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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. 5-CAA-03-1998
)
Borden Chemical, Inc.) Proceeding to Assess
Aurora, Illinois) Administrative Penalties
) under Section 113(d) of the
) Clean Air Act,
) 42 U.S.C. § 7413(d)
Respondent.)
_____)

CONSENT AGREEMENT AND CONSENT ORDER

WHEREAS, Complainant, the Director, Air and Radiation Division, United States Environmental Protection Agency, Region 5 ("U.S. EPA"), and Respondent, Borden Chemical, Inc. ("Respondent"), the Parties herein, wishing to settle all matters pertaining to this case and having consented to the entry of this Consent Agreement and Consent Order ("CACO"); NOW, THEREFORE, before the taking of any testimony, without an adjudication of any issues of law or fact herein, the Parties consent to the entry of, and agree to comply with the terms of, this CACO.

I. Preliminary Statement

1. U.S. EPA instituted this civil administrative proceeding for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7413(d), by issuing an Administrative Complaint and Notice of Proposed Order Assessing a Penalty against Respondent on February 18, 1998 ("Complaint").

2. Respondent in this proceeding is Borden Chemical, Inc. (Borden Chemical), a Delaware Corporation, headquartered in Ohio and doing business in the State of Illinois.

3. The Complaint, which is fully incorporated herein by reference, charged Respondent with failure to equip its foundry sand manufacturing process operations A and B with capture and control equipment to achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent, a violation of 40 C.F.R. § 52.741(x)(3) from at least January 3, 1992 to November 19, 1996 and a violation of 35 Ill. Admin. Code § 218.986 from November 20, 1996 to the date of the Complaint.

4. Based on these alleged violations the Complaint sought the imposition of a penalty in the amount of \$175,840.

5. On or about March 23, 1998, Respondent filed its Answer and Request for Hearing in which it denied liability on the allegations in the Complaint.

6. As a result of information exchanged during settlement negotiations, U.S. EPA and Respondent have agreed to resolve this matter by executing this CACO.

II. Consent Agreement

7. This CACO resolves the violations alleged in the Complaint up until, the date that the Complaint was filed, February 18, 1998.

8. Respondent admits the jurisdictional allegations contained in the Complaint.

9. Respondent neither admits nor denies the specific factual allegations contained in the Complaint, except those admissions contained in Respondent's Answer.

10. Respondent certifies that its foundry sand manufacturing process is in compliance with the requirements of the CAA and 35 Ill. Admin. Code § 218.

11. In consideration of the foregoing, and due to the fact that Respondent has been cooperative in providing U.S. EPA with information during the pendency of this matter, and for "other factors as justice may require," the civil penalty proposed in the Complaint is being adjusted in conformance with U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991, to a settlement amount of \$154,740.

12. Respondent agrees to pay \$154,740 to U.S. EPA to settle this proceeding.

13. Respondent shall pay the settlement amount no later than 30 days from the effective date of this CACO.

14. The settlement payment payable hereunder shall be made by certified or cashier's check or money order, payable to "Treasurer, United States of America," and mailed to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

A transmittal letter, indicating Respondent's name, complete address, and this case docket number must accompany the payment. Respondent shall send a copy of the check and transmittal letter to:

- 1) Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (MF-10J)
Chicago, Illinois 60604; and
- 2) Linda Hamsing
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (AE-17J)
Chicago, Illinois 60604; and
- 3) Edward J. Messina
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604.

15. Respondent's failure to timely comply with any provision of this CACO shall render the entire unpaid portion of the proposed civil penalty of \$175,840 immediately due and payable, together with all accrued interest. Such failure may also subject Respondent to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413 (d)(5), to collect any unpaid portion of the proposed civil penalty, together with interest, handling charges and nonpayment penalties as set forth in Paragraph 15, below. In any such collection action, the validity, amount and appropriateness of this CACO or the settlement payment or penalty assessed hereunder are not subject to review.

16. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3731, Respondent shall pay the following amounts:

a. Interest. Any unpaid portion of the settlement payment or assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the date a copy of the executed CACO is mailed to Respondent, provided, however, that no interest shall be payable on any portion of the settlement payment or assessed penalty that is paid within 30 days of the date a copy of this CACO is mailed to Respondent.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid for any month in which any portion of the settlement payment or assessed penalty is more than 30 days past due.

c. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(4), should Respondent fail to pay on a timely basis the full amount of the settlement payment or any assessed penalty, interest or handling charges, Respondent shall be liable to pay the United States' enforcement and collection expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding or overdue settlement amounts, penalties

and nonpayment penalties accrued from the beginning of such quarter.

17. Nothing in this CACO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and other Federal, state or local laws or statutes or shall restrict U.S. EPA's authority to seek compliance with all applicable provisions of the Act and other applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

18. Respondent represents that it is duly authorized to execute this CACO and that the party signing this CACO on its behalf is duly authorized to bind Respondent to the terms of this CACO.

19. The provisions of this CACO shall be binding on Respondent, its officers, directors, employees, agents, servants, authorized representatives, successors and assigns.

20. Respondent hereby waives its right to a judicial or administrative hearing with respect to the Complaint or this CACO, and explicitly waives any and all rights under any provisions of law, including those pursuant to Section 113(d)(2) and (4) of the Act, 42 U.S.C. § 7413(d)(2) and (4), to challenge the terms and conditions of this CACO.

21. Each party shall bear its own costs, fees (including but not limited to attorney's fees) and disbursements in this action.

22. This CACO constitutes the entire agreement between the parties.

23. This CACO shall be in full effect upon execution of the Consent Order by the U.S. EPA Region 5 Director of the Air and Radiation Division or his designated representative, and filing with the Regional Hearing Clerk.

24. Upon filing, Complainant will transmit a copy of the filed CACO to the Respondent.

25. Respondent and U.S. EPA agree to issuance of the attached Consent Order.

The foregoing Consent Agreement is Hereby Stipulated, Agreed, and Approved for Entry:

**U.S. ENVIRONMENTAL PROTECTION
AGENCY, COMPLAINANT**

Date: 3-31-99

By: Richard C. Karl
Richard C. Karl, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

BORDEN CHEMICAL, INC.

Date: 3/24/99

By: Jim Miles
Jim Miles, Plant Manager
Borden Chemical, Inc.

CONSENT ORDER

It is so ORDERED, in the case of Borden Chemical, Inc. Aurora, Illinois, Docket No. 5-CAA-03-1998, as agreed to by the parties and as stated in the foregoing Consent Agreement. This Order disposes of this matter pursuant to 40 C.F.R. § 22.18(c). This Order shall become effective upon filing with the Regional Hearing Clerk.

Dated: 4/2/99



David A. Ullrich
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No: 5-CAA-98-003

RECEIVED
REGIONAL HEARING

CERTIFICATE OF FILING AND MAILING

1999 APR -2 P2:49

I, Betty Williams, do hereby certify that the original of the foregoing Consent Agreement and Consent Order (CACO) was sent to Borden Chemical, Inc., was filed with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and that a second original of the CACO was sent Certified Mail, Return Receipt Requested, to:

Jim Mills, Plant Manager
Borden Chemical, Inc.
1019 Jericho Road
Aurora, Illinois 60506

I also certify that copies of the CACO were sent by First Class Mail to:

Sharon Post, Attorney
Borden Chemicals, Inc.
180 East Broad Street
27th Floor
Columbus, Ohio 43215

David Kolaz, Manager
Compliance and Systems Management Section
Bureau of air
Illinois Environmental Protection agency
1021 North Grand Avenue East
Springfield, Illinois 62702

on the 2nd Day of April 1999.

Betty Williams
Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: P140778981