



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 2
JUN 18 11 26 39
REGIONAL HEARING

June 18, 2010

JoAnn Gould
Harter Secrest & Emery
1600 Bausch & Lomb Place
Rochester, New York 14601-2711

Re: Consent Agreement and Final Order for the Kodak/Eastman Business Park

Dear Ms. Gould:

Enclosed is a copy of the signed Consent Agreement and Final Order for the above mentioned case. The Final Order has been signed and approved by our Regional Administrator. If you have any questions, please feel free to call me at (212) 637-3244 or e-mail me at orrell.nadine@epa.gov.

Sincerely,


Nadine Orrell
Assistant Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF

Eastman Kodak Company/Kodak Park
343 State Street
Rochester, NY 14650

Respondent

CWA SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER

Docket No. CWA-02-2009-3809

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket-number, in the following manner to the respective addresses below:


Original and One Copy By Hand:

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

Copy by Certified Mail, Return Receipt Requested:

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

JUN 1 8 2010
Date: _____


Secretary

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2
2010 JUN 16 PM 2:39
REGIONAL HEARINGS
CLERK

IN THE MATTER OF

Eastman Kodak Company/Kodak Park
343 State Street
Rochester, NY 14650

Respondent

CWA SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER

Docket No. CWA-02-2009-3809

CONSENT AGREEMENT

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by §§ 311(b)(6)(B) and 311(j)(1)(C) of the Clean Water Act (the "Act"), 33 U.S.C. §§1321(b)(6)(B) and 1321(j)(1)(C). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 2, who has in turn delegated these authorities to the Director of the Emergency and Remedial Response Division for Region 2 ("Complainant").

The Eastman Kodak Company ("Respondent") neither admits nor denies the allegations and findings contained in the Consent Agreement and Final Order ("CA/FO") and does not admit any liability to the United States arising out of the matters alleged in the CA/FO;

Complainant and Respondent have agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed as follows:

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Respondent is a corporation organized under the laws of the state of New Jersey and doing business in New York. The Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.
2. Respondent is the owner and operator, within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. §1321(a)(6), and 40 CFR §112.2, of an oil storage facility located at 1669 Lake Avenue in Rochester, New York ("the Facility").
3. Respondent is engaged in storing, consuming, blending, transferring, and distributing oil or oil products located at the Facility.
4. The Facility has an aggregate aboveground storage capacity of greater than 1320 gallons of oil in containers, with a shell capacity of at least 55 gallons.
5. The Facility is located in Eastman Business Park, formerly known as Kodak Park, in Rochester, New York, adjacent to the Genesee River. The Genesee River flows into Lake Ontario.
6. The Genesee River and Lake Ontario are navigable waters of the United States, subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.
7. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the

Act, 33 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.

8. The Facility is a non-transportation-related onshore facility within the meaning of 40 CFR §112.21, Appendix A, subject to 40 CFR Part 112, the Spill Prevention Control and Countermeasures Rule.

9. Section 311(j)(5)(A) of the Act, 33 U.S.C. § 1321(j)(5)(A), provides that the President shall issue regulations requiring each owner or operator of an onshore facility within the meaning of 40 CFR § 112.2, to submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance (a “Facility Response Plan” or “FRP”).

10. As an onshore facility within the meaning of 40 CFR § 112.2, the Facility is an “FRP facility,” subject to the Facility Response Plan Regulations contained in 40 CFR Part 112 and to the Facility Response Plan submission requirements of 40 CFR §§112.20 and 112.21.

11. On September 25, 2009, the Complainant issued an Administrative Complaint, Docket No. CWA-02-2006-3809, pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act , 33 U.S.C. 1321(b)(6)(B)(ii).

12. The September 25, 2009, Complaint alleged that the Respondent violated the SPCC and FRP regulations and proposed a civil penalty of \$157,100. The Complaint is herein incorporated by reference.

Waiver of Rights

13. Respondent waives the right to appeal any Final Order in this matter pursuant to Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. §1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

14. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

Jurisdiction

15. For the purpose of this proceeding, Respondent a) admits the jurisdictional statements contained herein; b) admits the jurisdictional allegations of the Complaint as applied to the Facility; and c) neither admits nor denies the specific factual allegations contained in the Complaint and Findings of Fact incorporated by reference herein.

Penalty

16. Respondent consents to the assessment of a civil penalty of \$88,000 (eighty-eight thousand dollars). Within forty-five (45) days of the signature date of the Final Order (at the end of this document), the Respondent shall pay the civil penalty by means of a cashier's or certified check, by wire transfer or by overnight mail.

Payment Terms

17. If paying by check, Respondent shall submit a cashier's or certified check made payable to "Environmental Protection Agency," noting on the check "AOSTLF-311" and docket number "ACWA-02-2008-3809". The check should be sent to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York at the following address:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency"

Overnight mail should be sent to the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

18. Respondent shall submit copies of the check or the wire transfer to:

Nadine Orrell, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007

and

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007

19. Failure by Respondent to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the total amount of the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

- a. If the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date;
- b. Pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. Section 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter;

- c. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
- d. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.


General Provisions

20. The provisions of the Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

21. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. §1321, or any promulgating regulations and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the total penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the Administrative Complaint.

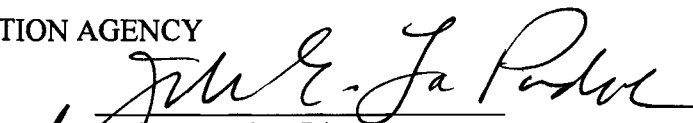
EASTMAN KODAK COMPANY

Date: 5/12/2010


Victor Dauksha, Manager
Environmental Waste Management Services
Eastman Kodak Company

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5/25/10


Walter Mugdan, Director
Emergency and
Remedial Response Division

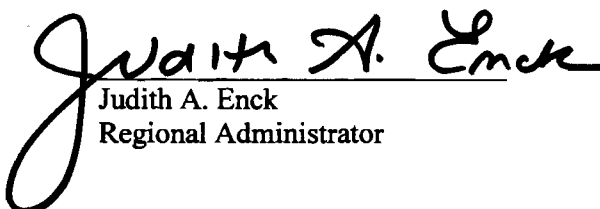
FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. §1321(b)(6) and the delegated authority of the undersigned, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, codified at 40 CFR Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties are adopted as Findings in this Final Order.

Respondent is ordered to comply with the terms of the Consent Agreement.

Date:

6/1/10


Judith A. Enck
Regional Administrator