

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Tomen Agro, Inc.  
3647 Shepard Road  
Perry, Ohio 44081,

Respondent.

) Docket No. **CAA-5-99-022**  
)  
)  
) Proceeding to Assess an  
) Administrative Penalty  
) under Section 113(d) of the  
) Clean Air Act,  
) 42 U.S.C. § 7413(d)  
)

Consent Agreement and Consent Order

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (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 **AUG 09 1999** EPA filed the complaint in this action against Respondent, Tomen Agro Inc. (Tomen Agro). The complaint alleges that Tomen Agro violated Section 112 of the Act, 42 U.S.C. § 7412 and the regulations promulgated thereunder at 40 C.F.R. Part 63, Subparts A, F and G, and the Ohio Implementation Plan (SIP) due to failure to comply with conditions of its Permit to Install (PTI), at its facility in Perry, Ohio.

Stipulations

3. Tomen Agro admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint.

4. Tomen Agro waives its right to a hearing pursuant to 40 C.F.R. § 22.15(c), and waives its right to appeal pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

5. Tomen Agro certifies that it is complying fully with 40 C.F.R. Part 63, Subparts A, F, and G, and its PTI issued pursuant to the Ohio SIP.

6. The parties consent to the terms of this Consent Agreement and Consent Order (CACO).

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

**Civil Penalty**

8. In consideration of the foregoing stipulations and findings, and having taken into account the seriousness and duration of the violations, Respondent's full compliance history, degree of culpability, economic benefit or savings resulting from the violations, the size of Respondent's business and the economic impact of the penalty on the business, Respondent's good faith efforts to comply, and Respondent's agreement to perform a supplemental environmental project (SEP), EPA agrees to mitigate the proposed penalty of \$ 53,900.00 to \$ 11,514.00.

9. Tomen Agro shall pay the \$ 11,514.00 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 CACO.

10. Tomen Agro shall send the check to:

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

11. A transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document number must accompany the payment. Respondent shall write the case docket number and the billing document number on the face of the check. Respondent shall 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

Ms. Nidhi K. O'Meara, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3509

12. This civil penalty is not deductible for federal tax purposes.

13. If Tomen Agro violates this CACO, 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 shall accrue on any amount overdue from the date the payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2). Tomen Agro shall pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Tomen Agro shall 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 shall 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. Tomen Agro shall complete a SEP designed to protect the environment by installing a high-efficiency jet pulse dust collection system designed to achieve a 0.01 gr/dscf outlet concentration for particulate matter.

16. Tomen Agro shall complete the SEP as follows:

- a. Replace the existing shaker style dust collector system with a high-efficiency jet pulse dust collection system at Tomen Agro's rework station.

b. Submit relevant information regarding the design and operational specifications of the high-efficiency jet pulse dust collection system proposed for installation, prior to initiating installation, to U.S. EPA in accordance with this CACO.

c. Install, operate and maintain the high-efficiency jet pulse dust collection system within 10 months after entry of this CACO in accordance with the specifications and deadlines set forth in this CACO and Exhibit A to this CACO, which is incorporated herein by reference. Tomen Agro shall operate the high-efficiency jet pulse dust collection system in accordance with the design specifications submitted pursuant to Paragraph 16, subparagraph b, above.

d. Maintain records of relevant operating parameters to show the high-efficiency jet pulse dust collection system is operating in accordance with the design specifications for maximum control efficiency. These records shall include:

1. Dates and hours of operation for the rework station,
2. Dates and hours of operation for the high-efficiency jet pulse dust collection system; and
3. Pressure drop readings across the filter bags of the high-efficiency jet pulse dust collection system once per shift when the system is operating.

17. Tomen Agro shall spend at least \$ 90,200.00 in the performance of this SEP. This expenditure shall include only one-time, non-depreciable costs for engineering, equipment purchase, demolition, and installation.

18. Tomen Agro shall operate the high-efficiency jet pulse dust collection system, as set forth in this CACO, at all times when the rework station is in operation for at least three (3) years following its installation and start-up.

19. Tomen Agro certifies that it is not required to perform or develop this SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CACO. Tomen Agro further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action or early reduction program.

20. EPA may inspect the facility at any time to monitor Tomen Agro's compliance with this CACO's SEP requirements.

21. Tomen Agro shall maintain copies of the underlying research and data for all reports submitted to EPA according to this CACO. Tomen Agro shall provide the documentation of any underlying research and data to EPA within seven days of EPA's request for the information.

