

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 SEP 27 P 3 07  
REGIONAL HEARING  
CLERK

In the Matter of:

American Biltrite, Inc.

Respondent

In a proceeding under Section 113(d)  
of the Clean Air Act, 42 U.S.C. § 7413(d)

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

**CAA-02-2012-1216**

**PRELIMINARY STATEMENT**

This Consent Agreement and Final Order (CAFO) simultaneously commences and concludes an administrative penalty proceeding brought by the Complainant, the Director of the Division of Enforcement and Compliance Assistance for the U.S. Environmental Protection Agency (EPA) Region 2, against Respondent American Biltrite, Inc (Biltrite or Respondent), pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and §§ 22.13(b) and 22.18(b) of EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (Consolidated Rules of Practice), 40 C.F.R. Part 22.

The Consent Agreement is signed by the Complainant and Respondent, and the Final Order is issued by the Region 2 Regional Administrator. As set forth in the "Jurisdictional Allegations" section of the Consent Agreement, the Complainant is duly authorized to sign consent agreements and the Regional Administrator is duly authorized to issue final orders.

## CONSENT AGREEMENT

### General Background

1. EPA has determined that Biltrite violated the Act and its implementing regulations at Biltrite's surface coating facility (Facility) located in Moorestown, New Jersey . More specifically, EPA has determined that Biltrite violated EPA's New Source Performance Standards (NSPS) set forth at 40 C.F.R. Part 60, Subpart A, §§ 60.1 – 60.19 (NSPS General Provisions) and at 40 C.F.R. Part 60, Subpart RR, §§ 60.440 – 60.447 (NSPS Surface Coating Regulations). EPA has also determined that Biltrite violated the New Jersey Department of Environmental Protection (NJDEP) ) Administrative Code (N.J.A.C) Title 7, Chapter 7 §§ 27- 34 (Air Pollution Control requirements). EPA further determined that Respondent violated conditions in the Facility's CAA Title V Operating Permit . The specific violations found by EPA are set forth below in the section of this Consent Agreement entitled "Conclusions of Law."

2. Complainant and Respondent enter into this Consent Agreement and propose the attached Final Order so as to resolve the violations alleged in the "Conclusions of Law" section of this Consent Agreement. Pursuant to the Consolidated Rules of Practice §§ 22.13(b) and 22.18(b), the issuance of the Consent Agreement and Final Order serves to simultaneously commence and conclude the agency's administrative penalty proceeding for those violations.

3. For the purposes of this proceeding, and to avoid the expense of protracted litigation, Respondent:

- a. admits the jurisdictional allegations set forth below in the section of this Consent Agreement entitled "Jurisdictional Allegations;"
- b. neither admits nor denies the findings of fact set forth in the section of this Consent Agreement entitled "Findings of Fact;"
- c. neither admits nor denies the Conclusions of Law;

- d. consents to the payment of the civil penalty specified in the section of this Consent Agreement entitled "Settlement," on the terms specified in that section;
- e. consents to the issuance of the attached Final Order; and
- f. waives any right to contest the allegations set forth in the "Conclusions of Law" section of this Consent Agreement and any right to appeal the attached Final Order.

**Jurisdictional Allegations**

4. Section 113(d) of the Act authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of Subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 111 and 114 of the Act.

5. Section 302(e) of the Act provides that whenever the term "person" is used in the Act, the term includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

6. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Complainant, the Director of the Division of Enforcement and Compliance Assistance, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the State of New York, the

State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

7. Pursuant to EPA Delegation of Authority 7-6-C, the Administrator has delegated to the Region 2 Regional Administrator the authority to execute CAA Section 113(d) Final Orders.

8. Pursuant to Section 113(d), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on June 7, 2011, the United States Department of Justice granted EPA's request for a waiver of the CAA Section 113(d) 12-month time limitation on EPA's authority to initiate an administrative penalty action in this matter.

9. Respondent is a "person" within the meaning of Section 302(e) of the Act.

### **Legal Background**

#### *CAA Sections 111 and 114*

10. Section 111(b)(1)(A) of the Act, authorizes the Administrator of EPA (Administrator) to publish a list of categories of stationary sources that the Administrator has determined "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare."

