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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JW SKUPNIEWITZ
CLERK US DIST COURT
WD OF WI

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 PRAIRIE SAND & GRAVEL, INC.,)
)
 Defendant.)
 _____)

Case No. 98-C-0586-S

CONSENT DECREE

Plaintiff, the United States of America, by authority of the Attorney General of the United States, and acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this action seeking civil penalties pursuant to Section 113 of the Clean Air Act (the "Act"), 42 U.S.C. § 7413, against the Defendant, Prairie Sand & Gravel, Inc. ("PS&G"). The Complaint alleges that PS&G, which operates a grain transfer facility in Crawford County, on St. Feriole Island, Prairie du Chien, Wisconsin, failed to comply with certain specified conditions of its air permit, issued to it by the Wisconsin Department of Natural Resources ("WDNR"). The Complaint further alleges that PS&G failed to obtain a permit for certain of its stationery sources, as required by the Clean Air

Act and the Wisconsin State Implementation Plan ("SIP").

WDNR lawfully issued the air permit pursuant to its SIP and regulations promulgated under the Act designed to ensure attainment and maintenance of the national ambient air quality standards ("NAAQS") established by EPA for certain pollutants. 42 U.S.C. § 7410(a); Wisconsin SIP Rule Ch NR 154.11(6)(a)(1) Wis Admin. Code (subsequently recodified at Ch NR 431.05 Wis Admin. Code, but not yet federally approved as recodified).

The United States and PS&G agree that settlement of this action is in the public interest and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter.

THEREFORE, upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

2. The Court has personal jurisdiction over PS&G and venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1381(b) and (c).

3. The parties agree to be bound by the terms of this

Consent Decree and not to contest its validity in any subsequent proceeding.

4. Solely for the purposes of this Consent Decree, and without an admission of liability for the claims asserted by the United States herein, PS&G waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District and shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

II. DEFINITIONS

5. Unless specifically defined in this section or elsewhere in this Consent Decree, terms used herein shall have the meaning set forth in Section 302 of the Clean Air Act, 42 U.S.C. § 7602, or any regulations promulgated under the Act.

6. "Act" means the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*

7. "Day" means a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

8. "Decree" means this Consent Decree, as entered by the Court.

9. "Dump-Pit" shall mean the area of the facility where grain is dumped or released from trucks through grates designated as Source No. P11 in PS&G's construction and operating permit, 96 BKE-608, where it is then conveyed to the grain unloading spout.

10. "Enclosure" shall mean the walls, doors and roofing surrounding the Dump-Pit.

11. "EPA" means the United States Environmental Protection Agency.

12. "Facility" shall mean the grain transfer facility located at 800 Villa Louis Road, Prairie du Chien, Wisconsin, currently owned and operated by Prairie Sand & Gravel, Inc.

13. "Notify," "submit," and other terms signifying an obligation to transmit or communicate documents and information means to deliver by personal delivery, by courier, or by mail for delivery not later than the day that such transmission or communication is required by this Consent Decree.

14. "Parties" means the United States and PS&G.

15. "PS&G" or "Defendant" shall mean Prairie Sand & Gravel, Inc.

16. "WDNR" means the Wisconsin Department of Natural Resources.

III. PARTIES BOUND

17. The provisions of this Consent Decree shall apply to and be binding on the United States and PS&G, and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter PS&G's status or responsibilities under this Consent Decree. PS&G shall be responsible for ensuring that its officers, directors, agents, servants, contractors, subcontractors, employees and lessees comply with the requirements of this Consent Decree. In the event of any change in ownership, operation, or corporate, or other legal status, at least thirty (30) days prior to transferring such ownership or operation of any part of the Facility, Defendant shall verify to the United States in writing, in the manner set forth in Section XI (Notice), that the change will occur. No such sale or transfer shall relieve Defendant of the obligations in this Decree unless agreed to in writing by the United States and approved by the Court.

IV. CIVIL PENALTIES

18. Within thirty (30) calendar days after entry of this Consent Decree as an Order of the Court, PS&G shall pay a civil penalty in the sum of \$115,000 to the United States of America in

full satisfaction and settlement of: (1) any and all civil claims for violations alleged in the Complaint relating to the PS&G Facility and occurring prior to the date of lodging of this Consent Decree; and (2) any and all civil claims under the Clean Air Act or the Wisconsin SIP for operation of a temporary grain transfer station at the Facility during November 1995, or arising from the November 7, 1996, WDNR inspection of the Facility. The penalty specified herein shall represent civil penalties assessed by the United States and shall not be deductible for purposes of federal taxes. Payment shall be made to the United States by Fedwire Electronic Funds Transfer ("EFT") to the Federal Reserve/U.S. Treasury Department in New York City for credit to the U.S. Department of Justice. Any EFTs received at the Federal Reserve Bank prior to its time of closing will be credited that business day.

19. The following information must be provided to the bank making the Electronic Transfer of Funds:

Receiving Bank	
ABA Code	021030004
Message Type Code	1000
Amount to be Transferred	<u>\$115,000.00</u>
Receiving Beneficiary Bank,	

Name, and Account Number
DEPT
15030001

TREASNYC/CTR/BNF=
OF JUSTICE/AC-

Collection Office Identifier

U. S. Attorney, WIW

Debtor's Name Collection Office Claim Number ***

On the date of payment, written notice of payment must be sent by telefax to the U.S. Attorney's Office for the Western District of Wisconsin, Financial Litigation Unit, Attention: Donna Hughes. Fax number (608) 264 - 5724.