22. Tomen Agro shall submit the reports required by the SEP to EPA according to the schedule in Exhibit A.

23. Tomen Agro shall submit a SEP completion report to EPA by July 5, 2000. This report shall contain the following information:

- a. The date the installation of the new dust collection system was initiated or completed.
- b. Detailed description of the SEP as completed;
- c. Certification that Tomen Agro has completed the SEP in compliance with this CACO; and
- d. The date Tomen Agro started up the new dust collection system.
- e. Description of any operating problems and the actions taken to correct the problems;
- f. The operational parameters of the high-efficiency jet pulse dust collection system determined to result in the maximum control efficiency for particulate matter at Tomen Agro's rework facility.
- g. A list of all parameters monitored to assure proper operation of the new dust collection system.
- h. 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 and time records and payroll information for consultants;

I. Description of the environmental benefits resulting from the SEP (quantifying the benefits and pollution reductions, if feasible).

24. Tomen Agro shall submit all notices and reports required by this CACO 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

and

Kevin Vuilleumier  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

25. In each report that Tomen Agro submits pursuant to this CACO, it shall 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.

26. Following receipt of the SEP completion report described in paragraph 23 above, EPA shall notify Tomen Agro in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Tomen Agro 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 28.

27. If EPA exercises option b. above, Tomen Agro may object in writing to the deficiency notice within 10 days of receiving the notice. The parties shall have 30 days from EPA's receipt of Tomen Agro's objection to reach an agreement. If the parties cannot reach an agreement, EPA shall give Tomen Agro a written decision on its objection. Tomen Agro shall comply with any requirements that EPA imposes in its decision. If Tomen Agro does not complete the SEP as required by EPA's decision, Tomen Agro shall pay stipulated penalties to the United States under paragraph 28 below.

28. If Tomen Agro violates any requirement of this CACO relating to the SEP, it shall pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b. below, if Tomen Agro did not complete the SEP satisfactorily pursuant to this CACO, it shall pay a stipulated penalty of \$ 30,066.00 plus interest from the effective date of this CACO.

b. If Tomen Agro did not complete the SEP satisfactorily, but EPA determines that Tomen Agro: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, it shall not be liable for any stipulated penalty.

c. If Tomen Agro satisfactorily completed the SEP, but spent less than 90 percent of the required amount on the

SEP, it shall pay a stipulated penalty of \$7,516.00 plus interest from the effective date of this CACO.

d. If Tomen Agro failed to timely submit the SEP completion report required by paragraph 23 above, it shall pay a stipulated penalty of \$ 100.00 for each day after the report was due until it submits the report.

e. If Tomen Agro failed to timely submit any other report required by paragraph 22 above or in Exhibit A of this CACO, it shall pay a stipulated penalty of \$ 100.00 for each day after the report was due until it submits the report.

29. EPA's determinations of whether Tomen Agro satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP shall bind Tomen Agro.

30. Tomen Agro shall pay the stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Tomen Agro shall use the method of payment specified in paragraphs 10 and 11 above and it shall pay interest, handling charges, and nonpayment penalties on any overdue amounts.

31. Upon payment of the civil penalty and satisfactory completion of the SEP, U.S. EPA shall notify Tomen Agro that its obligations have been satisfactorily completed, and that all obligations under this CACO have terminated except those set forth in paragraphs 16(d) and 18 above.

32. Any public statement that Tomen Agro makes referring to the SEP shall include the following language, "Tomen Agro undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Tomen Agro for violations of the Ohio SIP and the National

Emission Standards for Hazardous Air Pollutants, 40 C.F.R. Part 63."

**General Provisions**

33. This CACO settles EPA's claims for civil penalties for the violations alleged in the complaint.

34. Nothing in this CACO shall restrict EPA's authority to seek Tomen Agro's compliance with the Act and other applicable laws and regulations.

35. This CACO does not affect Tomen Agro's responsibility to comply with the Act and other applicable federal, state and local laws and regulations.

36. This CACO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Tomen Agro's "full compliance history" pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e).

37. The terms of this CACO bind Tomen Agro, its officers, directors, agents, successors, authorized representatives, and assigns.

38. 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.

39. Each party shall bear its own costs and fees in this action.

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

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

Date: \_\_\_\_\_

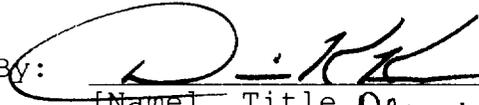
8/4/99

By: \_\_\_\_\_

  
Margaret M. Guerriero, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Tomen Agro, Respondent

Date: July 26, 1999

By:   
[Name], Title Dennis K. Krass, President  
Tomen Agro

**CONSENT AGREEMENT AND CONSENT ORDER**

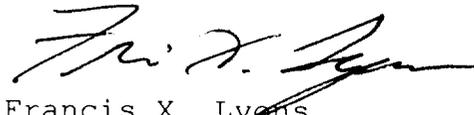
**In the Matter of Tomen Agro, Inc.**

**Docket No. CAA-5-99-022**

**Consent Order**

It is ordered as agreed to by the parties and as stated in the Consent Agreement, effective immediately upon filing of this CACO with the Regional Hearing Clerk. This Order disposes of the matter pursuant to 40 C.F.R. § 22.18(c).

