

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ENVIRONMENTAL APPEALS BOARD

IN THE MATTER OF )  
 )  
Johnson Controls, Inc. )  
 )  
Respondent )

Docket No. HQ-CAA-2008-6001

CONSENT AGREEMENT

I. Preliminary Statement

A. Complainant, the United States Environmental Protection Agency (EPA), and Johnson Controls, Inc., together with York International Corporation and Environmental Technologies, Inc., two Johnson Controls, Inc. companies (collectively Respondent or Johnson Controls, Inc.), having consented to the terms of this Consent Agreement and Final Order, (Agreement or CAFO), and before the taking of any testimony and without the adjudication of issues of law or fact herein, agree to comply with the terms of this Agreement and attached proposed Final Order, hereby incorporated by reference.

B. In late 2005, Johnson Controls, Inc. acquired four York International Corporation facilities located in Kansas, Oklahoma, Illinois, and Pennsylvania. Following this acquisition, Johnson Controls, Inc. voluntarily audited the fin press processing units in operation at the four York International Corporation facilities and identified potential Clean Air Act (CAA or Act) permitting violations in an audit report prepared by its environmental consultant and dated October 9, 2006.

C. Johnson Controls, Inc. acquired the assets of Environmental Technologies, Inc. and its Largo, Florida facility in late 2006. Based on an audit of the Largo, Florida facility in early 2007, Johnson Controls, Inc. identified potential CAA permitting violations at fin press processing units.

D. All of the fin press units for the facilities noted above are listed in Attachment A, hereby incorporated by reference into this Agreement.

E. On October 27, 2006, and February 16, 2007, pursuant to EPA's policy entitled *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (Audit Policy), 65 Fed. Reg. 19618 (April 11, 2000), Respondent submitted voluntary disclosures of potential CAA permitting violations for the facilities found in Attachment A.

F. Respondent submitted final audit reports to EPA in March 2007, resulting in a final list of disclosed violations, found in Attachment B, hereby incorporated by reference, which is the subject of this Agreement.

## II. Jurisdiction

A. The parties agree to the commencement and conclusion of this cause of action by issuance of this Agreement, as prescribed by EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, and more specifically by 40 C.F.R. § 22.13 and § 22.18(b), and Section 113(a) of the CAA, 42 U.S.C. § 7413(a).

B. Respondent agrees that Complainant has the jurisdiction to bring an administrative action, based upon the facts that Respondent disclosed concerning these violations, to compel compliance, and for the assessment of civil penalties pursuant to Sections 113(a)(1)(A) and (d)(4) of the CAA, 42 U.S.C. §§ 7413(a)(1)(A) and (d)(4).

C. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this Agreement and its right to seek judicial review of the Final Order accompanying this Agreement.

D. For purposes of this proceeding, Respondent admits that EPA has jurisdiction over the subject matter which is the basis of this Agreement.

E. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

F. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving violations that are older than 12 months is appropriate for an administrative penalty action. Such determination was made on June 2, 2008.

G. This Agreement serves as the Notice of Violation to Respondent as required by Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). In letters dated November 21, 2008, Complainant provided notice of these violations to the states of Kansas, Oklahoma, Pennsylvania, Illinois, and Florida as required by Section 113(a)(1) of the CAA.

H. Respondent has been afforded the opportunity to confer with EPA as provided by Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4). In addition, as provided for in Section 113(a)(4) of the CAA, this CAFO shall be non-renewable.

### III. Statements of Fact

A. Respondent is Johnson Controls, Inc., which is incorporated in the state of Wisconsin. Johnson Controls, Inc. is a manufacturer of residential, commercial, and industrial air conditioning and chilling equipment at over 25 locations internationally.

B. Respondent submitted voluntary disclosures to EPA on October 27, 2006, and February 16, 2007, pursuant to EPA's Audit Policy, disclosing potential violations of:

1. Requirements adopted as part of a state implementation plan (SIP) pursuant to Section 110 of the CAA, 42 U.S.C. § 7410;
2. Section 502 of the CAA, 42 U.S.C. § 7661a; and
3. Section 165 of the CAA, 42 U.S.C. § 7475.