20. PS&G shall transmit evidence of such payment to the United States and EPA at the following addresses:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044
Re: DOJ 90-5-2-1-2218
Fax: (202)514-0097

Michelle Farley
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency - Region V
77 West Jackson Boulevard
Chicago, Illinois 60604
Fax: (312) 353-8289

21. PS&G shall give notice of the terms of this Consent Decree to any lessor of PS&G's facility, and to each successor owner and lessee known to PS&G.

V. FAILURE TO MAKE TIMELY PAYMENTS

22. If the civil penalty provided for in this Consent Decree is not timely paid, this Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection of any unpaid amounts in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308, and other applicable federal authority. The United States shall be entitled to interest on any overdue amount from the due date at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. Further, PS&G shall be liable for reasonable attorney fees and costs incurred by the United States to collect any amounts past due under this Consent Decree.

23. Payments made under paragraphs 18 and 40 shall be in addition to any other remedies or sanctions available to the United States or EPA by virtue of PS&G's failure to make timely payments required by this Consent Decree.

VI. COMPLIANCE PLAN

SIP AND PERMIT COMPLIANCE

24. Defendant certifies, through a duly authorized official, that upon execution of this Decree it has reviewed its permit and its grain transfer operations and that to the best of

its knowledge it is in compliance with its applicable construction and/or operating permit(s) under the SIP and the Act.

25. Defendant shall hereafter agree that it will obtain proper construction and operating permits for any temporary grain transfer facilities.

26. Within 30 days from the date of entry of this Consent Decree, Defendant shall complete construction of an extension to the enclosure over the truck Dump-Pit at the Facility such that the Dump-Pit is totally enclosed by three walls (retractable or otherwise) and a roof when trucks dump grain into the pit. The overhead door at the truck Dump-Pit shall be closed at all times when grain is being unloaded.

BAGHOUSE EVALUATION AND MAINTENANCE

27. Within 45 days from the date of entry of this Consent Decree, Defendant shall perform an evaluation of baghouse performance in order to determine whether such baghouse is properly sized to accommodate all negative pressure requirements for fugitive dust collection from all pickup points, including those within the enclosure as well as those outside of the enclosure.

28. Within 45 days from the date of the evaluation

described in the previous paragraph, the results, observations and recommendations from such evaluation shall be documented in a written report which shall include conclusions as to the efficiency of the baghouse for reducing particulate emissions at the enclosure.

29. Within the first 7 days of each quarter (except for the first quarter of January 1 - March 31), beginning with the quarter starting on July 1, 1999, Defendant shall conduct a maintenance check on the baghouse to ensure that it is functioning properly and efficiently.

30. Such maintenance checks shall include, but not be limited to: visual inspection of the bags and duct system, pressure testing to identify any breaches in the bag, cleaning of any ducts or the cleaning or replacement of any baghouse component as necessary.

31. Within 45 days from the date of each maintenance check described in the previous paragraph, a written report shall be submitted describing the results of the visual observations of the bags and duct system as well as the results of pressure testing. This report shall also include a full description of any baghouse maintenance performed as a result of the maintenance check, the date such maintenance was performed, and the time

required to perform such maintenance.

32. A third party consultant hired by Defendant shall conduct the baghouse evaluation and all quarterly baghouse maintenance checks required by this Consent Decree and shall prepare all written reports required by this Consent Decree.

33. Defendant shall submit a testing and a maintenance plan to EPA for both the baghouse evaluation and the baghouse maintenance checks, for approval no later than 14 days prior to the date of the evaluation described in paragraph 27, and all baghouse maintenance checks described in paragraph 29. If EPA fails to approve, conditionally approve, or disapprove the maintenance plan within 14 days from its receipt at EPA, then the maintenance plan shall be deemed approved. Once the maintenance plan is approved by EPA for any quarter, it may be submitted as a maintenance plan for any subsequent quarter by making written reference to it in the notification required by paragraph 34.

34. Defendant shall provide EPA and WDNR at least 14 days written notice of the date and time of any baghouse evaluation or baghouse maintenance check performed pursuant to this Consent Decree and shall have right of access to be present during such activities.

QUARTERLY REPORTING

35. Within 45 days from the date of each maintenance check described in paragraph 29, Defendant shall provide to EPA photocopies of all records required to be kept pursuant to the SIP and/or Defendant's applicable construction and/or operating permits under the Act for the previous quarter. Such records shall include, but not be limited to any evaluation and maintenance check results and reports prepared pursuant to this Consent Decree as well as all maintenance, inspection, production and emissions records required to be maintained pursuant to Defendant's construction and/or operating permits under the Act.

36. All reporting pursuant to this Consent Decree shall be under cover letter signed by a responsible corporate official of Defendant attesting to the truthfulness and completeness of the reports and shall be submitted 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 to the best of my knowledge. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

37. In performing any work required by this Consent Decree