

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

REGIONAL HEARING CLERK
EPA REGION III, PHILA, PA
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IN THE MATTER OF:

Maryland Aviation Administration,)
a modal administration of the Maryland)
Department of Transportation of)
the State of Maryland)
Respondent.)
Baltimore/Washington International)
Thurgood Marshall Airport)
761 Elm Road, BWI Airport)
Maryland, 21240)
Facility.)

EPA Docket Number
CAA-03-2015-00234

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 the Maryland Aviation Administration, a modal Administration of the Maryland Department of Transportation of the State of Maryland (the "Respondent" or "MAA"), pursuant to Section 113(a) and (d) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7413(a) and (d), 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).

This Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO") address the alleged violations of a requirement found in a CAA Title V Operating Permit 24-003-00208, Section IV, Table IV-2.3A, issued to Respondent by the Maryland Department of the Environment ("MDE"), for the Baltimore-Washington International Thurgood Marshall Airport (the "Facility").

II. General Provisions

1. Section 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. EPA agrees to pay its own costs and fees incurred in settlement of this matter.
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. The Maryland Aviation Administration is a modal administration of the Maryland Department of Transportation. The Maryland Department of Transportation is a principal department of the government of the State of Maryland. The Maryland Aviation Administration is a modal administration and the unit of the Maryland Department of Transportation that owns and operates the Baltimore-Washington International Thurgood Marshall airport (the "Facility").

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 unit of a principal department of government of a State. At all times relevant to this Consent Agreement, Respondent has been the owner and operator of the Facility.
9. Title V of the CAA, 42 U.S.C. §§ 7661 – 7661f, established an operating permit program for major sources of air pollution. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to the Administrator a permit program meeting the requirements of Title V.
10. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), the Administrator promulgated regulations providing for the establishment of Title V permitting programs at 40 C.F.R. Part 70.
11. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.
12. EPA granted full approval to the Maryland Title V operating permit program on January 15, 2003, and the program became effective on February 14, 2003. *See* 68 Fed. Reg. 1974 (Jan. 15, 2003) (granting full approval to Maryland’s operating permits program). *See also* 61 Fed. Reg. 34733 (July 3, 1996) (granting interim final approval to Maryland’s operating permits program).
13. Section 113(d)(1) of the CAA limits the Administrator’s authority to matters where the first alleged violation occurred no more than 12 months prior to initiation of an administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.
14. The Administrator and the Attorney General, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.
15. The Maryland Department of Environment (“MDE”) is a Permitting Authority for Title V purposes as defined in Section 501(4) of the CAA, 42 U.S.C. § 7661(4).
16. Pursuant to COMAR 26.11.03.01(C), with certain exceptions which are not relevant here, “. . . an owner or operator of a Part 70 source may not operate the source after the time it is required to submit a timely and complete application unless the source is in compliance with a Part 70 permit issued under this chapter.” A “Part 70 Source” is defined in COMAR

- 26.11.02.01(B)(32) (recodified as 26.11.02.01(B)(33)) as, *inter alia*, a stationary source required to have a Part 70 permit pursuant to COMAR 26.11.03.01. A “major source” is included among those sources required to have a Part 70 permit by COMAR 26.11.03.01(A), and “major source” is defined to include a major stationary source, as defined in Section 302 of the CAA, that directly emits or has the potential to emit 100 tons per year or more of any air pollutant. *See* COMAR 26.11.02.01(C). The definition of “regulated air pollutant” includes Nitrogen Oxides (“NO_x”), Volatile Organic Compounds (“VOCs”) and any pollutant for which a national ambient air quality standard (“NAAQS”) has been promulgated. *See* COMAR 26.11.03(B)(44) (recodified as 26.11.02.01(B)(44)). “Potential to emit” means the maximum capacity of a stationary source to emit an air pollutant under its physical and operational design. COMAR 26.11.03(B)(41) (recodified as 26.11.02.01(B)(41)).
17. Respondent’s Facility emits or has the potential to emit more than 100 tons per year of NO_x, which is a “regulated air pollutant” under COMAR 26.11.03(B)(44) (recodified as 26.11.02.01(B)(44)).
 18. The Facility is a “major source” for Title V purposes, and a “major stationary source” as defined by COMAR 26.11.02.01(C) and Sections 302 and 501 of the CAA, 42 U.S.C. §§ 7602 and 7661(2).
 19. Respondent was issued a Title V Major Source Operating Permit, Permit Number 24-003-00208, by MDE, which became effective on February 1, 2009 and expired on February 1, 2014 (the “2009 Title V permit”). The current Title V Operating permit was issued on January 31, 2014, and expires on January 31, 2019.
 20. Respondent’s 2009 Title V permit contained a requirement that EU-9, a No. 2 fuel oil boiler used for heat and process steam, and located in building 123, be monitored for visible emissions (“VE”). Section IV of the 2009 Title V Permit, Table IV – 2.3A, entitled “Monitoring Requirements – Control of Visible Emissions,” requires, among other things, that Respondent “(1) [p]roperly operate and maintain the boilers in a manner to prevent visible emissions; and (2) verify no visible emissions when burning No. 2 fuel oil . . .” by performing “. . . a visual observation for a 6 minute period once for each 168 hours that the boiler burns oil . . .”. The 2009 Title V permit cites COMAR 26.11.03.06C as the basis for this permit condition.
 21. In accordance with the requirement of Section III (Plant Wide Conditions), Paragraph 9 (Compliance Certification Report) of the 2009 Title V permit, Respondent submitted a Title V compliance certification covering the period January 2013 through December 2013. This compliance certification reported failure to perform VE readings in compliance with the VE requirement in paragraph 20 above, for the EU-9 boiler for the periods 10/15/13 to 11/19/13, 11/27/13 to 12/17/13, and 12/25/13 to 12/31/13.
 22. Respondent’s Title V compliance report explained that it failed to do the weekly (every 168

