

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Daikin Applied Americas, Inc.
13600 Industrial Park Blvd.
Plymouth, Minnesota 55441,**

Respondent,

**Chiller Products Plant
207 Laurel Hill Road
Verona, VA 24482,**

Facility.

EPA Docket No. CAA-03-2016-0021

CONSENT AGREEMENT

**Proceeding under Section 113(d) of the
Clean Air Act**

REGIONAL HEARING OFFICE
EPA REGION III, PHILA, PA

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CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

This administrative Consent Agreement (the "Consent Agreement") is entered into and between the Complainant, the Director of the Air Protection Division, United States Environmental Protection Agency, Region III ("EPA" or "Complainant"), and Daikin Applied Americas, Inc. (the "Respondent" or "Daikin"), pursuant to Section 113(a) and (d) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Consolidated Rules"). The Consolidated Rules provide at 40 C.F.R. § 22.13, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be commenced and concluded simultaneously by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

This Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO") address alleged violations by Respondent of requirements found in 40 C.F.R. Part 63, Subpart ZZZZ, the National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines ("Subpart ZZZZ"), as described below.

B. GENERAL PROVISIONS

1. Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement, rule, plan, order, waiver, or permit promulgated, issued, or approved under Subchapters I, IV, V and VI [also referred to as Titles I, IV, V and VI] of the Act. The authority to issue the accompanying Final Order has been duly delegated to the Regional Judicial Officer, EPA Region III.
2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO and agrees not to contest EPA's jurisdiction with respect to the issuance, execution and enforcement of this CAFO.

3. Except as provided in paragraph 2 above, Respondent neither admits nor denies the specific findings of fact and the conclusions of law set forth in this CAFO.
4. Respondent consents to the issuance of this CAFO, agrees to comply with the terms and conditions set forth therein, and consents to the payment of a civil penalty as set forth in this CAFO.
5. Respondent agrees to pay its own costs and attorney fees.
6. Respondent agrees that this CAFO shall apply to, and be binding upon, Respondent, its officers, directors, servants, employees, agents, successors and assigns.

C. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law.

7. Respondent is a private corporation organized under the laws of the state of Delaware to manufacture chiller products. Respondent owns and operates the chiller products manufacturing facility located at 207 Laurel Hill Road, Verona, VA 24482 (the "Facility").
8. Respondent is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d), 42 U.S.C. § 7413(d), because it is a corporation. At all times relevant to the violations alleged in this Consent Agreement, Respondent has been the owner and operator of the Facility.
9. Section 112 in Title I of the CAA, 42 U.S.C. § 7412, governs the federal control program for hazardous air pollutants ("HAPs") and directs EPA to define the categories of sources that are required to control emissions of HAPs. Section 112(d) of the CAA, 42 U.S.C. § 7412(d), directs EPA to establish national emissions standards for hazardous air pollutants ("NESHAPs") for sources in each category to limit the release of specified HAPs from specific industrial sectors.
10. Pursuant to Section 112(a) of the CAA, 42 U.S.C. § 7412(a), a "major source" is a stationary source that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs. The term HAP means any air pollutant listed pursuant to Section 112(b) of the CAA, 42 U.S.C. § 7412(b). An "area source," pursuant to Section 112(a) of the CAA, 42 U.S.C. § 7412(a), means any stationary source of HAP that is not a major source.
11. The Facility is an area source of HAPs because it is a stationary source which emits or has the potential to emit HAPs including, but not limited to, formaldehyde and carbon monoxide (a surrogate for other HAPs), at levels below major source thresholds.
12. In 2008, EPA issued the National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, 40 C.F.R. Part 63, Subpart ZZZZ ("the RICE Rule") pursuant to Section 112 of the CAA, 42 U.S.C. § 7412.
13. The RICE Rule "establishes national emission limitations for hazardous air pollutants (HAP) emitted from stationary reciprocating internal combustion engines (RICE) located at major and area sources of HAP emissions. . . . [and] establishes requirements to demonstrate initial and continuous compliance with the emission limitations and operating limitations." 40 C.F.R. § 63.6580.

