

RECEIVED
REGIONAL HEARING
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF)
)
NYLONGE CORPORATION)
)
Respondent)
_____)

'99 MAY 21 9 49
Docket No. CAA-5-99-003
US EPA REGIONAL HEARING
Proceeding to Assess Administrative
Penalties under Section 113(d) of the
Clean Air Act, 42 U.S.C. § 7413(d)

CONSENT AGREEMENT AND CONSENT ORDER

WHEREAS, Complainant, the Acting Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (Complainant or U.S. EPA), has filed a Complaint and Notice of Opportunity for Hearing on Proposed Administrative Order Assessing Penalties (Complaint) for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits," 40 C.F.R. Part 22, against Nylonge Corporation (Respondent);

WHEREAS, Complainant and Respondent, the Parties herein, having agreed that resolution of this matter through entry of this Consent Agreement and Consent Order (CACO) is an appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby AGREED and ORDERED as follows:

I. PRELIMINARY STATEMENT

1. This CACO is issued pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 C.F.R. Part 22.

2. On June 5, 1998, U.S. EPA issued a Notice of Violation (NOV) to Respondent for alleged violations of Ohio's Part D State Implementation Plan (SIP), Ohio Administrative Code (OAC) rule 3745-31-05, arising from Respondent's construction and operation of its facility at 1301 Lowell Street, Elyria, Ohio (Elyria Facility) with an invalid permit to install from early 1990 to August 15, 1995. In addition, the NOV cited Respondent for violating 40 C.F.R. § 52.23 from August 16, 1995 to the end of 1996, resulting from Respondent's violation of its permitted carbon disulfide emission limits. A Section 113 conference between U.S. EPA and Respondent was held on July 8, 1998 during which U.S. EPA and Respondent discussed the violations cited in the NOV.

3. On December 23, 1998, U.S. EPA filed a Complaint against Respondent which alleged violations set forth in the June 5, 1998 NOV. The Complaint proposed a civil penalty of \$104,000.

4. Based on evidence presented by Respondent, U.S. EPA stipulates that for purposes of this CACO, Count II of U.S. EPA's Complaint against Respondent is withdrawn. In accordance with this stipulation, the proposed civil penalty is \$71,250.

5. Upon receipt of the NOV and the Complaint, Respondent cooperated with U.S. EPA to resolve the matters covered by this CACO and Respondent has shown good faith and cooperation in settling this matter.

6. Respondent admits that U.S. EPA has jurisdiction over the subject matter alleged in the Complaint and waives any defenses it might have as to jurisdiction and venue.

7. Other than those allegations admitted in Respondent's Answer to the Complaint, Respondent neither admits nor denies the factual allegations in the Complaint.

8. Respondent consents to the terms of this CACO and to the assessment of the civil penalty provided in the Order below.

9. Respondent waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint or to challenge the terms and conditions of this CACO.

10. This CACO shall apply to and be binding upon Respondent, its officers, directors, employees, agents, servants, authorized representatives, successors and assigns, including but not limited to, subsequent purchasers.

II. TERMS OF SETTLEMENT

11. In accordance with Section 113(d) and (e) of the Act, 42 U.S.C. § 7413(d) and (e), and after consideration of the nature of the violations addressed, information provided by Respondent, Respondent's agreement to perform a Supplemental Environmental Project (SEP), and other relevant factors, U.S. EPA has determined that an appropriate civil penalty is in the amount of SEVENTEEN THOUSAND EIGHT HUNDRED AND TWELVE DOLLARS (\$17,812.00).

12. Respondent consents to the issuance of the CACO hereinafter recited and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph and to the performance of a SEP.

13. Within thirty (30) days of receiving a copy of this CACO signed by the U.S. EPA Regional Administrator, Region 5. Respondent shall submit a cashier's or certified check, to the order of the "Treasurer, United States of America," in the amount of SEVENTEEN THOUSAND EIGHT HUNDRED AND TWELVE DOLLARS (\$17,812.00) to:

U.S. EPA, Region 5
P.O. Box 70753
Chicago, IL 60604

Respondent shall provide a copy of the check to:

Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

and

Cynthia A. King
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Interest and late charges shall be paid as specified in Paragraph 23 below.

14. The penalty specified in Paragraph 11, above, shall represent civil penalties assessed by U.S. EPA and shall not be deductible for purposes of Federal taxes.

15. Respondent certifies that the alleged violations at issue have been properly remedied and that Respondent is operating its Elyria Facility in compliance with its permits and the Ohio SIP.

16. Respondent has agreed to perform a SEP in which Respondent shall operate its existing caustic scrubber on 80% of the days during the "high ozone" period of May 1 through

September 1 for three years. The Parties agree that the SEP is intended to secure significant environmental or public health protection and improvements.

17. Respondent has provided information demonstrating that the value of the SEP is \$65,074.00. Respondent agrees that the total expenditure for the SEP shall not be less than \$53,438.00. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described below.

18. Respondent hereby certifies that, as of the date of this CACO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or injunctive relief in this or any other case. Respondent further certifies that it has not received, and it is not presently negotiating to receive, credit in any other enforcement action for the SEP.