hours) visible emissions reading for boiler EU-9 because a new manager accidentally programmed a work order for these VE readings to occur on a monthly basis in the “Maximo” work order system.

23. Respondent’s failure to perform the visible emission reading on boiler EU-9 from Oct 15, 2013 to November 19, 2013, from November 27, 2013 to December 17, 2013, and from December 25, 2013 to December 31, 2013, in accordance with the terms of its 2009 Title V permit, violates the requirements in Table IV – 2.3A of its Title V permit and therefore is also a violation of Section 502 of the CAA (and COMAR 26.11.03.01C).

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 resolve 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 \$20,484.00 within the time and manner specified herein.
26. The settlement amount of \$20,484.00 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 \$20,484.00 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 in connection with such civil penalty as described in this Consent Agreement and accompanying Final Order.
28. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3717, and 40 C.F.R. § 13.11(a), EPA is entitled to assess interest on outstanding debts owed to the United States. However, 40 C.F.R. § 13.11(b) and (c) exempt state and local governments from paying administrative costs and penalties on overdue debts. 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 interest on the outstanding 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. Thus, in accordance with the above provisions, to avoid the assessment of interest 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 CAFO.
31. 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-03-2015-00234).
32. 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>
33. Any payment made by any method must reference the above case caption and docket number, CAA-03-2015-00234. 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, and

Douglas Snyder, Esq., Senior Assistant Regional Counsel (3RC10),
U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and

Kristen Hall (3AP20), U.S. EPA Region III, Air Protection Division,
1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029.

34. Payment of the penalty specified in Paragraph 25 in the manner set forth in this Consent Agreement and payment of any applicable interest 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.
35. 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

36. 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

37. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Consent Agreement and Final Order is filed with the Regional Hearing Clerk of EPA Region III.

VII. Waiver of Hearing

38. 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

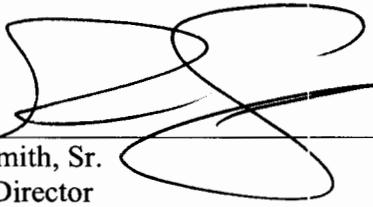
39. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those 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.

XI. Execution

40. The undersigned representatives of Respondent certify that s/he is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it, after obtaining the approval of the Maryland Board of Public Works. The approval of the Maryland Board of Public Works is indicated by Appendix A to this CAFO.

For the Respondent:

8/28/15
Date



Ricky D. Smith, Sr.
Executive Director
Maryland Aviation Administration

Approved as to form and legal sufficiency under laws of Maryland

August 28, 2015
Date

Robert J. Sager
Robert J. Sager
Assistant Attorney General

For the Complainant:

8/31/15
Date

Douglas J. Snyder
Douglas J. Snyder
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 and Presiding Officer, ratify this Consent Agreement and issue the accompanying Final Order. The amount of the recommended civil penalty assessment is \$20,484.00.

9/1/2015
Date

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

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

IN THE MATTER OF:)
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_____)

**EPA Docket Number
CAA-03-2015-00234**

**Proceeding Pursuant to
Sections 113(a) and (d)
of the Clean Air Act, as
amended, 42 U.S.C.
§ 7413(a) and (d)**

FINAL ORDER

Complainant, the Director of the Air Protection Division, U.S. Environmental Protection Agency, Region III, and Respondent, the Maryland Aviation Administration, a modal administration of the Maryland Department of Transportation of the State of Maryland, by its Executive Director, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Section 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon the consideration of, *inter alia*, 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, and the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

NOW, THEREFORE, PURSUANT TO Section 113 of the Clean Air Act, 42 U.S.C.

§7413, and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TWENTY THOUSAND FOUR HUNDRED EIGHTY FOUR DOLLARS (\$ 20,484)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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

Date: 9-3-2015



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. Environmental Protection Agency, Region III

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Certificate of Service

The undersigned hereby certifies that on the date shown below, one original of the fully-executed Consent Agreement and Final Order (CAFO) in this matter was filed with the Regional Hearing Clerk of EPA Region 3, and another original CAFO and a copy of the CAFO was sent to the following person by certified mail, return receipt requested, and by e-mail, to the address shown below:

Robert Sager., Esq.
Assistant Attorney General
Office of the Attorney General
Maryland Aviation Administration
P.O. Box 8766
BWI Airport MD 21240
Email: rsager@bwiairport.com

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Date 9/3/15

Douglas J. Snyder

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Assistant Regional Counsel