



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

JUN 02 2009

REPLY TO THE ATTENTION OF:
AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Heidi E. Hanson
Attorney at Law
4721 Franklin Avenue, Suite 1500
Western Springs, Illinois 60558-1720

Dear Ms. Hanson:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket number CAA-05-2009-0022 with Flavor Concepts, Inc. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUN 02 2009.

Pursuant to appendix A of the CAFO, Flavor Concepts, Inc. must pay the civil penalty within 240 days of the date the CAFO is filed. Each check must display the case docket number, CAA-05-2009-0022, and the billing document number, 2750960A001.

Please direct any questions regarding this case to Ann Coyle, Associate Regional Counsel, (312) 886-2248.

Sincerely,

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

Bonnie Bush, Chief
Air Enforcement & Compliance Assurance Branch
(MI/WI Section)

Enclosure

cc: Ann Coyle

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2009-0022
)	
Flavor Concepts, Inc.)	Proceeding to Assess a Civil Penalty
West Chicago, Illinois)	Under Section 113(d) of the Clean Air
)	Act, 42 U.S.C. § 7413(d)
Respondent.)	
_____)	

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)(2) and (3) 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, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Flavor Concepts, Inc. (Respondent), 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. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent 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. EPA approved Illinois Pollution Control Board (IPCB) Rules 101 and 103 as part of the federally enforceable Illinois State Implementation Plan (SIP). 37 Fed. Reg. 10862 (May 31, 1972).

10. IPCB Rule 101 defines an “emission source” as any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

11. IPCB Rule 101 defines a “new emission source” as any emission source that commences construction or modification on or after April 14, 1972.

12. IPCB Rule 101 defines “air contaminant” as any solid, liquid or gaseous matter, any odor or any form of energy that is capable of being released into the atmosphere from an emission source.

13. IPCB Rule 101 defines “construction” as onsite fabrication, erection or installation of an emission source or of air pollution control equipment.

14. IPCB Rule 101 now is set forth at 35 Illinois Administrative Code (IAC) § 201.102.

15. 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 from the Illinois Environmental Protection Agency (IEPA).

16. IPCB Rule 103(a)(1) now is set forth at 35 IAC § 201.142.

17. IPCB Rule 103(b)(1) states that no person shall cause or allow the operation of any emission source or new air pollution control equipment, for which a construction permit is required, without first obtaining an operating permit from IEPA.

18. IPCB Rule 103(b)(1) now is set forth at 35 IAC § 201.143.

19. The Administrator of 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 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 from March 15, 2004, through January 12, 2009, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

20. 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.

21. 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 and Alleged Violations

22. Respondent operates a facility (facility) at 1350 West Washington Street in West Chicago, Illinois, which manufactures and distributes food and beverage flavoring.
23. Respondent's West Chicago facility emits air contaminants, including particulate matter and volatile organic matter, to the air.
24. In 2003, Respondent began operations as an independent flavor manufacturer at the facility. At that time, Respondent installed and made operational two 300-gallon liquid tanks.
25. In 2004, Respondent installed and made operational one 1,000-gallon liquid tank, one large ribbon blender, and one dust collector at the facility.
26. In 2005, Respondent installed and made operational two 300-gallon liquid tanks and one small ribbon-blender at the facility.
27. Respondent "constructed" four 300-gallon liquid tanks, the 1,000 gallon liquid tank, two ribbon blenders, and one dust collector under 35 IAC § 201.102.
28. Respondent's four 300-gallon liquid tanks, 1,000 gallon liquid tank, and two ribbon blenders are all "new emission sources" under 35 IAC § 201.102.
29. Respondent's dust collector is "air pollution control equipment" under 35 IAC § 201.102.
30. Respondent constructed "new emission sources" and "air pollution control equipment," as defined in 35 IAC § 201.102; therefore, it is subject to IEPA's construction permit requirements.
31. Respondent did not have a construction permit when the facility initially installed two 300-gallon mixing tanks in 2003.

32. Respondent did not have a construction permit when the facility installed one 1,000-gallon liquid tank, one large ribbon blender and one dust collector in 2004.

33. Respondent did not have a construction permit when the facility installed two 300-gallon liquid tanks and one small ribbon blender in 2005.

34. On May 30, 2008, IEPA denied Respondent's application for a construction permit.

35. From January 2003 through May 30, 2008, Respondent violated the requirements of 35 IAC § 201.142.

36. Respondent constructed and operated "new emission sources" and "air pollution control equipment," as defined in 35 IAC § 201.102, for which construction permits were required; therefore, it is subject to IEPA's operating permit requirements.

37. Respondent did not have an operating permit when the facility began operating in 2003.

38. Respondent has operated continuously since January 2003.

39. IEPA issued a lifetime operating permit to Respondent on May 30, 2008.

40. From January 2003 through May 30, 2008, Respondent violated the requirements of 35 IAC § 201.143.

41. On February 20, 2008, EPA issued a Notice of Violation to Respondent for violations of the Illinois SIP regulations 35 IAC §§ 201.142 and 201.143 from January 2003 to the present.

