



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

March 31, 2015

APR 01 2015 1:56 PM
REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

VIA OVERNIGHT MAIL

Christopher Kerns, Esquire
Fort Myer Construction Corporation
2237 33rd Street, NE
Washington, D.C. 20018-1594

Re: Fort Myer Construction Corporation, EPA Docket No. CAA-03-2015-0040

Dear Chris:

Enclosed, please find the final Consent Agreement and Consent Order resolving the above-referenced matter. Pursuant to the Consent Order, payment of the penalty plus interest shall be made within thirty (30) days of the effective date of the Order. The effective date of the Order is the date on which the Order was filed with the Regional Hearing Clerk, in this case March 30, 2015.

Payment of the penalty shall be made as specified in section IV of the Consent Agreement. At the same time that any payment is made, mail copies of any corresponding check, or written notification confirming any electronic wire transfer to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and to me at the above-referenced address. The written notification to the Regional Hearing Clerk and to me should reference the above case caption and docket number.

Thank you for your cooperation in settling this matter. If you have any questions, I can be reached at (215) 814-2607.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Boehmcke".

Daniel E. Boehmcke
Senior Assistant Regional Counsel
EPA Region III

Enclosure

Customer Service Hotline: 1-800-438-2474

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

RECEIVED
2015 MAR 31 PM 1:56
REGIONAL HEARING OFFICE
PHILADELPHIA, PA

IN RE: :
Fort Myer Construction Corporation : Docket No. CAA-03-2015-0040
2237 33rd Street, NE :
Washington, DC 20018 :
Respondent : Proceeding Under the Clean Air Act,
: Section 113(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 Respondent, Fort Myer Construction Corporation (“Fort Myer” or the “Respondent”), 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 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”) addresses violations set forth herein, which occurred at Respondent’s asphalt plants (Plant #1 & Plant #2) located in Washington D.C. Asphalt Plant 1 is located at 2001 5th Street N.E. in Washington, D.C.; and Asphalt Plant 2 is located at 1155 W Street, N.E. in Washington, D.C. (collectively, 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 Consent Agreement and Final Order 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.
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

7. 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:
8. Respondent is a corporation doing business in the District of Columbia. Respondent is headquartered at 2237 33rd Street, NE, Washington, D.C. 20018, and operates asphalt manufacturing plants located at 2001 5th Street Northeast in Washington, D.C.; and at 1155 W Street, N.E. in Washington, D.C.
9. Respondent is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Asphalt Plant 1

10. Asphalt Plant 1 is a batch, hot mix asphalt facility which, as of April, 2012, manufactured virgin asphalt products for use in paving and construction.
11. The District of Columbia's District Department of the Environment ("DDOE") issued Respondent Title V Operating Permit #028 (the "Plant 1 Title V Permit"), with an effective date of April 25, 2000, which regulates emissions from Asphalt Plant 1. The initial Title V Permit for Asphalt Plant 1 expired on April 25, 2005. Respondent has filed a permit renewal application. The renewal application has not been acted on by DDOE as of this date. Pursuant to Chapter 20 of the District of Columbia Municipal Regulations ("20 DCMR") Section 303.3(c), "If a timely and complete application for a permit renewal is submitted, but the Mayor fails to take final action to issue or deny the renewal permit before the end of the term of the previous permit, then the permit shall not expire until the renewal permit has been issued or denied." Accordingly, Plant 1 Title V Permit is still in force, and all terms thereof are enforceable.
12. EPA granted final interim approval of the District of Columbia's Title V operating permit program on August 7, 1995 (60 FR 40101). EPA granted full final approval of the District of Columbia's Title V operating permit program on April 16, 2003 (68 FR 18581).
13. On April 24, 2012, duly authorized representatives of the EPA conducted a CAA compliance evaluation at Asphalt Plant 1 pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414.

