

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: James M. Baker 1/20/2010
Name of Contact person Date

in the ORC at 4-2109
Office Phone number

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS
 Administrative Order/ Consent Agreement FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt This is a modification

Name of Person and/or Company/Municipality making the payment
Dillen Floral Corporation

The Total Dollar Amount of Receivable \$30,948
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number CAA-03-2009-0293

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office Land and Chemicals Div.

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
Name of Contact Date

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- 1. U.S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-002)
Cincinnati, OH 45268
Attn: Lori Weidner
- 2. Originating Office (ORC)
- 3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- 1. Originating Office
- 2. Designated Program Office
- 3. Regional Hearing Clerk
- 3. Regional Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

TRANSMITTED BY TELEFAX TO: 717-260-1699

Monday, February 1, 2010

In Reply Refer To Mail Code: 3RC10

Scott A. Gould, Esquire
McNees, Wallace & Nurick LLC
100 Pine Street
Harrisburg, Pennsylvania 17108-1166

Re: In the Matter of Dillon Floral Corporation, EPA Docket No. CAA-03-2009-0293, Consent Agreement and Final Order

Dear Mr. ^{Scott}~~Gould~~:

Attached is the fully executed consent agreement and the issued and filed final order in the above-referenced matter. The final order became effective today upon its filing with the Regional Hearing Clerk. The assessed civil penalty of \$30,948 is now required to be paid within seven (7) calendar days of today's date, i.e., by February 8, 2010, in accordance with Section II., Paragraph 2 of the final order. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Baker".

James M. Baker
Senior Assistant Regional Counsel
Office of Regional Counsel
(215) 814-2109

Attachment (2-page final order and incorporated 6-page consent agreement)

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

In the Matter of:

Dillon Floral Corporation,

Respondent.

FINAL ORDER

Docket No. CAA-03-2009-0293

NOW, THEREFORE, pursuant to 40 C.F.R. Part 22, Subpart C, § 22.18(b)(2) and (3), and Subpart G, § 22.31, it is hereby **ORDERED** that:

I. GENERAL PROVISIONS

1. This proceeding is governed by the Consolidated Rules of Practice, 40 C.F.R. Part 22. The provisions of 40 C.F.R. Part 22, §§ 22.18(b)(2) and (3) and 22.31 govern the process of concluding this proceeding by final order.
2. The undersigned ratifies and incorporates by reference into this final order the consent agreement executed by the parties in this proceeding. The factual allegations and legal conclusions of the Complaint in this proceeding were incorporated by reference into the consent agreement. However, as provided in the consent agreement, for the purpose of this proceeding, except as otherwise provided in the consent agreement, Respondent Dillon neither admits nor denies the factual allegations and legal conclusions of the Complaint.
3. This final order constitutes the final Agency action in this proceeding as to Respondent Dillon.
4. Nothing in this final order is intended to, or shall be construed to, operate in any way to resolve any criminal liability of Respondent. Nothing in this final order shall be construed to limit the authority of EPA to undertake 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 or welfare, or the environment.

5. As provided in the aforementioned consent agreement, this final order resolves only Respondent Dillon's civil penalty liability for the violations alleged in Paragraph 2 of each of the four counts in Section IV. of the Complaint.
6. This final order does not waive, extinguish or otherwise affect Respondent Dillon's obligations to comply with all applicable provisions of the federal Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.*, and regulations promulgated thereunder.
7. This final order is effective upon filing with the Regional Hearing Clerk.