Date: 5 August, 1999



Francis X. Lyons  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Exhibit A

Specifications for Replacement of Shaker Style Dust Collector  
With a High-Efficiency Fabric-Filter, Pulse-Jet-Style Dust  
Collector

A. As a Supplemental Environmental Project (SEP) to be incorporated as part of the resolution of matters identified in Administrative Complaint Number CAA-5-99-022, filed on AUG 09 1999, Tomen Agro will replace the existing DRACCO style dust collection system with a second high-efficiency, fabric-filter, pulse jet style dust collection system at it rework station located at the Perry, Ohio facility.

B. The following schedule shall apply to this SEP project:

1. Within Sixty (60) days after entry of this CACO, Tomen Agro shall have:

- (A) Received bids for the project,
- (B) Reviewed the bids,
- (C) Chosen a bid, and
- (D) Submitted a purchase order for all major equipment components necessary for the construction, installation and maintenance of the new dust collection system.

2. Within two hundred-forty (240) days after entry of this CACO, Tomen Agro shall have all major equipment components delivered and available for installation.

3. Within three hundred (300) days after entry of this CACO, Tomen Agro shall have completed installation of the second, new dust collection system.

4. Within three hundred (300) days after entry of this CACO, Tomen Agro shall have started-up the new dust collection system begun operation of the system for at least three years following start-up.

C. Tomen Agro shall submit quarterly reports to U.S. EPA describing the status of Tomen Agro's compliance with the schedule in paragraph B (1-4) above, beginning Sixty (60) days after entry of this CACO. The reports shall include all relevant information necessary to show compliance with the schedule in paragraph B (1-4) above, and any other conditions established in this CACO with the following information as a minimum:

1. Report #1, submitted within sixty(60) days after entry of this decree:

(A) Copies of all bids received to date including the name of the individual or company supplying the bid and the date the bid was received by Tomen Agro,

(B) A written statement identifying the bid(s) accepted by Tomen Agro, and

(C) A copy of the purchase order(s) submitted by Tomen Agro for the equipment. The order(s) shall categorize all major equipment components purchased and the costs of each piece of equipment (i.e. duct work, fan, monitors, bags, etc.).

2. Report #2, submitted within 150 days after entry of this CACO:

(A) A list of any major equipment components received to date associated with this project,

(B) The status of any major equipment components not received to date,

(C) The anticipated date of receipt of any major equipment components not received to date, and

(D) A list of any activities done in preparation for this project (i.e. any pre-construction activities that have occurred to date) and the dates such activities occurred.

3. Report #3, submitted within 240 days after entry of this CACO.

(A) A summary of any major equipment components received, including but not limited to relevant information regarding the design and operational specifications of the high-efficiency jet pulse dust collection system proposed for installation as required by paragraph 16 of the CACO,

(B) A summary of the dates each piece of equipment was received, and

(C) A list of any activities done in preparation for this project to date (not including those submitted with Report #2) and the dates such activities occurred.

4. Report #4, submitted within 330 days after entry of this CACO. This report is the completion report required under paragraph 23 of the CACO.

D. In connection with this dust collection system SEP, Tomen Agro shall apply for all necessary permits to install and permits to operate.

In the Matter of: Tomen Agro, Inc.  
Docket No. CAA-5-99-022

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original of the foregoing Administrative Complaint to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies, along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, and a copy of the Penalty Policy (described in the Complaint) by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

A.D. Stungys, Plant Manager  
Tomen Agro, Inc.  
3647 Shepard Road  
Perry, Ohio 44081

And

Ms. Janet J. Henry  
Porter, Wright, Morris and Arthur, L.L.P.  
41 South High Street  
Columbus, Ohio 43215-6194

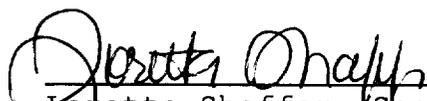
I also certify that copies of the Consent Agreement and consent Order were sent by First Class Mail to:

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
Lazarus Government Center  
P.O. 1049  
Columbus, OH 43216-1049

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REGION 5

Dennis Bush, APC Supervisor  
Northeast District Office  
2110 E. Aurora Road  
Twinsburg, Ohio 44087

on the 9<sup>th</sup> day of August, 1999.

  
\_\_\_\_\_  
Loretta Shaffer, Secretary  
AECAS (MN-OH)

CERTIFIED MAIL RECEIPT NUMBER: P 140 777 332