Annual Particulate Matter Emissions Testing for Asphalt Plant 1

14. Condition C.1.a.(4) of the Plant 1 Title V Permit requires that "Permittee must test for particulate matter emissions once a year in order to demonstrate compliance with the particulate matter emission limit of 0.03 grains [20 DCMR 603.1]. Test must be done in accordance with 40 CFR 60.93(b) using U.S. EPA's Reference Method 5 and [20 DCMR 502.5]."
15. 40 CFR § 60.93(b) states that "The owner or operator shall determine compliance with the particulate matter standards in § 60.92 as follows:
 - (1) "Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf).

Method 9 and the procedures in § 60.11 shall be used to determine opacity."
16. Performance tests conducted under 40 C.F.R. Part 60 must be conducted under conditions based on representative performance of the affected facility. See 40 C.F.R. § 60.8(c).

17. Condition B.1.a. of the Plant 1 Title V Permit provides that the Rotary Kiln burner located at Plant 1 "... is permitted to burn natural gas. Whenever gas supply is interrupted, burner KB-1 can burn fuel oil #2...."
18. D.C. Operating Permit #3452, issued March 18, 1993, gives "Permission to construct and operate a 240 tons per hour asphalt batch plant".
19. The Method 5 stack tests and Method 9 particulate emissions observations conducted by Respondent at Asphalt Plant 1 in 2010 and 2011 were run while combusting natural gas; but at an operating rate significantly below (less than 75% of) the permitted rate of 240 tons per hour ("tph"). Specifically, the tests were conducted at approximately 144 tph or 60% of the permitted rate on August 26, 2010; and 140 tpy or 58% on April 20, 2011.
20. Condition C.1.a.(3) of the Plant 1 Title V Permit provides that "...Regardless of recording or reporting no opacity violation during a year, Permittee will conduct a minimum of one visible emissions test for emission unit KB-1. Any visible emissions test must consist of 30 minutes opacity observations, performed by a certified opacity reader using the U.S. EPA's Reference Method 9 (see 40 CFR Part 60, Appendix A, Method). The visible emissions test will be performed for each stack while burner providing flue gas to that stack fire #2 fuel oil [20 DCMR 502]."
21. Respondent conducted annual Method 9 visible emissions observations for 2010 and 2011 only while firing natural gas in the observed unit. Respondent did not conduct any Method 9 visible emissions tests of unit KB-1 while the unit was combusting #2 fuel oil.
22. Respondent's failure to comply with the Title V Permit's annual particulate matter emissions testing requirements at Asphalt Plant 1 constitutes a violation of Sections 113 and 502(a) of the Clean Air Act, 42 U.S.C. §§ 7413 and 7661a(a).

Installation of New Reclaimed Asphalt Product Equipment
at Asphalt Plant 1 Without a Permit to Construct

23. Pursuant to Condition M of the of the Plant 1 Title V Permit, the "Permittee shall not initiate construction, installation, or modification of any equipment or facility which emits or controls air pollutants prior to obtaining a construction permit from the District in accordance with 20 DCMR 200, and a revision of the operating permit (Title V) in accordance with 20 DCMR 300."
24. During the EPA inspection of Asphalt Plant 1 conducted on April 24, 2012, EPA personnel confirmed that new equipment for processing reclaimed asphalt product ("RAP") had been installed. The RAP processing equipment is a potential source of particulate emissions. As of the date of the April 24, 2012 EPA inspection, Respondent had not submitted an application for a Chapter 2 Permit to Construct to DDOE.

25. Respondent's failure to comply with the requirement of Title V Permit Condition M to obtain a Permit to Construct prior to construction of RAP processing equipment at Asphalt Plant 1 constitutes a violation of Sections 113 and 502(a) of the Clean Air Act, 42 U.S.C. §§ 7413 and 7661a(a).

Records of Daily Observations for Asphalt Plant 1

26. Condition C.1.a.(3) of the Plant 1 Title V Permit provides that the "Permittee will conduct daily observations of emissions from each emission unit that is being operated. If emissions are visible, Permittee must report the occurrence to the District and make arrangements for opacity observation by a certified person...."

