

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
ReConserve of Kansas, Inc.)
(also known as Scope Industries, Inc.)) Docket No. CAA-07-2011-0014
)
)
Respondent)

ADMINISTRATIVE ORDER ON CONSENT

1. Section 113(a)(3) of the Clean Air Act (CAA or the Act) 42 U.S.C. § 7413(a)(3), grants the Administrator of the U.S. Environmental Protection Agency (EPA) the authority to make a finding of violation of a requirement or prohibition of Section 113, and upon such a finding, to issue an order requiring a person to comply with such requirement or prohibition. This authority has been delegated to the Director, Air and Waste Management Division, Region 7.

2. Pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), ReConserve of Kansas, Inc. (also known as Scope Industries, Inc.) (ReConserve) hereby agrees, and is hereby ordered by EPA, to comply with the requirements of Title V of the CAA, 42 U.S.C. §§ 7661-7661f (“Title V”).

I. Statutory and Regulatory Background

3. One purpose of the Title V program is to “enable the source, states, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements.” 57 Fed. Reg. 32250, 32251 (July 21, 1992). Thus, the Title V operating permits program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and that the facility is in compliance with these requirements.

4. The Title V operating permit program does not generally impose new substantive air quality control requirements (referred to as “applicable requirements”), but does require permits to contain monitoring, record keeping, reporting, and other requirements to assure compliance by sources with existing applicable emission control requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992) (EPA final action promulgating part 70 rule).

5. All “major” stationary sources of air pollution and certain other sources are required to apply for Title V operating permits that include emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the CAA, including the

requirements of the applicable State Implementation Plan (SIP). See CAA §§ 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a).

6. EPA promulgated regulations establishing the minimum requirements of the state Title V operating programs at 40 C.F.R. Part 70.

7. The State of Kansas has been approved by EPA to run the Title V operating permit within the state. See 61 Fed. Reg. 2938 (January 30, 1996). The Title V operating permit program is found at 28-19-500 to 28-19-518 of the Kansas Administrative Regulations (K.A.R.).

8. Within Kansas Title V operating permits are called “Class I” operating permits. The approved Title V operating permit program for the state of Kansas requires major sources, as defined in Section 102(a)(1) of the CAA, 42 U.S.C. § 7602(j), and K.A.R. 28-19-200(kk)(3), to obtain “Class I” operating permits.

9. At all relevant times to this action it has been unlawful to violate any requirement of a permit issued under Title V, including “Class I” permits, or to operate a major source except in compliance with a permit issued by a permitting authority under Title V. 42 U.S.C. § 7661a(a); KAR 28-19-500(f), and KAR KAR 28-18-16i.

10. Pursuant to 40 C.F.R. § 70.9, major sources are required to pay annual fees under the authorized state Title V permit program. Pursuant to K.A.R. 28-19-202, major sources in Kansas are required to pay an annual emissions fee.

II. Definitions

11. The terms “ReConserve of Kansas, Inc.” or “ReConserve” shall refer to the corporate entity that owns and/or operates the facility addressed at 41 South James Street Kansas City, Kansas 66118. This shall include any other business entity doing business as ReConserve of Kansas, Inc., or alternatively, as which ReConserve of Kansas, Inc. does business.

12. The term “facility” shall mean the ReConserve of Kansas, Inc. facility addressed at 41 South James Street, Kansas City, Kansas 66118.

13. “Major source” for purposes of the Title V permitting program is defined, in pertinent part, as the “potential to emit, in the aggregate 100 tons per year (tpy) of any air pollutant.” Section 102(a)(1) of the CAA, 42 U.S.C. § 7602(j) and K.A.R. 28-19-200(kk)(3).

III. Factual Background

14. At this facility, ReConserve processes waste food products of various types (bread, candy, chips, cookies, crackers, dough, pasta, and snack foods). The resulting mixture is then ground and dried by a rotary dryer, and later sold as a product named "Dried Bakery Product" to makers of feed for poultry, cattle, and pigs.

15. On July 20, 21, and 24, 2009, EPA conducted an inspection of ReConserve of Kansas, Inc.'s Kansas City, Kansas facility (the 2009 inspection).

16. During EPA's 2009 inspection, EPA performed a stack test of emissions from the facility. From data in this stack test, EPA calculations show that the facility had the potential to emit volatile organic compounds (VOC) emissions above the Title V major source designation threshold of 100 tpy for VOCs.

17. On or about February 11, 2010, EPA issued ReConserve a Request for Information, pursuant to the authority of Section 114 of the CAA, 42 U.S.C. § 7414, that directed ReConserve to provide information about its current and past operations to determine the facility's compliance with the CAA.

