

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the matter of:

Genpak LLC
Glens Falls, New York

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-02-2017-1201

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 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 United States Environmental Protection Agency, Region 2 (the "EPA"). On the EPA's behalf, the Director of the Division of Enforcement and Compliance Assistance for the EPA is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent is Genpak LLC, a limited liability company doing business in the state of New York. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (“Consent Agreement” or “Agreement”) and the attached final order (“Final Order” or “Order”) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

B. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this Consent Agreement are pursuant to Section 113(a)(1)(B) of the Act.
6. In satisfaction of the notice requirements of Section 113(a) of the Act, on April 29, 2016, the EPA issued to Respondent a notice of violation (“NOV”) and provided a copy of the NOV to New York State, providing notice to both that the EPA found that Respondent committed the violations described in Section E of this Agreement and providing Respondent an opportunity to confer with the EPA. On June 8, 2016 and October 17, 2016, representatives of Respondent and the EPA discussed the April 29, 2016 NOV.
7. The Regional Administrator is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. *See* 40 C.F.R. § 22.4(b) and 22.18(b). Pursuant to EPA Region 2 Delegation of Authority 7-6-C, the Region 2 Regional Administrator has delegated to the Regional Judicial Officer the authority to issue consent orders memorializing settlements providing for a penalty no greater than \$37,500 between the agency and respondents resulting from administrative enforcement actions under the Act.
8. The EPA and the United States Department of Justice jointly determined 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 assessment.

42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

9. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. *See* 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

10. Section 109 of the CAA directs the EPA Administrator to promulgate regulations establishing national ambient air quality standards (“NAAQS”) for each air pollutant for which air quality criteria have been issued pursuant to Section 108 of the Act.
11. Section 110(a)(1) of the CAA requires each state to adopt and submit to the EPA for approval, a plan that provides for the implementation, maintenance, and enforcement of each of the NAAQS. Such plans, once approved by the EPA, are known as State Implementation Plans, or SIPs.
12. At all times relevant, the federally approved SIP for the State of New York has included N.Y. Comp. Codes R. & Regs. tit. 6, § 200.1 (“6 NYCRR § 200.1”) and 6 NYCRR § 200.7. *See* 6 NYCRR § 200.1 (EPA approved July 17, 2013); 6 NYCRR § 200.7 (EPA approved April 22, 2008).
13. At all times relevant, the NY SIP has included the following definitions:
 - “Person” means: “Any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever.” 6 NYCRR § 200.1(bi).

- “Air contamination source” means: “Any apparatus, contrivance or machine capable of causing emission of any air contaminant to the outdoor atmosphere, including any appurtenant exhaust system or air cleaning device. Where a process at an emission unit uses more than one apparatus, contrivance or machine in combination, the combination may be considered a single emission source.” 6 NYCRR § 200.1(f).
- “Lower Orange County metropolitan area” means “The area including the Towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury.” 6 NYCRR § 200.1(al).
- “Reasonably available control technology (“RACT”)” means “Lowest emission limit that a particular source is capable of meeting by application of control technology that is reasonably available, considering technological and economic feasibility.” 6 NYCRR § 200.1(bq).

14. The NY General Provisions contain a “Maintenance of equipment” provision that states:

“Any person who owns or operates an air contamination source which is equipped with an emission control device shall operate such device and keep it in a satisfactory state of maintenance and repair in accordance with ordinary and necessary practices, standards and procedures, inclusive of manufacturer’s specifications, required to operate such device effectively.” 6 NYCRR § 200.7 (2008).

