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

For Respondent:



Samuel P. Gullotti,
Vice President of Operations
Philadelphia Furniture, LLC

For Complainant:



Dore LaPosta, Director
Division of Enforcement &
Compliance Assistance
United States Environmental
Protection Agency, Region 2

Date 5-26-2010

Date JUNE 9, 2010

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of Philadelphia Furniture, LLC, CAA-02-2009-1215. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

DATE: June 10, 2010

Heon S. Supra

Regional Judicial Officer
U.S. Environmental Protection
Agency – Region 2

In the Matter of Philadelphia Furniture, LLC, Docket No. CAA-02-2009-1215

CERTIFICATE OF SERVICE

I, Kara E. Murphy, certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees listed below:

Original and One Copy

By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency,
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by

Pouch Mail:

The Honorable Barbara A. Gunning
Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Copy by

UPS – Next Day Delivery:

John T. Kolaga, Esq.
Special Counsel
Damon Morey, LLP
200 Delaware Avenue, Suite 1200
Buffalo, NY 14202-2150

Dated: June 10, 2010
New York, New York

Kara E. Murphy
Kara E. Murphy

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U.S. Environmental Protection Agency
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Washington, D.C. 20460

Copy by
UPS – Next Day Delivery:

John T. Kolaga, Esq.
Special Counsel
Damon Morey, LLP
200 Delaware Avenue, Suite 1200
Buffalo, NY 14202-2150

Dated: June 10, 2010
New York, New York

Kara E. Murphy
Kara E. Murphy