



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

September 27, 2012

VIA OVERNIGHT MAIL

Eryn Starun, Esquire
Assistant General Counsel, Smithsonian Institution
The Office of General Counsel MRC 012
Smithsonian Institution Building Room 302
1000 Jefferson Drive SW
P.O. Box 23286
Washington, D.C. 20026-3286

Re: Smithsonian Institution, Museum of the American Indian, Docket No. CAA-03-12-0282

Dear Eryn:

Enclosed, please find the final Consent Agreement and Consent Order resolving the above-referenced matter. Pursuant to the Consent Order, payment of the penalty plus interest shall be made within sixty (60) days of your receipt of the fully executed Order.

Payment of the penalty shall be made as specified in paragraph IV.D. of the Consent Agreement. At the same time that any payment is made, mail copies of any corresponding check, or written notification confirming any electronic wire transfer to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to me at the above-referenced address. The written notification to the Regional Hearing Clerk and to me should reference the above case caption and docket number.

Thank you again for your cooperation in settling this matter. If you have any questions, I can be reached at (215) 814-2607.

Sincerely,

A handwritten signature in black ink that reads "Daniel E. Boehmcke". The signature is written in a cursive style with a large, looped initial "D".

Daniel E. Boehmcke
Senior Assistant Regional Counsel
EPA Region III

Enclosure

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

RECEIVED

2012 SEP 20 4: 27 PM
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA
EPA Docket No. CAA-03-2012-0282

IN RE: :
 :
Smithsonian Institution :
National Museum of the American Indian :
4th Street and Independence Avenue SW :
Washington, D.C. 20013-7012, :
 :
Respondent. :
 :

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

CONSENT AGREEMENT

I. Preliminary Statement

A. This 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 (the “Respondent”), pursuant to Sections 113(a)(3) and (d) of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7413(a)(3) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation 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).

B. The violations cited herein pertain to Respondent’s alleged failure to comply with the CAA, and provisions of the underlying District of Columbia State Implementation Plan (“DC SIP”) at Respondent’s National Museum of the American Indian, located at 4th Street and Independence Avenue SW in Washington, D.C. (the “Facility”).

C. In accordance with Sections 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.13(b), and 22.18(b)(2) and (3), Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, the claims identified Section III (“Findings of Fact and Conclusions of Law”) of this Consent Agreement.

II. General Provisions

A. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the accompanying Final Order (hereinafter collectively referred to as “this CAFO”).

B. Respondent neither admits nor denies the specific factual allegations and

conclusions of law set forth in this CAFO, except as provided in Paragraph II.A., above.

C. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CAFO, the issuance of the accompanying Final Order or the enforcement of this CAFO.

D. For the purpose of this proceeding only, Respondent hereby expressly waives its rights to a hearing pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, concerning the finality or validity of this CAFO, or with respect to any issue of law or fact set forth in this CAFO. Respondent also waives any right to appeal the accompanying Final Order.

E. Respondent consents to the issuance of this CAFO and agrees to comply with the terms of this CAFO.

F. By signing this Consent Agreement, Respondent certifies to EPA that, upon investigation and to the best of its knowledge, it is in compliance at the Facility with the requirements of the Clean Air Act and the DC SIP.

G. Each party to this action agrees to pay its own costs and attorney fees.

H. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

I. This CAFO shall apply to and be binding upon Respondent, its officers, directors, successors and assignees.

III. Findings of Fact and Conclusions of Law

A. Complainant has determined that Respondent has violated certain requirements of the CAA and the DC SIP. In accordance with the Consolidated Rules of Practice, Complainant alleges the following findings of fact and conclusions of law:

1. EPA is authorized by Section 113 of the Act, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. These include requirements promulgated by EPA and those contained in federally enforceable SIPs or permits.
2. The Facility is owned and operated by Respondent as a museum open to the public.
3. Respondent is a trust instrumentality of the United States and is a "person" within the meaning of Sections 113(a) and 502 of the Act, 42 U.S.C. §§ 7413(a) and 7661a, and as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. The applicable implementation plan for the District of Columbia has been approved by EPA, see 40 C.F.R. § 52.472.
5. On February 1, 2012, duly authorized representatives of the EPA conducted an inspection at the Respondent's facility. The report of this inspection was sent to Respondent via letter dated February 24, 2012.

