

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of:

Eastman Kodak Company  
Rochester, New York

Respondent

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

CONSENT AGREEMENT  
AND  
FINAL ORDER

CAA-02-2011-1209

REGIONAL HEARING  
CLERK

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11  
2011 NOV 10 P 4: 32

**PRELIMINARY STATEMENT**

The United States Environmental Protection Agency (EPA) issues this Consent Agreement and Final Order (CAFO) under the authority of 42 U.S.C. § 7413(d) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 *et seq.* 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 is the Director of the Division of Enforcement and Compliance Assistance (DECA), EPA Region 2, who is delegated, on behalf of Region 2, the authority to issue CAA administrative Complaints and Consent Agreements for violations of the CAA that occur in 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 § 113(d) Final Orders.

On April 1, 2011, EPA issued a Complaint and Notice of Opportunity to Request a Hearing CAA-02-2010-1209 (Complaint) to Respondent for civil monetary penalties. In the Complaint, EPA alleges that Respondent violated, at its Eastman Business Park facility (Facility) located in Rochester, New York (Facility), 40 C.F.R. Part 63, Subpart FFFF, (§§ 63.2430 – 63.2550), the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for miscellaneous organic chemical manufacturing (MON MACT), 40 C.F.R. Part 63, Subpart UU, (§§ 63.1019 – 63.1039), National Emission Standards for Equipment Leaks – Control Level 2 Standards (MON LDAR), promulgated pursuant to Sections 112 and 114 of the Act, and the Facility's Title V Operating Permit, which includes the MON MACT and MON LDAR regulations as applicable requirements.

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). In accordance with § 22.18(b), EPA and Respondent 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; (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 one-hundred twenty-four thousand, two-hundred twenty-five dollars (**\$124,225**). Respondent shall have the option of paying the entire **\$124,225** either by corporate, cashiers, or certified check within thirty (30) days from the date of issuance of the attached Final Order (Due Date). Respondent shall: (1) clearly type or write the docket number (CAA-02-2011-1209) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America;" and (3) send the check to:

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

Respondent shall send notice of payment to:

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

2. If Respondent fails to make full and complete payment of the **\$124,225** penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for

collection. In such an action, pursuant to § 113(d)(5) of the CAA, 42 U.S.C.

§ 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

- a. Interest. If Respondent fails 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 Respondent fails 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, Respondent 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 Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

3. SEP – Retirement of New York State (NYS) volatile organic compounds

(VOC) emission credit reductions (ERCs) - Respondent shall complete the following supplemental environmental project (SEP), which the parties agree is intended to secure significant environmental or public health protection and improvements.

Respondent shall complete the SEP as follows:

- a. Not more than ten (10) days after the Due Date, Respondent must submit a letter indicating that it is permanently retiring 111.1 NYS VOC ERCs and a copy of this CAFO to the following person: Mr. Ajay Shroff, Senior Environmental Engineer, Division of Air Resources, New York State Department of Environmental Conservation (NYSDEC), 625 Broadway, 2<sup>nd</sup> Floor, Albany, NY 12233; and
- b. Not more than ten (10) days after the Due Date, Respondent must submit a copy of this CAFO and a request to modify its Title V Operating Permit

to reflect the retired NYS VOC ERCs to the following address: Division of Air Resources, NYSDEC, Region 8, 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Tom Marriott.

4. The total expenditure for the SEP shall be not be greater than \$27,775 and Respondent must retire no less than 111.1 NYS VOC ERCS, in accordance with Paragraph 3 above.

5. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. That Respondent, in good faith, estimates each NYS VOC ERC is valued at no less than \$500; and
- b. That Respondent in good faith believes that it comports with EPA's SEP policy regarding eligible SEP costs.

6. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

7. Respondent hereby certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other

agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP for these NYS VOC ERCs.

**8. SEP Reports**

- a. Respondent shall submit a SEP Report to EPA by no later than two (2) months after the Due Date containing the following information:
  - i. A detailed description of the SEP as implemented;
  - ii. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
  - iii. Copies of the letters Respondent sent to Ajay Shroff and Tom Marriott as required by Paragraph 3a. and 3b.
- b. Respondent shall submit another SEP Report to EPA within six (6) months after the Due Date containing the following information:
  - i. A copy of the NYS ERC Registry notice verifying that Respondent retired 111.1 NYS VOC ERCs;
  - ii. A copy of its modified Title V Permit reflecting the retirement of 62.1 NYS VOC ERCs or an electronic copy of the facility's NYS Title V permit with modification that reflects the retirement of the 62.1 NYS VOC ERCs; and
  - iii. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
- c. In the event that the SEP Report required by Paragraph 8.b above cannot be submitted within 6 months after the Due Date because the Permit has not been modified or the NYS ERC Registry has not been revised to reflect the retirement of Kodak's ERCs within that time frame, Respondent shall submit semi-annual reports regarding permitting status until the SEP Report required by Paragraph 8.b is submitted.
- d. Respondent agrees that any failure to submit the SEP Reports required by Paragraph 8.a and/or 8.b above shall be deemed in violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 9 below.