11. Section 111(a)(2) of the Act defines "new source" as any stationary source, the construction or modification of which is commenced after the publication of regulations (or earlier if proposed regulations) prescribing a standard of performance applicable to such source.

12. Section 111(a)(3) of the Act defines "stationary source" as any building, structure, facility, or installation which emits or may emit any air pollutant.

13. Section 111(a)(5) of the Act defines "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source.

14. Pursuant to Sections 111 and 114 of the Act, the Administrator of EPA promulgated the "Standards for New Stationary Sources," referred to herein as the New Source Performance Standards or NSPS, which are codified at 40 C.F.R. Part 60.

15. According to Section 111(e) of the Act, once the standards of performance promulgated under the Act are effective, it is unlawful for "any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source."

16. Section 113 of the Act authorizes the Administrator of EPA to issue an administrative penalty order, in accordance with Section 113(d) of the Act, against any person that has violated or is in violation of the Act.

17. Section 114 of the Act authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in Subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Section 111 of the Act.

General Provisions of 40 C.F.R. Part 60

18. On December 28, 1971 pursuant to Section 111 of the Act, EPA promulgated 40 C.F.R. Part 60, Subpart A, §§ 60.1 – 60.19, (previously defined as the NSPS General Provisions), 36 Fed. Reg. 24877, December 28, 1971.

19. The NSPS General Provisions set forth general provisions, procedures and requirements that apply to every Part 60 NSPS subpart, unless the individual NSPS subpart in question provides differently.

20. 40 C.F.R. § 60.1 states that the provisions of Part 60 apply to the owner or operator of any stationary source which contains an affected facility, the construction, reconstruction, or modification of which is commenced after the date of publication in Part 60 of any standard (or if earlier, the date of publication of any proposed standard) applicable to that facility.

21. 40 C.F.R. § 60.2 defines "owner or operator" as "any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part."

22. Pursuant to 40 C.F.R. § 60.7(c), "each owner or operator required to install a continuous monitoring device shall submit excess emissions and monitoring systems performance report (excess emissions are defined in applicable subparts) and/or summary report form (see Paragraph (d) of this section) to the Administrator semiannually, except when: more frequent reporting is specifically required by an applicable subpart; or the Administrator, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. All reports shall be postmarked by the 30th day following the end of each six-month period. Written reports of excess emissions shall include the following information."

*NSPS Surface Coating Regulations*

23. Pursuant to Sections 111 and 114 of the Act, EPA promulgated the NSPS Surface Coating Regulations, 48 *Fed. Reg.* 48375 October 18, 1983.

24. Pursuant to 40 C.F.R. § 60.440, "the affected facility to which the provisions of this subpart apply is each coating line used in the manufacture of pressure sensitive tape and label materials".

25. Pursuant to 40 C.F.R. § 60.440(b), “any affected facility which inputs to the coating process 45 Mg (50 tons) of volatile organic compounds (VOC) or less per 12 month period is not subject to the emission limits of § 60.442(a), however, the affected facility is subject to the requirements of all other applicable sections of this subpart. If the amount of VOC input exceeds 45 Mg (50 tons) per 12 month period, the coating line will become subject to § 60.442(a) and all other sections of this subpart.”

26. Pursuant to 40 C.F.R. § 60.440(c), the NSPS Surface Coating Regulations “applies to any affected facility which begins construction, modification, or reconstruction after December 30, 1980.”

27. Pursuant to 40 C.F.R. § 60.447(b), “following the initial performance test, the owner or operator of each affected facility shall submit quarterly reports to the Administrator of exceedances of the VOC emission limits specified in § 60.442. If no such exceedances occur during a particular quarter, a report stating this shall be submitted to the Administrator semiannually.”

28. Pursuant to 40 C.F.R. § 60.447(c), “the owner or operator of each affected facility shall also submit reports at the frequency specified in § 60.7(c) when the incinerator temperature drops as defined under § 60.443(e). If no such periods occur, the owner or operator shall state this in the report.”

*The CAA and the New Jersey State Implementation Plan*

29. Section 101 of the Act indicates that one of the purposes of Subchapter 1 of the Act is to protect and enhance the quality of the nation’s air so as to promote the public health and welfare and the productive capacity of its population.

