



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 22 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard A. Duncan
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402-3901

Dear Mr. Duncan:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket no. CAA-05-2012-0035 As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUN 22 2012.

Pursuant to paragraph 52 of the CAFO, Park Nicollet Health Services must pay the civil penalty within 30 days of JUN 22 2012. Your check must have the docket number, CAA-05-2012-0035, and the billing document number, 2751203A037.

Please direct any questions regarding this case to Mark Palermo, Associate Regional Counsel, 312.886.6082.

Sincerely,

William MacDowell
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

cc: John Breslin, Acting Regional Judicial Officer /C-14J
Regional Hearing Clerk/E-19J
Mark Palermo/C-14J
Jeff T. Connell, MPCA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. CAA-05-2012-0035
)
Park Nicollet Health Services)
St. Louis Park, Minnesota,) Proceeding to Assess a Civil Penalty
) Under Section 113(d) of the Clean Air Act
) 42 U.S.C. § 7413(d)
Respondent.)
_____)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) 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 Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Park Nicollet Health Services (PNHS), a nonprofit corporation doing business in St. Louis Park, Minnesota.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

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REGIONAL HEARING CLERK
U.S. EPA REGION 5
2012 JUN 22 PM 4:11

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and any violation of law in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 112 (a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), defines “major source” as “any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.” *See also* 40 C.F.R. § 63.2.

10. Section 112(a)(2) of the CAA, 42 U.S.C. § 7412(a)(2), defines “area source” as “any stationary source of hazardous air pollutants that is not a major source.” *See also* 40 C.F.R. § 63.2.

11. Section 112(b) of the CAA, 42 U.S.C. § 7412(b), as revised in 61 Fed. Reg. 30816 (June 18, 1996), lists 188 Hazardous Air Pollutants (HAPs) that cause adverse health or environmental effects.

12. Section 112(d)(1) of the CAA, 42 U.S.C. § 7412(d)(1), requires the Administrator to promulgate regulations establishing emissions standards for each category or subcategory of major and area sources of HAPs, listed for regulation pursuant to subsections (c) and (e) of Section 112. These standards are known as National Emissions Standards for the Regulation of Hazardous Air Pollutants (NESHAPs).

13. Section 112(d)(2) of the CAA, 42 U.S.C. § 7412(d)(2), requires that emission standards promulgated under Section 112(d)(1) require “the maximum degree of reduction in emissions of the HAP . . . that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determine is achievable for new or existing sources in the category or subcategory to which such emission standard applies.” These are known as Maximum Achievable Control Technology (MACT) standards.

14. Section 112(d)(5) of the CAA, 42 U.S.C. § 7412(d)(5), allows the Administrator to elect to promulgate standards or requirements for area sources which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

15. Section 112(i)(1) of the CAA, 42 U.S.C. § 7412(i)(1), prohibits the operation of an existing source in violation of the standards, limitations or regulations promulgated under Section 112.

16. Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), authorizes the Administrator of EPA to require any person who owns or operates an emission source to make reports and provide information required by the Administrator. The Administrator has delegated this authority to the Director of the Air and Radiation Division Region 5.

17. On March 16, 1994, EPA promulgated the General Provisions for the Part 63 NESHAP standards at 40 C.F.R. Part 63, Subpart A, §§ 63.1 - 63.15. 59 Fed. Reg. 12408.

18. 40 C.F.R § 63.1(a)(4)(i) states that “[e]ach relevant standard in this part 63 must identify explicitly whether each provision in this subpart A is or is not included in such relevant standard.”

19. 40 C.F.R § 63.4(a)(1) prohibits the owner or operator subject to Part 63 from operating any affected source in violation of the requirements of Part 63.

20. 40 C.F.R § 63.4(a)(2) prohibits the owner or operator subject to Part 63 from failing to keep records, notify, report, or revise reports as required under Part 63.

21. 40 C.F.R § 63.6(c)(1) requires the owner or operator of an existing source to comply with the applicable standard by the compliance date established in the applicable subpart(s) of Part 63.

22. On December 28, 2007, EPA promulgated the National Emission Standards for Hospital Ethylene Oxide Sterilizers at 40 C.F.R. Part 63, Subpart WWWW, §§ 63.10382 - 63.10448 (Subpart WWWW). 72 Fed. Reg. 73611.

