



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUL 06 2011

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

David Anderson  
Deputy General Counsel  
C&D Technologies, Inc.  
P.O. Box 3053  
1400 Union Meeting Road  
Blue Bell, PA 19422-0838

Re: In the Matter of: C&D Technologies, Inc., Attica, Indiana  
Docket No. CAA-05-2011-0035

Dear Mr. Anderson:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves C&D Technologies, Inc.(C&D), case docket no. CAA-05-2011-0035.

Pursuant to paragraph 30 of the CAFO, C&D must pay the civil penalty within 30 days of the effective date. Your check must display the case name, case docket number CAA-05-2011-0035 and the billing document number 2751103A040.

Please direct any question regarding this case to Robert Guenther, Associate Regional Counsel, at 312-886-0566.

Sincerely,

A handwritten signature in cursive script that reads "Sara Breneman".

Sara Breneman, Chief  
Air Enforcement and Compliance Assurance Branch,  
MI/WI Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: )  
)  
C&D TECHNOLOGIES, INC., )  
ATTICA, INDIANA, )  
)  
RESPONDENT. )  
\_\_\_\_\_ )

Docket No.: CAA-05-2011-0035  
Proceeding to Assess a Civil  
Penalty Under Section 113(d) of  
the Clean Air Act, 42 U.S.C.  
§ 7413(d)

CONSENT AGREEMENT AND FINAL ORDER

RECEIVED  
JUL 06 2011

Preliminary Statement

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

1. Complainant, the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5, brought this administrative action seeking a civil penalty under section 113(d) of the Clean Air Act (the Act), 42 U.S.C. §7413(d).

2. On March 28, 2011, EPA filed a Complaint in this action against Respondent C&D Technologies, Inc. The Complaint alleges that Respondent violated section 112 of the Act, 42 U.S.C. § 7412, and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Lead Acid Battery Manufacturing Area Sources at 40 C.F.R. §§ 63.11421 through 63.11427, or subpart PPPPPP of part 63 at its facility in Attica, Indiana.

3. By order of the Regional Judicial Officer dated May 10, 2011, Respondent delayed filing an answer and request for a hearing under section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2), until July 1, 2011.

Stipulations

4. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint.

5. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).

6. Respondent certifies that it is complying fully with Act and the NESHAP for Lead Acid Battery Manufacturing Area Sources, 40 C.F.R. part 63, subpart P P P P P P.

7. Respondent consents to the terms of this CAFO and specifically to the assessment of the civil penalty specified herein.

8. The parties agree that settling this action without further litigation, within the terms in this CAFO, is in the public interest.

#### Civil Penalty

9. In consideration of Respondent's cooperation, willingness to quickly resolve this matter and its agreement to perform a supplemental environment project as described below, Complainant agrees to mitigate the proposed civil penalty of \$148,711 to \$26,025.

10. Within 30 days after the effective date of this CAFO, Respondent must pay the \$26,025 civil penalty by 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

The check must note the case title *In the Matter of C&D Technologies, Inc.*, docket number: CAA-05-2011-0035 and the billing document number.

11. Respondent must send a notice of payment that states the *In the Matter of C&D Technologies, Inc.*, docket number: CAA-05-2011-0035 and the billing document number to the

Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Robert S.

Guenther, at the following addresses when it pays the civil penalty:

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

Robert S. Guenther (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 W. Jackson Boulevard  
Chicago, IL 60604

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

13. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 26, below, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action under section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

14. Pursuant to 31 C.F.R. § 901.9, 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. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

### **Supplemental Environmental Project**

15. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by improving the efficiency of the air particulate removal system at Respondent's Attica facility, which will include some additional lead removal.

16. At its Attica, Indiana, facility, Respondent must complete the SEP as follows:

Respondent will replace the existing dust collector at the operation (EU 0200A in C&D's current operating permit) with a more efficient Donaldson Torit model. Respondent will commence installation of the new system by July 18, 2011, and commence operation by September 12, 2011. Filtered particulate will be collected and recycled at a permitted off-site secondary lead smelter.

17. Respondent must spend at least \$78,073 on equipment, labor and expenses associated with the SEP.

18. Respondent must continuously use or operate the equipment installed as the SEP for 3 years following its installation.

19. Respondent 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. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

20. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

21. Respondent must submit a SEP completion report to EPA by October 11, 2011.

This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems 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 canceled 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).

22. Respondent must submit all notices and reports required by this CAFO by first class mail to the Compliance Tracker in the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 11, above.

23. In each report that Respondent submits as provided by this CAFO, it 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.

24. Following receipt of the SEP completion report described in paragraph 21, 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 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 26, below.

25. 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 26, below.

26. 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 16, Respondent must pay a penalty of \$75,000.
- 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 17, above, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 17, above, Respondent must pay a penalty of \$15,000.
- d. If Respondent did not submit timely the SEP completion report, 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 <sup>st</sup> through 14 <sup>th</sup> day
\$200	15 <sup>th</sup> through 30 <sup>th</sup> day
\$500	31 <sup>st</sup> day and beyond

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

28. 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

paragraphs 10 - 11, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

29. Any public statement that Respondent makes referring to the SEP must include the following language: "C&D Technologies, Inc., undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against C&D Technologies, Inc., for violations of section 112 of the Clean Air Act."

30. 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**

31. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

32. 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.

33. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 31, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

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

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

36. 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.




37. Each party agrees to bear its own costs and attorney's fees in this action.

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


**C&D Technologies, Inc., Respondent**

6/29/11  
Date

  
\_\_\_\_\_  
David J. Anderson  
Vice President, General Counsel  
and Corporate Secretary

**United States Environmental Protection Agency, Complainant**

7/1/11  
Date

  
\_\_\_\_\_  
Cheryl L. Newton  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5

**Consent Agreement and Final Order  
In the Matter of: C&D Technologies, Inc.  
Docket No.: CAA-05-2011-0035**

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PROTECTION AGENCY**

**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.

7-5-11

\_\_\_\_\_  
Date



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

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**Certificate of Service**

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2011-0035 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 a second original copy 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:

David Anderson  
Deputy general Counsel  
C&D Technologies, Inc.  
P.O. Box 3053  
1400 Union Meeting Road  
Blue Bell, PA 19422-0838

I certify that I mailed a copy of the CAFO by first-class mail, addressed as follows:

Phil Perry, Chief  
Compliance and Enforcement Branch  
Office of Air Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue, Room IGCN 1003  
Indianapolis, Indiana 46206-6015

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

Marcy Toney  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard/Mail Code C-14J  
Chicago, Illinois 60604

On the 6<sup>th</sup> day of July 2011.

*Betty Williams*

Betty Williams  
Administrative Program Assistant  
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER:

7099168000076666251

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JUL 06 2011

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