C. Respondent hereby certifies and warrants as true the facts referenced in this Section.

D. Pursuant to EPA's Audit Policy, Respondent hereby certifies to the accuracy of the following facts upon which this Agreement is based:

1. the violations were discovered through an audit or through a compliance management system reflecting due diligence;
2. the violations were discovered voluntarily;
3. the violations were promptly disclosed to EPA in writing;
4. the violations were disclosed prior to commencement of an Agency inspection or investigation, notice of a citizen suit, filing of a complaint by a third party, reporting of the violations by a "whistle blower" employee, or imminent discovery by a regulatory agency;
5. pursuant to the Audit Policy, Respondent agrees, as part of this settlement, to correct all violations in Section IV; and Respondent is, to the best of its knowledge and belief, in full compliance with the CAA and the implementing regulations with respect to the violations of such Act found in Attachment B;
6. appropriate steps have been taken to prevent a recurrence of the violations;
7. the specific violations (or closely related violations) have not occurred within three years of the date of disclosure identified in Paragraph III (B) above, at the same facilities that are the subject of this Agreement, and have not occurred within five years of the date of disclosure identified in Paragraph III (B) above, as

part of a pattern at multiple facilities owned or operated by Respondent. For the purposes of subparagraph 7, a violation is:

(a) any violation of federal, state, or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, notice of violation, conviction or plea agreement; or

(b) any act or omission for which the regulated entity has previously received penalty mitigation from EPA or a state or local agency;

8. the violations have not resulted in serious actual harm nor presented an imminent and substantial endangerment to human health or the environment, and they did not violate the specific terms of any judicial or administrative Final Order or Agreement; and

9. Respondent has cooperated as requested by EPA.

#### IV. Conclusions of Law

##### CAA Prevention of Significant Deterioration Requirements at the Wichita, Kansas Facility

A. For purposes of this Agreement, Respondent is a person within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and operates stationary sources within the meaning of Section 302(z) of the CAA, 42 U.S.C. § 7602(z).

B. Part C, Title I of the CAA, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration (PSD) of air quality in those areas designated as in attainment with the National Ambient Air Quality Standards (NAAQS).

C. Section 165(a) of the CAA, 42 U.S.C. § 7475(a), prohibits the construction and subsequent operation of a major emitting facility in an area designated as in attainment with the NAAQS unless a PSD permit has been issued.

D. Section 169(1) of the CAA, 42 U.S.C. § 7479(1), defines a major emitting facility as a source with the potential to emit (PTE) of 250 tons per year (TPY) or more of any air pollutant.

E. Sections 110(a) and 161 of the CAA, 42 U.S.C. § 7410(a) and § 7471, require states to adopt a SIP that contains emission limitations, and such other measures as may be necessary, to prevent significant deterioration of air quality in areas designated as in attainment or unclassifiable.

F. A state may comply with Sections 110(a) and 161 of the CAA, 42 U.S.C. §§ 7410(a) and 7471, by having its own PSD regulations approved by EPA as part of its SIP, which must be at least as stringent as the regulations set forth in 40 C.F.R. § 51.166. Upon approval by EPA of a SIP, the state's requirements become federally enforceable.

G. On May 1, 1983, the state of Kansas PSD regulations became effective. The regulations appearing at 40 C.F.R. § 52.21 were incorporated into and approved by EPA as part of the Kansas SIP on December 11, 1984, and became effective on January 10, 1985. The original regulations were at K.A.R. 28-19-17. The current regulations can be found at K.A.R. 28-19-350 and were approved by EPA on February 26, 2003. (See 49 Fed. Reg. 48185 and 68 Fed. Reg. 8845)

H. The PSD regulations, at 40 C.F.R. § 52.21, incorporated into the Kansas SIP at K.A.R. 28-19-350, require major sources to obtain a permit to operate. Specifically, 40 C.F.R. § 52.21(j) requires that a major source in an attainment or unclassifiable area install and operate best available control technology (BACT) as defined in 40 C.F.R. § 52.21(b)(12) and 42 U.S.C. § 7479(3) for each pollutant regulated under the CAA.

I. Respondent's actual emissions of volatile organic compounds (VOCs), a pollutant regulated under the CAA, for 2006 from the fin press units were 241 TPY, with a PTE of 420.1 TPY. Therefore, Respondent was, at the time of the violation, a major source and was required to obtain a PSD permit under the state's federally approved SIP.

