



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 24 2010

REPLY TO THE ATTENTION OF:
AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steven Poplawski
Bryan Cave LLP
211 North Broadway
St. Louis, Missouri 63102

Dear Mr. Poplawski:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Ralston Foods, Docket No. CAA-05-2010-0012. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

FEB 24 2010

Pursuant to paragraph 30 of the CAFO, Ralston Foods must pay the civil penalty within 30 days of MAR 26 2010. Its check must display the case name, the docket number, CAA-05-2010-0012, and the billing document number, 2751003A013.

Please direct any questions regarding this case to Cynthia A. King, Associate Regional Counsel, at (312) 886-6831.

Sincerely yours,

Bonnie Bush
Air Enforcement and Compliance Assurance
Section (MI/WI)

Enclosure

cc: Isaac Robinson, APC Manager
Ohio EPA
Central District Office
50 West Town Street, Suite 700
Columbus, Ohio 43215

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

Ralston Foods)
Lancaster, Ohio)

Respondent.)
_____)

Docket No. CAA-05-2010-0012

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

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Consent Agreement and Final Order

Preliminary Statement

REGIONAL HEARING CLERK
USEPA
REGION 5

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) 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 Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Ralston Foods (Ralston), a corporation doing business in Ohio.
4. Under 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. On July 12, 1982, 47 Fed. Reg. 25145, U.S. EPA approved Ohio Administrative Code (OAC) 3745-35-01 and 02 as part of the federally enforceable Ohio State Implementation Plan (SIP).

10. The OAC 3745-35-01 defines an “air contaminant source” as each separate operation or activity that results or may result in the emission of any air contaminant.

11. The OAC 3745-35-02(A) states that no person shall cause, permit, or allow the operation or other use of any air contaminant source without applying for and obtaining a permit-to-operate (PTO) from the Ohio Environmental Protection Agency (OEPA) in accordance with the requirements of this rule.

12. The OAC 3745-35-02(B)(6) states, in part, that applications for PTOs shall contain, but are not limited to, the nature, source, and quantity of uncontrolled and controlled emissions.

13. On June 30, 2008, OAC 3745-35 was rescinded, and replaced by the Permit-to-Install and Operate Program that is codified in OAC 3745-31.

14. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up

to \$27,500 per day of violation, up to a total of \$220,000, for violations that occurred from January 31, 1997 through March 15, 2004, up to \$32,500 per day of violation, up to a total of \$270,000, for violations that occurred from March 15, 2004 through January 11, 2009, and up to \$37,500 per day of violation, up to a total of \$295,000, for violations that have occurred on or after January 12, 2009, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

15. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the 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.

16. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violation alleged in this CAFO.

Factual Allegations and Alleged Violations

17. Ralston owns and operates a private label cereal manufacturing facility located at 276 Bremen Road, Lancaster, Ohio (the facility).

18. Ralston began operating the facility in 1973.

19. The facility is an "air contaminant source," as that term is defined at OAC 3745-35-01, and is subject to Ohio's operating permit requirement.

20. The facility consists of a Rolled Cereal Line with a puffer and toaster drying system; three Single-Screw Extruded Cereal Lines (Lines #1, #5, and #6) with a collective total

of three dryers and ten flash dryers; three Twin-Screw Extruded Cereal Lines (Lines #2, #3, and #4) each with a dryer and a flash dryer; a Frosted Cereal Dryer; a Cereal Cooling Process (the Pellet Cooler); 19 grain silos (one of which is not used); and four boilers.

21. The Rolled Cereal Line and each extrusion line contain a coating drum located before a dryer.

22. Each of the dryers described in paragraphs 20 and 21 emit uncontrolled volatile organic compounds (VOCs) from the flavorings added to the cereal batch, except the dryer for Line #1.

23. Flavorings are added to the coating drums in all lines except Line #1. For Line #1, the syrup that is sprayed onto the product from the coating drum contains no flavorings containing VOCs.

24. The facility originally applied for PTOs for its dryers in 1984.

25. The PTOs and the PTO applications for these dryers, along with those submitted in later years, failed to include information on VOCs emitted from the addition of flavorings.

26. On February 12, 2009, Ralston applied for an amendment to its PTOs to account for VOC emissions being emitted from the ovens.

27. On December 29, 2008, Region 5 issued a Notice of Violation (NOV) to Ralston for its failure to account for all potential emissions that could be emitted from its facility when it applied for its PTOs.

