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HEARINGS CLERK
EPA REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. CAA-10-2019-0071
)
PORT TOWNSEND PAPER) CONSENT AGREEMENT
CORPORATION,)
)
Port Townsend, Washington)
)
Respondent.

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Port Townsend Paper Corporation (Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement & Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

National Emissions Standards for Hazardous Air Pollutants

3.1. Section 112(c) and (d) of the CAA require EPA to publish a list of categories of “stationary sources” of hazardous air pollutants (“HAPs”), and to promulgate regulations establishing emission standards for “major sources” within those categories. 42 U.S.C. § 7412(c) and (d). These standards are known as the National Emissions Standards for Hazardous Air

Pollutants (“NESHAP”) for Source Categories (also referred to as “MACT” standards), and are codified at 40 C.F.R. Part 63.

3.2. “Stationary source” under Section 112 has the same meaning as the term has under Section 111(a) of the CAA. 42 U.S.C. § 7412(a)(3). Section 112 of the CAA 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, more than 10 tons per year of any single HAP or 25 tons per year or more of any combination of HAPs. 42 U.S.C. § 7412(a)(1).

3.3. EPA has promulgated general provisions for the Part 63 NESHAP at 40 C.F.R. Part 63, Subpart A (“NESHAP General Provisions”), which contain general provisions that apply as specified in the relevant NESHAP. 40 C.F.R. § 63.1(a)(4)(i).

3.4. HAPs are defined at 40 C.F.R. § 63.2 to mean pollutants listed in, or pursuant to, Section 112(b) of the CAA. 42 U.S.C. § 7412(b).

3.5. “New source” is defined as a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under Section 112 establishing an emission standard applicable to such source. 42 U.S.C. § 7412(a)(4); see also 40 C.F.R. § 63.2.

3.6. “Existing source” is defined as any stationary source other than a new source. 42 U.S.C. § 7412(a)(10); see also 40 C.F.R. § 63.2.

3.7. Pursuant to 40 C.F.R. § 63.4(a), no “owner or operator” shall operate any “affected source” in violation of an applicable NESHAP, except under an extension of compliance or exemption from compliance as provided in that section or in CAA Section 112(i)(4), 42 U.S.C. § 7412(i)(4). An “affected source” is defined as a “collection of equipment, activities, or both within a single contiguous area and under common control that is included in a

Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the [CAA].” 40 C.F.R. § 63.2.

3.8. Pursuant to 40 C.F.R. § 63.6(e)(1)(i), at all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

3.9. Pursuant to Section 112(d) of the CAA, on April 15, 1998, EPA promulgated the NESHAP for the Pulp and Paper Industry, codified as Subpart S of the MACT standards (40 C.F.R. §§ 63.440-459) (“NESHAP Subpart S”). NESHAP Subpart S applies to the owner and operator of processes that produce pulp, paper, or paperboard; that are located at a plant site that is a “major source”; and that use the following processes and materials: (1) Kraft, soda, sulfite, or semi-chemical pulping processes using wood; or (2) mechanical pulping processes using wood; or (3) any process using secondary or non-wood fibers. 40 C.F.R. §§ 63.440 and 63.441.

3.10. The NESHAP General Provisions that apply to NESHAP Subpart S are specified in 40 C.F.R. Part 63, Subpart S, Table 1, and include the definitions in 40 C.F.R. § 63.2, the prohibition in 40 C.F.R. § 63.4(a), and the operation and maintenance requirements in 40 C.F.R. § 63.6(e)(i).

3.11. NESHAP Subpart S requires, inter alia, that each Low Volume High Concentration (“LVHC”) system that is at an existing affected source using a kraft pulping

process to “be enclosed and vented into a closed vent system and routed to a control device” that meets the requirements specified in 40 C.F.R. § 443(d). 40 C.F.R. § 63.443(a)(1)(i) and (c).

3.12. “LVHC system” is defined at 40 C.F.R. § 63.441 as “the collection of equipment including the digester, turpentine recovery, evaporator, steam stripper systems, and any other equipment serving the same function as those previously listed.”

3.13. “Digester system” is defined at 40 C.F.R. § 63.441 as “each continuous or batch digester used for the chemical treatment of wood or non-wood fibers. The digester system equipment includes associated flash tank(s), blow tank(s), chip steamer(s) not using fresh steam, blow heat recovery accumulator(s), relief gas condenser(s), prehydrolysis unit(s) preceding the pulp washing system, and any other equipment serving the same function as those previously listed. The digester system includes any of the liquid streams or condensates associated with batch or continuous digester relief, blow, or flash steam processes.”

3.14. The control device used to reduce total HAP emissions from the LVHC system must reduce total HAP emissions by 98 percent or more by weight, or meet other specified requirements. 40 C.F.R. § 63.443(d).

