

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2009 SEP 22 11:11:40
REGIONAL HEARING
CLERK

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IN THE MATTER OF

Eastman Kodak Company,
Rochester, NY,

Respondent

In a proceeding under Section 113(d)
of the Clean Air Act 42 U.S.C. § 7413(d)
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**CONSENT AGREEMENT
AND
FINAL ORDER**
CAA-02-2009-1212

Preliminary Statement

The United States Environmental Protection Agency (EPA) issues this Consent Agreement and Final Order (CAFO) under the authority of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 et seq., at 42 U.S.C. § 7413(d), Section 113(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 (Consolidated Rules of Practice). The Complainant in this matter is the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2. The Complainant is delegated the authority to issue CAA Section 113(d) Complaints and Consent Agreements on behalf of EPA Region 2, which includes the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands. The Regional Administrator of EPA Region 2 is duly delegated the authority to execute CAA Section 113(d) Final Orders.

On March 16, 2009, the U.S. Department of Justice (DOJ) granted EPA's request for a waiver of the CAA Section 113(d) 12-month limitation on EPA's authority to initiate an administrative action with respect to an action against Eastman Kodak Company (Kodak or Respondent).

Section 114 of the Act authorizes the Administrator to require owners or operators of emission sources to submit specific information regarding facilities, establish and maintain records, make reports, sample emission points, and to install, use and maintain such monitoring equipment or methods in order to determine whether any person is in violation of the Act.

Section 608 of the Act requires the EPA Administrator to promulgate regulations to reduce emissions of class I and class II ozone-depleting substances (ODS) or refrigerant containing chlorofluorocarbons (CFCs) into the atmosphere to the lowest achievable level by maximizing the recapture and recycling of refrigerants during the service, maintenance, repair, and disposal of appliances.

Pursuant to Sections 114 and 608 of the Act, EPA promulgated the emission standards for the servicing and disposal of air conditioning or refrigeration equipment containing ozone depleting refrigerants, 40 C.F.R. Part 82, Subpart F, 40 C.F.R. § 82.150 *et seq.* (CFC Regulations). Pursuant to 40 C.F.R. § 82.150(b), the CFC Regulations apply to any person servicing, maintaining, or repairing appliances. The CFC Regulations require repair of significant leaks, based on annual leak rates of equipment and require servicing records documenting the date, type of service, and quantity of refrigerant added.

Pursuant to 40 C.F.R. § 22.18(b), EPA is authorized to settle administrative enforcement actions provided they are commenced in accordance with 40 C.F.R. § 22.13(a) or (b). Pursuant to 40 C.F.R. § 22.13(a), any proceeding subject to the Consolidated Rules of Practice is commenced by filing with the Regional Hearing Clerk a complaint conforming to § 22.14. In accordance with §§ 22.13(a), and 22.18(b), EPA and Respondent enter into this Consent Agreement and propose the attached Final Order to resolve the violations alleged in the Complaint.

In this action, EPA finds that Respondent violated Sections 114, 608, and Title V of the Act, as well as provisions of the CFC Regulations, promulgated pursuant to Sections 114 and 608 of the Act, and conditions in its Title V Operating Permit issued pursuant to Section 504(a) of the Act, that include the CFC provisions as applicable requirements. EPA resolves all of these violations with the attached Final Order.

For purposes of this proceeding, and to avoid the expense of protracted litigation, Respondent: (1) admits that EPA has jurisdiction over the subject matter as alleged herein; (2) neither admits nor denies specific factual allegations contained in the Findings of Fact and Conclusions of Law in this Consent Agreement; (3) consents to the terms of agreement set forth in this Consent Agreement; and (4) consents to the issuance of the Final Order attached.

Findings of Fact and Conclusions of Law

1. Respondent is a person as the term is defined in Section 302(e) of the Act.
2. At all times relevant to this proceeding, Respondent is the owner and operator of the Kodak Park facility located in Rochester, New York (Facility), with a mailing address of 343 State Street, Rochester, New York 14650.
3. Respondent's Facility is subject to the CFC Regulations, promulgated pursuant to Sections 114 and 608 of the Act.
4. Respondent's Facility is subject to the conditions in its Title V Operating Permit.
5. The Amended Complaint alleged that Respondent violated 40 C.F.R. § 82.156(i)(3) and Condition 25 of the Facility's Title V Operating Permit by failing to conduct a follow-up verification test on the Industrial Refrigeration Machine Unit 26 for the April 12, 2004 leak, which was above 35% of the total charge during a 12-month period.
6. The Amended Complaint alleged that Respondent violated 40 C.F.R. § 82.156(i)(2) and Condition 25 of the Facility's Title V Operating Permit by failing to repair Industrial Refrigeration Machine Unit 26 for the December 27, 2005 leak, which was above 35% of the total charge during a 12-month period, to bring the leak rate below 35% of the total charge during a 12-month period within thirty (30) days where an industrial process shutdown is not needed.