J. Based on information provided to Complainant by Respondent pursuant to the Audit Policy, Complainant hereby states and alleges that Respondent violated the CAA by failing to apply for and obtain the required PSD permit at its Wichita, Kansas facility in accordance with the PSD regulations under Part C, Title I of the CAA, 42 U.S.C. §§ 7470-7492, and in particular Section 165 of the CAA, 42 U.S.C. § 7475(a), 40 C.F.R. § 52.21, and K.A.R. 28-19-350. These requirements were approved by EPA as part of the Kansas SIP. (See 49 Fed. Reg. 48185 and 68 Fed. Reg. 8845)

#### CAA Title V Requirements at the Wichita, Kansas Facility

A. For purposes of this Agreement, Respondent is a person within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and operates stationary sources within the meaning of Section 302(z) of the CAA, 42 U.S.C. § 7602(z).

B. Sections 501-507 of the CAA, 42 U.S.C. §§ 7661a-7661f, (Title V), establish an operating permit program for certain sources, including major sources. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), on July 21, 1992, EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a permit program to be administered by any air pollution control agency. These regulations were codified at 40 C.F.R. Part 70. (See 57 Fed. Reg. 32250)

C. On February 29, 1996, EPA approved the state of Kansas's Title V permit program. The regulations appearing at 40 C.F.R. Part 70 were incorporated into and made a part of the Kansas SIP at the time of the activities giving rise to this action. The regulations can be found at K.A.R. 28-19-500, also referred to as the Kansas Operating Permit Program. Upon approval by EPA of the Kansas SIP, the state's requirements became federally enforceable. (See 61 Fed. Reg. 2938)

D. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and its implementing regulations at 40 C.F.R. Part 70, as well as the Kansas Operating Permit Program, have at all relevant times made it unlawful to operate a major source except in compliance with a permit issued by a permitting authority under Title V of the CAA, 42 U.S.C. §§ 7661-7661f, 40 C.F.R. § 70.1(b), and K.A.R. 28-19-500.

E. A major source is defined in Section 501 of the CAA, 42 U.S.C. § 7661(2), in 40 C.F.R. § 70.2 and in K.A.R. 28-19-200(kk) as, among other things, any source which directly emits or has a PTE of 100 TPY or more of any regulated air pollutant. VOCs, which are emitted by Respondent at its Wichita, Kansas facility, are listed as a regulated air pollutant under 40 C.F.R. § 70.2 and K.A.R. 28-19-200(bbb).

F. Respondent's actual emissions of VOCs for 2006 from the fin press units were 241 TPY, with a PTE of 420.1 TPY. These emission amounts render it a major source under Section 501 of the CAA, 42 U.S.C. § 7661(2), 40 C.F.R. § 70.2, and under K.A.R. 28-19-500.

G. Based on information provided to Complainant by Respondent pursuant to the Audit Policy, Complainant hereby states and alleges that Respondent violated the CAA by failing to apply for and obtain a Title V permit at its Wichita, Kansas facility in accordance with Title V of the CAA, 42 U.S.C. §§ 7661-7661f, 40 C.F.R. Part 70, and K.A.R. 28-19-500, as approved by EPA as part of the Kansas SIP. (See 61 Fed. Reg. 2938)

#### CAA Title V Requirements at the Norman, Oklahoma Facility

A. For purposes of this Agreement, Respondent is a person within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and operates stationary sources within the meaning of Section 302(z) of the CAA, 42 U.S.C. § 7602(z).

B. Title V of the CAA, 42 U.S.C. §§ 7661a-7661f, establishes an operating permit program for certain sources, including major sources. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), on July 21, 1992, EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a permit program to be administered by any air pollution control agency. These regulations were codified at 40 C.F.R. Part 70. (See 57 Fed. Reg. 32250)

C. On November 30, 2001, EPA approved the state of Oklahoma's Title V program. The regulations appearing at 40 C.F.R. Part 70 were incorporated into and made a part of the Oklahoma SIP at the time of the activities giving rise to this action. The regulations can be found at OAC 252:100-8-2 through 100-8-9, also referred to as the Oklahoma Permit Program. Upon approval by EPA of the Oklahoma SIP, the state's requirements became federally enforceable. (See 66 Fed. Reg. 63170)

D. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and its implementing regulations at 40 C.F.R. Part 70, as well as the Oklahoma Permit Program, have at all relevant times made it unlawful to operate a major source except in compliance with a permit issued by a permitting authority under Title V, 40 C.F.R. § 70.1(b), and OAC 252:100-8-4(b).

