



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 16 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:
(AE-17J)

Ken Malinowski, Vice President, Director of Operations
Flavorchem Corporation
1525 Brook Drive
Downers Grove, Illinois 60515

Dear Mr. Malinowski:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves Flavorchem Corporation's, docket number, CAA-05-2007-0008. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on MAY 16 2007.

Pursuant to paragraph [42] of the CAFO, Flavorchem Corporation must pay the civil penalty within 30 days of MAY 16 2007. Your check must display the case docket number, CAA-05-2007-0008, and the billing document number, 2750703A010.

Please direct any questions regarding this case to Christine Liszewski, Associate Regional Counsel, 312-886-4670 or Tanya Hurlburt, Environmental Scientist, 312-352-4145.

Sincerely yours,

A handwritten signature in cursive script that reads "Bonnie Bush".

Bonnie Bush, Section Chief
Air Enforcement and Compliance Assurance MI/WI Section

Enclosure

Cc: Karl A. Karg (with enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	Docket No.CAA-05-2007-0008
)	
Flavorchem Corporation)	Proceeding to Assess a Civil
Downers Grove, Illinois)	Penalty under Section 113(d)
)	of the Clean Air Act,
Respondent.)	42 U.S.C. § 7413(d)
_____)	
)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. Respondent is Flavorchem Corporation (Flavorchem), a corporation doing business in Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a Consent Agreement and Final Order (CAFO).

40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Flavorchem admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Flavorchem waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. On May 31, 1972, U.S. EPA approved Illinois Pollution Control Board (IPCB) Rule 103 as part of the federally enforceable state implementation plan (SIP) for Illinois. 37 Fed. Reg. 10862 (May 31, 1972).

10. IPCB Rule 103(a)(1) states that no person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source of air pollution

control equipment, without first obtaining a construction permit. Due to renumbering of the IPCB Rules, Rule 103 (a)(1), as approved by U.S. EPA, is currently set forth at 35 Illinois Administrative Code (IAC) § 201.142.

11. IPCB Rule 103(b)(1) states that no person shall cause or allow the operation of any new emission source or new air pollution control equipment, for which a construction permit is required, without first obtaining an operating permit. Due to renumbering of the IPCB Rules, Rule 103 (b)(1), as approved by U.S. EPA, is currently set forth at 35 IAC § 201.143.

12. IPCB Rule 101 defines a "new emission source" as any emission source that commences construction or modification on or after the effective date of this Chapter (April 14, 1972). Due to renumbering of the IPCB Rules, Rule 101, as approved by U.S. EPA, is currently set forth at 35 IAC § 201.102.

13. The Clean Air Act Amendments of 1990 authorized U.S. EPA to designate areas as nonattainment and to classify them according to degree of severity. Classification, in turn, triggered a set of control requirements designated to bring areas into attainment by their specified attainment dates.

14. Effective January 6, 1992, U.S. EPA designated areas for the national ambient air quality standards. 56 Fed. Reg. 56694 (November 6, 1991). This rulemaking set forth the attainment status, including designations and classifications

for selected areas affected by ozone, carbon monoxide, particulate matter and lead.

15. Effective January 6, 1992, DuPage County of Illinois was designated as a "severe" nonattainment area for the 1-hour ozone standard. 56 Fed. Reg. 56694 (November 6, 1991).

16. On April 30, 2004, U.S. EPA published the 8-hour ozone designations for all areas of the country. 69 Fed. Reg. 23858 (April 30, 2004).

17. Under the 8-hour ozone standard, DuPage County of Illinois has been designated as a moderate nonattainment area for ozone, effective June 15, 2004.

18. Effective June 15, 2005, U.S. EPA revoked the 1-hour ozone standard and deferred to the new 8-hour ozone standard. 70 Fed. Reg. 44470 (August 3, 2005).

19. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act.

20. Section 503(c) of the Act, 42 U.S.C. § 7661b(c), sets forth the requirement to timely submit an application for a permit, including required information.

21. 40 C.F.R. § 70.5(a) provides that an owner or operator shall submit a timely and complete permit application in accordance with Part 70 requirements.

22. 40 C.F.R. § 70.7(b) provides that no source subject to Part 70 requirements may operate without a permit as specified in the Act.

23. A source subject to Part 70 requirements includes, among other things, any "major source." 40 C.F.R. § 70.3.

24. 40 C.F.R. § 70.2 defines a "major source" for ozone nonattainment areas as, a source with the potential to emit 100 tons per year (tpy) or more of volatile organic compounds (VOCs) or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme.

25. U.S. EPA granted final interim approval of the Illinois Title V program on March 7, 1995 (60 Fed. Reg. 12478), and the program became effective on that date. U.S. EPA granted final full approval of the Illinois Title V program effective November 30, 2001. See 40 C.F.R. Part 70, Appendix A.

26. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for SIP and Title V permit violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that

occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

27. Section 113(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.

28. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations

29. Flavorchem owns and operates a manufacturing facility at which it produces flavoring extracts, syrups and food colorings. Flavorchem's facility is located at 1525 Brook Drive in Downers Grove, DuPage County, Illinois (the Facility).

