



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

APR 30 2008

REPLY TO THE ATTENTION OF:
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Kit Carin, Director
Riceland Cabinet, Inc.
1597 E. Lincolnway
Orrville, Ohio 44667

Dear Mr. Carin:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves case docket number CAA-05-2008-0017 with Riceland Cabinet Corporation (Riceland). As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on APR 30 2008.

Pursuant to paragraph 45 of the CAFO, Riceland must pay the civil penalty within 30 days of the date the CAFO is filed. Your check must display the case docket number, CAA-05-2008-0017, and the billing document number, 2750803A015.

Please direct any questions regarding this case to Eaton R. Weiler, Associate Regional Counsel at (312) 886-6041.

Sincerely yours,

A handwritten signature in black ink that reads "William L. MacDowell".

William L. MacDowell, Chief
Air Enforcement Compliance Assurance Section (MN/OH)

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Riceland Cabinet Corporation)
Orville, Ohio.)
)
Respondent.)
_____)

Docket No. CAA-05-2008-0017
Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

2008 APR 30 PM 3:00

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION 5

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (CAA or 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, U. S. Environmental Protection Agency, Region 5.

3. Respondent is Riceland Cabinet Corporation, a business incorporated in and doing business in the State of Ohio.

4. 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). 40 C.F.R. § 22.13(b).

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 remaining allegations in the CAFO.

8. For the purposes of this CAFO, 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

Ohio State Implementation Plan

9. On September 8, 1993, EPA approved Ohio Admin. Code (OAC) § 3745-31-02 as part of the federally enforceable state implementation plan (SIP) for Ohio. *58 Fed. Reg.* 47211

10. The federally enforceable Ohio SIP provides that no person shall cause, permit, or allow the installation of a new source of air pollutants, or cause, permit or allow the modification of an air contaminant source, without first obtaining a permit-to-install (PTI). OAC § 3745-31-02(A).

11. On June 10, 1982, EPA approved OAC § 3745-35-02 as part of the federally enforceable SIP for Ohio. *47 Fed. Reg.* 25145.

12. The federally enforceable Ohio SIP provides that no person may cause, permit, or allow the operation or other use of any air contaminant source without applying for and obtaining a permit to operate (PTO). OAC § 3745-35-02(A). PTOs shall be effective for one year from date of issuance, or for whatever other period the director deems appropriate, not to exceed three years. 3745-35-02(D)(1).

Clean Air Act Title V Operating Permit Program

13. EPA granted full approval to the Ohio Title V operating permit program on August 15, 1995, effective October 1, 1995. 60 *Fed. Reg.* 42045.

14. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. §§ 70.1(b) and 70.3(a) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no person may operate a "major source" except in compliance with a Title V operating permit.

15. Section 503(c) of the CAA, 42 U.S.C. § 7661b(c), in relevant part, provides that a source shall submit a Title V operating permit application within 12 months after becoming a major source.

16. The term "major source" means, in relevant part, any stationary source which directly emits or has the potential to emit 100 tons per year of any air pollutant (including volatile organic compounds) and/or 10 tons per year or more of any single "hazardous air pollutant." Section 501(2) of the CAA, 42 U.S.C. § 7661(2); Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1).

17. The term "hazardous air pollutant" includes toluene. Sections 112(a)(6) and (b)(1) of the CAA, 42 U.S.C. §§ 7412(a)(6) and (b)(1).

Wood Furniture Manufacturing NESHAP

18. Under Section 112 of the CAA, on December 7, 1995, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Wood Furniture Manufacturing (Wood Furniture NESHAP) at 40 C.F.R. Subpart JJ, §§ 63.800 through 63.808. 60 *Fed. Reg.* 62936.

19. The Wood Furniture NESHAP applies to each facility that is engaged in the

manufacture of wood furniture or wood furniture components, and that is located at a major source of hazardous air pollutants. 40 C.F.R. § 63.800(a).

20. The owner or operator of an existing facility that is engaged in the manufacture of wood furniture or wood furniture components that increases its emissions or its potential to emit of hazardous air pollutants such that the facility becomes a major source of hazardous air pollutants is required to comply with provisions of the Wood Furniture NESHAP for existing facilities. 40 C.F.R. § 63.800(e).

21. The owner or operator of a facility not otherwise subject to the Wood Furniture NESHAP that increases its emissions or its potential to emit of hazardous air pollutants such that the facility becomes a major source is required to submit an initial notification identifying, among other things, the relevant standard, and the source's compliance status within 120 days after becoming a major source. 40 C.F.R. § 63.807(a) referring to 40 C.F.R. § 63.9.

22. The owner or operator of a facility subject to the Wood Furniture NESHAP is required to prepare, maintain, and implement a work practice implementation plan meeting the requirements of 40 C.F.R. §§ 63.803(b) through (l). 40 C.F.R. § 63.803(a).

