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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. CAA-5-2000-019
)
Ritchie Engineering Company,)
Incorporated) Proceeding to Assess an
Minneapolis, Minnesota,) Administrative Penalty
) under Section 113(d) of the
) Clean Air Act,
Respondent.) 42 U.S.C. § 7413(d)
)

Consent Agreement and Final Order

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On September 29, 2000, U.S. EPA filed the complaint in this action against Respondent Ritchie Engineering Company, Incorporated (Ritchie). The complaint alleged that Ritchie violated the National Recycling and Emissions Reduction Rule, promulgated at Section 608 of the Act, 42 U.S.C. § 7671(g), and codified at 40 C.F.R. Section 82.158(h) at its facility in Garrett, Indiana. The complaint also alleged that Ritchie failed to comply with Administrative Order CAA-ACO-7-2000-0009 issued on January 13, 2000. This Order required Ritchie to comply with 40 C.F.R. § 82.158(h) and to certify to U.S. EPA that it was in compliance with this regulatory provision.

3. Ritchie filed an answer on November 1, 2000 and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). In that answer, Ritchie denied U.S. EPA's allegation that the wording on its R60 model did not comply with the wording requirements of 40 C.F.R. § 82.158(h); alleged that the rule-making authority delegated to U.S. EPA under Section 608(a) of the Clean Air Act, 42 U.S.C. § 7671g(a), does not delegate to U.S. EPA the authority to regulate entities which manufacture equipment or other tools to be used during the service, repair or disposal of appliances and industrial process refrigeration but who are themselves not otherwise engaged in those regulated activities; and alleged that Respondent in good faith sought to comply, and had consulted industry sources and sources within U.S. EPA for compliance guidance, and that Respondent at all times corresponded with U.S. EPA in good faith and with complete candor as to the issues raised by U.S. EPA.

Stipulations

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

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

6. Within thirty (30) days of the effective date of this consent agreement and final order (CAFO), Ritchie must certify to U.S. EPA in writing that it is fully complying with 40 C.F.R. § 82.158(h). Ritchie may provide any documentation at that time demonstrating compliance. Ritchie must send the certification of compliance to:

Ms. Rae Trine
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd. (AE-17J)
Chicago, Illinois 60604-3590

7. The parties consent to the terms of this 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 the facts in this case, including Ritchie's small business status, U.S. EPA agrees to mitigate the proposed penalty of \$49,335 to \$20,000.

10. Ritchie must pay the \$20,000 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. Ritchie 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

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

13. If Ritchie does not pay timely the civil penalty, 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). Ritchie will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Ritchie 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.

General Provisions

15. This CAFO only settles U.S. EPA's claims for civil penalties for the violations alleged in the complaint filed on September 29, 2000.

16. 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 subsequent violations of this agreement by Ritchie; or for any violations of the Act, other than for those alleged violations resolved by this CAFO, or for violations of other applicable laws and regulations.

17. This CAFO does not affect Ritchie's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

18. The terms of this CAFO bind Ritchie, and its successors, and assigns. The terms of this agreement also bind U.S. EPA Region 5 and all other U.S. EPA Regions or offices.

19. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

20. Each party shall bear its own costs and attorneys' fees in the action resolved by this CAFO.

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

**U.S. Environmental Protection Agency,
Complainant**

Date: 8/13/01

By: 
Bharat Mathur, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

**Ritchie Engineering Company, Inc.,
Respondent**

Date: 8/6/01

By: Stephen H. Ritchie
Stephen H. Ritchie, President
Ritchie Engineering Company, Inc.

CONSENT AGREEMENT AND FINAL ORDER
Ritchie Engineering Company, Incorporated
Docket No. CAA-5-2000-019

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

8/13/01
Date:



Thomas V. Skinner,
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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2001

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered ^{on 8/13} the ⁵⁶ original of the Consent Agreement and Final Order, docket number CAA-5-2000-019 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Stephen H. Ritchie and Stephen H. Ritchie's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Steve H. Ritchie, President
Ritchie Engineering Company, Inc.
10950 Hampshire Avenue South
Bloomington, Minnesota 55438-2623

Mr. Roger Anderson
Attorney at Law
Firststar Center, Suite 2300
101 East Fifth Street
St. Paul, Minnesota 55101

I also certify that were sent by first class mail to:

Ms. Ann Foss, Enforcement Manager
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

Mr. David McIver, Office of Enforcement
Indiana Department of Environmental
Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46209-9932

on the 13th day of August, 2001.

Betty Williams for Loretta Shaffer
Loretta Shaffer, Secretary
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 70000600 00236752 4925