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REGIONAL HEARING CLERK

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

IN RE:

Smithsonian Institution	:	Docket No. CAA-03-2015-0091
National Zoological Park	:	Proceeding under the Clean Air Act
3001 Connecticut Avenue NW	:	Section 113(a) (1) and (d)
Washington, DC 20008	:	
	:	
Respondent	:	
	:	

CONSENT AGREEMENT

I.

Preliminary Statement

This administrative Consent Agreement (the "Consent Agreement") is entered into by and between the Complainant, the Director of the Air Protection Division, United States Environmental Protection Agency, Region III ("EPA" or "Complainant"), and the Smithsonian Institution National Zoological Park (the "Respondent"), pursuant to Section 113(a)(1) and (d) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7413(a)(1) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (the "Consolidated Rules of Practice"). The Consolidated Rules of Practice at 40 C.F.R. § 22.13 provide, 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") addresses violations alleged by EPA which occurred at a facility owned and operated by the Respondent, located at 3001 Connecticut Avenue NW, Washington, D.C. 20008.

II. General Provisions

- 1) Section 113(a)(1) and (d) of the Act, 42 U.S.C. § 7413(a) and (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 Consent Agreement and the accompanying Final Order.
- 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 Consent Agreement and the accompanying Final Order.
- 4) Respondent consents to the issuance of this Consent Agreement and the accompanying Final Order, 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 Consent Agreement and the accompanying Final Order shall apply to, and be binding upon, Respondent, its officers, directors, servants, employees, agents, successors and assigns. The provisions of this CAFO shall be binding upon Complainant and Respondent and their successor agencies, departments or instrumentalities.

III. Findings Of Fact And Conclusions Of Law

- 7) 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.
- 8) Respondent has, all times relevant to this CAFO, owned and operated the Smithsonian Institution National Zoological Park, located at 3001 Connecticut Avenue NW, Washington, D.C. 20008 ("the Facility"). The Facility is a 163-acre public zoological park, home to 2,000 individual animals, that serves as a research, conservation, and education center for endangered species.

- 9) Respondent is an instrumentality of the United States and 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) of the Act, 42 U.S.C. § 7413(d).
- 10) On November 27 and 28, 2012, EPA conducted a compliance inspection and on-site records review at the Facility.
- 11) During the November 27 and 28, 2012 compliance inspection and the resulting investigation, EPA determined that the Facility is subject to the provisions of 40 C.F.R. Part 63, Subpart CCCCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities ("Subpart 6C").
- 12) The Facility is an existing affected source pursuant to Subpart 6C, Section 63.11111, because it is a gasoline dispensing facility ("GDF") located at an area source with less than 10,000 gallons per month gasoline throughput.
- 13) Subpart 6C at 63.11111(e) requires affected sources to document monthly gasoline throughput at the GDF and maintain those records for a period of five years, beginning on January 10, 2008 for existing sources.
- 14) Respondent failed to maintain monthly gasoline throughput records as required from January 10, 2008 through March 2012.
- 15) Based upon the November 27 and 28, 2012 compliance inspection, EPA has determined that the Respondent has failed to comply with the gasoline throughput recordkeeping requirements of 40 C.F.R. Section 63.11111(e), Part 63, Subpart 6C.

IV. Settlement Recitation, Settlement Conditions, and Civil Penalty

- 16) Complainant and Respondent enter into this Consent Agreement and the accompanying Final Order in order to settle and resolve all violations set forth in Section III of this Consent Agreement.
- 17) In settlement of the alleged violations enumerated above in Section III of this Consent Agreement, Respondent consents to the assessment and agrees to pay a civil penalty in the amount of Twenty-Four Thousand Dollars (\$24,000) within the time and manner specified herein.

- 18) The settlement amount of Twenty-Four Thousand Dollars (\$24,000) 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 constitute satisfaction of the violations set forth in Section III of this Consent Agreement.
- 19) Complainant and Respondent agree that payment of the civil penalty of Twenty-Four Thousand Dollars (\$24,000) shall be made no later than sixty (60) days after the effective date of this Consent Agreement and accompanying Final Order.
- 20) Payment of the penalty in Paragraph 17 shall be made by cashier's check, certified check, or electronic wire transfer, Automated Clearing House ("ACH"), or an on line, 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-03-2015-0091).