- e. Respondent shall submit all notices and reports required by this CAFO, by first class mail to:

Kenneth Eng, Air Compliance Branch Chief  
U.S. EPA Region 2  
290 Broadway - 21<sup>st</sup> Floor  
New York, New York 10007

and

Flaire Mills, Air Branch Chief  
Office of Regional Counsel  
U.S. EPA Region 2  
290 Broadway - 16<sup>th</sup> Floor  
New York, New York 10007

9. Stipulated Penalties for Failure to Complete SEP

- a. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in Paragraph 3 above and/or to the extent that the actual expenditures for the SEP do not equal the cost of the SEP described in Paragraphs 4 and 5 above, Respondent shall be liable for stipulated penalties in accordance with the provisions set forth below.
- i. For a SEP that has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$875 per NYS VOC ERC not retired.
  - ii. For failure to submit the SEP Reports required by Paragraph 8.a above, Respondent shall pay a stipulated penalty in the amount of \$250 for each day after the report was originally due up to ten (10) days. For each day following the tenth day after the report was originally due, Respondent shall pay a stipulated penalty in the amount of \$500 each day until the report is submitted.
- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of the EPA.
- c. Stipulated penalties for Subparagraphs a.i and a.ii above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
- d. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of

payment shall be in accordance with the provisions of Paragraph 2 above. Interest and late charges shall be paid as stated in Paragraph 10 below.

- e. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation(s) of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation(s) of any applicable provision of law.

10. Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. § 102.13(d) and (e).

11. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act."

12. 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.



13. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

14. Respondent has read the Consent Agreement and consents to its terms and issuance as a Final Order.

15. This Consent Agreement and Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Air Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and 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 CAFO 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 Respondent to comply with such laws and regulations.

16. 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 in the Complaint.

17. Respondent explicitly waives its right to request a hearing and/or contest allegations in the Complaint and explicitly waives its right to appeal the attached Final Order.

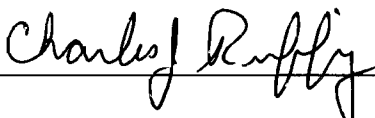
18. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator or a delegate where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

19. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in connection with this action resolved by this Consent Agreement and attached Final Order.

20. The Consent Agreement and attached Final Order shall be binding on Respondent and its successors and assignees.

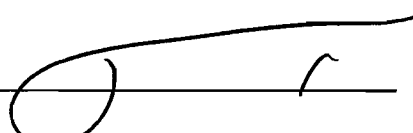
21. Each of the undersigned representatives to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

For Respondent:

  
\_\_\_\_\_  
Charles J. Ruffing, Director  
Health, Safety Environment and  
Sustainability  
Eastman Kodak Company

Date 7 November 2011

For Complainant:

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

Date NOVEMBER 9, 2011

*In the Matter of Eastman Kodak Company*

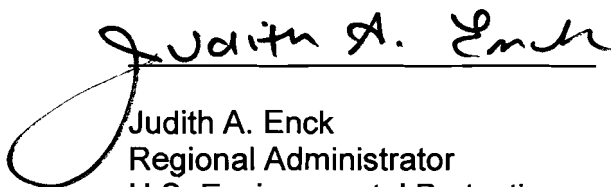
CAA-02-2011-1209

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of Eastman Kodak Company, CAA-02-2011-1209. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

DATE: \_\_\_\_\_

11/10/11

Handwritten signature of Judith A. Enck in black ink, written over a horizontal line.

Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection  
Agency – Region 2

CERTIFICATE OF SERVICE

I certify that the attached Consent Agreement and Final Order, dated 11/10/2011 was sent in the following manner to the addressees listed below.

Original and One Copy Delivered by hand to Regional Hearing Clerk's Office:

✓ Karen Maples  
Copy by Hand to:

Kara Murphy  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Air Branch, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

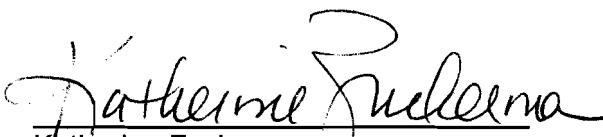
Copy by (*Overnight*) Mail to:

Honorable Barbara A. Gunning  
Administrative Law Judge  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900L  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-2001

*and copy to:*

JoAnn Gould, Esq.  
Senior Environmental Counsel  
Harter Secrest & Emery, LLP  
1600 Bausch & Lomb Place  
Rochester, NY 14604

Dated: November 10, 2011

  
Katherine Zuckerman  
Air Branch Secretary  
U.S. Environmental Protection Agency  
Office of Regional Counsel, Region 2