7. The Amended Complaint alleged that Respondent violated 40 C.F.R. § 82.166(k) by failing to document how much R-22 was added to the Chilled Water Chiller Unit, Circuit #2 on May 8, 2006.
8. The Amended Complaint alleged that Respondent violated 6 NYCRR 201-6.5(e) and Condition 2-18 of the Facility's Title V Operating Permit by failing to identify intermittent compliance and certify intermittent compliance with the CFC Regulations.
9. Failure of an owner or operator of industrial process refrigeration (IPR) equipment to conduct a follow-up verification test within thirty (30) days of completing the repairs or within thirty (30) days of bringing the appliance back on-line, if taken off-line, but no sooner than when the appliance has achieved normal operating characteristics and conditions is a violation of the CFC Regulations and Sections 114, 608 and Title V of the Act.
10. Failure of an owner or operator of IPR containing more than fifty (50) pounds of refrigerant to have leaks repaired if an appliance is leaking at a rate such that the loss of refrigerant will exceed 35% of the total charge during a 12-month period, within thirty (30) days after discovery of the leak, or within thirty (30) days after when the leak should have been discovered is a violation of the CFC Regulations and Section 608 and Title V of the Act.
11. Failure of an owner/operator of IPR normally containing fifty (50) pounds or more of refrigerant to document the quantity of refrigerant added is a

violation of the CFC Regulations and Sections 114, 608 and Title V of the Act.

12. Failure to identify intermittent compliance and certify intermittent compliance with the CFC Regulations for the violations alleged above is a violation of Condition 2-18 of the Facility's Title V Operating Permit, 6 NYCRR 201-6.5(e), and Sections 114, 502 and 608 of the Act.

Consent Agreement

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

13. Respondent shall pay a civil penalty, pursuant to Section 113(d) of the Act, in the amount of sixty-three thousand seven hundred ninety-two dollars (\$63,792) either by cashiers' or certified check, within thirty (30) days from the date of issuance of the attached Final Order (Due Date). Respondent shall: (1) clearly type or write the docket number (CAA-02-2009-1212) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America;" and (3) send the check to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall send notice of payment to the following individuals:

Kenneth Eng, Air Compliance Branch Chief
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2
290 Broadway – 21st Floor
New York, New York 10007

and

Flaire Hope Mills, Air Branch Chief
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007

14. If Respondent fails to make full and complete payment of the \$63,792 penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

- i. Interest. If Respondent fails to make payment, or makes partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- ii. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- iii. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a

quarterly nonpayment penalty for each quarter during which such a 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.

15. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations of the Act set forth herein.
16. Respondent has read the Consent Agreement, finds it reasonable and consents to the terms and issuance as a Final Order.
17. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and other environmental laws, nor shall this CAFO affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
18. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement or the attached Final Order and explicitly waives its right to appeal the attached Final Order.
19. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

20. Each party to this CAFO shall bear its own costs and attorneys fees in this action resolved by this Consent Agreement.
21. This CAFO shall be binding on Respondent and its successors and assignees.
22. Each of the undersigned representative(s) to this CAFO certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and bind that party to it.

For Respondent:



Judith Carlson, Director
Worldwide Facility and
Property Management
Eastman Kodak Company

Date 9/9/09

For Complainant:



Dore LaPosta, Director
Division of Enforcement &
Compliance Assistance
United States Environmental
Protection Agency, Region 2

Date SEPTEMBER 15, 2009

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of Eastman Kodak Company CAA-02-2009-1212. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

DATE: 9/16/09



George Pavlou
Acting Regional Administrator
U.S. Environmental Protection
Agency – Region 2

In the Matter of Eastman Kodak Company, Docket No. CAA-02-2009-1212

CERTIFICATE OF SERVICE

I, Kara E. Murphy, certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees listed below:

Original and One Copy

By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency,
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by

Pouch Mail:

The Honorable Barbara A. Gunning
Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Copy by

FedEX – Next Day Delivery:

JoAnn Gould, Esq.
Senior Environmental Counsel
Harter Secrest & Emery, LLP
1600 Bausch & Lomb Place
Rochester, NY 14604

Dated: Sept. 22, 2009
New York, New York


Kara E. Murphy