14. The RICE Rule applies to owners and operators of “stationary RICE at a major or area source of HAP emissions.” 40 C.F.R. § 63.6585.
15. Pursuant to 40 C.F.R. § 63.6585(a), “[a] stationary RICE is any internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile.”
16. In a January 5, 2015 letter to EPA, Respondent stated that it was subject to the RICE Rule.
17. Respondent is subject to the RICE Rule because it owns and operates a stationary RICE at an area source of HAP emissions. 40 C.F.R. § 63.6585.
18. The provisions of the RICE Rule apply to each existing affected source.
19. Based upon an email from the Respondent to EPA on January 15, 2015 at 10:16 a.m., Respondent commenced construction on or about July 1, 2002 on a 2,000-kilowatt (“kW”) Caterpillar Model No. 3516 diesel-fired RICE, which was installed at the Facility. This equipment (Caterpillar Model No. 3516 RICE) is a stationary RICE, as defined in 40 C.F.R. § 63.6585(a). The equipment (Caterpillar Model No. 3516 RICE) is a compression ignition (“CI”) stationary RICE because it is not a spark ignition engine. 40 C.F.R. § 63.6675. The equipment (Caterpillar Model No. 3516 RICE) is also a non-emergency, non-black start CI stationary RICE with 2,848 brake horsepower.
20. Because Respondent commenced construction of Caterpillar Model No. 3516 RICE on or before June 12, 2006, the Caterpillar Model No. 3516 RICE is an “existing” stationary RICE. 40 C.F.R. § 63.6590(a)(1)(iii).
21. Virginia has not accepted delegation for the RICE Rule at this date. Therefore, all reports required by the RICE Rule must be submitted to EPA.
22. 40 C.F.R. § 63.6590(a) defines “affected source” as “any existing, new, reconstructed stationary RICE located at a major or area source of HAP emissions.”
23. Pursuant to 40 C.F.R. § 63.6645(a) (notification requirements), the owner or operator of an existing affected source must “submit all of the notifications in [40 C.F.R.] §§ 63.7(b) and (c), 63.8(e), (f)(4) and (f)(6), 63.9(b) through (e), and (g) and (h) that apply to the affected source.”
24. 40 C.F.R. § 63.9(b) requires the owner or operator of an affected source to submit an “Initial Notification” to the EPA Administrator “within 120 calendar days after the effective date of the relevant [NESHAP] standard (or within 120 calendar days after the source becomes subject to the relevant [NESHAP] standard).”
25. As an affected source for the RICE Rule, Respondent was required to submit an “Initial Notification” within 120 calendar days after the effective date of the RICE Rule, which was August 31, 2013. *See* 40 C.F.R. § 63.6595(a). Respondent did not submit the “Initial Notification” by this date, in violation of 40 C.F.R. §§ 63.6645(a) and 63.9(b) and the Act.
26. Pursuant to 40 C.F.R. § 63.6603(a), the owners and operators of existing stationary RICE located at area sources of HAPs are required to comply with the requirements of Table 2d of the RICE Rule.
27. Table 2d of the RICE Rule requires owners and operators of non-emergency, non-black start CI stationary RICE with greater than 500 brake horsepower to limit carbon monoxide (“CO”) emissions to 23 parts per million volumetric dry (“ppmvd”) at 15% oxygen (“O₂”) or reduce CO emissions by 70% or more. 40 C.F.R. Part 63, Subpart ZZZZ, Table 2d.