30. Section 109 of the Act requires the EPA Administrator to promulgate regulations establishing primary and secondary national ambient air quality standards (NAAQS) for air pollutants, for which air quality criteria have been issued (known as "criteria pollutants"). Section 109 further requires that the primary NAAQS for each criteria pollutant must contain an adequate margin of safety to protect the public health and that the secondary NAAQS for that pollutant must protect the public welfare from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

31. Pursuant to Section 107 of the Act, geographic areas within a state that meet the NAAQS for a particular pollutant are designated "attainment" areas for that pollutant, while areas that do not meet the NAAQS for a particular pollutant are designated "non-attainment" areas.

32. Section 110(a)(1) of the Act requires each state, after reasonable notice and public hearing, to adopt and submit to EPA, for approval, a plan that provides for the implementation, maintenance, and enforcement of the primary and secondary NAAQS in each air quality control region in the state.

33. Section 110(a)(2) sets forth requirements for each state plan submitted pursuant to Title I of the Act.

34. Pursuant to Section 109 of the Act, the Administrator promulgated primary and secondary NAAQS for ozone. *See* 40 C.F.R. §§ 50.9 and 50.10.

35. Section 182(b)(1)(A) of the Act, states that each state in which all or part of a Moderate Area is located, must with respect to the Moderate Area, submit to the EPA Administrator for approval, revisions to the applicable implementation plan to provide for annual reductions in emission for VOCs .

36. At all times relevant to this CAFO, the EPA approved SIP for the State of New Jersey has included the following provisions:

- a. N.J.A.C. 7:27-16.1(A)(e), which provides that each owner and operator of any equipment or source operation subject to N.J.A.C. 7:27-16 is responsible for ensuring compliance with all requirements of that subchapter.
- b. N.J.A.C. 7:27-16.7(n)(2), which requires any surface coating operation that has a thermal oxidizer used to control the emission of VOC<sup>1</sup> to record on a continuous basis or at a frequency approved in writing by NJDEP the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere.

37. N.J.A.C. 7:27-16.1, defines "thermal oxidizer" as a type of control apparatus which reduces the emission of air contaminants by subjecting the gases being emitted to elevated temperatures which cause the air contaminant molecules to decompose within an enclosed space. This provision provides that the term thermal oxidizer includes catalytic and noncatalytic thermal oxidizers.

CAA Title V and New Jersey's Title V Operating Permit Program

38. Title V of the Act consists of Sections 501 to 507 of the Act, 42 U.S.C. §§ 7661-7661f.

39. In general, Title V of the Act requires each "major source" to obtain an operating permit setting forth all of the air pollution requirements that apply to that source, and also provides for the creation of state and federal programs to issue such permits.

40. Section 501(a) of the Act provides that the term "major source," as used in Title V of the Act, means any stationary source or group of stationary sources located within a

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<sup>1</sup> N.J.A.C. 7:27-16.1, defines "volatile organic compounds" or "VOC" to mean any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) that participates in atmospheric photochemical reactions.

contiguous area and under common control that is a major source as defined in either Section 112 of the Act or Section 302 of the Act or Part D of Subchapter I of the Act.

41. Section 502(a) of the Act makes it unlawful to violate any requirement of a Title V Operating Permit and also makes it unlawful to operate a major source except in compliance with such a permit.

42. Section 502(b) of the Act requires EPA to promulgate regulations establishing the minimum elements of a Title V Operating Permit program and sets forth the procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs.

43. Section 502(d) of the Act requires each state to develop and submit to EPA a permit program meeting the requirements of Title V of the Act.

44. Section 502(e) of the Act provides that EPA retains the authority to enforce Title V Operating Permits issued by a State.

45. Section 503 of the Act sets forth requirements for permit applications and provides that major sources are required to have Title V Operating Permits by the later of (i) the effective date of the permit program applicable to the source, or (ii) the date on which the source becomes a major source.

46. Section 503(b)(2) of the Act provides that the regulations promulgated pursuant to Section 502(b) of the Act must include requirements that the permittee periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the Title V Operating Permit, and promptly report any deviations from permit requirements to the permitting authority.