E. A major source is defined in Section 501 of the CAA, 42 U.S.C. § 7661(2), in 40 C.F.R. § 70.2 and in Oklahoma's Permit Program as, among other things, any source which directly emits or has a PTE of 100 TPY or more of any regulated air pollutant. VOCs, which are emitted by Respondent at its Norman, Oklahoma facility are listed as a regulated air pollutant under 40 C.F.R. § 70.2 and OAC 252:100-8-2.

F. Respondent's actual emissions of VOCs for 2006 from the fin press units at the Norman, Oklahoma facility were 73 TPY with a PTE of 207 TPY. These emission amounts render it a major source under Section 501 of the CAA, 42 U.S.C. § 7661(2), 40 C.F.R. § 70.2, and under Oklahoma's Permit Program.

G. Based on information provided to Complainant by Respondent pursuant to the Audit Policy, Complainant hereby states and alleges that Respondent violated the CAA by failing to apply for and obtain the required Title V permit at its Norman, Oklahoma facility in accordance with CAA Title V, 42 U.S.C. §§ 7661-7661f, 40 C.F.R Part 70, and OAC 252:100-8-2 through 252:100-8-9, as approved by EPA as part of the Oklahoma SIP. (See 66 Fed. Reg. 63170)

#### CAA Operating Permit at the East York, Pennsylvania Facility

A. For purposes of this Agreement, Respondent is a person within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and operates stationary sources within the meaning of Section 302(z) of the CAA, 42 U.S.C. § 7602(z).

B. Section 110(a)(1) of the CAA, 42 U.S.C. § 7410(a)(1), requires a state to submit a SIP to implement, maintain and enforce ambient air quality standards.

C. EPA approved the Pennsylvania construction and operating permit requirements as part of the SIP on July 30, 1996. Upon approval by EPA of Pennsylvania's SIP, the state's requirements became federally enforceable. (See 61 Fed. Reg. 39597)

D. Complainant hereby states and alleges that, based on the information supplied by Respondent to EPA pursuant to the Audit Policy, Respondent was required to apply for and obtain an operating permit in accordance with 25 PA Code § 127.402(a), but failed to do so. As such, Respondent has violated the federally approved Pennsylvania CAA SIP requirements by failing to apply for and obtain the required permit at its East York, Pennsylvania facility in accordance with 25 PA Code § 127.402(a).

CAA Operating Permit at the Dixon, Illinois Facility

A. For purposes of this Agreement, Respondent is a person within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and operates stationary sources within the meaning of Section 302(z) of the CAA, 42 U.S.C. § 7602(z).

B. Section 110(a)(1) of the CAA, 42 U.S.C. § 7410(a)(1), requires a state to submit a SIP to implement, maintain and enforce ambient air quality standards.

C. EPA approved the Illinois construction permit requirements as part of the SIP on May 31, 1972 and February 21, 1980. The state's operating permit program was approved as part of the SIP on December 17, 1992. Upon approval by EPA of the Illinois SIP, the state's requirements became federally enforceable. (See 37 Fed. Reg. 10862, 45 Fed. Reg. 11472, and 57 Fed. Reg. 59928)

D. Complainant hereby states and alleges that, based on the information supplied by Respondent to EPA pursuant to the Audit Policy, Respondent was required to apply for and obtain an operating permit in accordance with Illinois Admin. Code 201.143, but failed to do so. As such, Respondent has violated the federally approved CAA Illinois SIP requirements by failing to apply for and obtain the required permit at its Dixon, Illinois facility in accordance with Illinois Admin. Code 201.143.

CAA Operating Permit at the Largo, Florida Facility

A. For purposes of this Agreement, Respondent is a person within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and operates stationary sources within the meaning of Section 302(z) of the CAA, 42 U.S.C. § 7602(z).

B. Section 110(a)(1) of the CAA, 42 U.S.C. § 7410(a)(1), requires a state to submit a SIP to implement, maintain and enforce ambient air quality standards.