II. CIVIL PENALTY


1. A civil penalty in the amount of thirty thousand nine hundred and forty-eight dollars (\$30,948) is assessed against Respondent Dillon Floral Corporation (Dillon).
2. In light of Section II., Paragraph 1 immediately above, Respondent Dillon shall pay its assessed civil penalty as follows:

Within seven (7) calendar days after the effective date of this final order, Respondent Dillon shall pay the full amount of the assessed civil penalty. This final order shall not terminate or otherwise lapse until the assessed civil penalty is paid in full. Respondent Dillon shall make timely payment of the assessed civil penalty by sending a cashier's check or certified check, made payable to the Treasurer of the 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 shall note the case title and docket number. Copies of the check shall be served upon the Regional Hearing Clerk and the Complainant as follows: Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and Counsel for Complainant, James M. Baker (3RC10), Senior Assistant Regional Counsel, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

Date: 1/27/10


Renee Sarajian
Regional Judicial Officer

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:

CONSENT AGREEMENT

Dillon Floral Corporation,

Docket No. CAA-03-2009-0293

Respondent.

I. PRELIMINARY STATEMENT

1. On September 30, 2009, the Complainant, Director, Land and Chemicals Division, Region III, United States Environmental Protection Agency (EPA), filed an Administrative Complaint and Notice of Opportunity for Hearing (Complaint) issued to Dillon Floral Corporation (Dillon), Respondent, under Section 113(a)(3)(A) and (d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(A) and (d), 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, for alleged violations of a rule establishing a national emission standard for asbestos promulgated under Section 112 of the CAA, 42 U.S.C. § 7412.
2. Respondent Dillon filed an answer to the Complaint on or about October 30, 2009.
3. The Complaint arose under the CAA, 42 U.S.C. §§ 7401-7671q. On April 5, 1984, under Section 112 of the CAA, 42 U.S.C. § 7412, the Administrator of EPA promulgated a rule establishing a national emission standard for asbestos. That rule is codified at 40 C.F.R. Part 61, Subpart M (§§ 61.140-61.157).
4. 40 C.F.R. Part 61, Subpart M, § 61.145(b)(1), provides, in pertinent part, that “[e]ach owner or operator of a demolition ...activity...shall provide the Administrator with written notice of intention to demolish...”.
5. 40 C.F.R. Part 61, Subpart M, § 61.145(c)(1), provides, in pertinent part, that “[e]ach owner or operator of a demolition or renovation activity to whom [§ 61.145(c)] applies, according

to [§ 61.145(a)], shall, except as provided therein,...[r]emove all RACM from a facility being demolished...before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal”.

6. 40 C.F.R. Part 61, Subpart M, § 61.145(c)(6)(i), provides, in pertinent part, that “[e]ach owner or operator of a demolition or renovation activity to whom [§ 61.145(c)] applies, according to [§ 61.145(a)], shall...[f]or all RACM, including material that has been removed or stripped...[a]dequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with § 61.150...”.

7. 40 C.F.R. Part 61, Subpart M, § 61.145(c)(8), provides, in pertinent part, that “no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by [§ 61.145] unless at least one on-site representative...trained in the provisions of [40 C.F.R. Part 61, Subpart M] and the means of complying with them, is present”.

8. Section 113(a)(3)(A) of the CAA, 42 U.S.C. § 7413(a)(3)(A), provides, in pertinent part, that “...whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated...[any requirement of various provisions of the CAA, including Section 112 of the CAA], including, but not limited to, a requirement...of any rule...promulgated...under those provisions..., the Administrator may issue an administrative penalty order in accordance with [Section 113(d) of the CAA]...”.

9. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), provides, in pertinent part, that “...The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, whenever, on the basis of any available information, the Administrator finds that such person...has violated...any... requirement...of [various provisions of the CAA, including Section 112 of the CAA], including, but not limited to, a requirement...of any rule...promulgated...under [those provisions]...”.

II. STIPULATIONS

1. Respondent, Dillon Floral Corporation (Dillon), is and, at all times relevant hereto, has been a Pennsylvania corporation which owns and, at all times relevant hereto, has owned, the premises at 933 Columbia Boulevard, Bloomsburg, Pennsylvania 17815.

2. Respondent is a “person” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and as that term is used in Section 113(a)(3)(A) and (d) of the CAA, 42 U.S.C. § 7413(a)(3)(A) and (d), and in 40 C.F.R. Part 61, Subpart M.