All checks shall be made payable to Treasurer, United States of America and shall be mailed to the attention of:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell at (513) 487-2105

Overnight deliveries shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. Environmental Protection Agency
Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL

St. Louis, MO 63101

Contact: (314) 418-1028.

All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Payments through ACH (also known as REX or remittance express) shall be directed to:

U.S Treasury REX/Cashlink ACH Receiver

ABA = 051036706

Account 310006, Environmental Protection Agency

CTX Format Transaction Code 22 - checking

33 Liberty Street

New York, N.Y. 10045

Physical location of U.S. Treasury facility:

5700 Rivertech Court

Riverdale, MD 20737

Contact: 866-234-5681 or REX at 1-866-234-5681

An on-line, internet payment option, is also available through the United States Department of Treasury. This payment option can be accessed from www.pay.gov. Enter sfo 1.1 in the search field. Open form and complete required fields.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

- 21) All payments made by check also shall reference the above case caption and docket number, CAA-03-2015-0091. At the same time that any payment is made, copies of any corresponding check or written notification confirming any electronic transfer through wire transfer, ACH, or internet payment shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, to Dennis M. Abraham, Esq., Senior Assistant Regional Counsel (3RC10), U.S. EPA Region

III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and to Erin Willard (3AP20), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029.

- 22) Payment of the penalty specified in Paragraph 17 in the manner set forth in this Consent Agreement and payment of any applicable interest, as set forth above, shall constitute full and final satisfaction of all civil claims for penalties for the specific violations alleged in Section III of this Consent Agreement. Compliance with this Consent Agreement and accompanying Final Order 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.

V. Reservation of Rights

- 23) This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged in Section III 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 Consent Agreement and Final Order 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 Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.

VI. Effective Date

- 24) The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Consent Agreement and Final Order is filed with the Regional Hearing Clerk of EPA Region III.

VII. Waiver of Hearing

- 25) 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 and any right to confer with the Administrator.

VIII. Entire Agreement

26) This Consent Agreement and the accompanying Final Order constitute 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 Consent Agreement and the accompanying Final Order. Nothing in this Consent Agreement or the accompanying Final Order 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 Consent Agreement and the accompanying Final Order.

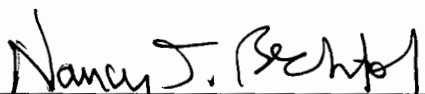
IX. ANTIDEFICIENCY ACT

27) Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with the CAA, the applicable regulations thereunder, or with this CAFO. Nothing in the CAFO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. §1341.

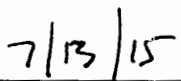
X. Execution

28) 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 Consent Agreement and the accompanying Final Order.

For the Respondent:
Smithsonian Institution



Nancy Bechtol
Director
Office of Facilities, Engineering and Operations



Date:

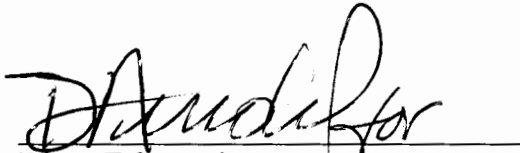
For the Complainant:



Dennis M. Abraham
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III

7-15-15
Date:

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. The amount of the recommended civil penalty assessment is Twenty-Four Thousand Dollars (\$24,000).



Diana Esher, Director
Air Protection Division
U.S. Environmental Protection Agency, Region III

7/15/15
Date:



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

July 22, 2015

VIA FIRST CLASS MAIL

Farleigh Earhart
Associate General Counsel
Smithsonian Institution
P.O. Box 37012, MRC 012
Washington, DC 20013-7012

Re: Consent Agreement and Final Order
EPA Docket No. CAA-03-2015-0091


Dear Ms. Earhart:

Enclosed is a copy of the above-referenced Consent Agreement and Final Order (the "CAFO", which was filed ratified by the Regional Judicial and Presiding Officer (the "RJO") for U.S. EPA, Region III on July 21, 2015. The CAFO has been filed with the Regional Hearing Clerk for EPA, Region III on this date.

I am also enclosing a copy of a Memorandum which was provided to the RJO as a summary of the parties' settlement for your records.

Please ensure that payment of the civil penalty (\$24,000) is timely made in accordance with the terms of the CAFO.

Thank you again.

Very truly,



Dennis M. Abraham
Senior Assistant Regional Counsel

Enclosures



Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474