27. Condition D.2. of the Plant 1 Title V Permit provides that "To demonstrate compliance with the terms of this permit, Permittee must do the following [20 DCMR 302.1(c)(B)]:

Keep records of visible emissions observations and tests showing date/time of tests, test results, corrective actions taken, if any, and submit results in semi-annual and annual certification reports."

28. Condition F.1. of the Plant 1 Title V Permit provides that, "Where applicable to the monitoring, reporting or testing requirements of this permit, Permittee shall keep records as shown below [20 DCMR 301.1(c)(2)(A) (I-vi)]:

- a. the date, place as defined in permit, and time of sampling or measurements;
- b. the date(s) analyses were performed;
- c. the company or entity that performed the analyses;
- d. the analytical techniques or methods used;
- e. the results of such analyses; and
- f. the operating conditions as existing at the time of sampling or measurement.

29. Condition F.2. of the Plant 1 Title V Permit provides that, "Permittee must keep and maintain records of all testing results, monitoring information, records and reports required by this permit for a period of at least five years from the date of such test, monitoring sample, measurement or report."

30. Respondent did not record and/or keep and maintain records of daily observations of emissions from each emission unit that is being operated at Asphalt Plant 1. Respondent provided EPA copies of some of the monthly log sheets maintained for the Facility. The monthly log sheets include a single space for facility personnel to record the "Appearance of the Stack" and another space for facility personnel to record the "Gen'l Plant Appearance." On each of the proffered monthly sheets, at most one observation for the appearance of the stack and one observation of the general plant appearance were recorded in the designated spaces on the monthly log sheet. In no case were records of daily observations reflected on the monthly log sheets provided to EPA.

31. Respondent failed to provide any other records demonstrating compliance with the requirements to make and keep records of daily visible emissions observations at Plant 1 for the years 2009 & 2010, as required by Conditions C.1, D.2, F1, and F2 of the Title V Permit.
32. Respondent's failure to comply with the Title V Permit's daily visible emissions reading and record-keeping requirements at Asphalt Plant 1 constitutes a violation of Sections 113 and 502(a) of the Clean Air Act, 42 U.S.C. §§ 7413 and 7661a(a).

Records of the Daily Pressure Drop Readings Across the Baghouse at Asphalt Plant 1

33. Condition D.3. of the Plant 1 Title V Permit states, "Keep a log of routine maintenance operations of the baghouse consistent with the manufacturers specifications including monitoring pressure drops across the bags daily, ...The information must be maintained at the facility, and any deviations from normal pressure drops must be justified and reported."
34. At the time of the April 24, 2012 EPA inspection, Respondent was unable to provide records for the years 2009 and 2010 to show compliance with daily monitoring of pressure drops across the baghouse, as required by Condition D.3 of the Title V Permit.
35. Respondent's failure to comply with the Title V Permit's requirement to keep records of daily monitoring of pressure drops across the baghouse at Asphalt Plant 1 constitutes a violation of Sections 113 and 502(a) of the Clean Air Act, 42 U.S.C. §§ 7413 and 7661a(a).

Asphalt Plant 2

36. Asphalt Plant 2 is a continuous counter-flow drum hot mix asphalt plant that manufactures both virgin and reclaimed asphalt products. Emission sources at the plant include a 95.63 million British Thermal Units per hour ("MMBTU/hr") dual fuel fired burner; a 2.1 MMBTU/hr natural gas fired oil heater; and a baghouse to control emissions from operations.
37. DDOE issued Title V Operating Permit #030 with an effective date of April 25, 2000 for Asphalt Plant 2 (the "Asphalt Plant 2 Title V Permit"). However, the Asphalt Plant 2 Title V Permit regulated emissions for the Asphalt 2 as constituted prior to its shut-down in 2008, rebuild and re-commencement of operations in a new configuration in 2009.
38. In November 2010, Respondent submitted to DDOE an application for a revised Title V Permit for the new Asphalt Plant 2. DDOE has reviewed the application and drafted a revised Title V Permit for the new Asphalt Plant 2 (Title V Permit #030), but has not to date issued as a final revised Asphalt Plant 2 Title V Permit.
39. DDOE issued "Temporary Permit #6166 to Construct a Hot Mix Asphalt Plant at Fort Myer Plant #2" on March 30, 2009. This permit was to construct an asphalt plant including a

Gencor Ultra II-135 oil and gas fired burner rated at 95.63 MMBTU/hr rated heat input, and a Gencor Ultraflo baghouse. This permit expired on April 30, 2009.