23. The owner or operator of a facility subject to the Wood Furniture NESHAP is required to comply with specific recordkeeping requirements, including records of the volatile hazardous air pollutant (VHAP) content, as applied, of each finishing material and/or records of the facility-wide monthly average VHAP content for all finishing materials. 40 C.F.R. §§ 63.806(b) and (c).

24. The owner or operator of a facility subject to the Wood Furniture NESHAP is required to submit, in relevant part, semi-annual compliance reports, including the facility's compliance status and the information required to be kept by 40 C.F.R. §§ 63.804(g)(1), (2), (3),

(5), (7) and (8). 40 C.F.R. § 63.807(c).

25. The Administrator of 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, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

26. Section 113(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.

27. 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 violations alleged in this CAFO.

Factual Allegations and Alleged Violations

28. Riceland Cabinet Corporation owns and operates a wood furniture manufacturing facility (the "facility") located at 11597 E. Lincolnway, Orrville, Ohio.

29. Riceland Cabinet Corporation purchased the assets of Riceland Cabinet Inc., including the facility, in April of 2006. Unless otherwise specified, Riceland Cabinet Corporation and Riceland Cabinet Inc. are hereinafter jointly referred to as "Riceland."

Ohio State Implementation Plan

30. Riceland violated OAC §§ 3745-31-02(A) and 3745-35-02(A) of the federally enforceable Ohio SIP by failing to obtain PTIs and PTOs for the following emissions units which

were constructed and started operation on the following dates:

Emissions Unit I.D.	Description	Date of Construction	Date of Operation
R005	manual wood coating operation	12/18/2001	02/01/2002
R006	manual wood coating operation	12/28/2001	02/01/2002
R007	manual wood coating operation	01/19/2002	02/01/2002
R008	manual wood coating operation	03/01/1999	03/01/1999
R009	manual wood coating operation	08/05/2005	08/22/2005
R010	manual wood coating operation	08/05/2005	08/22/2005
R011	manual wood coating operation	08/05/2005	08/22/2005
R012	manual wood coating operation	08/05/2005	08/22/2005
R013	manual wood coating operation	08/23/2005	10/01/2005
R014	manual wood coating operation	08/22/2005	08/22/2005
R015	automatic wood coating operation	08/22/2005	08/22/2005
R016	ultraviolet drying and curing oven	02/01/2002	02/01/2002

31. On or about March 13, 2006, Riceland Cabinet Corporation submitted to the Ohio Environmental Protection Agency (OEPA) PTI Application No. 02-21941, for R005 through R016.

32. The OEPA issued a PTO (Application No. 0285010312R002) to the facility on September 2, 1994, for the operation of emission unit R002. The PTO expired on September 1, 1997. Riceland violated OAC § 3745-35-02(A) by continuing to operate emissions unit R002 without applying for or obtaining a renewed PTO.

33. The OEPA issued a PTO (Application No. 0285010312P002) to the facility on September 16, 1994, for the operation of emissions unit P002. The PTO expired on September 15, 1997. Riceland violated OAC § 3745-35-02(A) by continuing to operate emissions unit P002 without applying for or obtaining a renewed PTO.

34. The OEPA issued a PTO (Application No. 0285010312R001) to the facility on September 16, 1994, for the operation of emissions unit R001. The PTO expired on September 15, 1997. Riceland violated OAC § 3745-35-02(A) by continuing to operate emissions unit

R001 without applying for or obtaining a renewed PTO.

Clean Air Act Title V Operating Permit Program

35. On or about February 1, 2002, after the installation of several unpermitted emissions units and the expiration of three PTOs, the facility became a major source because it then had the potential to emit 100 tons per year or more of volatile organic compounds, and also because it had the potential to emit 10 tons per year or more of toluene, a hazardous air pollutant.

36. Riceland violated Sections 502(a) and 503(c) of the CAA, 42 U.S.C. §§ 7661a(a) and 7661b(c), and 40 C.F.R. §§ 70.1(b) and 70.3(a), by failing to apply for a Title V operating permit within one year after the facility became a major source, and thereafter operating the facility without a Title V operating permit.

37. On or about November 11, 2006, Riceland submitted, to the OEPA, a Title V operating permit application for the facility.

Wood Manufacturing NESHAP

38. Prior to becoming a major source, the facility was engaged in the manufacture of wood furniture or wood furniture components within the meaning of 40 C.F.R. §§ 63.800(a) and 63.801.

39. On or about February 1, 2002, the facility became subject to the provisions of the Wood Furniture NESHAP for existing sources because it became a major source for the hazardous air pollutant toluene (see above Paragraph 35). 40 C.F.R. §§ 63.800(a) and (e).