42. On April 2, 2008, EPA and Respondent held a conference to discuss the February 20, 2008, Notice of Violation.

43. On July 3, 2008, EPA issued a notice of intent to file a civil administrative complaint letter to Respondent. In the letter, EPA stated that it intended to propose that a \$106,660 penalty be assessed against Respondent for the violations EPA would allege in the complaint.

44. On July 11, 2008, Respondent provided financial information to EPA to substantiate Respondent's claim that it is unable to pay the proposed penalty. On or about December 12, 2008, Respondent provided additional financial information to EPA.

Civil Penalty

45. 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, and the information regarding the Respondent's ability to pay the proposed penalty, Complainant has determined that an appropriate civil penalty to settle this action is \$53,827.

46. Respondent agrees to pay the United States of America a civil penalty of \$53,827 plus interest, calculated at three percent per annum, in eight installments. Appendix A sets forth the schedule and amounts of Respondent's payments. Respondent may pay the full amount of the penalty, \$53,827, within 30 days of the effective date of this CAFO without incurring any interest charges. Any payments Respondent makes more than 30 days after the effective date of this CAFO will incur interest. EPA will not assess a prepayment penalty if Respondent elects to prepay part or all of the installments. Respondent must pay each installment either online, by accessing the webpage www.pay.gov, entering "sfo 1.1" in the search field, and opening and completing the required fields, or by sending a cashier's or certified check payable to the "Treasurer, United States of America," to:

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

The check must note: the case name (*In the matter of Flavor Concepts, Inc.*), the docket number of this CAFO and the billing document number.

47. Unless Respondent pays electronically, a transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany each payment. Respondent must send a copy of each check and transmittal letter, or electronic receipt, to:

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

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

Ann Coyle (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

49. If Respondent does not pay timely the civil penalty, 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.

50. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must 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.

General Provisions

51. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

52. The CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

53. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 51, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

54. Respondent certifies that it is complying fully with its Lifetime Operating Permit (I.D. No. 043090ADV).

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

56. The terms of this CAFO bind Respondent, its successors, and assigns.


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

58. Each party agrees to bear its own costs and attorneys’ fees in this action.

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


Flavor Concepts, Inc., Respondent

5/22/09
Date


Larry Wadsworth, President
Flavor Concepts, Inc.

U.S. Environmental Protection Agency, Complainant

5/28/09
Date


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

Appendix A: Schedule of Payments

The following table sets forth the payment schedule for Respondent to resolve this matter.

Payment #	Due Date*	Amount Due	Principal	Interest	Principal Balance
1	30	\$6,728.38**	\$6,728.38	\$0.00	\$47,098.62
2	60	\$6,795.83	\$6,678.08	\$117.75	\$40,420.54
3	90	\$6,795.83	\$6,694.78	\$101.05	\$33,725.76
4	120	\$6,795.83	\$6,711.52	\$84.31	\$27,014.24
5	150	\$6,795.83	\$6,728.29	\$67.54	\$20,285.95
6	180	\$6,795.83	\$6,745.12	\$50.71	\$13,540.83
7	210	\$6,795.83	\$6,761.98	\$33.85	\$6,778.85
8	240	\$6,795.83	\$6,778.85***	\$16.95	\$0.00

* Due Date indicates the number of days after the effective date of the CAFO that the penalty payment is due.

** The first payment does not include interest because it is due within 30 days of the effective date of the CAFO.

*** The final principal payment has been adjusted to account for payments having been rounded to the nearest cent.


CONSENT AGREEMENT AND FINAL ORDER
In the Matter of: Flavor Concepts, Inc.
Docket No. CAA-05-2009-0022

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31.

5/29/09

Date



Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency

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**In the Matter of:
Flavor Concepts, Inc.
Docket No.**

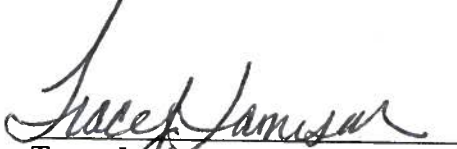
CERTIFICATE OF SERVICE

I, Tracy Jamison, certify that I hand delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, the original and one copy of the Consent Agreement and Final Order, docket number CAA-05-2009-0022. Further, I certify that I mailed correct copies of the Consent Agreement and Final Order, by first-class, postage prepaid, certified mail, return receipt requested, to Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Ms. Heidi E. Hanson
Attorney at Law
4721 Franklin Avenue, Suite 1500
Western Springs, Illinois 60558-1720

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USEPA
REGION 5

on the 2 day of JUNE, 2009.


Tracy Jamison
Office Automation Clerk
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8919 2683