



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 11 2010

UNITED PARCEL SERVICE

Mr. William P. Nichols, MPA
Chief Operating Officer
Centers for Disease Control and Prevention
1600 Clifton Road, N.E.
Atlanta, Georgia 30333

Re: Consent Agreement and Final Order
In the Matter of the Centers of Disease Control and Prevention
Docket No. CAA-04-2010-1519(b)

Dear Mr. Nichols:

Enclosed please find a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk as directed in Section 22.05(a) of the Consolidated Rules of Practice, as amended. Please refer to Section IV (Final Order), for the terms and instructions regarding the Centers for Disease Control and Prevention's (CDC's) final payment on the penalty due. Any questions regarding the processing of CDC's penalty may be directed to Ms. Lori Weidner, Financial Management Office, at (513) 487-2125.

If you have any other questions, please contact Kevin Taylor of the South Air Enforcement Section at (404) 562-9134 or contact me at (404) 562-9589.

Sincerely,

A handwritten signature in cursive script that reads "Vera Kornylak".

Vera Kornylak, Esq.
Associate Regional Counsel
Office of Environmental Accountability

Enclosure

Internet Address (URL) • <http://www.epa.gov>

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
Centers for Disease Control and Prevention)
Atlanta, Georgia)
)
Respondent.)
)

Docket No. CAA-04-2010-1519(b)

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GENERAL COUNSEL

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action/Jurisdictional Statements

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is the Centers for Disease Control and Prevention (CDC) (hereinafter, "Respondent") which owns and operates a facility in Atlanta (DeKalb County), Georgia.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

3. The authority to take action under Section 113(d) of CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides, and Toxics Management Division, by EPA Region 4 Delegation 7-6-A. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4. Respondent is a United States federal agency under the Department of Health and Human Services.

5. Respondent is a "person" as defined in CAA § 302(e), 42 U.S.C. § 7602(e).

6. Pursuant to Section 502(a) of the Act, 42 U.S.C. § 7661(a), and 40 C.F.R. § 70.7(b), after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit. EPA first

promulgated regulations governing state operating permit programs on July 21, 1992. *See 57 Fed. Reg.* 32295; 40 C.F.R. Part 70.

7. EPA promulgated full approval of the State of Georgia's Title V program on June 8, 2000. Georgia's Title V program became effective on that date. *See 65 Fed. Reg.* 36358.

8. Georgia's regulations governing the Title V permitting program are codified at Georgia Rules for Air Quality Control, Chapter 391-3-1-.03(10), and are federally enforceable pursuant to CAA § 113(a)(3) and 40 C.F.R. § 70.6(b)(1).

II. Factual Allegations

9. The CDC owns and operates a large campus of buildings that house many of the administration and research functions employed for the nation's public health programs. The facility's main campus is located at 1600 Clifton Road, N.E., Atlanta (DeKalb County), Georgia 30333.

10. The CDC is major source under Title V of the Act and is subject to the regulatory requirement to operate under a Title V State Operating Permit and to comply with the Georgia Air Quality Act, O.C.G.A., Section 12-9-1, *et seq.*, and the Georgia Rules for Air Quality Control (Georgia Rules), Chapter 391-3-1.

11. In accordance with the requirements of 40 C.F.R. Part 70 and Georgia Rules 391-3-1-.03, CDC was originally issued Part 70 Operating Permit No. 9431-089-0005-V-01-0 (Title V permit) on October 29, 2003. The Title V permit has since been amended on March 9, 2005 (No. 9431-089-0005-V-01-1), January 26, 2006 (No. 9431-089-0005-V-01-2), October 4, 2006 (No. 9431-089-0005-V-01-3), and June 14, 2007 (No. 9431-089-0005-V-01-4). The Title V permit was renewed on February 11, 2009 (No. 9431-089-0005-V-02-0). As described below, EPA finds that the CDC has violated a number of conditions of its Title V permit. These conditions are appropriately included in the Title V permit because they are applicable requirements of the Georgia State Implementation Plan (SIP).

12. Condition No. 5.2.5 of the Title V permit and Condition No. 5.2.8 of the Title V permit amendment (No. 9431-089-0005-V-01-3) requires the installation, calibration, maintenance and operation of a continuous monitoring system (CMS) to record indicated parameters for each of its incinerators. On July 30, 2008, CDC submitted its 1st semi-annual air compliance report (SAR) for 2008 which reported 17.9% (82 hours) of monitor downtime for incinerator #1 (INC1), and 52% (16 hours) of monitor downtime for incinerator #3 (INC3). On January 29, 2009, CDC submitted its 2nd SAR for 2008 which reported 5% (3.5 hours) monitor downtime for incinerator # 2 (INC2). On July 22, 2009, CDC submitted its 1st SAR for 2009 which reported 22% (93 hours) of monitor downtime for INC3. Based on the excessive monitoring downtime for the incinerators, EPA finds that the CDC did not adequately maintain and operate its CMS in a continuous manner, as required by Condition No. 5.2.5 of its Title V permit and Condition No. 5.2.8 of its Title V permit amendment (No. 9431-089-0005-V-01-3).