23. Subpart WWWW at 40 C.F.R § 63.10382 provides that owners or operators of ethylene oxide sterilization facilities at hospitals that are area sources of HAPs are subject to Subpart WWWW.

24. Subpart WWWW at 40 C.F.R. § 63.10448 defines “sterilization facility” to mean the group of ethylene oxide sterilization units at a hospital using ethylene oxide gas or an ethylene oxide/inert mixture for the purpose of sterilizing.

25. Subpart WWWW at 40 C.F.R. § 63.10448 defines “sterilization unit” to mean any enclosed vessel that is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilizing. As used in this subpart, the term includes combination sterilization units.

26. Subpart WWWW at 40 C.F.R § 63.10384(a) requires existing sources to comply with the applicable requirements by December 29, 2008.

27. Subpart WWWWW at 40 C.F.R § 63.10384(c) requires new sources that started up after December 28, 2007 to comply with the applicable requirements upon startup of the affected source.

28. Subpart WWWWW at 40 C.F.R § 63.10390 requires owners or operators of affected sterilization units to sterilize items having a common aeration time at full load, except under medically necessary circumstances. Alternatively, owners or operator may equip their sterilization units with an add-on air pollution control device in accord with 40 C.F.R. § 63.10400.

29. Subpart WWWWW at 40 C.F.R. § 63.10448 defines “full load” to mean the maximum number of items that does not impede proper air removal, humidification of the load, or sterilant penetration and evacuation in the sterilization unit.

30. Subpart WWWWW at 40 C.F.R. § 63.10448 defines “medically necessary” to mean circumstances that a hospital central services staff, a hospital administrator, or a physician concludes, based on generally accepted medical practices, necessitate sterilizing without a full load in order to protect human health.

31. Subpart WWWWW at 40 C.F.R § 63.10400 requires that initial compliance with 40 C.F.R § 63.10390 be demonstrated by the submission of an Initial Notification of Compliance Status.

32. Subpart WWWWW at 40 C.F.R § 63.10420 requires that for each sterilization unit not equipped with an air pollution control device, continuous compliance with 40 C.F.R. § 63.10390 be demonstrated by “recording the date and time of each sterilization cycle, whether each sterilization cycle contains a full load of items, and, if not, a statement from a hospital central services staff, a hospital administrator, or a physician that it was medically necessary.”

33. Subpart WWWW at 40 C.F.R § 63.10430 requires the submission of an Initial Notification of Compliance Status no later than 180 calendar days after the applicable compliance date.

34. Subpart WWWW at 40 C.F.R §§ 63.10432 – 63.10434 requires that the records of the Initial Notification of Compliance Status and the records required under 40 C.F.R § 63.104020 be kept for 5 years.

35. Table 1 to Subpart WWWW shows that 40 C.F.R. §§ 63.4(a)(1), 63.4(a)(2) and 63.6(c)(1) all apply to facilities that are subject to Subpart WWWW.

36. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations of the CAA that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations of the CAA that occurred after January 12, 2009 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

37. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

38. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Complainant's Factual Allegations and Alleged Violations

39. Park Nicollet owns and operates Methodist Hospital located at 6500 Park Nicollet Blvd., St. Louis Park, Minnesota (the "Facility").

40. As part of the Facility, Park Nicollet is an owner or operator of an "ethylene oxide sterilization facility" as that term is defined under 40 C.F.R. § 63.10448.

41. The Facility is an area source of HAPs, as defined at Section 112(a)(2) of the CAA, 42 U.S.C. § 7412(a)(2), and 40 C.F.R. § 63.2.

42. Park Nicollet's ethylene oxide sterilization facility is subject to Subpart WWWW.

43. On August 29, 2011, Park Nicollet submitted an Initial Notification of Compliance Status with Subpart WWWW pursuant to 40 C.F.R. § 63.10430. The notification indicated that an ethylene oxide sterilization unit was installed at the Facility on October 21, 2009 ("Sterilizer 2"). The notification stated Sterilizer 2 uses approximately 9,000 grams of ethylene oxide annually with typically 90 sterilization cycles per year. (Park Nicollet has indicated that the actual amount used is approximately 900 grams; the 9,000 figure in the notification was in error). The notification also stated that another sterilizer had been in place at the Facility before October 21, 2009 ("Sterilizer 1"), which was removed from service prior to installation of Sterilizer 2. Further, the notification noted that no add-on air pollution control devices were used by Sterilizer 2.