3.15. NESHAP Subpart S, 40 C.F.R. § 63.443(c), also requires, inter alia, that the enclosures and closed-vent systems required by 40 C.F.R. § 63.443(c) for capturing and transporting HAPs meet the requirements specified in 40 C.F.R. § 63.450(b) through (d). 40 C.F.R. § 63.450(a).

3.16. NESHAP Subpart S imposes various inspection and repair requirements for enclosures of LVHC systems and closed vent systems. See 40 C.F.R. § 63.453(k).

3.17. NESHAP Subpart S defines “black liquor” as spent cooking liquor that has been separated from the pulp produced by the kraft, soda, or semi-chemical pulping process.

40 C.F.R. § 63.441.

Requirements for Title V Operating Permits

3.18. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and the implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including “major sources” as defined in 42 U.S.C. § 7661(2).

3.19. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that, after the effective date of any permit program approved or promulgated under Title V of the CAA, it shall be unlawful for any person to operate a major source and certain other sources, except in compliance with a permit issued by a permitting authority under Title V of the CAA.

3.20. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), and 40 C.F.R. § 70.6(a) require that each Title V permit contain enforceable emission limitations and standards and such other conditions as are necessary to assure compliance with all requirements of the CAA.

3.21. Washington’s Title V operating permit program was granted full approval by EPA on August 13, 2001, (66 Fed. Reg. 42439). Washington’s Title V operating permit program is codified at Washington Administrative Code 173-401-100 et seq., otherwise known as “Chapter 401” of the Washington Title V operating permit program.

3.22. Violations of Title V program requirements and permits are subject to federal enforcement under Section 113(a)(3) of the CAA, 42. U.S.C. § 7413(a)(3).

General Findings

3.23. Respondent is incorporated in the State of Washington as Port Townsend Paper Corporation, and licensed to do business in Washington.

3.24. Respondent is and has been at all relevant times the “owner” and “operator” of the PTPC Mill within the meaning of the CAA and NESHAP Subpart S. See 40 C.F.R. § 63.2.

3.25. The PTPC Mill produces pulp from wood by cooking (digesting) wood chips in a water solution of sodium hydroxide and sodium sulfide at high temperature and pressure. The PTPC Mill thus uses a “kraft pulping” process as that term is defined in 40 C.F.R. § 63.441 to produce pulp, paper, or paperboard within the meaning of 40 C.F.R. § 63.440(a).

3.26. The digestion process creates pulp along with gaseous byproducts that include volatile organic HAPs (e.g., methanol, acrolein, acetaldehyde, toluene, hexane, and formaldehyde) and total reduced sulfur.

3.27. Black liquor contains HAPs (e.g., Bis (2-ethylhexyl) phthalate (DEHP), Carbon disulfide, p-Cresol, 1,4-Dioxane (1,4-Diethyleneoxide), Methanol, Methyl ethyl ketone, and Phenol) and total reduced sulfur.

3.28. The PTPC Mill is a “major source” as defined in Section 112 of the CAA, 42 U.S.C. § 7412(a), and 40 C.F.R. § 63.2 because it emits or has the potential to emit considering controls, in the aggregate, more than 10 tons per year of any single HAP or 25 tons per year or more of any combination of HAPs.

3.29. Respondent is currently operating the PTPC Mill under a Title V operating permit issued by the Washington Department of Ecology (“Ecology”) on January 17, 2007, pursuant to Title V, Section 502 of the CAA, 42 U.S.C. § 7661a, which permit was amended on April 28, 2010 (as so amended, the “PTPC Title V Permit”).

3.30. The PTPC Mill operates one sawdust digester known as the Messing and Durkee continuous sawdust digester (“M&D Digester”). The M&D Digester is a continuous digester used for the chemical treatment of wood or non-wood fibers, and therefore is a “digester system” as defined in 40 C.F.R. § 63.441.

3.31. In addition, the M&D Digester is part of a “Low Volume, High Concentration” or LVHC System as defined in 40 C.F.R. § 63.441.

3.32. The M&D Digester is an “enclosure” within the meaning of NESHAP Subpart S, 40 C.F.R. §§ 63.443(c), 63.450, and 63.453(k).

3.33. EPA Region 10 conducted an inspection of the PTPC Mill on July 6 and 7, 2017.

3.34. During the July 2017 inspection, the inspector observed that not all emissions from the M&D Digester were routed to a control device meeting the requirements of 40 C.F.R. §§ 63.443(d) and 63.450. Specifically, the inspector observed that some digester gases escaped the rotary valve feeding sawdust and black liquor into the digester and were routed to either 1) a stack directly over the rotary valve, which vented through the roof to the atmosphere, or 2) an open-ended metering screw which transports sawdust and black liquor to the rotary valve, and which vents to the atmosphere.