6. EPA's review of the findings from the Facility inspection indicates that Respondent violated several requirements of the applicable District of Columbia Municipal Regulations ("DCMR") which have been incorporated into the DC SIP.
7. Pursuant to Section 200.1 of Title 20 of the DCMR, DCMR 20-200.1, a permit from the DDOE must be obtained before any person shall cause, suffer, or allow the construction of a new stationary source, or the modification of an existing stationary source, or the installation or modification of any air pollution control device on a stationary source.
8. Pursuant to DCMR 20-200.2, an operating permit shall be obtained from DDOE before any person shall cause, suffer, or allow the operation of: (a) Any major stationary source, for which a construction or modification permit is required under DCMR 20-200.1; or (b) Any source, for which a construction or modification permit is required under DCMR 20-200.1, and which construction or modification permit was subject to conditions which affect, or would affect, the operation of the source.
9. The Facility is a major stationary source for purposes of the District of Columbia air regulations and the DC SIP because of its potential to emit more than twenty five (25) tons per year ("tpy") of nitrogen oxides ("NOx"). See definition at DCMR 20-199 (Major stationary source).
10. Respondent installed and commenced operation of three boilers (natural gas and #2 fuel oil fired Cleaver-Brooks boilers, model number CBI 200-200-125, with serial numbers OL 101886, OL 101887, and OL 101888) at the time of the Facility's opening in 2004.
11. Respondent installed an emergency generator (Cummins 1,250 kW, model No. DFLLC-5564915, serial No. H020403284) at the Facility in 2003 and has operated it intermittently since that time.
12. Respondent installed and commenced operation of a spray paint booth at the Facility at the time of the Facility's opening in 2004. The spray paint booth, with dimensions of 20 x 14 x 10 feet, has been used for painting and finishing exhibits at the Facility since that time.
13. The three Cleaver-Brooks boilers at the Facility are not subject to the exemption from the requirement to obtain construction and operating permits set forth in DCMR 20-200.11, which provides that no permit shall be required for any fuel burning equipment which has a capacity of 5 million ("MM") British Thermal Units ("BTUs") per hour of heat input and which uses for fuel only gaseous fuels or distillate oils, because each of these units can operate at a rate equivalent to greater than 5 MM British Thermal Units ("BTUs") per hour.
14. The spray paint booth at the Facility is not subject to the exemption from the requirement to obtain construction and operating permits set forth in DCMR 20-200.11 because it is not a fuel burning unit.
15. Respondent failed to apply to DDOE for District of Columbia operating permits for the Cleaver Brooks boilers at the Facility until September 9, 2009. DDOE issued Respondent an operating permit for each boiler on October 8, 2010 (DDOE permits Nos. 6270, 6271 and 6272).