44. Prior to August 29, 2011, Park Nicollet had not submitted an Initial Notification of Compliance Status pursuant to 40 C.F.R. § 63.10430.

45. Sterilizer 1 was installed at the facility on April 26, 1993 and used approximately 2,200 grams of ethylene oxide annually until its shutdown on October 21, 2009, with typically 220 sterilization cycles per year. Sterilizer 1 did not have an add-on air pollution control device.

46. Sterilizer 1 was an existing source under Subpart WWWW. Thus, pursuant to 40 C.F.R § 63.10384(a), initial compliance with Subpart WWWW was required by December 29, 2008.

47. Pursuant to 40 C.F.R § 63.10430, the Initial Notification of Compliance Status for Sterilizer 1 was due by June 27, 2009 (180 calendar days after December 29, 2008).

48. Sterilizer 2 is a new source under Subpart WWWW. Thus, pursuant to 40 C.F.R § 63.10384(c), initial compliance was required by October 21, 2009, its startup date.

49. Pursuant to 40 C.F.R § 63.10430, the Initial Notification of Compliance Status for Sterilizer 2 was due by April 20, 2010 (180 calendar days after October 21, 2009).

50. Park Nicollet has violated Subpart WWWW with respect to its operation of its ethylene oxide sterilization facility at the Facility. Specifically the alleged violations are as follows:

- a. Count 1 – Park Nicollet failed to submit the Initial Notification of Compliance Status for Sterilizer 1 within 180 days of the applicable compliance date, in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under 40 C.F.R §§ 63.4(a)(1), 63.4(a)(2), and 63.10430.
- b. Count 2 -- Park Nicollet failed to submit the Initial Notification of Compliance Status for Sterilizer 2 within 180 days of the applicable compliance date, in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations under 40 C.F.R §§ 63.4(a)(1), 63.4(a)(2), and 63.10430.
- c. Count 3 – Park Nicollet failed to demonstrate continuous compliance for Sterilizers 1 and 2 by failing to keep complete records of whether each sterilization cycle contained a full load of items and, if not, a statement from an appropriate person that it was medically necessary, in violation of Section 112 of the CAA, 42 U.S.C. § 7412, and its implementing regulations at 40 C.F.R §§ 63.4(a)(1), 63.4(a)(2), and 63.10420.

Civil Penalty

51. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and cooperation, prompt return to compliance, and agreement to perform a Supplemental Environmental Project (SEP), Complainant has determined that an appropriate civil penalty to settle this action is \$18,750.

52. Within 30 days after the effective date of this CAFO, Respondent must pay an \$18,750 civil penalty by either sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

or, for checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes) sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name, docket number of this CAFO, and the billing document number.

53. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO, and the billing document number to the Regional Hearing Clerk, Compliance Tracker, Air Enforcement and Compliance Assurance Branch, and Mark J. Palermo, Associate Regional Counsel at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Mark J. Palermo (C-14J)
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

54. This civil penalty is not deductible for federal tax purposes.

55. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 64, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

56. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This

nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Supplemental Environment Project

57. Respondent must complete a supplemental environmental project (SEP) designed to protect families by abating lead-based paint hazards in a number of residential properties in or around St. Louis Park or Minneapolis, Minnesota, as further described herein. This SEP may include, but is not limited to, window replacement, the removal of lead-based paint and dust, the permanent enclosure or encapsulation of lead-based paint, and the replacement of lead-based painted surfaces or fixtures. The focus of the SEP will be lead abatement at low-income residences where children age six and under or pregnant women reside and whose occupants are unable to afford the costs of such work.