40. DDOE issued a final "Permit #6166 to Construct a Hot Mix Asphalt Plant at Fort Myer Plant #2" on May 11, 2009.
41. DDOE issued "Permit #6166 to Operate a Hot Mix Asphalt Plant at Fort Myer Construction Plant #2" on November 17, 2009. This permit (the "Plant 2 Operating Permit") was the effective permit at the time of the inspection.
42. The Plant 2 Operating Permit was issued pursuant to the District's SIP operating permit program, contained at 20 DCMR [Section] 200 et seq., which is part of the federally approved and enforceable provisions of the District of Columbia Municipal Regulations as incorporated into the District of Columbia State Implementation Plan ("D.C. SIP"). See 40 C.F.R. § 52.470 et seq.
43. Pursuant to 40.C.F.R. § 52.23, failure to comply with any approved regulatory provision of a State implementation plan, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the State implementation plan, shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act.
44. On April 24, 2012, EPA conducted an air compliance evaluation at Asphalt Plant 2.
45. On August 8, 2013, EPA issued a Notice of Violation to Respondent for violations of the D.C. SIP at the Facility.

Operating the Process Using Reclaimed Asphalt Pavement
at Rates over 20% by Weight

46. In the Plant 2 Operating Permit, Condition III(b) provides that "The Permittee is prohibited from the production, mixing, storage, use or application of cutback asphalt at this facility. Reclaimed asphalt pavement (RAP) may be used in the process at rates up to 20% by weight."
47. In the Plant 2 Operating Permit, Condition IV(b) provides that "The Permittee shall monitor the hot mix asphalt production and associated production rate and RAP usage rate to ensure compliance with Conditions III(a) and (b) of this permit."
48. In the Plant 2 Operating Permit, Condition V(b)(3) states that "Records of the total tons of RAP used in the process each day shall be recorded and divided by the total tons of asphaltic

concrete produced that day to determine the daily average percentage RAP used. This percentage shall also be recorded.”

49. On at least the following 33 days, Respondent operated the process at rates above the maximum allowable permitted RAP of 20% by weight during the period from April 12, 2010 through December 30, 2011:

2010

April 12, 13, & 19

May 7 & 22

September 16, 18, & 23

December 1;

2011

February 15, 16, & 17

March 11, 16, & 17

April 8, 13, 21, 22, 25, 26, & 27

May 1

June 2, 6, & 22

July 5 & 6

October 19 & 30

November 4 & 28

December 16, 2011.

50. Respondent’s failure to comply with the limitation on the operation of Asphalt Plant 2 by operating Asphalt Plant 2 with more than the maximum allowable permitted percentage of RAP as set forth in Plant 2 Operating Permit Condition III(b) constitutes a violation of the Plant 2 Operating Permit, 40 C.F.R. § 52.23 and Section 113 of the Clean Air Act, 42 U.S.C. § 7413.

Operating the Asphalt Plant 2 Baghouse with
Differential Pressure Outside the Permitted Range

51. In the Plant 2 Operating Permit, Condition III(d)(1) provides that “The baghouse shall remain operative or effective, and shall not be removed. [20 DCMR 107.1] In order to ensure that this occurs the following steps shall be implemented:
- (1) The differential pressure across the bags shall be maintained between 2 and 4 inches of water (or other range that has received written approval from the District based on a future submission justifying such change).”
52. In the Plant 2 Operating Permit, Condition IV(g) provides that “The Permittee shall monitor the differential pressure across the baghouse to ensure compliance with Condition III(d)(1)

of this permit. If the differential pressure drifts outside the specified range, action shall be taken to identify the problem and correct it promptly.”