40. Riceland violated 40 C.F.R. §§ 63.807(a) and 63.9 by failing to submit for the facility an initial notification identifying, among other things, the relevant standard and the facility's compliance status within 120 days after becoming a major source subject to the Wood Furniture Manufacturing NESHAP.

41. Riceland violated 40 C.F.R. §§ 63.803(a) by failing to prepare, maintain, and implement for the facility a work practice implementation plan meeting the requirements of 40 C.F.R. §§ 63.803(b) through (l).

42. Riceland violated 40 C.F.R. §§ 63.806(b) and (c) by failing to comply with the prescribed recordkeeping requirements for the facility, including records of the VHAP content, as applied, of each finishing material and/or records of the facility-wide monthly average VHAP content for all finishing materials.

43. Riceland violated 40 C.F.R. § 63.807(c) by failing to submit, in relevant part, semi-annual compliance reports, including the facility's compliance status and the information required to be kept by 40 C.F.R. §§ 63.804(g)(1), (2), (3), (5), (7) and (8).

Civil Penalty

44. 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, and Riceland Cabinet Corporation's cooperation in resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$150,000.

45. Within 30 days after the effective date of this CAFO, Respondent must pay a \$150,000 civil penalty by one of the following options:

- a. Sending via U.S. Postal Service mail a cashier's or certified check payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note the case name, docket number of this CAFO, and the billing

document number.

- b. Sending via a carrier that will not deliver to P.O. Boxes (*e.g.* express carrier) a cashier's or certified check payable to the "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the case name, docket number of this CAFO, and the billing document number.

- c. Sending via electronic funds transfer payable to the "Treasurer, United States of America," 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.

46. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send copies of the payment and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604;

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; and

Eaton R. Weiler, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

47. This civil penalty is not deductible for federal tax purposes.

48. If Respondent does not pay timely the civil penalty, the 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.

49. 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 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 accrue from the beginning of the quarter.

General Provisions

50. This CAFO resolves Respondent's liability for federal civil penalties for the violations alleged in this CAFO, provided Respondent continues to take all timely and necessary

measures to obtain PTIs for emissions units R005 to R016 and a Title V operating permit and ultimately obtains such permits.

51. EPA and the United States shall not pursue injunctive relief or other equitable relief against Respondent for the violations alleged in this CAFO so long as it continues to take all timely and necessary measures to obtain PTIs for emissions units R005 to R016 and a Title V operating permit and ultimately obtains such permits.

52. 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 Paragraphs 50 and 51, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

53. Respondent certifies that, to the best of its knowledge and belief after due inquiry into the facts and law, it is complying fully with the Wood Furniture NESHAP.

54. 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).

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

56. 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.

57. Each party agrees to bear its own costs and attorneys' fees in this action.

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

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of:

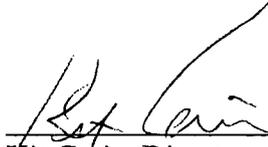
Riceland Cabinet Corporation

Docket No. CAA-05-2008-0017

Riceland Cabinet Corporation, Respondent

Date

4/12/08

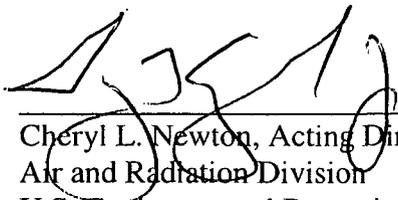


Kit Carin, Director
Riceland Cabinet Corporation

United States Environmental Protection Agency, Complainant

Date

4/24/08


_____ *POB*

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

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of:

Riceland Cabinet Corporation

Docket No. CAA-05-2008-0017

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.

4/29/08

Date

Walter W. Kovalich

Mary A. Gade
Regional Administrator
U.S. Environmental Protection
Agency, Region 5

CERTIFICATE OF SERVICE

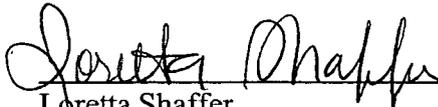
I, Loretta Shaffer, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2008-0017 to the Regional Hearing Clerk, Region 5 U.S. Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Riceland Cabinet Corporation and its Counsel by placing them in the custody of the United States Postal Service addressed as follows:

(Second Original)

Kit Carin
Riceland Cabinet Corporation
1597 E. Lincolnway
Orrville, OH 44667

Steve Shrock
Critchfield, Critchfield & Johnston, Ltd
138 East Jackson Street
Millersburg, Ohio 44654

on the 30th day of April, 2008.


Loretta Shaffer
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 70010320 0006 0187 6706

RECEIVED
REGIONAL HEARING CLERK
US EPA DIVISION V

2008 APR 30 PM 3:00