

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION III  
 1650 Arch Street  
 Philadelphia, Pennsylvania 19103-2029**

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 EPA REGION III

**IN THE MATTER OF:**

Air Products and Chemicals, Inc.  
 357 Marian Ave.  
 Tamaqua, Pennsylvania 18252  
  
 Respondent.

**Docket No. CAA-03-2015-0222**  
  
 Proceeding Pursuant to Sections  
 113(a) and (d) of the Clean Air  
 Act, as amended, 42 U.S.C.  
 § 7413(a) and (d).

**CONSENT AGREEMENT**

**I. Preliminary Statement**

This administrative Consent Agreement (the "Consent Agreement") is entered into by and between the Complainant, the Director of the Air Protection Division, United States Environmental Protection Agency, Region III ("EPA" or "Complainant"), and Air Products and Chemicals, Inc. (the "Respondent" or "Air Products"), pursuant to Sections 113(a) and (d) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7413(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (the "Consolidated Rules of Practice"). The Consolidated Rules of Practice at 40 C.F.R. § 22.13 provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be commenced and concluded simultaneously by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

Pursuant to Section 113(d)(1) of the CAA, § 7413(d)(1), the Department of Justice and EPA have jointly determined that although the violations set forth herein began more than twelve (12) months prior to initiation of this administrative action, this matter is nonetheless appropriate for an administrative penalty action.

This Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO") address alleged violations by Respondent of requirements found in 40 C.F.R. Part 63 Subpart JJJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources, which concern the timely filing of an Initial Notification and Notification of Compliance, as described below.

## **II. General Provisions**

1. Sections 113(a) and (d) of the Act, 42 U.S.C. § 7413(a) and (d), authorizes the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement, rule, plan, order, waiver, or permit promulgated, issued, or approved under Subchapters I, IV, V and VI [also referred to as Titles I, IV, V and VI] of the Act. The authority to issue the accompanying Final Order has been duly delegated to the Regional Judicial Officer, EPA Region III.
2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO and agrees not to contest EPA's jurisdiction with respect to the issuance, execution and enforcement of this Consent Agreement and the accompanying Final Order.
3. Except as provided in paragraph 2 above, Respondent neither admits nor denies the specific findings of fact and the conclusions of law set forth in this Consent Agreement and the accompanying Final Order.
4. Respondent consents to the issuance of this Consent Agreement and the accompanying Final Order, agrees to comply with the terms and conditions set forth therein, and consents to the payment of a civil penalty as set forth in this CAFO.
5. Respondent agrees to pay its own costs and attorney fees.
6. Respondent agrees that this Consent Agreement and the accompanying Final Order shall apply to, and be binding upon, Respondent, its officers, directors, servants, employees, agents, successors and assigns.

## **III. Findings Of Fact And Conclusions Of Law**

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law:

7. Respondent is a corporation organized under the laws of the Commonwealth of Pennsylvania.
8. Respondent is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), because it is a corporation.
9. Respondent owns and operates an industrial gas manufacturing plant located at 357 Marian Avenue, Tamaqua, Pennsylvania 18252 (the "Facility").
10. The Facility has two operational, oil-fired steam generators rated at 0.8 million British Thermal Units per hour ("MMBtu/hr"), one operational oil-fired steam generator rated at 6.7 MMBtu/hr, and one operational oil-fired steam generator rated at 1.7 MMBtu/hr. The Facility has one operational oil-fired hot water boiler rated at 0.73 MMBtu/hr, and one

operational oil-fired hot water boiler rated at 1.02 MMBtu/hr.