47. Section 504 of the Act specifies requirements and conditions that must be included in any Title V Operating Permit.

48. Consistent with Section 502(b) of the Act, EPA promulgated 40 C.F.R. Parts 70 and 71. 40 C.F.R. Part 70 sets forth minimum requirements for state Title V Operating Permit programs. 40 C.F.R. Part 71 contains the federal Title V Operating Permit program, including, among other elements, the procedures by which EPA will issue Title V Operating Permits.

49. EPA granted interim approval of NJ Title V Operating Permit program with an effective date of June 17, 1996, 61 Fed. Reg. 24715 (May 16, 1996).

50. EPA granted full approval of the NJ Title V Operating Permit program with an effective date of November 30, 2011. 66 Fed. Reg. 63168 (Dec. 5, 2001). NJ's Title V Operating Permit program is currently codified at N.J.A.C. Title 7, Subchapter 22, and is titled, "Operating Permits," (N.J.A.C. 7:27-22).

51. N.J.A.C. 7:27-22-19(f), a provision in the NJ Title V Operating Permit program, requires that all New Jersey Title V Operating Permits include a provision that requires annual compliance certifications be submitted to EPA and to New Jersey, the permitting authority.

*The Facility Title V Operating Permit Requirements*

52. On July 12, 2000, the NJDEP issued an initial Facility's Title V Operating Permit. NJDEP has issued Bilrite modified versions of the Facility Title V Operating Permit since that date.

53. Each of the Facility's Title V Operating Permits incorporates as an applicable requirement the Title V requirement to submit annual compliance certifications to the NJDEP, the permitting authority and to EPA.

54. Each of the Facility's Title V Operating Permits incorporates the NSPS Surface Coating Regulations as applicable requirements.

55. Each of the Facility Title V Operating Permits incorporates N.J.A.C. 7.27-16.7(n)(2) as a federally enforceable applicable requirement.

**Findings of Fact**

56. Biltrite owned and/or operated the Facility at all times relevant to this Consent Agreement.

57. The Facility is located in Moorestown New Jersey and its mailing address is 105 Whittendale Avenue, Moorestown, NJ 08057.

58. Moorestown is situated in Burlington County, which since June 15, 2004, has been designated as a moderate non-attainment area for ozone (8-hour standard). *See* 40 C.F.R. § 81.331.

59. On February 27 and 28, 2008, inspectors (EPA Inspectors) from EPA Region 2 performed an inspection (EPA Inspection) to determine whether the Facility was in compliance with the Act including CAA regulations and the Facility's Title V Operating Permit.

60. During the EPA Inspection, EPA Inspectors observed surface coating manufacturing operations at six (6) coating lines.

61. During the EPA Inspection, Biltrite Facility personnel provided the EPA Inspectors with Facility records demonstrating that the annual VOC input for each of two (2) lines, one designated as Line 5/7 and the other as Line 8, exceeded 50 tons per 12 months (45 Mg of VOC per 12 months.)

62. In response to an EPA Inspector's request, made during the EPA Inspection, for records demonstrating compliance with the NSPS Surface Coating regulations, Biltrite Facility personnel indicated that they could not locate or verify that the NSPS-specific reports were submitted to EPA.

63. During the EPA Inspection, EPA Inspectors reviewed the Facility's Title V Operating Permit in effect at that time and found that the NSPS Surface Coating regulations were listed as applicable requirements.

64. On April 4, 2008, Biltrite submitted to EPA a document entitled "Consolidated Notification Package, 40 C.F.R. 60 Subpart RR, American Biltrite, Inc. 105 Whittendale Avenue, Moorestown, NJ 08057" (April 2008 Report).

65. In the April 2008 Report, Biltrite indicated that:

- a. the VOC input to each of the surface coating lines at the Facility designated as Line 5/7 and Line 8 is greater than 50 tons per year (tpy).
- b. the VOC emissions to Line 5/7 and Line 8 are controlled by thermal incinerators.<sup>2</sup>
- c. Line 5/7 and Line 8 are affected lines within the meaning of the NSPS Surface Coating Regulations.
- d. Line 5/7 and Line 8 are subject to the reporting requirements of 40 C.F.R. § 60.477 of the NSPS Surface Coating Regulations.
- e. Line 5/7 was constructed in 1995 and had an initial start up on January 30, 1996.
- f. Line 8 was constructed in 2001 and had an initial start up on February 15, 2001.
- g. Line 5/7 and Line 8 are "affected facilities" pursuant to 40 C.F.R. § 60.440(a).