53. Plant 2 Operating Permit Condition V(b)(6) provides, “At least once each day, the differential pressure across the baghouse shall be recorded. Any readings outside the range specified pursuant to Condition III(d)(1) shall include an explanation of what was done [sic] diagnose and correct the deviation.”
54. Respondent provided to EPA the monthly log sheets for the Plant 2 baghouse for the period from July 2009 through April 2012. These monthly log sheets included recordings of daily pressure differential readings required by Plant 2 Operating Permit Conditions IV(g) and V(b)(6) for some, but not all, dates.
55. Respondent failed to demonstrate compliance with the requirement of Plant 2 Operating Permit Conditions IV(g) and V(b)(6) to record the differential pressure drop across the bags for days for which there was no reading for such days indicated on the monthly log sheets and no corresponding notation documenting whether the plant operated on those days.
56. The differential pressure readings recorded from July 2009 through April 2012 showed that almost all of the readings recorded (except for approximately 20 days) were below the minimum differential pressure of two (2) inches of water required by Plant 2 Operating Permit Condition III(d)(1).
57. Respondent failed to operate the Asphalt Plant 2 baghouse with differential pressure within the range permitted by Plant 2 Operating Permit Condition III(d)(1).
58. Respondent’s failure to comply with Plant 2 Operating Permit Conditions III(d)(1), IV(g) and V(b)(6) constitutes a violation of the Plant 2 Operating Permit, 40 C.F.R. § 52.23 and Section 113 of the Clean Air Act, 42 U.S.C. § 7413.

Records of Weekly Observations

59. Plant 2 Operating Permit Condition IV(m) provides “The Permittee shall conduct weekly observations of visible emissions from the outlet of the baghouse and shall perform a walk-through of the plant to identify any sources of fugitive visible emissions....”
60. Plant 2 Operating Permit Condition V(b)(9) requires that “Records of the results of the weekly visible emissions observations required under Condition IV(m) shall be maintained and updated at the time of the observations.”
61. Respondent did not record weekly observations of emissions from each emission unit that is being operated at Asphalt Plant 2. Respondent provided EPA copies of some of the monthly log sheets maintained for the Facility. The monthly log sheets include a single space for facility personnel to record the “Appearance of the Stack” and another space for facility personnel to record the “Gen’l Plant Appearance.” On each of the proffered monthly sheets,

at most one observation for the appearance of the stack and one observation of the general plant appearance were recorded in the designated spaces on the monthly log sheet. On the provided log sheets Respondent recorded a monthly statement of cleanliness of the plant on the log sheets rather than weekly observations of visible emissions from the plant walk-through. In no case were records of weekly observations reflected on the monthly log sheets provided to EPA.

62. Respondent's failure to comply with the requirement of Plant 2 Operating Permit Condition V(b)(9) to record weekly visible emissions observations at Asphalt Plant 2 constitutes a violation of a violation of the Plant 2 Operating Permit, 40 C.F.R. § 52.23 and Section 113 of the Clean Air Act, 42 U.S.C. § 7413.

Records of Activities Undertaken at Asphalt Plant 2 to Correct
Observed Visible Emissions Violations