18. EPA's Section 114 Request for Information also required ReConserve to submit a Test Protocol to EPA for review and approval to test for gas velocity, oxygen and carbon dioxide, moisture, particulate matter (PM), opacity, in-stack filterable particulate matter (FPM), dioxins and furans, total hydrocarbon (THC), and individual volatile organic species.

19. On June 18, 2010, ReConserve submitted a proposed Test Protocol to EPA for review and approval. On July 13, 2010, EPA approved with revisions, ReConserve's proposed Test Protocol.

20. On July 15, through July 16, 2010, EPA observed the stack performance test performed by ReConserve pursuant to the approved Test Protocol.

21. On or about August 27, 2010, ReConserve submitted the test results which documented emissions of an estimated mass rate of 183.9 pounds per hour (lb/hr) of VOC, which equals a Potential to Emit of over 800 tons per year (805.4 tpy). Again, this is above the Title V "major source" threshold of 100 tpy for VOCs.

22. Within thirty (30) days of the effective date of this Order, ReConserve has agreed to pay \$30,392 in emissions fees to the Kansas Department of Health and Environment (KDHE) for past emission fees due under the Class I operating permit program.

IV. Respondent's Violations of CAA

23. The factual allegations set forth in Paragraphs 1 to 22, above, are hereby incorporated by reference.
24. From at least 2000 to the present, ReConserve has operated the Kansas City facility without a valid Class I (Title V) operating permit.
25. Respondent ReConserve's failure to operate with the required Class I (Title V) operating permit is a violation of 42 U.S.C. § 7661a(a), 40 C.F.R. § 70.7(b), and KAR 28-18-16i.

V. Compliance Order

26. Within ninety (90) days of receipt of an executed copy of this Order, Respondent shall submit a complete Class I (Title V) permit application, prepared in accordance with the requirements of KAR 28-19-518, to the following:

Bruce Andersen
Department of Air Quality
Unified Government of Wyandotte County, Kansas
619 Ann Avenue, Suite 305
Kansas City, Kansas, 66101

Rick Brunetti, Director, Bureau of Air
Kansas Department of Health and Environment
Division of Environment
1000 SW Jackson
Curtis Building, Suite 310
Topeka, Kansas 66612

Mr. Gary Bertram
Air Permitting and Compliance Branch
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101.

VI. Additional Provisions

27. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413. Under Section 113(a) of the CAA, the Administrator may, inter alia: issue an administrative penalty order pursuant to Section 113(d) for civil administrative penalties of up to \$25,000 per day of violation; or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and the Civil Monetary Penalty Inflation Adjustment Rule, this penalty maximum was increased to \$32,500 per day for violations occurring between March 15, 2004, and January 12, 2009; and to \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition, Respondent may be subject to an administrative or civil action for similar penalties and/or injunctive relief, pursuant to Sections 113(b) and (d) of the CAA, based on the violations addressed by this Order. Furthermore, for any person who knowingly violates the provisions of the CAA as set forth in Section 113(c) of the CAA, Section 113(c) provides for criminal penalties or imprisonment, or both.

28. This Order shall not relieve Respondent of its obligation to comply with all applicable federal, state, and local laws, regulations and other legal requirements, including but not limited to Title V of the CAA, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

29. Respondent hereby waives its jurisdictional objections to the issuance of a Class I (Title V) permit by KDHE for the facility.

30. Based on the parties' negotiations leading to this Order on Consent, the requirement for an opportunity to confer of Section 113(a)(4) of the CAA, 42 U.S.C. 7413(a)(4) have been satisfied and this Order shall become effective immediately upon receipt by Respondent of an executed copy of the Order. All dates for compliance shall be calculated from this effective date.

31. All information and documents submitted by ReConserve to EPA pursuant to this Order shall be subject to public inspection unless identified as confidential by ReConserve in accordance with the requirements of 40 C.F.R. Part 2. Information and documents so identified will be disclosed only in accordance with the provisions of 40 C.F.R. Part 2.

ReConserve of Kansas, Inc.
Administrative Compliance Order
EPA Docket No.: CAA-07-2011-0014

For ReConserve of Kansas, Inc., (also known as Scope Industries, Inc.)

Date April 1, 2011

Name: Rida Hamed
Title: Executive VP

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date 4/12/11

Howard C. Bunch
Sr. Assistant Regional Counsel

Date 4/21/11

Becky Weber
Director
Air and Waste Management Division