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<sup>2</sup> A thermal incinerator is also known as a thermal oxidizer.

- h. For the period beginning January 1, 2008, Biltrite will begin submitting excess emission and monitoring system performance reports in accordance with 40 C.F.R. § 60.7(c).
66. An initial search of EPA records conducted by EPA Inspectors found no NSPS Surface Coating regulation excess emissions or monitoring reports for the years 2006 and 2007.
67. On July 21, 2010, pursuant to Section 114 of the Act, EPA issued Biltrite a request for information (Information Request).
68. On September 7, 2010, Biltrite provided responses to the Information Request (Biltrite Response).
69. According to information contained in the Biltrite Response:
- a. The construction of the Facility was completed in 1988. The Facility's certification of occupancy was issued on December 30, 1988.
  - b. The Facility manufactures pressure sensitive tape products. The Facility began operating in January 1989.
  - c. Compliance with NSPS Surface Coating Regulations VOC emissions standards at Facility "affected" lines is achieved through compliance option set forth at 40 C.F.R. § 60.442(a)(2)(i) through the use of Regenerative Thermal Oxidizers (RTO).
  - d. Heavy solvent use on line 5/7 began in January 2000.
  - e. In order to achieve compliance with the NSPS Surface Coating Regulations, emissions from Line 5/7 are controlled by a regenerative thermal oxidizer (RTO).
  - f. Temperature sensing devices (thermocouples) record Line 5/7 RTO chamber temperature.

- g. A continuous monitoring system sends Line 5/7 temperature data to a data acquisition system.
- h. In order to achieve compliance with the NSPS Surface Coating Regulations, emissions from Line 8 are controlled by an RTO. Temperature sensing devices (thermocouples) record Line 8 RTO chamber temperature.
- i. A continuous monitoring system sends Line 8 temperature data to a data acquisition system.
- j. Excess emission and monitoring system reports were not available prior 2008.

70. Biltrite included Attachment 4 in its response. Attachment 4 contained a record of 3-hour block averages of minute-to-minute temperature readings for Line 8 for most of the period of January 1, 2010 through June 30, 2010. No temperature readings for March 14, March 15, 2010, April 18, 2010, and April 19, 2010 were included in Attachment 4.

71. A second search of EPA records by EPA Inspectors revealed that Biltrite submitted an NSPS Surface Coating Regulation excess emissions and monitoring report July 28, 2008 and that Biltrite has been in compliance with the NSPS reporting requirements ever since.

72. On June 29, 2011, pursuant to Section 113(a) of the Act, EPA issued a Notice of Violation (NOV) CAA-02-2011-1303.

73. The NOV concluded and informed Biltrite of the following:

- a. Respondent is the owner and operator of the Facility, which operates a thermal oxidizer, within the meaning of N.J.A.C. 7:27-16.1, to control VOC emissions from surface coating lines.
- b. Respondent is subject to N.J.A.C. 7.27-16.7(n)(2); and

- c. Respondent's failures to continuously record temperature readings at Line 8 on March 14, 2010, March 15, 2010, April 8, 2010, and April 19, 2010 is a violation of N.J.A.C. 7.27-16.7(n)(2) and the NJ SIP.<sup>3</sup>

74. After the NOV was issued, EPA and Respondent had a conference to discuss EPA's conclusions set forth in the NOV.

75. On April 4, 2012, EPA received Biltrite's New Jersey Department of Environmental Protection 100-A Form report, describing deviations in recording temperature NJDEP (NJDEP Downtime Report). The NJDEP Downtime Report provides a record of the time that the continuous monitoring systems for Line 5/7 or Line 8 were not recording temperature during the 2011 calendar year.

76. The NJDEP Downtime Report indicated that during the first quarter of 2011, the CMS serving Line 8 was not recording temperature for 91 hours and that during the fourth quarter of 2011, the CMS serving Line 8 did not record temperature for 15 hours.