19. SEP Reports

a. SEP Completion Report. Respondent shall submit a SEP Completion Report to U.S. EPA on September 30, 2001. In the SEP Completion Report, Respondent shall include the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders, invoices and receipts or canceled checks;
- (iv) Certification that Respondent operated its caustic scrubber for 80% of the period of May 1 through September 1 for three years; and
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (quantifying the benefits and pollutant reductions, if feasible).

b. Periodic Reports. Respondent shall submit two brief reports advising U.S. EPA of the days of operation of the caustic scrubber and enclosing emission monitoring reports for the period of May 1 through September 1. These reports are due twelve months from the effective date of this CACO and twenty-four months from the effective date of this CACO.

c. Respondent agrees that failure to submit the SEP Completion Report or any Periodic Report as required above shall be deemed a violation of this CACO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 22, below.

d. Respondent shall submit, by first class mail, all notices and reports required by this CACO to Cynthia A. King, Office of Regional Counsel, C-14J, United States Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604.

20. In all documents or reports, including, without limitation, the SEP Completion Report and the Periodic Reports, submitted to U.S. EPA pursuant to this CACO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

21. Respondent agrees that U.S. EPA may inspect the Elyria Facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

22. Stipulated Penalties for Failure to Complete SEP/Failure to Spend Required Amount

a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraph 16 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 17, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately below, if the SEP has not been completed satisfactorily pursuant to this CACO, Respondent shall pay a stipulated penalty to the United States in the amount of \$53,438.00.

(ii) if the SEP is not completed satisfactorily, but the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90% of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

(iii) If the SEP is satisfactorily completed, but the Respondent spent less than 90% of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of the difference Respondent should have expended and the amount actually expended.

- (iv) If the SEP is satisfactorily completed, and the Respondent spent at least 90% of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
 - (v) For failure to submit the SEP Completion Report required by Paragraph 19 (a) above, Respondent shall pay a stipulated penalty in the amount of \$500 for each day after three years from the effective date of this CACO until the report is submitted.
 - (vi) For failure to submit the periodic report required by Paragraph 19 (b) above, Respondent shall pay a stipulated penalty in the amount of \$250 for each day after the report was originally due until the report is submitted.
- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of U.S. EPA.
- c. Stipulated penalties for subparagraphs (v) and (vi) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
- d. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by U.S. EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 13, above. Interest and late charges shall be paid as stated in Paragraph 23, below.

e. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

23. Pursuant to 31 U.S.C. § 3717, U.S. EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).

24. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Air Act."

25. This CACO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed

to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this Agreement.

26. This CACO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to the Clean Air Act for the violations alleged in the Complaint. Nothing in this CACO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CACO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by U.S. EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

27. Each undersigned representative of the parties to this CACO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CACO and to execute and legally bind that party to it.

28. This document constitutes an “enforcement response” as that term is used in the Clean Air Act Civil Penalty Policy for the purposes of determining Respondent’s “full compliance history” as addressed in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

29. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CACO.

30. The effective date of this CACO will be the date on which it is signed by the Acting Regional Administrator.

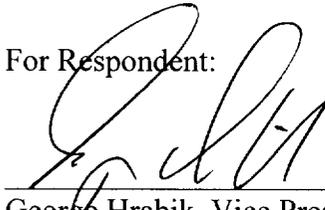
For Complainant:



Richard Karl, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5

Date: 5/21/99

For Respondent:



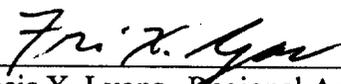
George Hrabik, Vice President
Nylonge Corporation

Date: 5/19/99

In the Matter of Nylonge Corporation
Docket No. CAA-5-99-003

III. ORDER

The foregoing CACO is hereby approved and incorporated by reference into this Order.
The Respondent is hereby ordered to comply with the terms of the above CACO, effective immediately.



Francis X. Lyons, Regional Administrator
U.S. Environmental Protection Agency, Region 5

Date: 5-21-99

In the Matter of Nylonge Corporation
Docket No. CAA-5-99-003

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REGIONAL HEARING

CERTIFICATE OF SERVICE

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EAB

I hereby certify that an original of the foregoing Consent Agreement and Consent Order was sent on MAY 24, 1999, in the manner specified, to the following parties: AGENCY REGION V

Via Certified Mail, Return Receipt Requested to:

Counsel for Nylonge Corporation

Steven Bell, Esq.
Ulmer & Berne LLP
Bond Court Building
1300 East Ninth Street, Suite 900
Cleveland, Ohio 44114-1583

Certified Mail Number: P564-485-830

Respondent

Mr. George Hrabik, Vice President
Nylonge Corporation
1301 Lowell Street
Elyria, Ohio 44035

Certified Mail Number: P564-485-829

Via Hand-Delivery to:

Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

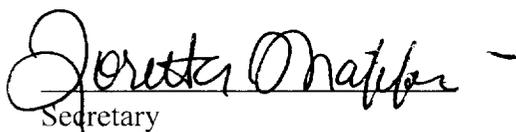
Via Pouch Delivery to:

Administrative Law Judge Carl C. Charneski
Office of Administrative Law Judges
United States Environmental Protection Agency
Mail Code 1900
401 M Street, S.W.
Washington, D.C. 20460

Via First Class Mail to:

State Contact

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government center
122 Sotuh Front Street
Coumbus, OH 43215

A handwritten signature in black ink, appearing to read "Jorutta Onatiba", with a horizontal line drawn through the middle of the signature.

Secretary
Enforcement Section
Air Enforcement Branch
U.S. Environmental Protection
Agency (AE-17J)
77 West Jackson Blvd.
Chicago, Illinois 60604