16. Respondent failed to obtain a District of Columbia operating permit for the emergency generator at the Facility until 2008 (No. 6138).
17. As of the date of the EPA inspection (February 1, 2012), Respondent had never applied for a District of Columbia operating permit for the spray paint booth at the Facility.
18. Title V of the Act, 42 U.S.C. §§ 7661 -7661 f, mandates a federally enforceable operating permit program for certain sources, which States may implement. EPA promulgated final approval of the District of Columbia Title V program on December 4, 2001. 40 CFR Part 70, Appendix A. The District of Columbia Title V program became effective on November 30, 2001. EPA had granted interim approval of the District of Columbia Title V program in a rulemaking effective September 6, 1995. The District of Columbia regulations governing the Title V permitting program are located at Title 30 of the DCMR, and have been incorporated into the federally approved D.C. SIP.
19. The District of Columbia was, at the time of construction and first operation of the affected sources at the Facility, designated by EPA as a severe nonattainment area for ozone (1-hour standard). Pursuant to DCMR 30-399, sources within a severe ozone nonattainment area with emissions of more than twenty five (25) tpy of volatile organic compounds (“VOC”) or NO_x constitute a major source. DCMR 30-301 requires major stationary sources in the District of Columbia to apply for a Title V operating permit.
20. The District of Columbia operating permits for the boilers at the Facility (DDOE permits Nos. 6270, 6271 and 6272) each specify in paragraph 1.c. that Respondent shall apply for a Title V permit within six months of the date of issuance of the District of Columbia operating permit. Given the October 8, 2010, issuance of the permits, Respondent was required to have submitted a Title V permit application by April 8, 2011. Respondent did not submit a Title V permit application for the Facility until June 17, 2011.
21. During EPA’s inspection on February 1, 2012, in response to questioning, Facility personnel stated to the EPA inspector that the Facility operates a paint booth.
22. The spray paint booth at the Facility was not included in Respondent’s June 17, 2011, Title V permit application.
23. Section VI.b. of each of Permit Nos. 6270, 6271 and 6272 for the boilers at the Facility requires Respondent to report the fuel usage and the criteria pollutant emissions from the boilers to DDOE for each calendar year annually by March 31 of the following year.
24. At the time of the February 1, 2012 EPA inspection, Respondent had not submitted a fuel usage and criteria pollutant emission report as described in paragraph 23, above to DDOE for 2010.
25. Section V.c. of Permit 6138-R1 for the emergency generator at the Facility requires Respondent to obtain a certification from the fuel supplier that the fuel was tested and met the sulfur content and cetane index or aromatic content limitations set forth in the Permit. The Facility maintains fuel delivery receipts, but these do not contain the required certification.

26. Section IV.d. of each of Permit Nos. 6270, 6271 and 6272 for the boilers at the Facility requires Respondent to monitor the stacks during operation of the boilers for visible emissions at least once a month. Section V.c. of each of these boiler permits requires Respondent to keep records of these observations.
27. Respondent only observed the stacks when the Museum burns diesel fuel oil, which has occurred once annually to test the boiler's ability to burn this type of fuel, and not the remainder of the time when natural gas was burned. Respondent did not keep records of stack observations as required by the boiler permits.
28. Since at least October 1, 2007, Respondent has been in violation of the DC SIP as set forth above. These violations of the DC SIP constitute violations of Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d).

IV. Settlement Recitation, Settlement Conditions And Civil Penalty

A. Complainant and Respondent enter into this Consent Agreement, and the attached Final Order, in order to fully settle and resolve all allegations set forth in Section III, "Findings of Fact and Conclusions of Law," above, and all claims for civil penalties pursuant thereto.

B. In full settlement of the violations alleged in Section III, above, and in consideration of Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), and other relevant factors, Complainant has determined that a civil penalty of fifty thousand dollars (\$50,000) is appropriate. This settlement penalty amount is based upon EPA's consideration of a number of factors, including but not limited to the statutory factors set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), which are: the seriousness of the violations, the duration of the violations, and Respondent's compliance history and good faith efforts to comply. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Clean Air Act Stationary Source Civil Penalty Policy*, adjusted for inflation pursuant to 40 C.F.R. Part 19.

C. In settlement of the violations set forth in Section III, above, Respondent hereby consents to the assessment of a fifty thousand dollars (\$50,000) civil penalty.

D. Payment of the civil penalty amount required under the terms of this Section IV of this Consent Agreement shall be made within sixty (60) days of Respondent's receipt of the fully executed and entered Consent Agreement and accompanying Final Order in this matter as follows:

1. Mailing (*via regular U.S. Postal Service Mail*) a certified or cashier's check, made payable to "United States Treasury," sent to the following address:

U.S. Environmental Protection Agency
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

2. Overnight Delivery of a certified or cashier's check, made payable to "United States Treasury," sent to the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

3. Respondent's civil penalty payment also may be made by electronic funds transfer ("EFT") to the following account:

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"

4. Respondent's civil penalty payment also may be made by automatic clearinghouse ("ACH") (also known as REX or remittance express) to the following account:

PNC Bank
ABA 051036706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street NW
Washington, DC 20074

5. All payments made shall reference the above case caption and docket number, CAA-03-2012-0282. At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Chip Hosford (3AP12), Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

6. 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.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this executed CAFO is received by Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within sixty (60) 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).