77. The NJDEP Downtime Report indicated that during the first quarter of 2011, the CMS serving Line 5/7 was not recording temperature for 54 hours and that during the second quarter of 2011, the CMS serving Line 5/7 was not recording temperature for 1 hour.

78. The NJDEP Downtime Report indicated that during the third quarter of 2011, the CMS serving Line 5/7 was not recording temperature for 40 hours.

79. EPA informed Biltrite that the CMS for Line 5/7 and Line 8 were not recording temperature on a continuous basis during 2011. During these times, Biltrite was logging temperature data manually.

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<sup>3</sup> Each of Respondent's violations of N.J.A.C. 7.27-16.7(n)(2) and the NJ SIP is also a violation of a condition in the Facility Title V Operating Permit, for which Section 113(a) of the Act does not require notice.

Findings of Fact Regarding the Facility Title V Operating Permit

80. During the EPA File Review, EPA found that Biltrite did not identify, in the Facility's Title V Operating Permit annual certification for the yearly reporting period of January 1 through December 31 of 2007, 2008, and 2010, violations of the NSPS Surface Coating regulations and of the conditions in the Title V Permit which incorporates those regulations as applicable requirements.

81. During the EPA File Review, EPA found that Biltrite did not identify, in the Facility Title V Operating Permit annual certification for the yearly reporting period of January 1 through December 31 of 2007, 2008, and 2010, violations of the N.J.A.C. 7.27-16.7(n)(2) and of the conditions in the Facility Title V Operating Permit which incorporates those regulations as applicable requirements.

82. Also, after the conference on the NOV, the parties met, on a number of occasions, and negotiated the agreement, contained herein, for execution by EPA as a "Final Order."

Conclusions of Law

Based on the Findings of Fact set forth above, for the relevant time of this Consent Agreement EPA reaches the following Conclusions of Law:

General Conclusions

83. Respondent is and has been a "person," within the meaning of Section 302(e) of the Act.

84. Respondent is and has been an "owner or operator" of the Facility, as that term is used in CAA Section 111(a)(5) and 40 C.F.R. § 60.2.

85. Respondent is and has been subject to the requirements of Sections 110, 111, 114 and Title V of the Act.

86. The Facility is and has been subject to a Title V Operating Permit that was issued to Biltrite pursuant to New Jersey Administrative Code (N.J.A.C.) 7:27-22, 40 C.F.R. Part 70, and Title V of the Act.

87. Line 5/7 and Line 8 are and were each "affected facilities" within the meaning of 40 C.F.R. § 60.440(a).

88. In accordance with 40 C.F.R. § 60.440(b) and (c) all sections of the NSPS Surface Coating regulations applied and continue to apply to Line 5/7 and Line 8.

89. Biltrite has operated and continues to operate a thermal oxidizer, within the meaning of N.J.A.C. 7:27-16.1, to control VOC emissions from surface coating lines.

90. At all times since the installation of Line 5/7 and Line 8, including the period of times of March 14 and 15, 2010; April 18 and 19, 2010; January 6 through 10, 2011 and October 5 and 6, 2011, Respondent was subject to N.J.A.C. 7:27-16.7(n)(2).

#### Specific Violations

91. Respondents' failures to submit NSPS semi-annual excess emission and monitoring reports for the period of time from 2006 through 2008 are violations of: (1) 40 C.F.R. §§ 60.7 and 60.447(b) and (2) Sections 111 and 114 of the Act. Each failure is also a violation of the Facility Title V Operating Permits, which include the NSPS General Provisions and the NSPS Surface Coating regulations, as applicable requirements.

92. Respondents failures to continuously record temperature readings at Line 8 on March 14 and 15, 2010; April 18 and 19, 2010; January 3, 2011; January 6 through 10, 2011 and October 5 and 6, 2011 and failures to continuously record temperature readings on Line 5/7 on January 3, 2011; January 5 through January 7, 2011; January 26, 2011; May 9, 2011; and September 6 through September 9, 2011 are violations of N.J.A.C. 7:27-16.7(n)(2) in the EPA

approved SIP for the State of New Jersey and the Facility Title V Operating Permit, which incorporates, N.J.A.C. 7.27-16.7(n)(2) as a federally enforceable applicable requirement.

