



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

MAY 11 2009

REPLY TO THE ATTENTION OF:

AE-17J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Patricia F. Sharkey  
Attorney at Law  
McGuireWoods LLP  
77 West Wacker Drive  
Suite 4100  
Chicago, Illinois 60601-1818

Re: BRC Rubber & Plastics, Inc.- Consent Agreement and Final Order

Dear Ms. Sharkey:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves BRC Rubber & Plastics, Inc., CAA Docket No. CAA-05-2009-0007. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on May 11, 2009.

Pursuant to paragraph 13 of the CAFO, BRC Rubber & Plastics, Inc., must pay the \$18,017 civil penalty within 30 days of the date the CAFO was filed, June 10, 2009.<sup>juw</sup> The check must display the case docket number, CAA-05-2009-0007, and the billing document number, 2750903A022.

Please direct any questions regarding this case to Padmavati Bending, Associate Regional Counsel, (312) 353-8917.

Sincerely,

  
Brent Marable  
Chief  
Air Enforcement and Compliance Assurance (IL/IN)

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

In the Matter of: )  
)  
BRC Rubber & Plastics, Inc. )  
Montpelier, Indiana )  
Respondent. )  
\_\_\_\_\_ )

Docket No. CAA-05-2009-007

Proceeding to Assess a Civil Penalty  
Under Section 113 (d) of the Clean Air  
Act, 42 U.S.C. § 7413(d)

RECEIVED

MAY 11 2009

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**Consent Agreement and Final Order**

1. Complainant, the Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).
2. On December 22, 2008, EPA filed the Complaint in this action against Respondent BRC Rubber and Plastics, Inc. The Complaint alleges that Respondent violated Sections 112 and 502 of the Act, 42 U.S.C. § 7412 and 7661a(a), and 40 C.F.R. Part 63, Subpart Mmmm by having emissions from its coating operations in excess of the emission limit of 37.7 pounds HAPs/gallons coating solids used requirement contained in 40 C.F.R. Part 63, Subpart Mmmm at its facility in Montpelier, Indiana.
3. On January 13, 2009, Respondent filed, and Complainant posed no objection to, a motion for an extension of time to answer the Complaint.
4. The Regional Judicial officer granted Respondent's motion and Respondent is not required to file an Answer to the Complaint until April 27, 2009.
5. Respondent has not yet filed an Answer or requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

### Stipulations

6. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint.
7. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).
8. Respondent certifies that it is complying fully with 40 C.F.R. Part 63, Subpart MMMM.
9. Respondent agrees to continue complying with 40 C.F.R. Part 63, Subpart MMMM through the same compliance methods used to date, i.e., the use of low HAP materials.
10. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.
11. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

### Civil Penalty

12. In consideration of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), including the facts of this case, the nature of the violations, the cooperation demonstrated by Respondent, Respondent's agreement to perform a Supplemental Environmental Projects (SEP), and other relevant factors, Complainant agrees to mitigate the proposed penalty of \$109,784 to \$18,017.
13. Within 30 days after the effective date of this CAFO, Respondent must pay the \$18,017 civil penalty by one of the following options:
  - a. Sending via U.S. Postal Service mail a cashier's or certified check payable to the "Treasurer, United States of America," to:

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

The check must note the case name, docket number of this CAFO, and the billing document number.

b. Sending via a carrier that will not deliver to P.O. Boxes (*e.g.* express carrier) a cashier's or certified check payable to the "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note the case name, docket number of this CAFO, and the billing document number.

c. Sending via electronic funds transfer payable to the "Treasurer, United States of America," to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the case name, the docket number of this CAFO, and the billing document number.

14. If paying by check, a transmittal letter stating the Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 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, IL 60604

Padmavati G. Bending, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

15. This civil penalty is not deductible for federal tax purposes.
16. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under Paragraph 30, below, 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.
17. 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.

**Supplemental Environmental Project**

18. Respondent must complete a supplemental environmental project (SEP) designed to protect the environmental and public health by reducing Volatile Organic Compounds and Hazardous Air Pollutant emissions.

19. At its Montpelier, Indiana facility, Respondent must complete a SEP which retrofits the existing "chain on edge" unit on Coating Lines PB4 and PB5 to improve adhesive transfer efficiency on the following schedule:

<u>Task</u>	<u>Deadline</u>
Submit Construction Permit Application to IDEM	No later than 30 days after entry of this CAFO.
Issue purchase orders	No later than 90 days after receipt of the construction permit from IDEM.
Commence construction	No later than 180 days after receipt of the construction permit from IDEM.
Commence operation of new equipment	No later than 360 days after receipt of the construction permit from IDEM.

