



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

JUN 05 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7003 0500 0003 0873 3380

Winfred T. Colbert
Attorney
Coordinator, Global Environmental Health
& Safety Law Department
The Goodyear Tire & Rubber Company
1144 East Market Street, Dept. 822
Akron, Ohio 44316-0001

Re: Consent Agreement and Final Order
Docket Number CAA-06-2007-3324

Dear Mr. Colbert:

Enclosed is a copy of the fully executed Consent Agreement and Final Order (CAFO) that has been filed in the above-referenced case. Please note that payment of the civil penalty of Forty Five Thousand One Hundred and Thirty Three Dollars (\$45,133) is due 30 days after your receipt of this CAFO.

If you have any questions regarding this matter, please contact Carlos Zequeira at 214-665-8053.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Blevins".

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED

2009 JUN -9 AM 11:52

REGIONAL HEARING CLERK
EPA-REGION VI

IN THE MATTER OF:

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DOCKET NO. CAA-06-2007-3924

THE GOODYEAR TIRE & RUBBER CO.
BEAUMONT, TEXAS

CONSENT AGREEMENT AND
FINAL ORDER

RESPONDENT

CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 (EPA) as Complainant, and The Goodyear Tire & Rubber Company, located in Beaumont, Texas (hereinafter Respondent), in the above-referenced action, have consented to the terms of this Consent Agreement and Final Order (CAFO).

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this CAFO.

I.
PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties authorized by Section 113(d) of the Clean Air Act, as amended (CAA or the Act), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b) and 22.34.

2. This CAFO alleges Respondent violated regulations promulgated pursuant to the Act.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific factual allegations contained herein.

4. Respondent consents to the assessment of the civil penalty set forth in paragraph 37 below and further agrees that it will pay the stated civil penalty in the amount and by the method set out in this CAFO.

5. Respondent waives any right to contest the allegations in this CAFO and also waives its right to appeal the Final Order set forth herein.

6. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

7. Nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

8. Respondent hereby certifies that, as of the date of its execution of this CAFO, it has corrected the violations alleged herein, and is now, to the best of its knowledge, in compliance with all the requirements of the Act.

9. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

10. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns, including, but not limited to, subsequent purchasers.

11. Pursuant to §113(a)(3)(A) of the Act, 42 U.S.C. § 7413(a)(3)(A), the Administrator of EPA may issue an administrative penalty order in accordance with subsection (d) of this section

when the Administrator finds that any person has violated requirements of the Act.

12. Section 113(d)(1) of the Act also authorizes EPA to bring an administrative penalty action where the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that a matter is appropriate for administrative action.

13. The U.S. Department of Justice and EPA have jointly determined that an administrative action is appropriate for the violations alleged herein and have, therefore, waived the limit on the age of the violations, pursuant to § 113(d) of the Act, 42 U.S.C. § 7413(d).

14. Pursuant to 40 C.F.R. § 22.31(a), the Final Order herein constitutes the final agency action in this proceeding.

II.

STATUTORY AND REGULATORY BACKGROUND

15. Pursuant to Section 129 of the CAA, 42 U.S.C. § 7429, EPA promulgated the approval and promulgation of State Plans for designated facilities and pollutants regulations found at 40 C.F.R. Part 62. Among these regulations, one is the Federal Plan for Commercial and Industrial Solid Waste Incineration (CISWI) Units that Commenced Construction on or before November 30, 1999, found at 40 C.F.R. Part 62, Subpart III (Subpart III).

16. Subpart III establishes emission requirements and compliance schedules for the control of emissions from CISWI units that are not covered by an EPA approved and currently effective State or Tribal plan. 40 C.F.R. § 62.14500(a).

17. EPA has authority under Section 113 of the CAA to pursue civil penalties for

violations of the regulations found in Subpart III.

18. At all times relevant, 40 C.F.R. § 62.14660 provides standards of performance for testing regulated incinerators.

III.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

19. Respondent is a corporation organized under the laws of the State of Ohio and is authorized to do business in the State of Texas.

20. The Respondent is a corporation doing business in the State of Texas and is a “person” as that term is defined in § 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of § 113(d) of the Act, 42 U.S.C. § 7413(d).

21. Respondent owned and operated a stand-alone Consumat solid waste incinerator located at Interstate Highway 10 Southwest at Smith Road, Beaumont, Jefferson County, Texas (Facility).

22. Respondent’s Consumat incinerator was subject to requirements of Subpart III.

IV.
VIOLATION

23. According to 40 C.F.R. § 62.14500(b), “you” in Subpart III means the owner or operator of a CISWI unit.

24. 40 C.F.R. § 62.14660 states, “You must conduct an initial performance test, as required under 40 C.F.R. § 60.8, to determine compliance with the emission limitations in Table 1 of this subpart and to establish operating limits using the procedure in § 62.14635 or § 62.14640.”

25. According to 40 C.F.R. § 62.14665, the initial performance test must be conducted no later than 90 days after the CISWI's final compliance date.

26. The final compliance date was October 4, 2004, as set forth in 40 C.F.R. § 62.14535(a)(3); therefore, the initial performance test was required to be conducted by no later than January 2, 2005.

27. On September 21 and 22, 2004, Respondent conducted an initial performance test on its CISWI unit in accordance with 40 C.F.R. § 62.14660.

28. On December 17, 2004, Respondent submitted its initial performance test results indicating that the reported sulfur dioxide emission of 49.5 parts per million by dry volume measured at 7 percent oxygen (ppmdv @ 7% O₂) was over the allowable standard of 20 ppmdv @ 7% O₂ set forth in Table 1 to Subpart III.