93. Respondents failures to submit a complete and accurate Title V Operating Permit annual certification for the Facility are violations of: (1) N.J.A.C. 7:27-22.19(f), (2) the Facility Title V Operating Permit, which includes the Title V annual compliance certification as an applicable requirement, (3) and Section 114 of the Act.

### **Settlement**

94. Pursuant to Section 113(d) of the Act, Respondent shall pay a civil penalty of seventy thousand dollars (\$70,000) in settlement of all violations alleged in the Findings of Fact and/or Conclusions of Law. Respondent shall have the option of paying the entire seventy thousand dollars (\$70,000), either by corporate, cashiers' or certified check within thirty (30) days from the date of issuance of the attached Final Order (Due Date). Respondent shall: (1) clearly type or write the docket number (CAA-02-2012-1216) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America;" and (3) send the check to:

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent shall send notice of payment to the following:

Kenneth Eng, Chief, Air Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2  
290 Broadway – 21st Floor  
New York, New York 10007

and

Evans Stamatakis  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 2  
290 Broadway – 16th Floor  
New York, New York 10007

95. If Respondent fails to make full and complete payment of the seventy thousand dollars (\$70,000) penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

- a. Interest. If Respondent fails to make payment, or make partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

96. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations of the Act set forth herein.

97. Nothing in this Consent Agreement and attached Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Clean Air Act and other environmental laws and it is the responsibility of the Respondent to comply with such laws and regulations.

98. This Consent Agreement and attached Final Order shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

99. This Consent Agreement, attached Final Order, and any provision herein is not intended to be and shall not be construed as an admission of any Finding of Fact or liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CAFO or any of its terms and conditions.

100. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement in any proceeding to enforce this CAFO and explicitly waives its right to appeal the attached Final Order.

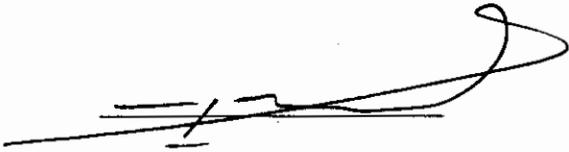
101. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

102. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in this action resolved by this Consent Agreement and attached Final Order.

103. The Consent Agreement and attached Final Order shall be binding on Respondent and its successors and assignees.

Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

For Respondent:

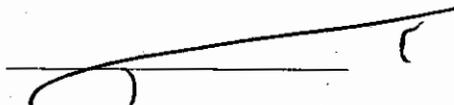


Michel Merx  
American Biltrite, Inc.

Protection Agency, Region 2

Date 9/18/2012

For Complainant:



Dore F. LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
United States Environmental

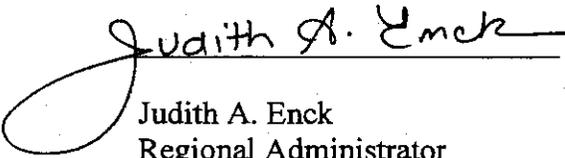
Date SEPTEMBER 25, 2012

*In the Matter of American Biltrite, Inc.  
CAA-02-2012-1216*

**FINAL ORDER**

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent agreement, in the matter of American Biltrite, Inc. CAA-02-2012-1216. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective upon filing with the Regional Hearing Clerk.

DATE: 9/25/12



Judith A. Enck  
Regional Administrator  
United States Environmental  
Protection Agency, Region 2

**In the Matter of American Bilrite - Docket Number CAA-02-2012-1216**

**CERTIFICATE OF SERVICE**

I Katherine Zuckerman certify that I have caused to be sent the foregoing CONSENT AGREEMENT and its accompanying FINAL ORDER bearing the above referenced docket number, in the following manner to the respective addressees listed below:

Copy by  
Overnight mail

Bonnie A. Barnett  
Drinker Biddle & Reath LLP  
One Logan Square, Ste. 2000  
Philadelphia, PA 19103-6996

Original and One Copy  
by Hand:

Karen Maples  
Office of Regional Hearing Clerk  
U. S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Dated: Sept 27, 2012

  
Katherine Zuckerman  
Air Branch Secretary  
Region 2