C. EPA approved revisions to the Florida SIP, allowing the state of Florida to issue operating permits to CAA sources on February 1, 1996. Upon approval by EPA of Florida's SIP, the state's requirements became federally enforceable. (See 61 Fed. Reg. 3572)

D. Complainant hereby states and alleges that, based on the information supplied by Respondent to EPA pursuant to the Audit Policy, Respondent was required to apply for and obtain an operating permit in accordance with F.A.C. 62-210.300, but failed to do so. As such, Respondent has violated the federally approved CAA Florida SIP requirements by failing to apply for and obtain the required permit at its Largo, Florida facility in accordance with F.A.C. 62-210.300.

V. Actions Taken To Return to Compliance

A. Respondent agrees to take, or has taken, the following actions to return to compliance with the CAA at the facilities identified herein.

B. As part of this settlement, Respondent has shut down four (4) fin press units, identified in Attachment A, at the Wichita, Kansas facility.

C. Respondent has, as part of this settlement, changed its fin press processes at the Wichita, Kansas and Norman, Oklahoma facilities to use aluminum sheets that have been pre-coated with a low VOC-containing lubricant, prior to being manufactured into components of air-conditioning units through stamping operations at the facilities. The fin press unit process change was completed at both facilities in August 2008.

D. As a result of the above actions, Respondent will reduce its VOC emissions from the fin press units listed in Attachment A as follows:

i. Wichita, Kansas: Respondent will reduce VOC emissions from 241 TPY of actual emissions to not more than 1.5 TPY of actual VOC emissions from its fin press units at the Wichita, Kansas facility listed in Attachment A.

ii. Norman, Oklahoma: Respondent will reduce VOC emissions from 72 TPY of actual emissions to not more than 1.6 TPY of actual VOC emissions from its fin press units at the Norman, Oklahoma facility listed in Attachment A.

E. Respondent will apply to the Kansas Department of Health and the Environment (KDHE) for both an underlying federally enforceable air permit, as well as a Title V permit, in accordance with K.A.R. 28-19-500 and K.A.R. 28-19-300 to incorporate the revised emission limits in Paragraph V.D.i. above within thirty (30) days from the effective date of the Final Order. Respondent's permit, once approved by KDHE, will contain emission levels of not more than 1.5 TPY of actual VOC emissions from the fin press units at the Wichita, Kansas facility listed in Attachment A.

F. Respondent shall maintain records documenting that the fin press units at the Wichita, Kansas facility do not emit, on a 12 month average basis, more than 1.5 TPY of actual VOC emissions. These records shall be updated no later than the first business day of the following

month for the previous month's usage following each consecutive 12-month period. These records shall include the amount of aluminum fin stock rolls used, the amount of lubricating oil used to coat the aluminum rolls and the VOC content of the lubricating oil. The VOC content of the lubricating oil shall be determined using material safety data sheets (MSDS) or any other record approved by KDHE. Respondent shall maintain such records at the facility for a period of three (3) years, and shall keep them available for inspection. Respondent shall report any exceedance of the limit within ten (10) business days to KDHE.

G. Respondent shall obtain from the supplier of the lubricating oil certification of the VOC content of the lubricating oil applied to the metal. Respondent shall obtain from the supplier of the aluminum rolls the quantity of material applied per unit surface area, and the quantity supplied, in units, of surface area on the fin stock roll.

H. Respondent must provide written notice and a copy of its revised permit application(s) to the U.S. EPA contact listed below at the same time it sends the revised application to KDHE.

I. Respondent will apply to amend its permit application for both an underlying federally enforceable air permit, as well as a Title V permit, with the Oklahoma Department of Environmental Quality (ODEQ) to incorporate the revised emission limits in Paragraph V.D.ii. above within thirty (30) days from the effective date of the Final Order. Respondent's permit, once approved by ODEQ, will contain emissions limits of not more than 1.6 TPY of actual VOC emissions from all of the fin press units at the Norman, Oklahoma facility listed in Attachment A.

J. Respondent shall maintain records documenting that the fin press units at the Norman, Oklahoma facility do not emit, on a 12 month average basis, more than 1.6 TPY of actual VOC emissions. These records shall include the amount of aluminum fin stock rolls used, the amount of the lubricating oil used to coat the aluminum rolls and the VOC content of the lubricating oil. Respondent shall maintain such records at the facility for a period of three (3) years.