63. Plant 2 Operating Condition II(e) provides that, with exceptions not relevant here, visible emissions shall not be emitted into the outdoor atmosphere from Asphalt Plant 2.
64. Plant 2 Operating Condition II(f) provides that no gases shall be discharged into the atmosphere which exhibit greater than 20 percent opacity or greater as measured by EPA Reference Method 9 ("Method 9") to determine compliance with Conditions II(e) and II(f).
65. Plant 2 Operating Permit, Condition IV(n) requires that visible emissions observed at Asphalt Plant 2 be reported to DDOE. The Permittee is then required to either shut the process down and make any necessary repairs/adjustments to correct the incidence, or make arrangements for prompt observation by an individual certified in accordance with EPA Reference Method 9 to determine compliance.
66. Plant 2 Operating Permit Condition V(b)(10) requires that "Records of the activities undertaken to determine compliance or correct problems pursuant to Condition IV(n) shall be maintained."
67. Plant 2 Operating Permit Condition V(a) provides that, "The Permittee shall maintain all records necessary for determining compliance with this permit in a readily accessible location for five (5) years and shall make these records available to the Department upon written or verbal request."
68. On at least eight dates, Respondent's monthly log sheets for Asphalt Plant 2 include written statements in the space on the log sheet provided for indicating the "Appearance of Stack," that the opacity of the emissions plume from the Asphalt Plant 2 baghouse stack was 20% or greater. These recorded observations for the dates indicated below did not include any statements documenting whether the process was shut down and repaired or adjusted to correct the incidence, or that EPA Reference Method 9 Visible Emissions Evaluations were conducted as required by Plant 2 Operating Permit Condition IV(n), which is a violation of Plant 2 Operating Condition V(b)(10):

<u>Date</u>	<u>Stack Appearance</u>
2-18-12	20% opacity
1-06-12	20% opacity
12-03-11	30% opacity
11-17-11	20% opacity
8-06-11	25% opacity
7-08-11	20% opacity
6-06-11	20% opacity
6-14-10	20% opacity

69. Respondent's failure to comply with the requirement of Plant 2 Operating Permit Condition V(b)(10) to keep records of activities undertaken at Asphalt Plant 2 to correct observed visible emissions violations or document resumption of compliance constitutes a violation of the Plant 2 Operating Permit, 40 C.F.R. § 52.23 and Section 113 of the Clean Air Act, 42 U.S.C. § 7413.

Annual Visible Emissions Test of Asphalt Plant 2 Baghouse Stack

70. Plant 2 Operating Condition IV(o) requires that "At least once per calendar year, during operation of the process equipment, the Permittee shall cause to be conducted a visible emissions test of the outlet of the baghouse....The visible emissions test will be performed while the burner is firing #2 fuel oil. [20 DCMR 502]"
71. Condition V(b)(11) requires that "Records of the results of all visible emissions testing performed under Condition IV(o) shall be maintained."
72. No visible emissions tests were performed while firing #2 fuel oil during the years 2010 and 2011. Method 9 observations were performed while combusting natural gas on April 20, 2010 and April 19, 2011. Respondent did not combust any #2 fuel oil during these observations.
73. Respondent's failure to conduct annual visible emissions testing of the Asphalt Plant 2 baghouse stack while firing #2 fuel oil as required by Plant 2 Operating Permit Condition IV(o) constitutes a violation of the Plant 2 Operating Permit, 40 C.F.R. § 52.23 and Section 113 of the Clean Air Act, 42 U.S.C. § 7413.

IV. Settlement Recitation, Settlement Conditions, and Civil Penalty

74. Respondent herein certifies to Complainant EPA that upon investigation, to the best of its knowledge and belief, all violations alleged in this Consent Agreement have been remedied.
75. Complainant and Respondent enter into this Consent Agreement and the accompanying

Final Order in order to settle and resolve all violations set forth in Section III of this Consent Agreement.

76. 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 Thirty Thousand Dollars (\$30,000.00) within the time and manner specified herein.
77. The settlement amount of Thirty Thousand Dollars (\$30,000.00) 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 constitute full and final satisfaction of the violations set forth in Section III of this Consent Agreement.
78. Respondent shall pay the civil penalty of Thirty Thousand Dollars (\$30,000.00) 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, administrative costs, and late payment penalties in connection with such civil penalty as described in this Consent Agreement and accompanying Final Order.
79. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. 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 late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
80. 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).

81. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. §13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period in which the penalty remains unpaid.
82. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 40 C.F.R. § 13.11(e). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
83. Payment of the civil penalty set forth in Paragraph 76, above, 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-03-2015-0040).
84. All checks shall be made payable to Treasurer, United States of America and shall be mailed to the attention of:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000
Contact: (513) 487-2105.

Overnight deliveries shall be sent to:

U.S. Environmental Protection Agency
Government Lockbox 979077
Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: (314) 418-1028.

All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA = 02130004
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”

Payments through ACH (also known as REX or remittance express) shall be directed to:

U.S Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking
33 Liberty Street
New York, N.Y. 10045

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737
Contact: 866-234-5681

85. An on-line, internet payment option, is also available through the United States Department of Treasury. This payment option can be accessed from www.pay.gov. Enter sfo 1.1 in the search field. Open form and complete required fields.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

86. All payments made by check also shall reference the above case caption and docket number, CAA-03-2015-0040. At the same time that any payment is made, copies of any corresponding check or written notification confirming any electronic transfer through wire transfer, ACH, or internet payment shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, to Daniel E. Boehmcke, Senior Assistant Regional Counsel (3RC10), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and to Theresa Horgan (3AP20), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029.

87. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in, and any civil penalty amount paid pursuant to, this Consent Agreement and accompanying Final Order.
88. Payment of the penalty specified in Paragraph 76, above, in the manner set forth in this Consent Agreement and payment of any applicable interest, handling costs and/or late payment charges as set forth above shall constitute satisfaction of all civil claims for penalties for the specific violation 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.
89. 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. Additionally, Respondent's failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in the assessment of additional interest, penalties and/or late payment penalty charges.

V. Reservation of Rights

This Consent Agreement and the accompanying Final Order resolve only the civil 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

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

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.

VII. Entire Agreement

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.

IX. Execution

The person signing this Consent Agreement on behalf of Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Respondent, to the terms and conditions of this Consent Agreement and the accompanying Final Order.

For the Respondent:

3-17-2015
Date:



Lewis F. Shrensky, Executive Vice President
Fort Myer Construction Corporation

For the Complainant:

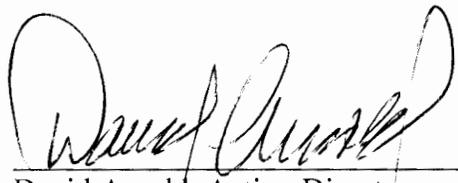
3/23/15
Date



Daniel E. Boehmcke
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 Officer, ratify this Consent Agreement and issue the accompanying Final Order. The amount of the recommended civil penalty assessment is Thirty Thousand Dollars (\$30,000.00).

3/24/2015
Date



David Arnold, Acting 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 RE:

Fort Myer Construction Corporation : Docket No. CAA-03-2015-0040
2237 33rd Street, NE :
Washington, DC 20018 :
Respondent :
: Proceeding Under the Clean Air Act,
: Section 113(a) and (d)

FINAL ORDER

The terms of the forgoing Consent Agreement are hereby accepted by the undersigned and incorporated into this Final Order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT, 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, Respondent, Fort Myer Construction Corporation, is assessed a civil penalty of Thirty Thousand Dollars (\$30,00.00).

The effective date of this Final Order is the date that it is filed with the Regional Hearing Clerk.

3-30-15
Date:



Heather Gray
Regional Judicial Officer
U.S. Environmental Protection Agency
Region III

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

IN RE:

Fort Myer Construction Corporation : Docket No. CAA-03-2015-0040
2237 33rd Street, NE :
Washington, DC 20018 :
Respondent : Proceeding Under the Clean Air Act,
Section 113(a) and (d)
:

CERTIFICATE OF SERVICE

I hereby certify that the original and true and correct copies of the foregoing Consent Agreement and Final Order were hand delivered to the Regional Hearing Clerk, and delivered via e-mail and overnight mail, to the following persons:

Christopher Kerns, Esquire
Fort Myer Construction Corporation
2237 33rd Street, NE
Washington, D.C. 20018-1594