20. Respondent must spend at least \$82,450 to purchase the equipment and operate it for at least 5 years.

21. Whenever using Coating Lines PB 4 and PB 5, Respondent must continuously use or operate the equipment installed as the SEP for 5 years following its installation. If

Respondent ceases operation of this equipment within 5 years of commencing operations of this equipment, Respondent must notify EPA of that fact in writing by sending a report to the address specified in Paragraph 26, below.

22. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

23. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

24. Respondent must maintain copies of the underlying research and data for all reports submitted to EPA according to the CAFO. Respondent must provide the documentation of any underlying research and data to EPA within seven days of EPA's request for the information.

25. Respondent must submit a SEP completion report to EPA within 60 days after beginning operation of the SEP (the last task identified in Paragraph 19, above). This report must contain the following information:

- a. Detailed description of the SEP as completed;
  - b. Description of any operating problems and the actions taken to correct the problems;
  - c. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual cost of the goods and services;
  - d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
  - e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).
26. Respondent must submit all notices and reports required by this CAFO by first class

mail to:

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, IL 60604

27. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

28. Following receipt of the SEP completion report described in Paragraph 25, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 30.

29. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 30, below.



30. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent spent less than the amount set forth in paragraph 20, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 20.
- b. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$42,225 in addition to any penalty required under subparagraph 30.a, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- c. If Respondent fails to comply with the schedule in paragraph 19, above, for implementing the SEP, fails to submit timely the SEP completion report required by paragraph 25, above, or fails to submit timely any other report required by paragraph 24, above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$ 250	1 <sup>st</sup> through 20 <sup>th</sup> day
\$ 500	21 <sup>st</sup> through 30 <sup>th</sup> day
\$ 750	31 <sup>st</sup> day and beyond.

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

31. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

32. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 13, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

33. Any public statement that Respondent makes referring to the SEP must include the following language, "BRC Rubber and Plastics, Inc. undertook this project under the settlement

of the United States Environmental Protection Agency's enforcement action against BRC Rubber and Plastics, Inc. for violations of 40 C.F.R. Part 63, Subpart Mmmm."

34. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased cost for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

35. For federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

#### **General Provisions**

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

37. This 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 other violation of

law.

38. 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 36, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

39. 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).

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

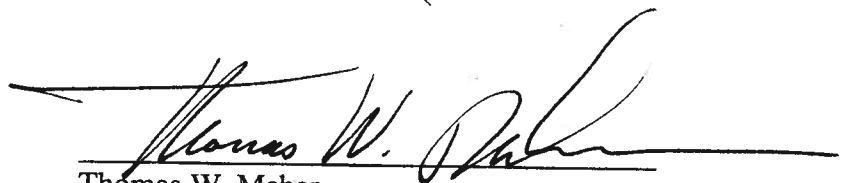
41. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

42. Each party agrees to bear its own cost and attorneys' fees in this action.

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

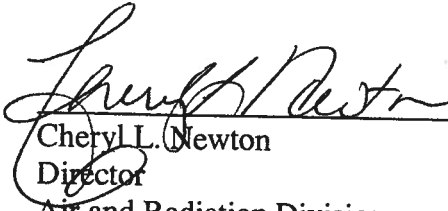
**BRC Rubber and Plastics, Inc., Respondent**

4-30-09  
Date

  
Thomas W. Maher  
Vice President, Human Resources  
BRC Rubber and Plastics, Inc.

**United States Environmental Protection Agency, Complainant**

5/8/09  
Date

  
Cheryl L. Newton  
Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5

In the Matter of:  
BRC Rubber and Plastics, Inc.  
Docket No. CAA-05-2009-007

**Final Order**

This Consent Agreement and Final Order, as agreed to by 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. IT IS SO ORDERED.

5-8-09  
Date

Richard C. Kelso  
Bharat Mathur  
Acting Regional Administrator  
United States Environmental Protection Agency  
Region 5

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PROTECTION AGENCY

In the Matter of BRC Rubber & Plastics, Inc.

Docket No: CAA-05-2009-0007

**CERTIFICATE OF MAILING**

I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2009-0007 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to BRC Rubber & Plastics, Inc. and BRC Rubber & Plastics, Inc. Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Thomas W. Maher  
Vice President, Human Resources  
BRC Rubber and Plastics, Inc.  
623 West Monroe Street  
Montpelier, Indiana 47359

Patricia F. Sharkey  
Attorney at Law  
McGuireWoods LLP  
77 West Wacker Drive  
Suite 4100  
Chicago, Illinois 60601-1818

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MAY 11 2009

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

I also certify that a copy of the CAFO was sent by first-class mail to:

Phil Perry, Chief  
Compliance and Enforcement Branch  
Office of Air Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue / Room IGCN 1003  
Indianapolis, Indiana 46204-2251

on the 11<sup>th</sup> day of May 2009.

  
Betty Williams  
Administrative Program Assistant  
AECAS (IL/IN)