

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
Phillips Manufacturing Company)
4949 S. 30th Street) Docket No. CAA-07-2007-0016
Omaha, Nebraska)
)
Respondent)

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

This Administrative Compliance Order on Consent (Order on Consent) is entered into voluntarily by the United States Environmental Protection Agency, Region VII (EPA) and Phillips Manufacturing Company (Phillips or Respondent), pursuant to Section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7413(a)(3)(B), as amended. This Order on Consent requires Phillips to comply with the requirements of Section 112(d) of the Clean Air Act, 42 U.S.C. § 7412(d), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 63, Subpart T.

Specifically, EPA Orders Phillips to notify EPA and comply with the regulations set forth at 40 C.F.R. Part 63, Subpart T if and when Respondent uses a halogenated hazardous air pollutant solvent referred to in Subpart T, or combinations thereof, in a manner which would subject Respondent to the requirements of 40 C.F.R. Part 63, Subpart T.

The terms of this Order on Consent shall not be modified except by a subsequent written agreement between the parties.

I. Statutory and Regulatory Background

1. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added Section 112(d) to Title I of the Clean Air Act, 42 U.S.C. § 7412(d), which requires the Administrator of EPA to, among other things, promulgate regulations establishing emission standards for hazardous air pollutants (HAPs). Specifically, section 112(d), 42 U.S.C. § 7412(d) mandates the Administrator to promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsections (c) of this section in accordance with the schedules provided in subsections (c) and (e) of this section.

2. On March 16, 1994, EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPs), 40 C.F.R. Part 63, which implements Section 112, 42 U.S.C. § 7412, of the Clean Air Act. These standards regulate specific categories of stationary sources that emit or have the potential to emit one or more hazardous air pollutants listed in this part pursuant to section 112(b) of the Act, 42 U.S.C. § 7412.

3. Specifically, the regulations at 40 C.F.R. Part 63, Subpart T, set forth National Emission Standards for Halogenated Solvent Cleaning. These standards apply to each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines using a halogenated HAP solvent listed in Subpart T, or combination thereof, greater than 5% by weight as a cleaning and/or drying agent.

4. Pursuant to 40 C.F.R. § 63.460(c) each solvent cleaning machine subject to this subpart that commences construction or reconstruction after November 29, 1993, must achieve compliance with the provisions of subpart T immediately upon start-up or by December 24, 1994, whichever is later.

5. Pursuant to 40 C.F.R. § 63.460(g) each continuous web cleaning machine subject to this subpart shall achieve compliance with the provisions of this subpart no later than December 2, 1999.

6. Pursuant to 40 C.F.R. § 63.468(b) each owner or operator of a new solvent cleaning machine subject to the provisions of this subpart must submit an initial notification report to the Administrator as soon as practicable before startup.

7. Pursuant to 40 C.F.R. 63.468(c) each owner or operator of a batch vapor or in-line solvent cleaning machine must submit a compliance report to the Administrator no later than one hundred fifty (150) days after start up.

8. Pursuant to 40 C.F.R. 63.468(d) each owner or operator of a batch vapor or in-line solvent cleaning machine must submit an initial statement of compliance for each solvent cleaning machine to the Administrator no later than one hundred fifty (150) days after start up.

9. Section 113(a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(3), grants the Administrator the authority to make a finding of violation of a requirement or prohibition of Title I, and upon such a finding, to issue an order requiring a person to comply with such requirement or prohibition.

II. Definitions

10. The regulations at 40 C.F.R. § 63.3 define “stationary source” as any buildings, structures, facility, or installation which emits or may emit any air pollutant.

11. The regulations at 40 C.F.R. § 63.461 define “halogenated hazardous air pollutant solvent or halogenated HAP solvent” by listing various solvents including trichloroethylene.

12. The regulations at 40 C.F.R. § 63.461 define “in-line cleaning machine or continuous cleaning machine” as a solvent cleaning machine that uses an automated parts handling system,

typically a conveyor, to automatically provide a continuous supply of parts to be cleaned. These units are fully enclosed except for the conveyor inlet and exit portals and can be either cold or vapor cleaning machines.

13. The regulations at 40 C.F.R. § 63.461 define “solvent cleaning machine” as any device or piece of equipment that uses halogenated HAP solvent liquid or vapor to remove soils from the surfaces of materials. Types of solvent cleaning machines include but are not limited to batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines.

14. The regulations at 40 C.F.R. § 63.461 define “continuous web cleaning machine” as a solvent cleaning machine in which parts such as film, coils, wire, and metal strips are cleaned at speeds typically in excess of 11 feet per minute. For purposes of subpart T, all continuous web cleaning machines are considered to be a subset of in-line solvent cleaning machines.

15. The regulations at 40 C.F.R. § 63.461 define “new” as any solvent cleaning machine the construction or reconstruction of which is commenced after November 29, 1993.

III. Factual Background

16. Respondent is the owner and/or operator of a facility located at 4949 S. 30th Street, Omaha, Nebraska (facility). The facility owned by Respondent utilizes prefabricated metal parts in the manufacture of drywall trim.

17. Respondent operates two cold in-line continuous web cleaning machines which are used to clean metal parts.

18. EPA inspected the Respondent’s facility on April 26, 2005, to determine compliance with Section 112 of the Clean Air Act and 40 C.F.R. Part 63. Information collected as a result of this inspection revealed that the Respondent’s facility was using trichloroethylene, a halogenated HAP solvent, in its in-line solvent cleaning machine.

19. Respondent used trichloroethylene in its in-line solvent cleaning machine from September 24, 2004 through August 11, 2005.