58. Respondent must complete the SEP as follows: the Respondent will contract with a local not-for-profit organization (“NFP”) experienced in lead abatement work to promptly undertake and complete such work in or around St. Louis Park or Minneapolis, Minnesota. Respondent has tentatively selected Sustainable Resources Center, which is acceptable to EPA. The foregoing statement shall not be construed to prohibit Respondent from selecting a different NFP. Respondent shall require the NFP to conduct the SEP according to all applicable federal and state work practice and notification requirements including, but not limited to, the United States Department of Housing and Urban Development’s Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing and the State of Minnesota requirements, unless otherwise specifically provided in this CAFO. Respondent must fully fund an escrow account to pay for the lead abatement SEP not later than 90 days after the effective date of this CAFO. Respondent must spend at least \$56,250 for the lead abatement SEP. The NFP may assess administrative costs not to exceed 10% of the total project value (i.e., not to exceed 10%

of 56,250). Respondent will complete the SEP within one year after the effective date of this CAFO, provided that this date may be extended by mutual agreement of the parties in writing.

59. SEP Certifications:

- a. Park Nicollet certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement or as injunctive relief as of the date it signs this CAFO.
- b. Park Nicollet certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.
- c. Park Nicollet 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.
- d. Park Nicollet certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial assistance 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. The parties agree that the NFP certifying to the lack of another federal financial assistance transaction shall satisfy Park Nicollet's obligation for reasonable inquiry under this subparagraph.

60. Respondent must submit a SEP completion report to EPA no later than 60 days after the SEP is complete. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems implementing the SEP and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and

- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible). Include the number of properties from which lead was removed under the SEP.

61. Respondent must submit the SEP Completion Report by first class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch, and Mr. Palermo at the addresses provided in paragraph 53, above.

62. In the SEP Completion Report, Respondent must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

In certifying the report, the signatory may rely on documentation, assertions or other information provided by the NFP.

63. Following receipt of the SEP completion report described in paragraph 60, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and that EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 64.

If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as

required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 64, below.

64. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 58, Respondent must pay a penalty equal to 125 percent of the difference between the amount it spent on the SEP and the amount set forth in paragraph 58.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 58, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent did not timely submit the SEP completion report required by paragraph 60, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$150	15 th through 30 th day
\$250	31 st day and beyond

65. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

66. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 52, above, and will pay interest and nonpayment penalties on any overdue amounts.

67. If Respondent makes any public statement referring to the SEP, it must include the following language: "Park Nicollet Health Services undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against

Park Nicollet Health Services for alleged violations of the Clean Air Act.” Respondent’s contractual agreement with the NFP shall not be considered such a public statement.

68. Force Majeure: If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent’s past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above.

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

General Provisions

70. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations alleged in this CAFO.

71. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

72. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 70, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

73. Respondent certifies that it is complying fully with Subpart WWWW under 40 C.F.R. Part 63.

74. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

75. The terms of this CAFO bind Respondent, its successors and assigns.

76. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

77. Each party agrees to bear its own costs and attorneys fees in this action.

78. This CAFO constitutes the entire agreement between the parties.

Consent Agreement and Final Order

In the Matter of: Park Nicollet Health Services, St. Louis Park, Minnesota

Park Nicollet Health Services, Respondent

June 15, 2012
Date

Katherine Tarvestad
Katherine Tarvestad
Vice President of Corporate Compliance
Park Nicollet Health Services

United States Environmental Protection Agency, Complainant

6/20/12
Date

George T. Czerniak
George T. Czerniak
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order


In the Matter of: Park Nicollet Health Services, St. Louis Park, Minnesota

Docket No. CAA-05-2012-0035

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

June 21, 2012
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Park Nicollet Health Services
Docket No. CAA-05-2012-0035

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA 05 2012 0035 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Richard A. Duncan
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402-3901

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

John Breslin
Acting Regional Judicial Officer
U.S. Environmental Protection Agency
77 W. Jackson Boulevard / Mail Code C-14J
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Jeff T. Connell
Compliance and Enforcement Section
Industrial Division
Minnesota Pollution Control Authority
33 South Sixth Street, Suite 4200
Saint Paul, MN 55155-4194

RECEIVED
REGIONAL HEARING CLERK
U.S. EPA REGION 5
2012 JUN 22 PM 3:11

On the 22 day of June 2012.

Loretta Shaffer

Loretta Shaffer, Administrative Program Assistant
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7672 9536