28. On February 17, 2009, Region 5 and Respondent held a conference to discuss the December 29, 2008 NOV.

29. Ralston's failure to account for all potential emissions that could be emitted from its

facility was in violation of OAC 3745-35-02(B)(6) and Section 110 of the Act, 42 U.S.C. § 7410.

Civil Penalty

30. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation, prompt return to compliance, and agreement to perform a supplemental environmental project (SEP), Complainant has determined that an appropriate civil penalty to settle this action is \$29,336.

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$29,336 civil penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the case name, the docket number of this CAFO and the billing document number.

32. This civil penalty or any stipulated penalty is not deductible for federal tax purposes.

33. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 46, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

34. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Supplemental Environmental Project

35. Respondent must complete a SEP designed to protect the environment or public health by installing a new cooling system that will reduce carbon dioxide (CO₂) emissions as more particularly described herein.

36. Within six (6) months of the effective date of this CAFO, Respondent must install, at its Lancaster, Ohio facility, a cooling system that circulates 87°F propylene glycol solution through its two Atlas Copco air compressors in the powerhouse. The cooling system will consist of a Marley model MHF704D081 1-Cell fluid cooler, two 15 horsepower (hp) pumps, two 7.5 hp cooler fans, and a 5 hp spray pump that will reduce the load on a 600-ton Trane chiller, a 60 hp condenser pump, a 30 hp primary chilled water pump, and a 100 hp secondary chilled water pump, thereby saving an estimated 1,544,000 KWh in electricity use.

37. Respondent must spend at least \$217,000 to implement the SEP described in paragraph 36.

38. Respondent certifies that it is not required to perform or develop the SEP by any

law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

39. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

40. Respondent must maintain copies of all reports submitted to U.S. EPA according to this CAFO.

41. Respondent must submit a SEP completion report to U.S. EPA within 30 days of completion of the SEP. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification in the form set forth in paragraph 43 that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

42. Respondent must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

43. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

44. Following receipt of the SEP completion report described in paragraph 41, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 46, below.

45. If U.S. EPA exercises option b in paragraph 44, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 46, below.

46. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent spends less on the SEP than 90% of the amount set forth in paragraph 37, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 37.

- b. If Respondent has completed the SEP but the SEP is not satisfactory, Respondent must pay \$63,500 in addition to any penalty required under subparagraph 46.a, above.
- c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$145,000 in addition to any penalty required under subparagraph 46.a, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 36, above, for implementing the SEP or fails to submit timely the SEP completion report required by paragraph 41, above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$250	1 st through 14 th day
\$500	15 th through 30 th day
\$750	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

47. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

48. Respondent must pay any stipulated penalties within 20 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 31, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

49. Any public statement that Respondent makes referring to the SEP must include the following language, "Ralston Foods undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action for violations of the Clean Air Act."

50. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

51. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

52. The CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

53. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 51, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

54. Respondent certifies that it is complying fully with the provisions of the Act and the implementing regulations cited herein.

55. This CAFO constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

56. The terms of this CAFO bind Respondent, its successors, and assigns.

57. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms. Each party agrees to bear its own costs and attorneys' fees in this action.

58. This CAFO constitutes the entire agreement between the parties.

59. This CAFO may only be modified by written agreement between the parties.

60. This CAFO is effective upon filing with the Regional Hearing Clerk.

Ralston Foods, Respondent

February 1, 2010
Date

Ronald D. Wilkinson
Ronald D. Wilkinson
President of Ralston Foods
Ralston Foods

United States Environmental Protection Agency, Complainant

2/19/10
Date

Cheryl L. Newton
Cheryl L. Newton
Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of: Ralston Foods

Docket No. CAA-05-2010-0012

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

2/23/10
Date

Walter W. Karaluk
for
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5

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USEPA
REGION 5**

In the Matter of: Ralston Foods, Lancaster, Ohio
Docket No.

CERTIFICATE OF SERVICE

I, Tracy Jamison, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order (CAFO), Docket Number, CAA-05-2010-0012, to the Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, and that I mailed a correct copy of the CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Steven Poplawski
Bryan Cave LLP
211 North Broadway
St. Louis, Missouri 63102

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I also certify that a copy of the CAFO was sent by first-class mail to:

Isaac Robinson, APC Manager
Ohio EPA
Central District Office
50 West Town Street, Suite 700
Columbus, Ohio 43215

on the 24 day of February, 2010.



Tracy Jamison
Office Automation Assistant
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 70091680 0000 76673631