28. As the owner or operator of an existing stationary, non-emergency, non-black start CI stationary RICE with greater than 500 brake horsepower located at an area source of HAPs, Respondent was required to limit CO emissions to 23 ppmvd at 15% O₂ or reduce CO emissions by 70% or more. Upon information and belief, from May 3, 2013 until March 26, 2015, Respondent failed to limit CO emissions to 23 ppmvd at 15% O₂ or reduce CO emissions by 70% or more, in violation of 40 C.F.R. § 63.6603(a) and Table 2d and the Act.
29. Pursuant to 40 C.F.R. § 63.6612(a), owners and operators of existing stationary RICE located at area sources of HAP emissions are required to conduct the applicable initial performance tests or other initial compliance demonstrations contained in Tables 4 and 5 of the RICE Rule within 180 days of the compliance date specified in 40 C.F.R. § 63.6595 and according to the provisions of 40 C.F.R. § 63.7(a)(2).
30. Upon information and belief, Respondent was required to conduct initial performance tests and compliance demonstrations within 180 days of its compliance date of May 3, 2013, which would have been October 30, 2013.
31. According to a March 31, 2015 executive summary of the Facility's emissions test, a third party, the Air Compliance Group, L.L.C., performed the overdue initial performance tests and compliance demonstrations for Respondent on March 26, 2015, using EPA Methods 3A and 10 of the RICE Rule. These initial performance tests and compliance demonstrations were not conducted within 180 days of Respondent's compliance date of May 3, 2013, which would have been October 30, 2013. 40 C.F.R. § 63.6595. Between October 30, 2013 and March 26, 2015, Respondent was in violation of 40 C.F.R. § 63.6612(a) for failure to timely perform initial performance tests and compliance demonstrations.
32. Pursuant to 40 C.F.R. § 63.6645(h)(2), owners and operators of affected sources are required to submit a Notification of Compliance Status for each applicable initial compliance demonstration required by Table 5 of the RICE Rule that includes a performance test within 60 days of that performance test.
33. Respondent was required, but failed, to submit a Notification of Compliance Status for each applicable initial compliance demonstration required by Table 5 of the RICE Rule that includes a performance test within 60 days of the March 26, 2015 performance test, which would have been May 25, 2015, and is therefore in violation of 40 C.F.R. § 63.6645(h)(2) and the Act.
34. Pursuant to 40 C.F.R. § 63.6650(b)(1) and Table 7, owners and operators of affected sources are required to submit semiannual compliance reports beginning after an affected source's compliance date.
35. As the owner and operator of an affected source which is a non-emergency, non-black start CI stationary RICE with 2,848 brake horsepower, Respondent must submit semiannual compliance reports, as required by 40 C.F.R. § 63.6650(b)(1) and Table 7 to include all information in § 63.6650(b) by the dates specified in § 63.6650(b).
36. In accordance with 40 C.F.R. § 63.6650(b), Respondent's compliance date was May 3, 2013. As such Respondent was required to submit semiannual compliance reports for the following periods of time:
 - a. May 3, 2013 until June 30, 2013;
 - b. July 1, 2013 until December 31, 2013;

- c. January 1, 2014 until June 30, 2014;
- d. July 1, 2014 until December 31, 2014; and
- e. January 1, 2015 until June 30, 2015.

37. From July 2013 through present, Respondent failed to submit the semiannual compliance reports as required, in violation of 40 C.F.R. § 63.6650(b)(1), Table 7, and the Act.
38. Section 113(d)(1) of the CAA limits the Administrator's authority to matters where the first alleged violation occurred no more than 12 months prior to initiation of an administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.
39. The Administrator and the Attorney General, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

D. SETTLEMENT RECITATION, SETTLEMENT CONDITIONS, AND CIVIL PENALTY

40. Complainant and Respondent enter into this Consent Agreement and the accompanying Final Order in order to settle the violations specifically set forth in Section C of this Consent Agreement.
41. In settlement of the alleged violations enumerated above in Section C of this Consent Agreement, Respondent consents to the assessment and agrees to pay a civil penalty in the amount of \$30,000.00 within the time and manner specified herein.
42. The settlement amount of \$30,000.00 is based upon Complainant's consideration of and application of the statutory penalty factors set forth in Section 113(e), of the Act, 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 same violation, the seriousness of violation and such other matters as justice may require, and EPA's Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991), as indexed for inflation in keeping with 40 C.F.R. Part 19 (Adjustment to Civil Monetary Penalties for Inflation). Complainant has determined that Respondent's payment of this civil penalty shall resolve the violations set forth in Section C of this Consent Agreement.
43. Respondent shall pay the civil penalty of \$30,000.00 no later than thirty (30) days after the effective date of this CAFO in order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO.
44. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
45. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this executed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date

