

3. Respondent includes APMC and its respective parent, subsidiaries and related entities. APMC is incorporated in Delaware and its principal place of business is in Houston, Texas. APMC currently owns an electric utility steam generating unit on which construction commenced after September 18, 1978, located at 1010 Zephyr Street, Stockton, California and is referred to as the Stockton CoGen facility ("the Facility"). Prior to November 30, 2009, Stockton CoGen Company, a California General Partnership, owned the Facility. Between 2006 and the present, Air Products Energy Enterprises, LP ("APEE, L.P.") has been the operator of the Facility. APMC and APEE, L.P. are related entities.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Pursuant to authority under Section 111 of the Act, 42 U.S.C. § 7411, the Administrator of EPA has promulgated Subpart Da at 40 C.F.R. §§ 60.40Da-60.52Da.

5. Subpart Da applies to each electric steam generating unit for which construction, modification, or reconstruction is commenced after September 18, 1978. 40 C.F.R. § 60.40Da(a)(2).

6. A person's failure to comply with NSPS requirements is subject to enforcement under Section 113 of the Act. 42 U.S.C. § 7413(a)(3).

7. The definition of "Person" under Section 302(e) of the Act includes individuals, corporations, partnerships and associations. 42 U.S.C. § 7602(e).

8. "Owner or operator" means any person who owns, leases, operates, controls, or supervises an affected facility. 40 C.F.R. § 60.2.

9. "Affected facility" means, with reference to a stationary source, any apparatus to which a standard is applicable. 40 C.F.R. § 60.2.

10. "Electric utility steam-generating unit" is defined at 40 C.F.R. § 60.41Da and meets

the definition of an affected facility.

11. Electric utility steam-generating units subject to Subpart Da are required to continuously monitor opacity of emissions from the affected facility. 40 C.F.R. § 60.49Da(a).

12. Electric utility steam-generating units subject to Subpart Da are required to obtain SO₂ emissions monitoring data for at least 18 hours in at least 22 of 30 successive boiler operating days. See 40 C.F.R. § 60.49Da(f)(1).

C. ALLEGATIONS

GENERAL ALLEGATIONS

13. Respondent is a person as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

14. At all times relevant to this CAFO, Stockton CoGen Company ("SCC") owned and/or operated and/or controlled the Stockton CoGen facility which is located at 1010 Zephyr Street, Stockton, California ("the Facility"). Respondent acquired the Facility effective November 30, 2009, and SCC has since been dissolved. At all times relevant to this CAFO, APEE, L.P. operated and/or controlled the Facility. For purposes of this CAFO, Respondent is the "owner" or "operator" of the Facility as that term is defined at 40 C.F.R. § 60.2.

15. The Facility operates a solid fuel-fired, circulating fluidized-bed boiler ("boiler") to generate electricity and steam. Steam and some electric power generated at the Facility is provided to an adjacent corn wet-milling facility, with the remainder of the electricity sold to a local utility company. The boiler constitutes an electric-utility steam generating unit, as defined at 40 C.F.R. § 60.41Da.

16. The electric utility steam-generating unit at the Facility is an “affected facility” as defined at 40 C.F.R. § 60.2 and is subject to the requirements and prohibitions set forth at Subpart Da.

COUNT 1: FAILURE TO CONTINUOUSLY MONITOR OPACITY OF EMISSIONS

17. On or about March 28, 2009, the Facility’s continuous opacity monitoring system (“COMS”) for monitoring the opacity of emissions from the affected facility ceased to function, and APEE, L.P. could no longer continuously monitor the opacity of emissions from the affected facility.

18. APEE, L.P.’s failure to continuously monitor opacity emissions from the affected facility continued until about May 13, 2009, at which time APEE, L.P. installed and began operating a new COMS.

19. APEE, L.P.’s failure to continuously monitor the opacity of emissions from the affected facility constitutes a violation of 40 C.F.R. § 60.49Da(a) and the CAA for each day that such failure to monitor occurred.

COUNT 2: FAILURE TO OBTAIN EMISSIONS MONITORING DATA

20. APEE, L.P. was required to obtain from the affected facility continuous SO₂ emissions data for at least 18 hours in at least 22 out of 30 successive boiler operating days.

21. In this case, APEE, L.P. failed to obtain the required minimum amount of continuous SO₂ emissions data on August 4, 5, and 6, 2006, for its continuous emissions monitoring system (“CEMS”).

22. APEE L.P.’s failure to obtain the required minimum amount of continuous SO₂ emissions data resulted in a violation of 40 C.F.R. § 60.49Da(f)(1) and the CAA.

FILED

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U.S. EPA REGION IX
REGIONAL HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

In the Matter of:)	
)	Docket No. CAA-09-2011- <u>0008</u>
Air Products Manufacturing Corporation,)	
)	CONSENT AGREEMENT AND FINAL
Respondent.)	ORDER PURSUANT TO 40 C.F.R.
)	§§ 22.13 and 22.18

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA") and Air Products Manufacturing Corporation ("APMC") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This is a civil administrative penalty action instituted against Respondent pursuant to Section 113(d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7413(d), for violations of Section 111 of the Act, 42 U.S.C. § 7411, Standards for Performance for New Stationary Sources ("NSPS") and its implementing federal regulations at 40 C.F.R. Part 60, Subpart Da – "Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978" ("Subpart Da").