11. At all times relevant to the violations alleged in this Consent Agreement, Respondent has been the owner and operator of the Facility.
12. As described below, the Facility is subject to 40 C.F.R. Part 63, Subpart JJJJJ, entitled. “National Emissions Standards for Hazardous Air Pollutants for Industrial, Commercial and Institutional Boilers Area Sources (the “ICI area source boiler NESHAP” or “Part 63, Subpart JJJJJ”).
13. Part 63, Subpart JJJJJ applies to the owner or operator of “. . . an industrial, commercial, or institutional boiler as defined in § 63.11237 that is located at, or is part of, an area source of hazardous air pollutants (HAP), as defined in § 63.2, except as specified in § 63.11195.” 40 C.F.R. § 63.11193. Section 63.11195 lists several exemptions from Part 63, Subpart JJJJJ, none of which are applicable in this case.
14. Pursuant to 40 C.F.R. § 63.11237, an “*Industrial boiler* means a boiler used in manufacturing, processing, mining, and refining or any other industry to provide steam, hot water, and/or electricity.”
15. The six oil-fired boilers at the Facility are “industrial boilers” as that term is defined at 40 C.F.R. § 63.11237.
16. Pursuant to 40 C.F.R. § 63.2, an “*Area source* means any stationary source of hazardous air pollutants that is not a major source as defined in this part.” A “major source” is defined in 40 C.F.R. § 63.2 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, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.”
17. A “stationary source” is defined at Section 302(z) of the Act, 42 U.S.C. § 7602(z), as “. . . generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 7550 of this title.”
18. Hazardous Air Pollutant (“HAP”) is defined in 40 C.F.R. § 63.2 as “any air pollutant listed in or pursuant to section 112(b) of the Act.”
19. The six oil-fired boilers are stationary sources within a contiguous area and under common control which emit, or have the potential to emit, less than 10 tons per year of any HAP or less than 25 tons per year of any combination of HAPs. The six oil-fired boilers emit, among other HAPs, formaldehyde. The Facility is therefore an area source of HAPs.

20. In accordance with 40 C.F.R. § 63.11194(b), each oil-fired boiler at the Facility is an “existing source” because each boiler was constructed before June 4, 2010.
21. The six oil-fired boilers are an “affected source” per 40 C.F.R. § 63.11194(a)(1), because they are a collection of existing industrial, commercial, or institutional boilers within a subcategory listed in 40 C.F.R. § 63.11200 (oil), and defined at 40 C.F.R. § 63.11237, that is located at an area source.
22. Respondent, the owner or operator of six (6) existing affected oil-fired boilers, was required to submit an Initial Notification to EPA in accordance with the notification, reporting, and recordkeeping requirements found at 40 C.F.R. §§ 63.11225(a)(1) and (2) no later than January 20, 2014, or within 120 days after the source becomes subject to the standard. Respondent failed to meet this deadline and submitted its Initial Notification to EPA on December 22, 2014, a total of 336 days late, in violation of 40 C.F.R. § 63.11225(a)(1) and (2).
23. Respondent, the owner or operator of six (6) existing affected oil-fired boilers, was required to submit a Notification of Compliance to the EPA in accordance with the notification, reporting, and recordkeeping requirements found at 40 C.F.R. § 63.11225(a)(1) and (4) no later than July 19, 2014 which is 120 days after the March 21, 2014 date per 40 C.F.R. § 63.11196. Respondent failed to meet this deadline and filed its Notification of Compliance with EPA on June 15, 2015, a total of 331 days late, in violation of 40 C.F.R. § 63.11225(a)(1) and (4).

#### **IV. Settlement Recitation, Settlement Conditions, and Civil Penalty**

24. Complainant and Respondent enter into this Consent Agreement and the accompanying Final Order in order to settle the violations specifically set forth in Section III of this Consent Agreement.
25. In settlement of the alleged violations enumerated above in Section III of this Consent Agreement, Respondent consents to the assessment and agrees to pay a civil penalty in the amount of SEVENTEEN THOUSAND TWO HUNDRED AND EIGHTY DOLLARS (\$17,280.00) within the time and manner specified herein.
26. The settlement amount of SEVENTEEN THOUSAND TWO HUNDRED AND EIGHTY DOLLARS (\$17,280.00) is based upon Complainant’s consideration of and application of the statutory penalty factors set forth in Section 113(e) of the Act, 42 U.S.C. §7413(e), which include the size of the business, economic impact of the penalty, the violator’s full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, the payment of penalties previously assessed for same violation, the seriousness of violation and such other matters as justice may require, and EPA’s Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991), as indexed for inflation in keeping with 40 C.F.R.

Part 19 (Adjustment to Civil Monetary Penalties for Inflation). Complainant has determined that Respondent's payment of this civil penalty shall resolve the violations set forth in Section III of this Consent Agreement.

27. Respondent shall pay the civil penalty of SEVENTEEN THOUSAND TWO HUNDRED AND EIGHTY DOLLARS (\$17, 280.00) no later than thirty (30) days after the effective date of this Consent Agreement and accompanying Final Order in order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this Consent Agreement and accompanying Final Order.
28. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
29. Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of this executed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
30. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. §13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
31. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 40 C.F.R. §13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
32. Thus, in accordance with the above provisions, to avoid the assessment of interest, late payment penalties, and handling charges on the penalty set forth herein, Respondent must pay the full amount of the civil penalty, in the manner directed, within thirty (30) days of the effective date of this Consent Agreement and accompanying Final Order.
33. Payment of the penalty in Paragraph 25 shall be made by cashier's check, certified check, or electronic wire transfer, Automated Clearing House ("ACH"), or an on line, internet payment as specified below. All payments are payable to "Treasurer, United States of America" and shall reference the above case caption and docket number (CAA-03-2015-

0222).

