

Essroc also requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

Stipulations

4. Essroc admits the jurisdictional allegations in the complaint, and neither admits nor denies the factual allegations in the complaint.

5. Essroc waives its right to contest the allegations in the complaint, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

6. Essroc certifies that, to its knowledge, it is complying fully with the Indiana SIP.

7. The parties consent to the terms of this consent agreement and final order (CAFO).

8. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

9. In consideration of Respondent's agreement to perform a Supplemental Environmental Project (SEP), U.S. EPA agrees to mitigate the proposed penalty of \$27,500 to \$6,875.

10. Essroc must pay the \$6,875 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

11. Essroc must send the check to:

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

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

Attn: Regional Hearing Clerk, (R-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

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, Illinois 60604-3590

Louise C. Gross (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

13. If Essroc does not pay timely the civil penalty, or any stipulated penalties due under paragraph 25, 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.

14. Interest will accrue on any overdue amount from the date payment was due at a rate established under 26 U.S.C. § 6621(a)(2). Essroc will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Essroc will 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

15. Essroc must complete a supplemental environmental project (SEP) designed to protect the environment and public health by installing a dust suppression system to control limestone dust emissions from its limestone crushing system at its Logansport, Indiana facility. Essroc must install and operate this system no later than 270 days after the effective date of this CAFO.

16. Essroc must spend at least \$58,000 to engineer, purchase and install the equipment, and approximately \$3,000 annually to operate the equipment for its entire useful life (estimated at seven years).

17. Essroc must use or operate the dust suppression system whenever reasonably possible for its entire useful life (estimated at seven years), and agrees to use its best efforts to maintain this system in good working order.

18. Essroc 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. Essroc further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

19. An authorized representative of U.S. EPA, upon presentation of his or her credentials, may inspect the limestone crushing system at any reasonable time to monitor Essroc's compliance with this CAFO's SEP requirements.

20. Essroc must submit a SEP completion report to U.S. EPA within 30 days after start-up of the dust suppression system. 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 canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. certification that Essroc has completed the SEP in compliance with this CAFO; and

e. description of the environmental and public health benefits anticipated to result from the SEP (quantify the benefits and pollution reductions, if feasible).

21. Essroc 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, Illinois 60604-3590

22. In each report that Essroc 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, the information 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.

23. Following receipt of the SEP completion report described in paragraph 20, above, U.S. EPA must notify Essroc in writing that:

- a. It has completed the SEP and the SEP report in accordance with this CAFO;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Essroc 30 days to address the deficiencies; or
- c. It has not completed the SEP or the SEP report in accordance with this CAFO and U.S. EPA will seek stipulated penalties under paragraph 25, below.