

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF:

Van Hoekelen Greenhouses, Inc.

Respondent.

**51 Lofty Road
McAdoo, PA 18237**

Facility.

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DOCKET NO.: CAA-03-2022-0004

**EXPEDITED SETTLEMENT
AGREEMENT AND FINAL ORDER**

EXPEDITED SETTLEMENT AGREEMENT

1. This Expedited Settlement Agreement (or “Agreement”) is entered into by the Director, Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”), and Van Hoekelen Greenhouses, Inc. (“Respondent”), pursuant to Section 113(a) and (d) of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7413(a) and (d), as amended, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“Consolidated Rules”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)). The U.S. Environmental Protection Agency, Region III (“EPA”) has jurisdiction over this matter pursuant to Section 113(a) and (d) of the Act, 42 U.S.C. § 7413(a) and (d), and 40 C.F.R. §§ 22.1(a)(2) and 22.4 of the Consolidated Rules. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant.
2. The Consolidated Rules govern this administrative adjudicatory proceeding pursuant to 40 C.F.R § 22.1(a)(2).
3. The EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. §19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.
4. At all times relevant to this Agreement, Respondent, an ornamental nursery plant products company incorporated in the State of Pennsylvania, was, and currently is, a “person” as defined under Section 302(e) of the CAA, 42 U.S.C § 7602(e), and the owner and operator of Van Hoekelen Greenhouses, Inc., located at 51 Lofty Road, McAdoo, PA 18237 (the “Facility”).
5. On November 20, 2019, EPA performed a CAA inspection at the Facility to verify compliance with applicable state and federal regulations. Documents related to the Facility’s process and operations were requested and reviewed as a result of EPA’s investigation, particularly

regarding the Hurst Model FB-3250-30-1, 24.53 MMBTU/hour (Metric Million British Thermal Unit/hour) coal-fired boiler fully installed in September of 2004.

6. Respondent has a Synthetic Minor Operation Permit (No. 54-00071) which provides on page 28: "You are subject to this subpart [JJJJJ] if you own or operate an industrial, commercial, or institutional boiler as defined in § 63.11237 that is located at, or is part of, an area source of hazardous air pollutants (HAP)....".
7. Pursuant to Section 112 of the CAA, EPA promulgated 40 C.F.R. Part 63, Subpart JJJJJ (Subpart 6J) known as the "National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Are Sources". As required by Subpart 6J, a new or reconstructed affected boiler ("affected source") must conduct applicable performance (stack) tests according to 40 C.F.R. § 63.11212 on a triennial basis, as required by 40 C.F.R. § 63.11220(2). Furthermore, as required by 40 Subpart 6J, § 63.11201(a), the affected source must comply and demonstrate compliance with each requirement in Table 1 and Table 3 associated with the emission limits and operating limits within 180 days of startup of the affected source.
8. On July 15, 2020, EPA issued Respondent an information request letter pursuant to Section 114 of the CAA, 42 U.S.C § 7614, ordering the Respondent to perform a stack test for the coal-fired boiler referred to in paragraph 5 above (and which is subject to Subpart 6J), in accordance with the procedures and required test methods outlined in 40 C.F.R. § 63.11212. On November 18, 2020, EPA granted approval of 13 MMBTU/hour operational limit so the Facility could perform the emissions test required by EPA's July 15, 2020 information request letter. On December 18, 2020, the Respondent completed the required stack test in accordance with the approved compliance test protocol and operational limit. The emission test results were provided on January 19, 2021.
9. Based upon the initial compliance date for this Facility (initial start-up of the affected source began in January 2005), an initial emissions test was due no later than 180 days after March 21, 2011 in addition to performance testing required on a triennial basis. Respondent's failure to demonstrate compliance with stack emission limits and requirements are in violation of the CAA and its implementing regulations found at 40 C.F.R. Part 63, Subpart JJJJJ.
10. As a result of EPA's November 20, 2019 CAA inspection at the Facility, and other information obtained from Respondent pursuant to its enforcement authority under Section 114 of the CAA, 42 U.S.C § 7614, EPA obtained evidence that Respondent failed to:
 - Conduct triennial performance tests (in 2017) of the affected source; and
 - Failed to demonstrate compliance with stack emission limits and requirements in Table 1 and Table 3 of Subpart 6J for the affected source.
11. EPA finds that Respondent violated Section 112 of the CAA, 42 U.S.C. § 7412 and Subpart 6J as a result of its failure to conduct performance tests on a triennial basis (40 C.F.R. §

63.11220(2)) and failure to demonstrate compliance with emission limits as required by 40 C.F.R. § 63.11201(a).