13. Condition No. 5.2.2 of the Title V permit requires the installation, calibration,

maintenance and operation of a predictive emissions monitoring system (PEMS), which continuously monitors boiler operating parameters and predicts NO_x emission rates for each of its boilers to insure compliance with its permitted emission limits. On July 30, 2008, CDC submitted its 1st SAR for 2008 which reported 100% monitor downtime for Boilers BL04 (453 hours) and BL07 (31 hours). On January 29, 2009, CDC submitted its 2nd SAR for 2008 which reported 100% (9 hours) monitor downtime for Boiler BL07, and 23% (842 hours) monitor downtime for Boiler 10. Based on the excessive monitoring downtime for the boilers, EPA finds that the CDC did not adequately maintain and operate its PEMS in a continuous manner, as specified by Condition No. 5.2.2 of its Title V permit.

14. Condition No. 5.2.2 of the Title V permit requires that any continuous monitoring system or monitoring device shall be installed, operated, calibrated and maintained and information reported in accordance with the applicable procedures and performance specifications of the Georgia Department of Natural Resources Procedures for Testing and Monitoring Sources of Air Pollutants (PTMSAP). The PTMSAP requires CMS and PEMS to meet its Relative Accuracy specifications and to conduct a Relative Accuracy Test Audit (RATA) at approximately 12-month intervals. The 2008 Annual Compliance Certification submitted by CDC indicated that the required RATA was not performed for Boilers BL04, BL07, and BL10 for the entire 2008 calendar year as required by Condition No. 5.2.2 of the Title V permit.

15. As required by Condition No. 4.2.9 of amended Title V permit (No. 9431-089-0005-V-01-3), a performance test was due for INC3 in May 2009. The testing was not performed until October 2009. Therefore, EPA finds that CDC did not perform its annual performance test on INC3 at the required 12 month interval, as required by Condition No. 4.2.9 of the Title V permit amendment (No. 9431-089-0005-V-01-3).

II. Consent Agreement

16. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out in Paragraphs 1 through 8 above, but Respondent neither admits nor denies the factual allegations set out in Paragraphs 9 through 15 above.

17. As provided in 40 C.F.R. §22.18(b)(2), for the purposes of this proceeding, Respondent waives any right to contest the allegations listed above and its right to appeal the proposed final order accompanying this consent agreement.

18. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

19. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of its Title V permit at its Clifton Road facility.

20. Compliance with this CAFO shall resolve the alleged violations contained herein, and EPA hereby releases Respondent from all liability for the violations of the Title V permit alleged herein. This CAFO shall not otherwise affect any liability of Respondent, if any, to the United States. Other than as expressed herein, EPA does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or

permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement for allegations of violations not contained in this CAFO. Respondent reserves its rights and defenses regarding liability in any proceedings other than a proceeding by Complainant to enforce this CAFO.

21. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

IV. Final Order

22. Based upon an analysis of the penalty assessment criteria in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), Complainant has determined that an appropriate civil penalty to settle this matter is one hundred sixty thousand dollars (**\$163,000**).

23. Respondent shall pay the penalty **within 30 days** of the effective date of the CAFO by wire transfer to the Federal Reserve Bank of New York with the following wire transfer content:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
TIN: 52-0852695
33 Liberty St.
New York NY 10045

Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"

24. At the time of payment, Respondent shall send a copy of the wire transfer authorization form and transaction record, together with a transmittal letter which shall state that the payment is for the civil penalty owed pursuant to the Consent Agreement and Final Order in the Matter of the Centers of Disease Control and Prevention, Docket No. CAA-04-2010-1519(b), to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Mr. Kevin Taylor
Air, Pesticides and Toxics Management Division
Air and EPCRA Enforcement Branch
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

26. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

27. This CAFO shall be binding upon the Respondent, its successors and assigns.

28. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Ms. Beverly A. Spagg
Chief
Air Enforcement and EPCRA Branch
Air, Pesticides and Toxics Management Division
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9170

29. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

Remainder of page intentionally left blank.

V. Effective Date

31. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Centers for Disease Control and Prevention

By: W. P. Nichols Date: 7/26/10
Printed Name: WILLIAM P. NICHOLS
Title: CHIEF OPERATING OFFICER, CDC

U.S. Environmental Protection Agency

By: Carol L. Kemker Date: 7/21/10
Carol L. Kemker, Acting Director
Air, Pesticides and Toxics Management Division,
Region 4

APPROVED AND SO ORDERED this day of August 11, 2010.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of Centers for Disease Control and Prevention, CAA-04-2010-1519(b), on the parties listed below in the manner indicated:

Kevin I. Taylor
Air, Pesticides, and Toxics
Management Division
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Vera Kornylak
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Mr. William P. Nichols, MPA
Chief Operating Officer
Centers for Disease Control and Prevention
1600 Clifton Road, N.E.
Atlanta, Georgia 30333

(United Parcel Service with Electronic
Confirmation Requested)

Date: August 11, 2010

for Claudette A. Heneef
Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511