29. After evaluating the first initial performance test results, Respondent decided to not operate its CISWI unit (or "incinerator") and informed EPA of its decision.

30. However, Respondent stated that it subsequently operated the incinerator in May 2005 using a reduced waste feedstock based on engineering process knowledge and calculations such that operation of the incinerator would be below the allowable standard of 20 ppmdv @ 7% O₂.

31. On May 31, 2006, EPA issued an administrative order requiring that Respondent conduct another initial performance test on its incinerator pursuant to 40 C.F.R. § 62.14660.

32. On July 10-13, 2006, Respondent conducted its second initial performance test which specifically tested the emissions of all pollutants listed in 40 C.F.R. Part 62, Subpart III,

Table 1.

33. In its second initial performance test (conducted in July 2006), the incinerator met the emission limitations for all air pollutants listed in 40 C.F.R. Part 62, Subpart III, Table 1, including sulfur dioxide.

34. Despite the fact that the second initial performance test showed that the incinerator was in full compliance with the emission limitations for all air pollutants, including sulfur dioxide, as prescribed in 40 C.F.R. Part 62, Subpart III, Table 1, the second initial performance test should have been conducted prior to commencing the operation of the incinerator in May, 2005.

35. Consequently, Respondent's July 2006 test was late and should have been conducted prior to May 2005.

36. Therefore, Respondent failed to conduct an initial performance test on its incinerator demonstrating full compliance with the emission limitations for all air pollutants listed in 40 C.F.R. Part 62, Subpart III, Table 1, prior to commencing the operation of its incinerator, in violation of 40 C.F.R. § 62.14660.

V.

CIVIL PENALTY AND TERMS OF SETTLEMENT

37. Pursuant to § 113(d) of the Act, 42 U.S.C. § 7413(d), which authorizes EPA to assess a civil penalty of up to Twenty-Five Thousand Dollars (\$25,000)¹ per day for each violation

¹ The Civil Penalty Inflation Adjustment Rule of December 31, 1996 (61 Fed. Reg. 69360) provides for ten percent (10%) increases in the statutory penalty provisions (\$25,000) cited in the Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991 (CAA Penalty Policy). The ten percent (10%) increase is effective for violations which occurred between January 30, 1997 and March 14, 2004 for a statutory maximum penalty of \$27,500. The Civil Penalty Inflation Adjustment Rule of

of the Act, the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this matter is in the amount of Forty-five Thousand One Hundred and Thirty-three Dollars (\$45,133).

38. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

39. Within thirty (30) days of Respondent's receipt of this fully executed CAFO, Respondent shall pay the assessed civil penalty by cashier's check, certified check, or wire transfer made payable to Treasurer, United States of America, EPA - Region 6. Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; or wire transfer. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. EPA, Region 6
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

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

Contact: Natalie Pearson
Telephone: (314) 418-4087.

For wire transfer, the payment should be remitted to:

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"

For an On Line Payment Option, available through the U.S. Department of Treasury, access:

WWW.PAY.GOV

Enter "sfo 1.1" in the search field, then open form and complete required fields.

PLEASE NOTE: Docket number CAA-06-2007-3324 shall be clearly typed or printed on the check to ensure proper credit. The check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and transmittal letter to the following:

Air/Toxics and Inspection Coordination Branch (6EN-A)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733;

and

Regional Hearing Clerk
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

40. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

41. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §13.11, unless otherwise prohibited by law, EPA will 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. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. 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). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

42. EPA will also assess a fifteen dollar (\$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 fifteen dollar (\$15.00) administrative handling charge for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six (6) percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. Section 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first (1st) day payment is delinquent. See 31 C.F.R.

Section 901.9(d). Other penalties for failure to make a payment may also apply.

43. Pursuant to § 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

44. This document is a Final Order as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of prior such violations.

VII.
RETENTION OF ENFORCEMENT RIGHTS

45. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal laws, regulations, statutes, or permitting programs.

46. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

VIII.
COSTS

47. Each party shall bear its own costs and attorneys fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

Date: 5/18/09



Donald E. Stanley
Vice President, Product Quality & Plant Technology
The Goodyear Tire & Rubber Company
1144 E. Market Street
Akron, OH 44316-0001

ATTEST: 
Assistant Secretary

FOR THE COMPLAINANT:

Date: 6/5/09




John Blevins
Director
Compliance Assurance and Enforcement Division
United States Environmental Protection Agency
Region 6

FINAL ORDER

Pursuant to § 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. In accordance with 40 C.F.R. Section 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated June 8, 2009



Michael C. Barra
Regional Judicial Officer

CERTIFICATE OF SERVICE

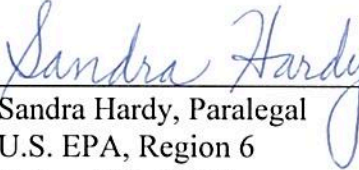
I hereby certify that on the 9th day of June, 2009, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) were hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED # 7003 0500 0003 0873 3403

Donald E. Stanley
Vice President, Product Quality & Plant Technology
The Goodyear Tire & Rubber Company
1144 E. Market Street
Akron, OH 44316-0001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED # 7003 0500 0003 0873 3380
and FACSIMILE #

Winfred T. Colbert
Attorney
Coordinator, Global Environmental Health
& Safety Law Department
The Goodyear Tire & Rubber Company
1144 East Market Street, Dept. 822
Akron, Ohio 44316-0001
COUNSEL FOR RESPONDENT


Sandra Hardy, Paralegal
U.S. EPA, Region 6
Dallas, TX 75202