3.35. During the July 2017 inspection, the EPA inspector observed that the M&D Digester, rotary valve, screw conveyor, and associated vents and ducting were covered with brown liquid and sawdust. Based on the inspector’s observations, the brown liquid and sawdust appeared to be coming from the open-ended inlet of the metering screw, where sawdust and black liquor are mixed prior to being conveyed to the rotary valve and into the digester.

3.36. During the July 2017 inspection, the inspector also observed visible emissions from both sides of the rotary valve as well as the digester surface.

3.37. Visible emissions leaking from the rotary valve or seams of the M&D Digester are evidence of visible defects in an enclosure within the meaning of 40 C.F.R. § 63.453(k)(6).

3.38. On April 12, 2018, EPA notified Respondent and the State of Washington that EPA had identified violations of NESHAP Subpart S at the PTPC Mill.

3.39. On May 16, 2019, Respondent and EPA entered into an Administrative Compliance Order on Consent (“AOC”) under which Respondent agreed to come into compliance with the requirements identified below no later than October 31, 2019.

VIOLATIONS

Failure to Enclose and Route M&D Digester Emissions to a Control Device

3.40. From 2001 to the present, the M&D Digester at the PTPC Mill was not enclosed and vented into a closed-vent system and routed to a control device meeting the requirements specified in 40 C.F.R. § 63.443(d). Specifically, some digester gases escape the rotary valve feeding sawdust and black liquor into the digester and are vented to the atmosphere.

3.41. The failure set forth the preceding paragraph violates 40 C.F.R. § 63.443 (a)(1)(i), (c) and (d); Condition F.3 of the PTPC Title V Permit; Section 112 of the CAA, 42 U.S.C. § 7412(d); and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

Failure to Inspect and Repair Visible Defects in the M&D Digester and/or Failure to Conduct Good Operation and Maintenance Practices

3.42. Visible emissions leaking from the rotary valve or from seams of the M&D Digester are evidence of visible defects in an enclosure within the meaning of 40 C.F.R. § 63.453(k)(6).

3.43. Based on information and belief, from at least July 6, 2017, to the present, Respondent did not implement corrective actions as soon as practicable to address visible defects in the M&D Digester, in violation of 40 C.F.R. §§ 63.443(a)(1)(i), 63.443(c), 63.443(d), 63.450, and 63.453(k)(6); Condition F.3.a of the PTPC Title V Permit; Section 112 of the CAA, 42 U.S.C. § 7412(d); and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

3.44. In addition, or as an alternative to the allegations in Paragraph 3.42 and 3.43, on July 6 and 7, 2017, and on dates before and since then, based on information and belief, Respondent was not operating and maintaining the M&D Digester and the equipment feeding black liquor to the M&D Digester in a manner consistent with safety and good air pollution control practices for minimizing emissions, in violation of 40 C.F.R. § 63.6(e); Condition F.6 of

the PTPC Title V Permit; Section 112 of the CAA, 42 U.S.C. § 7412(d); and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

3.45. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$47,357 per day of violation.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations and legal conclusions contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). After considering these factors, EPA has determined, and Respondent agrees, that an appropriate penalty to settle this action is \$342,000 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

Roylene Cunningham
U.S. Environmental Protection Agency
Region 10, 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Cunningham.roylene@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of 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 the Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States'

enforcement expenses, including but not limited to attorneys' 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 of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

May 15, 2019

FOR RESPONDENT:



Colin Fernie, President
Port Townsend Paper Corporation

DATED:

5/16/2019

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Enforcement & Compliance
Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2019-0071
)	
PORT TOWNSEND PAPER)	FINAL ORDER
CORPORATION,)	
)	
Port Townsend, Washington,)	
Respondent.)	

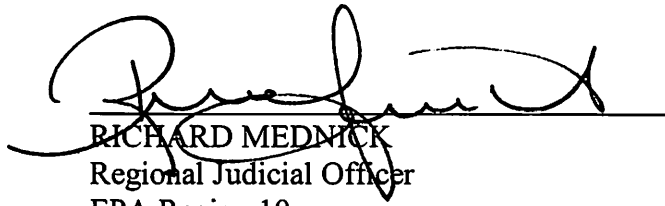
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 20th day of May, 2019.



RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Port Townsend Paper Corporation, Docket No.: CAA-10-2019-0071**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

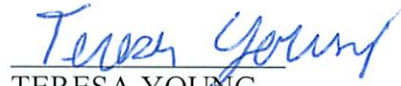
The undersigned certifies that a true and correct copy of the document was delivered to:

Julie Vergeront
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Krista McIntyre
Stoel Rives LLP
101 S. Capitol Boulevard, Suite 1900
Boise, Idaho 83702

DATED this 21 day of May 2019.


TERESA YOUNG
Regional Hearing Clerk
EPA Region 10