3. Dillon owns, operates, controls, or supervises, and at all times relevant hereto has owned,

operated, controlled, or supervised, the premises of 933 Columbia Boulevard, Bloomsburg, Pennsylvania 17815.

4. The premises of 933 Columbia Boulevard, Bloomsburg, Pennsylvania 17815 is and, at all times relevant hereto, has been a "facility" as that term is defined in 40 C.F.R. Part 61, Subpart M, § 61.141.

5. An EPA inspection of the premises of 933 Columbia Boulevard, Bloomsburg, Pennsylvania 17815 was conducted on October 15, 2008. While on the premises to inspect the removal of thermal insulation by one contractor at one greenhouse on the premises, the EPA inspector observed several other greenhouses on the premises that had been completely or partially demolished. It appeared to the inspector that at least 8 greenhouses had been demolished.

6. Material and debris observed and sampled on October 15, 2008 included "RACM" as that term is defined in 40 C.F.R. Part 61, Subpart M, § 61.141.

7. The material and debris observed and sampled on October 15, 2008 resulted from or was involved in a "demolition" as that term is defined in 40 C.F.R. Part 61, Subpart M, § 61.141.

8. Dillon owned, operated, controlled, or supervised the above-referenced "demolition" operation.

9. With respect to the above-referenced "demolition" operation, Respondent was an "owner or operator of a demolition or renovation activity" as that term is defined in 40 C.F.R. Part 61, Subpart M, § 61.141.

10. With respect to the above-referenced "demolition" operation, the combined amount of "RACM" involved was at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components or at least 1 cubic meter (35 cubic feet) of facility components where the length or area could not be measured previously.

11. With respect to the above-referenced "demolition" operation, 40 C.F.R. Part 61, Subpart M, § 61.145, including but not limited to the introductory paragraph of § 61.145(a), § 61.145(a)(1), § 61.145(b), and § 61.145(c), applied to Respondent as an "owner or operator of a demolition or renovation activity".

III. GENERAL PROVISIONS

1. This proceeding is governed by the Consolidated Rules, 40 C.F.R. Part 22. As noted in the Complaint, and as provided in 40 C.F.R. Part 22, § 22.18(b)(1), EPA encourages settlement of a

proceeding at any time if the settlement is consistent with the provisions and objectives of the CAA and applicable regulations. In the event a settlement is reached, the provisions of 40 C.F.R. Part 22, § 22.18(b)(2) and (3), and (c), govern the process of effectuating the settlement and concluding the proceeding.

2. Any and all terms and conditions of this settlement are recorded herein.
3. For the purpose of this proceeding, Respondent Dillon only admits the jurisdictional allegations of the Complaint and those other allegations of the Complaint which Respondent Dillon admitted in its written answer to the Complaint.
4. The factual allegations and legal conclusions of the Complaint are incorporated by reference into this consent agreement. However, for the purpose of this proceeding, except as otherwise provided herein, Respondent Dillon neither admits nor denies the factual allegations and legal conclusions of the Complaint.
5. For the purpose of concluding this proceeding, Respondent Dillon waives any right to contest the allegations of the Complaint and any right to appeal the proposed final order accompanying this consent agreement. Respondent Dillon consents to the issuance of the proposed final order accompanying this consent agreement.
6. The parties agree to bear their own costs and attorneys fees.

IV. SETTLEMENT

1. As noted in Paragraph I.9. above, Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes the assessment of a civil administrative penalty of up to \$25,000 per day of violation. However, for any violation which occurs on January 31, 1997 through March 15, 2004, the assessment of a civil administrative penalty of up to \$27,500 per day of violation is authorized, and for any violation which occurs after March 15, 2004, the assessment of a civil administrative penalty of up to \$32,500 per day of violation is authorized (See 40 C.F.R. Part 19). The proposed civil penalties for the above-referenced CAA violations have been determined in accordance with 1) Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and 2) EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991 (CAA penalty policy), as modified, including Appendix III thereto (for violations of 40 C.F.R. Part 61, Subpart M), as revised May 5, 1992. Relevant modifications to the CAA penalty policy since its issuance on October 25, 1991 include modifications, dated May 9, 1997 and September 21, 2004 to implement the above-referenced Civil Monetary Penalty Inflation Rule (40 C.F.R. Part 19), pursuant to the Debt Collection Improvement Act of 1996 (inflation modifications). These inflation modifications essentially increased penalty policy amounts by 10% and 17.23%, respectively.