on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

46. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
47. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
48. Thus, in accordance with the above provisions, to avoid the assessment of interest, late payment penalties, and handling charges on the penalty set forth herein, Respondent must pay the full amount of the civil penalty, in the manner directed, within thirty (30) days of the effective date of this CAFO.
49. Payment of the penalty in Paragraph 41 shall be made by cashier's check, certified check, or electronic wire transfer, Automated Clearing House ("ACH"), or an online, internet payment as specified below. All payments are payable to "Treasurer, United States of America" and shall reference the above case caption and docket number – CAA-03-2016-0021).
50. Instructions for submitting payment of the penalty using the methods, or combination of methods, described above are provided at the following EPA website addresses:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>
<http://www2.epa.gov/financial/makepayment>
51. Any payment made by any method must reference the above case caption and docket number, CAA-03-2016-0021. Within 24 hours of payment of any penalty amount, Respondent shall send copies of any corresponding check, or written notification confirming any electronic transfer through wire transfer, ACH, or internet payment, to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, to Candace Headen, Assistant Regional Counsel (3RC10), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and to Gwendolyn Supplee (3AP20), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029.
52. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in, and any civil penalty amount paid pursuant to, this CAFO.
53. Payment of the penalty specified in Paragraph 41 in the manner set forth in this Consent Agreement and payment of any applicable interest, handling costs and/or late payment charges as set forth above shall constitute satisfaction of all civil claims for penalties for the specific violations alleged in Section C of this Consent Agreement. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations administered by EPA.
54. Respondent's failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in referral of this matter to the United States Attorney for enforcement of

this CAFO in the appropriate United States District Court, in accordance with Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5).

E. RESERVATION OF RIGHTS

55. This CAFO resolve only the civil penalty claims for the specific violations alleged in Section C of this Consent Agreement. 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. Nor shall anything in this CAFO be construed to limit the United States' authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

F. EFFECTIVE DATE

56. The effective date of this CAFO is the date on which the CAFO is filed with the Regional Hearing Clerk of EPA Region III.

G. WAIVER OF HEARING

57. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), with respect to any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the accompanying Final Order.

H. ENTIRE AGREEMENT


58. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO. Nothing in this CAFO shall be construed to affect or limit in any way the obligation of Respondent to comply with all federal, state and local laws and regulations governing any activity required by this CAFO.

I. EXECUTION

59. The person signing this Consent Agreement on behalf of Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Respondent, to the terms and conditions of this CAFO.

FOR RESPONDENT:

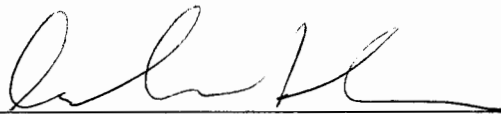
12/30/2015
Date



Bill Mateikis
Senior Vice President for Human Resources & General Counsel
Daikin Applied Americas, Inc.

FOR COMPLAINANT

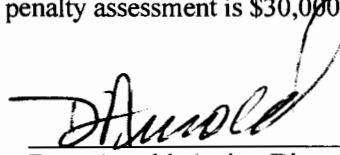
1/5/2016
Date


Candace Headen
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III

Accordingly, the Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, ratify this Consent Agreement and issue the accompanying Final Order (CAA-03-2016-0021). The amount of the recommended civil penalty assessment is \$30,000.00.

JAN 11 2016

Date



Dave Arnold, Acting Director
Air Protection Division
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

In the Matter of:

Daikin Applied Americas, Inc. 13600 Industrial Park Blvd. Plymouth, Minnesota 55441,

Respondent,

Chiller Products Plant 207 Laurel Hill Road Verona, VA 24482,

Facility.

EPA Docket No. CAA-03-2016-0021

FINAL ORDER

Proceeding under Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. § 7413(d)

FINAL ORDER

Complainant, the Director of the Air Protection Division, U.S. Environmental Protection Agency Region III, and Respondent, Daikin Applied Americas, Inc., have executed a document entitled "Consent 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 Consent Agreement are accented by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representation of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, inter alia, EPA's Clean Air Act Stationary Source Civil Penalty Policy (1991) and the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

NOW, THEREFORE, PURSUANT TO Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, IT IS HEREBY ORDERED that Respondent pay a civil penalty of THIRTY THOUSAND DOLLARS (\$30,000.00), in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Jan. 13, 2016 Date

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

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CERTIFICATION OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of the Daikin Applied Americas, Inc., Docket No. CAA-03-2016-0021, were filed and copies of the same were mailed to the parties as indicated below.


CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Bill Mateikis
Senior Vice President for Human Resources & General Counsel
Daikin Applied Americas, Inc.
13600 Industrial Park Blvd.
Plymouth, Minnesota 55441

Via Hand-Delivery

Regional Hearing Clerk
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

1/13/2016
Date


Candace Headen
Assistant Regional Counsel
U.S. EPA – Region III