K. Respondent must provide written notice and a copy of its permit application(s) to the U.S. EPA contact listed below at the same time it sends the revised application to ODEQ.

L. Respondent applied for and received a lifetime air operating permit from the Illinois Environmental Protection Agency for the fin press units referenced in Attachment A at its facility located in Dixon, Illinois in accordance with Illinois Admin. Code 201.143 Operating Permits for New Sources. Such permit was received on January 5, 2007.

M. Respondent applied for and received a CAA operating permit in accordance with F.A.C. 62-210.300 from the Florida Department of Environmental Protection for the fin press units referenced in Attachment A at its facility located in Largo, Florida on April 16, 2008.

N. Respondent applied for a CAA operating permit in accordance with 25 PA Code § 127.402(a) from the Pennsylvania Department of Environmental Protection for the fin press units referenced in Attachment A, at its facility located in East York, Pennsylvania on January 10, 2007. Respondent estimates that it will receive such permit in 2009.

#### VI. Civil Penalty

A. EPA agrees, based upon the facts and information submitted by Respondent and upon Respondent's certification herein to the veracity of this information, that Respondent has satisfied all of the conditions set forth in the Audit Policy for those violations described in Section IV above, and thereby qualifies for a 100% reduction of the gravity component of the civil penalty that otherwise would apply to these violations. Complainant alleges that the gravity component of the civil penalty for violations described in Section IV would ordinarily be \$1,500,000. EPA alleges that this gravity component is potentially assessable against Respondent for the violations described in Section IV. Pursuant to the Audit Policy, however, EPA will waive 100% of the gravity-based penalties assessable for the violations in Section IV.

B. Under the Audit Policy, EPA has discretion to assess a penalty equivalent to the economic benefit Respondent gained as a result of its noncompliance. Furthermore, under the Audit Policy, the Agency may waive economic benefit if it is determined to be insignificant. Based on information provided by Respondent and use of the Agency's economic benefit computer model, EPA has determined that Respondent obtained a de minimis economic benefit, as defined by the *Clean Air Act Stationary Source Civil Penalty Policy* (October 25, 1991), of less than \$5,000 as a result of its noncompliance in this matter. Based on the above, EPA will seek no penalty.

#### VII. Notice and Documentation

A. Respondent shall provide written notice and documentation within 30 (thirty) days from the date it applies for state permits with KDHE and ODEQ with the emission limits noted above. All written notice and documentation shall be submitted to the following individual:

Michael C. Calhoun  
U.S. Environmental Protection Agency  
Ariel Rios Building, Room 3121  
Mail Code 2248A  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Respondent may also submit notices and documentation required by this Agreement via electronic mail to EPA's contact noted above at: [calhoun.michael@epa.gov](mailto:calhoun.michael@epa.gov).

### VIII. Severability

A. As part of this Agreement, and in satisfaction of the requirements of the Audit Policy, Respondent has certified to certain facts. The parties agree that should EPA receive information that proves or demonstrates that these facts are other than as certified by Respondent, the portion of this Agreement pertaining to the affected facilities, including mitigation of the proposed penalty, may be voided or this entire Agreement may be declared null and void at EPA's election, and EPA may proceed with an enforcement action.

B. The parties agree that Respondent reserves all of its rights should this Agreement be voided in whole or in part. The parties further agree that Respondent's obligations under this Agreement will cease should this Agreement be rejected by the Agency's Environmental Appeals Board (EAB); provided, however, that in the event that the EAB expresses any objections to, or its intent to reject this Agreement, the parties agree that they shall exercise their mutual best efforts to address and resolve the EAB's objections.

### IX. Reservation of Rights

A. The Final Order, upon issuance by the EAB, and subsequent permit application submittals as required in Section V above, shall resolve only the federal civil claims alleged in this Agreement. Nothing in this Agreement or Final Order shall be construed to limit the authority of EPA and/or the United States to undertake any action against Respondent in response to any condition which EPA or the United States determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. Furthermore, except as specified in this paragraph, issuance of the Final Order does not constitute a waiver by EPA and/or the United States of its right to bring an enforcement action, either civil or criminal, against Respondent for any violation of federal or state statute, regulation, order, or permit.