20. The start-up date of the in-line solvent cleaning machine at Phillips is on or about September 24, 2004.

21. Phillips did not submit an initial notification report to the Administrator pursuant to 40 C.F.R. § 63.468(b).

22. Phillips did not submit a compliance report to the Administrator pursuant to 40 C.F.R. § 63.468(c).

23. Phillips did not submit an initial statement of compliance to the Administrator pursuant to 40 C.F.R. § 63.468(d).

IV. Conclusions of Law

24. Respondent is, and at all times referred to herein, was a “person” as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

25. Respondent’s facility located at 4949 S. 30th Street in Omaha, Nebraska is a “stationary source” pursuant to 40 C.F.R. § 63.3.

26. Trichloroethylene is a halogenated HAP solvent pursuant to 40 C.F.R. § 63.461.

27. Respondent is subject to the requirements of Section 112(d) of the Clean Air Act, 42 U.S.C. § 7412(d), and 40 C.F.R. Part 63, Subpart T, because it is an owner and operator of an in-line cold solvent cleaning machine which used a halogenated HAP solvent listed in Subpart T, or combination thereof, greater than 5% by weight as a cleaning and/or drying agent.

V. Finding of Violation

28. Phillips failed to submit an initial notification report to the Administrator pursuant to 40 C.F.R. § 63.468(b).

29. Phillips failed to submit a compliance report to the Administrator pursuant to 40 C.F.R. § 63.468(c).

30. Phillips failed to submit an initial statement of compliance to the Administrator pursuant to 40 C.F.R. § 63.468(d).

31. Phillips failure to comply with 40 C.F.R. § 63.468 is a violation of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

VI. Compliance Order

32. Based upon the foregoing Finding of Violation, it is hereby ordered and agreed that Respondent, Phillips Manufacturing Company, shall comply with the requirements of Section 112(d) of the Clean Air Act, 42 U.S.C. § 7412(d) and the regulations promulgated thereunder and codified at 40 C.F.R. Part 63, Subpart T. Specifically, EPA and Respondent agree that Respondent shall:

a. Notify EPA, in writing, within five (5) days before Respondent uses a halogenated hazardous air pollutant solvent referred to in Subpart T, or combinations thereof, in any of the Respondent's in-line solvent cleaning machines.

b. Fully comply with 40 C.F.R. Part 63, Subpart T in the event that Respondent uses a halogenated hazardous air pollutant solvent referred to in Subpart T, or combinations thereof, in a manner which would subject Respondent to the requirements of 40 C.F.R. Part 63, Subpart T.

33. All documents required to be submitted to EPA by this Order shall contain the following certification signed by an officer of the Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on

my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

34. The submissions required by paragraph 32 shall be made to:

Jennifer L. Trotter
Assistant Regional Counsel
United States Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101;

and

Gary Bertram
ARTD/APCO
United States Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

35. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

VII. Stipulated Penalties

36. Respondent shall be liable for stipulated penalties in the amounts set forth in subparagraphs (a) for failure to comply with the requirements of this Order.

- a) The following stipulated penalties shall accrue per violation per day for failure to comply with the requirements of paragraph 32 of this Order:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 30th day
\$250	31st day and beyond

37. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity.

38. The payment of penalties shall not alter in any way Respondent's obligation to comply with the provisions of this Order.

39. All penalties accruing under this section shall be due and payable to the United States within thirty (30) days of Respondent's receipt from EPA of a demand for payment of penalties. All payments to the United States under this section shall be paid by certified or cashiers check made payable to "Treasurer, United States of America" and remitted to:

EPA-Region VII
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

40. Failure to pay any portion of the stipulated penalties on the date upon which they are due will result in the accrual of interest on the unpaid portion of the stipulated penalties at the rate of two percent (2%) per annum.

VIII. Potential Liability

41. This Administrative Compliance Order on Consent resolves Phillips Manufacturing Company's civil liability for violation of 40 C.F.R. §63.468, failure to submit an initial notification report, a compliance report and initial statement of compliance, for the period of September 24, 2004 to August 11, 2005.

42. Respondent admits the jurisdictional allegations of this Administrative Compliance Order on Consent and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Administrative Compliance Order on Consent set forth below.

43. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Administrative Compliance Order on Consent.

44. Section 113(a)(3)(B) of the Clean Air Act grants EPA the authority to issue an Order to Comply to any person found in violation of Section 112(d) of the Clean Air Act and the regulations promulgated pursuant thereto.

45. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the Clean Air Act, 42 U.S.C. § 7413. Under Section 113(a) of the Clean Air Act, the Administrator is authorized to address such a violation as follows:

- a) Issue an administrative penalty order assessing a civil penalty not to exceed \$32,500 per day of violation;
- b) Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$32,500 per day of violation, or both; or
- c) Request the Attorney General to commence a criminal action pursuant to Section 113(c) of the Clean Air Act.

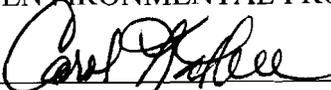
46. Issuance of this Order does not preclude the State of Nebraska or EPA from assessing penalties or taking any other action authorized under the Act. This Order does not affect the obligation of Phillips Manufacturing Company to comply with all federal, state and local statutes, regulations and permits.

47. This Order shall become effective on the date that it is signed by the EPA Director of the Air, RCRA and Toxics Division.

48. This Order shall terminate one year from the effective date of this Order.

49. This Order is binding on the Parties signing below.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

By 
Carol Kather
Acting Director
Air, RCRA and Toxics Division

Date: 3/7/07

By *James J. Holt*

Title *PRESIDENT*

Date *2/19/07*

IN THE MATTER OF Phillips Manufacturing Company, Respondent
Docket No. CAA-07-2007-0016

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Compliance Order on Consent was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Jennifer Trotter
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Robert M Walter
5629 Mosaic Way
Westerville, OH 43082

Dated: 3/9/07


Kathy Robinson
Hearing Clerk, Region 7