3/31/15
Date



Daniel E. Boehmcke
Senior Assistant Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

Subject: In Re: Fort Myer Construction Corporation
EPA Docket No. CAA-03-2015-0040
CAA Consent Agreement and Final Order

From: Mary Coe *Mary Coe*
Acting Regional Counsel (3RC00)

David Arnold, Acting Director *David Arnold*
Air Protection Division (3AP00)

To: Heather Gray
Regional Judicial Officer (3RC00)

In accordance with 40 C.F.R. §§ 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, the attached Consent Agreement and Final Order (“CAFO”) simultaneously commences and resolves claims against Fort Myer Construction Corporation (“Respondent”). The basis of the CAFO is Respondent’s failure to comply with the Clean Air Act (“CAA”), and provisions of Respondent’s CAA Title V Operating Permit, the District of Columbia State Implementation Plan (the “D.C. SIP”), and operating permits issued by the District of Columbia (“D.C.”) pursuant to the D.C. SIP at Respondent’s asphalt manufacturing plants, located at 2001 5th Street N.E. in Washington, D.C. (“Asphalt Plant 1”); and at 1155 W Street, N.E. (“Asphalt Plant 2”) in Washington, D.C. (collectively, the “Facility”).

The specific provisions alleged to have been violated include failure to comply with the Title V Permit’s annual particulate matter emissions testing requirements at Asphalt Plant 1; failure to comply with the requirement of the Title V Permit Condition to obtain a Permit to Construct prior to construction of recycle asphalt product (“RAP”) processing equipment at Asphalt Plant 1; failure to comply with the Title V Permit’s requirement to keep records of daily monitoring of pressure drops across the baghouse at Asphalt Plant 1; failure to comply with the limitation on the operation of Asphalt Plant 2 by operating Asphalt Plant 2 with more than the maximum allowable permitted percentage of RAP as set forth in the D.C. issued Plant 2 Operating Permit; failure to comply with the D.C. issued Plant 2 Operating Permit Conditions regarding the required pressure drop for the baghouse at Asphalt Plant 2; failure to comply with the requirement of the D.C. issued Plant 2 Operating Permit to record weekly visible emissions observations at Asphalt Plant 2; failure to comply with the requirement of the D.C. issued Plant 2 Operating Permit to keep records of activities undertaken at Asphalt Plant 2 to correct observed

visible emissions violations or document resumption of compliance; and failure to conduct annual visible emissions testing of the Asphalt Plant 2 baghouse stack while firing #2 fuel oil as required by the D.C. issued Plant 2 Operating Permit.

For purposes of achieving full settlement of the violations alleged in Section III, EPA has determined that a civil penalty of thirty thousand dollars (\$30,000) is appropriate. As explained in Section IV of the CAFO, this penalty is based upon EPA's consideration of a number of factors, including but not limited to the statutory factors set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), which include: the seriousness of the violations, the duration of the violations, and Respondent's compliance history and good faith efforts to comply. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's Clean Air Act Stationary Source Civil Penalty Policy, and adjusted for inflation pursuant to 40 C.F.R. Part 19.

As required by CAA Section 113(d)(1), 42 U.S.C. § 7413(d)(1), because the initial violations alleged in the CAFO occurred more than one year prior to the initiation of this administrative penalty action, EPA Region III has sought and received approval from the United States Department of Justice, with concurrence from EPA's Air Enforcement Division in the Office of Enforcement and Compliance Assurance, to proceed with the present action.

All Final Orders must be signed by the Regional Administrator. *See* 40 C.F.R. § 22.18(c). On June 7, 1995, the Regional Administrator of EPA Region III delegated this authority to the Regional Judicial Officer. *See* EPA Delegation No. 7-6-A, 1200 TN RIII-06.

Based on the foregoing, we recommend that you sign the attached Final Order and return it to the Daniel Boehmcke of the Office of Regional Counsel for further processing.

Attachment

cc: Christopher Kerns, Fort Myer Construction Corporation