### X. Other Matters

A. Each party shall bear its own costs and attorney fees in this matter.

B. The provisions of this Agreement and the Final Order, when issued by the EAB, shall apply to and be binding on the Complainant and the Respondent, as well as Respondent's officers, agents, successors and assigns. Any change in ownership or corporate status of the Respondent including, but not limited to, any transfer of stock, assets or real or personal property shall not alter Respondent's responsibilities under this Agreement, including the obligation to apply for state CAA permits at the Wichita, Kansas and Norman, Oklahoma facilities in accordance with Section V above.

C. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or regulations, nor shall it

restrict EPA's authority to seek compliance with any applicable laws, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit.

D. Except as provided in Section VIII(B), and subject to the terms of this Agreement, Respondent waives any rights it may have to contest the allegations contained herein and its right to seek judicial review of the Final Order accompanying this Agreement.

E. The undersigned representatives of each party to this Agreement certify that each is duly authorized by the party whom he represents to enter into these terms and bind that party to it.

FOR COMPLAINANT:



Bernadette Rappold, Director  
Special Litigation and Projects Division  
U.S. Environmental Protection Agency

7/24/09  
Date

FOR RESPONDENT:

C D M

C. David Myers, Vice President  
Johnson Controls, Inc.  
and  
President, Building Efficiency Business  
Johnson Controls, Inc.

6-26-09

Date

## ATTACHMENT A Fin Press Units

### Norman, OK In-Service

Fin Press	Serial Number
1	FP-3B-54-1966
2	FM4-100-54-66
3	SN-54-FP-3-1183
4	SN-48-FP-2-739
5	SN-FP-2-264
6	SN-FP-2-263
7	SN-54-FP-3-1444
8	54-FP-3B-1668

### Dixon, IL In-Service

Fin Press	Serial Number
1	F42-LP-150-1802

### Largo, FL In-Service

Fin Press	Serial Number
1	FF-4-984
2	48-FP-2-892
3	48-FP-2-360
4	FP-1-369

### East York, PA In-Service

Fin Press	Serial Number
1	48-FP-2-967
2	48-FP-2-187
3	SN-FP-1-A1228
4	SN-FP-1-832

### Wichita, KS In-Service

Fin Press	Serial Number
1	54-FP-3-1419
2	FP-3B-54-1938
3	FP-3B-1906
4	54-FP3-1443
5	FP-3B-54-1967
6	FP-2-173

### Four Fin Presses Removed from Service at Wichita, KS

Fin Press	Serial Number
1	SN-SP3-1072
2	FP-2-349
3	FP-4-54-1026
4	FP-3B-54-1966

**ATTACHMENT B-CAA Violations**

<b>Facility</b>	<b>Violation Description</b>	<b>Duration of Violation</b>
<p><b>Wichita, KS</b> York International 801 East 37th Street North Wichita, KS 67219</p>	<p>Violated the CAA by failing to obtain the required air permits in accordance with the PSD regulations under Part C, Title I and Title V of the CAA, 42 U.S.C. §§ 7470-7492 and §§ 7661-7661f, 40 C.F.R. §§ 52.21 and § 70.1(b), and K.A.R. 28-19-350 and 28-19-500.</p>	<p>1993 to May 2007  1996 to August 2008</p>
<p><b>Norman, OK</b> York International 5005 York Drive Norman, OK 73069</p>	<p>Violated the CAA by failing to obtain the required air permits in accordance with Title V of the CAA, 42 U.S.C. §§ 7661-7661f, 40 C.F.R. Part 70, and OAC 252:100-8-2 through 252:100-8-9.</p>	<p>2001 to January 2007</p>
<p><b>East York, PA</b> York International 1499 E. Philadelphia, St. York, PA 17403</p>	<p>Violated the CAA SIP requirements by failing to obtain the required air permits in accordance with 25 PA Code § 127.402(a).</p>	<p>1996 to January 2007</p>
<p><b>Dixon, IL</b> York International 1590 Dutch Road Dixon, IL 61021</p>	<p>Violated the CAA SIP requirements by failing to obtain the required air permits in accordance with Illinois Admin. Code 201.143.</p>	<p>2003 to January 2007</p>
<p><b>Largo, FL</b> Environmental Technologies 6750 Bryan Dairy Road Largo, FL 33777</p>	<p>Violated the CAA SIP requirements by failing to obtain the required air permits in accordance with F.A.C. 62-210.300.</p>	<p>1996 to April 2008</p>