The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 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.

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. See 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. See 31 C.F.R. § 901.9(d).

V. Effect of Settlement

Payment of the penalty specified in Section IV, above, in the manner set forth in Section IV, above, and payment of any applicable interest, handling costs and/or late payment charges, as set forth in Section IV, above, shall constitute full and final satisfaction of all civil claims for penalties for the specific violations alleged in Section III, above. 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.

VI. Reservation of Rights

This CAFO resolves only the civil claims for the specific Clean Air Act violations alleged in Section III, above, at the Facility through the date of this CAFO. Respondent understands that EPA retains the right to reinspect any and all of Respondent's facilities and that the discovery of new violations may lead to further enforcement action, including the possible imposition of civil penalties. 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. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

VII. Effective Date

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

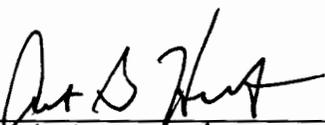
VIII. Entire Agreement

This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

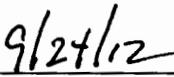
IX. Execution

The undersigned representative for Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to this Consent Agreement.

**FOR THE RESPONDENT
SMITHSONIAN INSTITUTION:**



Albert Horvath
Under Secretary for Finance + Administration

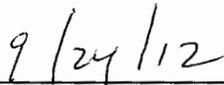


Date

**FOR THE COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION III**

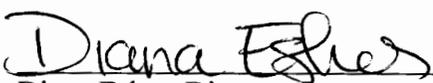


Daniel E. Boehmcke
Senior Assistant Regional Counsel
U.S. EPA, Region III



Date

The Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of U.S. EPA Region III, or his designee, issue the accompanying Final Order.



Diana Esher, Director
Waste and Chemicals Management Division



Date

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

IN RE: :
: EPA Docket No. CAA-03-2012-0282
Smithsonian Institution :
National Museum of the American Indian :
4th Street and Independence Avenue SW :
Washington, D.C. 20013-7012, : Proceeding under Section 113 (a) and (d)
: of the Clean Air Act, 42 U.S.C. § 7413(a) and (d)
Respondent. :
:

FINAL ORDER

The Undersigned accepts and incorporates into this Final Order by reference all provisions set forth in the foregoing Consent Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT, pursuant to Section 113 of the Clean Air Act, 42 U.S.C. §7413, and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, Respondent, the Smithsonian Institution, is assessed a civil penalty of fifty thousand dollars (\$50,000). The effective date of this Final Order is the date on which this Final Order, signed by the Regional Judicial Officer of EPA Region III, is filed with the Regional Hearing Clerk of U.S. EPA Region III.

9/27/12
Date

Renee Sarajian
Renee Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

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

IN RE: :
: EPA Docket No. CAA-03-2012-0282
Smithsonian Institution :
National Museum of the American Indian :
4th Street and Independence Avenue SW :
Washington, D.C. 20013-7012, : Proceeding under Section 113 (a) and (d)
: of the Clean Air Act, 42 U.S.C. § 7413(a)
and (d) :
Respondent. :
:

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the date provided below, the original and one true and correct copy of the foregoing Consent Agreement and Final Order were hand-delivered to and filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA, and that a true and correct copy was served via USPS Certified Mail, upon the following person:

Eryn Starun, Esquire
Assistant General Counsel, Smithsonian Institution
The Office of General Counsel MRC 012
Smithsonian Institution Building Room 302
1000 Jefferson Drive SW
P.O. Box 23286
Washington, D.C. 20026-3286

9/27/12
Date


EB
Daniel E. Boehmcke
Senior Assistant Regional Counsel
U.S. EPA , Region III
(215) 814-2607