2. In determining the amount of the CAA penalty to be assessed, Section 113(e) of the CAA, 42 U.S.C. § 7413(e), requires EPA to take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation (in addition to such other factors as justice may require).

3. To develop the proposed CAA penalty, EPA took into account the CAA penalty policy, as revised and modified, and the particular facts and circumstances of this case. EPA's CAA penalty policy, as revised and modified, represents an analysis of the statutory penalty factors enumerated above and guidance on their application in particular cases.

4. After considering the statutory factors, the CAA penalty policy, as revised and modified, and the facts and circumstances of this case, Complainant proposed that Respondent be assessed a CAA civil penalty of \$41,264 for the CAA violations alleged in the Complaint.

5. Based upon information available to Complainant at the time of the issuance of the Complaint, Complainant did not consider there to be a basis for adjustment (upward or downward) of the proposed civil penalty of \$41,264. However, as noted in Section V. of the Complaint, to the extent that relevant facts or circumstances unknown to Complainant at the time of issuance of the Complaint become known to Complainant thereafter, such relevant facts or circumstances may be considered as a possible basis for adjusting the proposed civil penalty set forth in the Complaint.

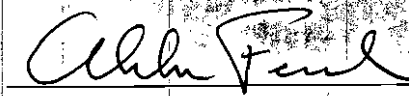
6. Based upon certain facts and circumstances unknown to Complainant at the time of the issuance of the Complaint, which were presented to Complainant by Respondent Dillon after issuance of the Complaint, and for the purposes of settlement of this proceeding, Complainant agrees to adjust the CAA civil penalty to be assessed against Respondent Dillon downward to \$30,948. For the purpose of this proceeding, Respondent Dillon consents to the assessment of a civil penalty of \$30,948 against it. Respondent Dillon agrees to pay the full amount of this civil penalty in accordance with the proposed final order accompanying this consent agreement.

7. Full payment of the civil penalty provided for herein shall only resolve Respondent Dillon's civil penalty liability for the violations alleged in Paragraph 2 of each of the four counts in Section IV. of the Complaint. Nothing in this consent agreement is intended to, or shall be construed to, operate in any way to resolve any criminal liability of Respondent. Nothing in this consent agreement shall be construed to limit the authority of EPA to undertake 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 or welfare, or the environment.

8. Respondent Dillon certifies that, to the best of its knowledge, as of the time of its execution of this consent agreement, it is in compliance with all applicable requirements of 40 C.F.R. Part 61, Subpart M.

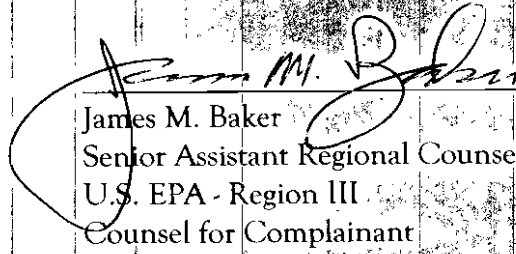
9. The undersigned representative of Respondent Dillon certifies that he is fully authorized by that Respondent to execute this consent agreement and to legally bind Respondent to its terms and conditions.

Date: 1/26/10



Abraham Ferdas, Director
Land and Chemicals Division
U.S. EPA - Region III
Representative of Complainant

Date: 1-11-10



James M. Baker
Senior Assistant Regional Counsel
U.S. EPA - Region III
Counsel for Complainant

Date: 1-8-10



Robert W. Dillon
President, Dillon Floral Corporation
Representative of Respondent Dillon