34. Instructions for submitting payment of the penalty using the methods, or combination of methods, described above are provided at the following EPA website addresses:  
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>  
<http://www2.epa.gov/financial/makepayment>
35. Any payment made by any method must reference the above case caption and docket number, CAA-03-2015-0222. Within 24 hours of payment of any penalty amount, Respondent shall send copies of any corresponding check, or written notification confirming any electronic transfer through wire transfer, ACH, or internet payment, to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, to Dennis M. Abraham, Senior Assistant Regional Counsel (3RC10), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and to Chip Hosford (3AP20), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029.
36. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in, and any civil penalty amount paid pursuant to, this Consent Agreement and accompanying Final Order.
37. Payment of the penalty specified in Paragraph 25 in the manner set forth in this Consent Agreement and payment of any applicable interest, handling costs and/or late payment charges as set forth above shall constitute satisfaction of all civil claims for penalties for the specific violations alleged in Section III of this Consent Agreement. Compliance with this Consent Agreement and accompanying Final Order shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations administered by EPA.
38. Respondent's failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in referral of this matter to the United States Attorney for enforcement of this Consent Agreement and the accompanying Final Order in the appropriate United States District Court, in accordance with Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5).

#### **V. Reservation of Rights**

39. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in Section III of this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this Consent Agreement and Final Order be construed to limit the United States' authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the Act, the regulations

promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.

**VI. Effective Date**

40. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Consent Agreement and Final Order, following signature by the Regional Judicial Officer or Regional Administrator of Region III, is filed with the Regional Hearing Clerk of EPA Region III.

**VII. Waiver of Hearing**

41. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), with respect to any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the accompanying Final Order.

**VIII. Entire Agreement**

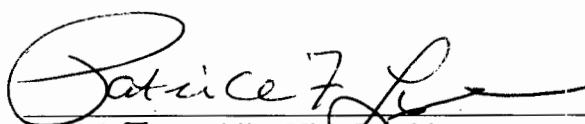
42. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the accompanying Final Order. Nothing in this Consent Agreement or the accompanying Final Order shall be construed to affect or limit in any way the obligation of Respondent to comply with all federal, state and local laws and regulations governing any activity required by this Consent Agreement and the accompanying Final Order.

**IX. Execution**

43. The person signing this Consent Agreement on behalf of Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Respondent, to the terms and conditions of this Consent Agreement and the accompanying Final Order.

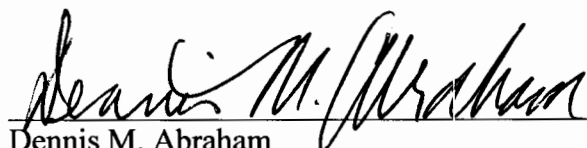
For the Respondent:

09/02/2015  
Date

  
Patrick F. Loughlin, Vice President  
Operations and Supply Chain Materials Technologies  
Air Products and Chemicals, Inc.

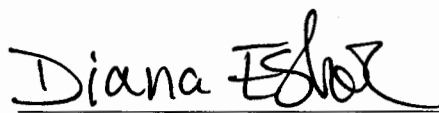
For the Complainant:

9-8-2015  
Date

  
Dennis M. Abraham  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III

Accordingly, the Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, ratify this Consent Agreement and issue the accompanying Final Order (CAA-03-2015-0222). The amount of the recommended civil penalty assessment is SEVENTEEN THOUSAND TWO HUNDRED AND EIGHTY DOLLARS (\$17, 280.00).

9/9/2015  
Date

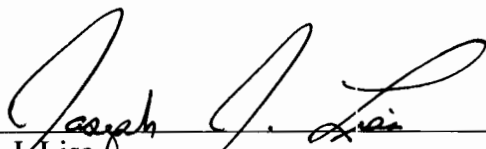
  
Diana Esher, Director  
Air Protection Division  
U.S. Environmental Protection Agency, Region III





The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: Sept. 16, 2015

  
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Joseph J. Lisa  
Regional Judicial Officer  
U.S. EPA, Region III