2. Complainant is the Director of the Air Division, EPA, Region IX, who has been duly delegated from the Administrator of EPA ("Administrator") the authority to initiate this action and to sign a consent agreement settling this action.

D. RESPONDENT'S ADMISSIONS

23. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E. of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C. of this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

24. Respondent agrees to the assessment of a penalty in the amount of ONE HUNDRED FORTY THOUSAND SIX HUNDRED DOLLARS (\$140,600) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C. of this CAFO.

25. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sf01.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

- a) Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

- b) Chief, Air Enforcement Office
Air Division (AIR-5)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

26. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

27. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph 24 by the deadline specified in Paragraph 25, then Respondent shall pay to EPA the stipulated penalty of \$500 for each day the penalty is late, which shall become due and payable upon EPA's written request. Such failure by Respondent may also subject Respondent to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth in Paragraph 28 below. In any such collection action, the validity, amount, and appropriateness of this CAFO or the penalty assessed hereunder are not subject to review.

28. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of this CAFO.

b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid for any month in which any portion of the assessed penalties is more than 30 days past due.

c. Attorney Fees, Collection Costs, Nonpayment Penalty: Pursuant to 42 U.S.C. § 7413(d)(5), if Respondent fails to pay on a timely basis the full amount of the assessed penalty, interest, and handling charges, they shall be liable for the United States' enforcement and collection 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 failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding or overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

F. RETENTION OF RIGHTS

29. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C. of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C. of this CAFO; or (ii) any criminal

liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C. of this CAFO.

30. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

G. ATTORNEYS' FEES AND COSTS

31. Except as set forth in Paragraph 28(c) above, each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

H. EFFECTIVE DATE

32. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by the Regional Judicial Officer, is filed.

I. BINDING EFFECT

33. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

34. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

35. This Consent Agreement constitutes the entire agreement between the parties resolving this matter arising under the CAA.

36. This document constitutes an "enforcement response" as that term is used in EPA's Penalty Policy for the purposes of determining Respondent's "full compliance history" as provided in Section 113(e) of the Act, 42 U.S.C. § 7413(e).

FOR RESPONDENT, AIR PRODUCTS MANUFACTURING CORPORATION:

Date: September 28, 2011 By:  TS
William J. Hammarstrom
President and Treasurer
AIR PRODUCTS MANUFACTURING CORPORATION

FOR COMPLAINANT, EPA REGION IX:

Date: 9/29/11 By: 
for Deborah Jordan
Director, Air Division
U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION IX

II. FINAL ORDER

Complainant and Respondent, having entered into the foregoing Consent Agreement,
IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2011-0008) be entered,
and that Respondent shall pay a civil administrative penalty in the amount of ONE HUNDRED
FORTY THOUSAND SIX HUNDRED DOLLARS (\$140,600) and comply with the terms and
conditions set forth in the Consent Agreement.

09/30/11
DATE


STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection
Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency – Region 9, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed as follows:

Diana P. Martin
Bingham McCutchen LLP
355 South Grand Avenue
Suite 4400
Los Angeles, CA 90071-3106

Certified Mail Number: 7010 1870 0001 5596 5784

Additional copies were placed in the United States Mail, addressed as follows:

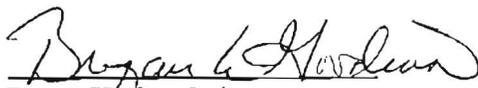
William J. Hammarstrom
President and Treasurer
Air Products Manufacturing Corporation
12600 Northborough Drive
Suite 196
Houston, TX 77067-3293

Todd Solodar, Esq.
Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195

In addition, a copy was hand delivered to:

Daniel Reich
Office of Regional Counsel
US Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Dated: 9/30/11


Bryan K. Goodwin
Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
US Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

SEP 29 2011

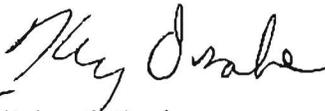
Mr. William J. Hammarstrom
President and Treasurer
Air Products Manufacturing Corporation
12600 Northborough Drive
Suite 196
Houston, TX 77067-3293

re: Air Products Manufacturing Corporation – Stockton CoGen Facility

Dear Mr. Hammarstrom:

Enclosed is your copy of the Consent Agreement and Final Order (“CAFO”) filed pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q. If you have any questions concerning the CAFO, please contact Mark Sims of my staff at (415) 972-3965 or Daniel Reich in the Office of Regional Counsel at (145) 972-3911.

Sincerely,


for Deborah Jordan
Director, Air Division

Enclosure

cc: Mr. Seyed Sadredin (SJVAPCD)
Mr. James Ryden (CARB)
Ms. Diana Martin, Esq. (Bingham)
Mr. Todd Solodar, Esq. (APMC)