30. Flavorchem has operated, among other things, a north wet mix area and coffee press, a south wet mix area and cocoa press, a spray dryer, a dry mix room with small mixers, a dry mix room with a mega-mixer, a fragrance room, a packaging room, a bean dryer and vanilla concentrator at the Facility.

31. From August 23 through August 26, 2005, and on September 15, 16 and 30, 2005, October 14, 2005 and November 18, 2005, Flavorchem performed emissions testing for particulate matter and VOCs at the emission sources described in paragraph 30, above.

32. Air emission calculations from the testing described in paragraph 31, above, show that Flavorchem has the potential to emit greater than 25 tpy of VOCs and that typical operations result in actual VOC emissions of approximately 18 tpy.

33. Based on the results of the emissions testing conducted by Flavorchem, the areas described in paragraph 30, above, are "emission sources" as defined at 35 IAC § 201.102.

34. Flavorchem is subject to the construction and operating permit requirements of 35 IAC §§ 201.142 and 201.143.

35. Based on the results of the emissions testing conducted by Flavorchem, Respondent was a "major source" of VOCs as defined at 40 C.F.R. § 70.2 prior to U.S. EPA's revocation of the 1-hour ozone standard.

36. As a major source of VOCs prior to June 15, 2005, Flavorchem was subject to the Title V permit requirements in Sections 502 and 503 of the Act, 42 U.S.C. §§ 7661a and 7661b, and 40 C.F.R. §§ 70.7(b) and 70.5(a).

37. In an October 10, 2006 letter, Flavorchem submitted a Clean Air Act Permit Program (CAAPP) application to the

Illinois Environmental Protection Agency (IEPA). In an October 23, 2006 letter, IEPA notified Flavorchem that it has determined that the CAAPP application is complete.

Violations

38. Flavorchem failed to obtain construction and operating permits for the emission sources described in paragraph 30, above, in violation of IPCB Rules 103(a)(1) and 103(b)(1) (currently set forth at 35 IAC §§ 201.142 and 201.143).

39. Flavorchem failed to timely submit an application for a Title V permit in violation of Section 503(c) of the Act, 42 U.S.C. § 7661b(c), and 40 C.F.R. § 70.5(a).

40. Flavorchem operated without a Title V operating permit, in violation of Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b).

Civil Penalty

41. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Flavorchem's cooperation with U.S. EPA, Flavorchem's good faith efforts to comply and other relevant factors, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$75,025.00.

42. Flavorchem must pay the \$75,025.00 civil penalty by cashier's or certified check payable to the "Treasurer, United

States of America," or by Electronic Funds Transfer (EFT) within 30 days after the effective date of this CAFO.

43. Flavorchem must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

or remit funds by EFT to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is: "D 68010727
Environmental Protection Agency."

44. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Christine Liszewski, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

45. This civil penalty is not deductible for federal tax purposes.

46. If Flavorchem does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

47. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Flavorchem will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Flavorchem will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Final Statement

48. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.

49. Except as set forth in paragraph 48, above, this CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

50. This CAFO does not affect Flavorchem's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraphs 48 and 49, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

51. Flavorchem certifies that it submitted a complete CAAPP application to IEPA and will be in full compliance with the permitting requirements in the Illinois SIP upon issuance of a permit by IEPA.

52. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Flavorchem's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

53. The terms of this CAFO bind Flavorchem, and its successors, and assigns.


54. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

55. Each party agrees to bear its own costs and attorneys' fees in this action.

56. This CAFO constitutes the entire agreement between the parties.

U.S. Environmental Protection Agency, Complainant

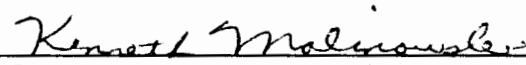
5/2/07
Date



Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

Flavorchem Corporation, Respondent

4/23/07
Date




Flavorchem Corporation
1525 Brook Drive
Downers Grove, Illinois 60515

CONSENT AGREEMENT AND FINAL ORDER
Flavorchem Corporation
Docket No. CAA-05-2007-0008

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

5/3/07



Mary A. Gade *for*
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

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CHICAGO, ILLINOIS

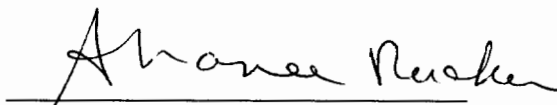
CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2007-0008 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Flavorchem Corporation and Flavorchem Corporation's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Ken Malinowski, Vice President, Director of Operations
Flavorchem Corporation
1525 Brook Drive
Downers Grove, Illinois 60515

Karl A. Karg, Esq.
Latham and Watkins, LLP
Sears Tower, Suite 5800
233 South Wacker Drive
Chicago, Illinois 60606-6401

on the 16th day of May, 2007.



Shanee Rucker
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 70010320000601988881

RECEIPT NUMBER: _____