12. EPA and Respondent agree that settlement of this matter for a penalty in the amount of **\$20,150** which Respondent shall be liable to pay in accordance with the terms set forth below, is reasonable and in the public interest. In calculating this amount, Complainant considered a number of factors in CAA Section 113(e)(1), 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 the same violation, the seriousness of violation and such other matters as justice may require. 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 (dated October 25, 1991) which reflects the statutory penalty criteria and factors set forth at Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the December 29, 2020 Expedited Settlement Agreement Pilot Program for the Stationary Source Enforcement Program.
13. Respondent agrees that, within 30 days of the effective date of this Agreement, Respondent shall make a payment of **\$20,150** by one of four methods: 1) electronic funds transfer ("EFT"), 2) Automated Clearinghouse, 3) Pay.gov, or 4) a cashier's check or certified check payable to "**United States Treasury**", with the case name, address, and docket number of this Agreement (CAA-03-2022-0004), for the amount specified above.
14. A list of the payment methods is also provided on the website <https://www.epa.gov/financial/makepayment>
 - a) Payment of the penalty amount **by EFT** to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: Environmental Protection Agency
 - b) Payment of the penalty amount **by Automated Clearinghouse (ACH)** to EPA can be made through the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver

ABA: 051036706
Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22- Checking

Physical Location of the U.S. Treasury Facility
5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

c) Payment of the penalty amount made **through Pay.gov**:

Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments. Follow these steps to make a payment:

- (1) You DO NOT need a username and password or account.
- (2) Enter SFO 1.1 in the form search box on the top left side of the screen.
- (3) Open the form and follow the on-screen instructions.
- (4) Select your method of payment from the "Type of Payment" drop down menu.
- (5) Based on your selection, the corresponding line will open and no longer be shaded grey.
- (6) Enter the docket number of this Agreement into the field.

d) Payment of the penalty amount **by cashier's check, or by certified check**, payable to the "United States Treasury" *with the case name, address, and docket number of this Agreement (CAA-03-2022-0004) referenced on the check*, which shall be sent:

- (1) via certified mail to:

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

or

- (2) via overnight mail (FedEx or other non-U.S. Postal Service express mail) to:

U.S. Environmental Protection Agency
Government Lock Box - Cincinnati Finance Center Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL

St. Louis, MO 63101

15. Within twenty-four (24) hours of making payment, Respondent shall also send proof of such payment (*i.e.*, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire transfer or of automated clearinghouse transfer) **by email** to:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
R3_Hearing_Clerk@epa.gov

and

Kim Laufenberg (3ED21)
U.S. EPA, Region III
laufenberg.kim@epa.gov

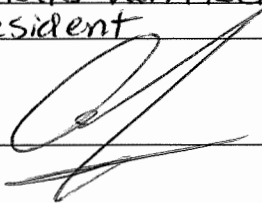
16. Payment of the civil penalty, in accordance with the above terms and provisions, is due and payable immediately upon Respondent's receipt of a true and correct copy of the fully executed and filed Agreement. Receipt by Respondent or Respondent's legal representative of such copy of the fully executed Agreement, with a date stamp indicating the date on which the Agreement was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed to EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
17. Late payment of the agreed upon penalty may subject Respondent to interest, administrative costs and late payment penalties in accordance with 40 C.F.R. § 13.11.
18. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Agreement and is in compliance with Section 112 of the CAA, 42 U.S.C. § 7412 and 40 C.F.R. Part 63, Subpart JJJJJ, Tables 1 and 3. Respondent further certifies that it has submitted all required reports, and/or performed all required testing, to the extent possible.
19. In signing this Agreement, the Respondent: a) admits the jurisdictional allegations set forth in this Agreement; b) neither admits nor denies the specific factual allegations set forth in this Agreement, except as provided in the jurisdictional admission above; c) agrees not to contest EPA's jurisdiction with respect to the execution of this Agreement, the issuance of the attached Final Order, or the enforcement of the Agreement; d) expressly waives its right to a hearing on any issue of law or fact set forth in this Agreement and any right to appeal the accompanying Final Order; e) consents to the issuance of the Agreement and agrees to comply with its terms; f) agrees to bear its own costs and attorney's fees; and g) agrees not to deduct for federal tax purposes all or any portion of the civil monetary penalty specified in this Agreement.
20. By its signature below, Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute

further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Agreement are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

21. This Agreement and attached Final Order constitute a settlement by EPA of its claims for civil penalties for the violations in this Agreement.
22. 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. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Sections 22.18(c) and 22.31(a) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Agreement, following its filing with the Regional Hearing Clerk.
23. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing.
24. The undersigned representative certifies that she/he is fully authorized to execute this Agreement and to legally bind Respondent.
25. As permitted under 40 CFR § 22.6, the Regional Hearing Clerk will serve copies of this Agreement and Final Order by e-mail to the parties at the following valid e-mail addresses: Laufenberg.Kim@epa.gov (for Complainant), and _____ (for Respondent).

For Respondent: Van Hoekelen Greenhouses, Inc.

Name: Cornelis van Hoekelen
Title: President

Signature: 

Date: 5-19-2022

For Complainant: U.S. Environmental Protection Agency, Region III

After reviewing the Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date

Karen Melvin, Director
Enforcement and Compliance Assurance Division

In the Matter of:
Van Hoekelen Greenhouses, Inc.

Docket No.
CAA-03-2022-0004

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF:

Van Hoekelen Greenhouses, Inc.

Respondent.

**51 Lofty Road
McAdoo, PA 18237**

Facility.

DOCKET NO.: CAA-03-2022-0004

**EXPEDITED SETTLEMENT
AGREEMENT AND FINAL ORDER**

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency - Region III, and Respondent, Van Hoekelen Greenhouses, Inc., have executed a document entitled “Expedited Settlement Agreement,” which I hereby ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Expedited Settlement Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

Based upon the representations of the parties in the attached Expedited Settlement Agreement, the penalty agreed to therein took into account the factors provided in CAA Section 113(e), EPA’s Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991) which reflects the statutory penalty criteria and factors set forth at Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the December 29, 2020 Expedited Settlement Agreement Pilot Program for the Stationary Source Enforcement Program.

NOW, THEREFORE, PURSUANT TO Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and in accordance with Section 18(b)(3) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, and having relied upon the representations of the parties set forth in this Agreement, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **\$20,150 (TWENTY THOUSAND, ONE HUNDRED, FIFTY DOLLARS)**, in accordance with the payment provisions set forth in the Expedited Settlement Agreement, and comply with the terms and conditions of the Expedited Settlement Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves

only those causes of action alleged in the Expedited Settlement Agreement and does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, and the regulations promulgated thereunder.

This Expedited Settlement Agreement and Final Order will be effective upon filing.

Date:

By:

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

Four Penn Center – 1600 John F Kennedy Blvd
Philadelphia, Pennsylvania 19103-2852

IN THE MATTER OF:

Van Hoekelen Greenhouses, Inc.
51 Lofty Road
McAdoo, PA 18237

Respondent.

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DOCKET NO.: CAA-03-2022-0004

EXPEDITED SETTLEMENT
AGREEMENT

CERTIFICATE OF SERVICE

I certify that on _____, the original and one (1) copy of the foregoing *Expedited Settlement Agreement* and of the associated *Final Order*, each were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served true and correct copies of the same to each of the following persons, in the manner specified below:

Copies served electronically, **via E-mail**, to the following persons at the E-mail addresses specified below:

Cornelis Van Hoekelen
Van Hoekelen Greenhouses, Inc.
51 Lofty Road
McAdoo, PA 18237
E-mail: patg@vhgreenhouses.com

and

Kim Laufenberg
Air Inspector (3ED21)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
E-mail: Laufenberg.Kim@epa.gov

Date

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029