



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JAN 18 2006

REPLY TO THE ATTENTION OF

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William D. Hayes, Esq.
Vorys, Sater, Seymour and Pease LLP
221 East Fourth Street, Suite 2000
Cincinnati, OH 45202

Re: Degussa Engineered Carbons, LP
Consent Agreement and Final Order

Dear Mr. Hayes:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) that resolves the case regarding Degussa Engineered Carbons, LP. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

~~JAN 20 2006~~

Pursuant to paragraph 7 of the CAFO, Degussa must pay the \$105,000 civil penalty within 60 days of receiving this document.

Degussa's check must display the case docket number, CAA-05-2004-044, and the billing document number, 050306011.

Please direct any questions regarding this case to John Tielsch, Associate Regional Counsel, (312) 353-7447.

Sincerely yours,

Charles R. Hall for William MacDowell

William L. MacDowell, Chief
Air Enforcement and Compliance Assurance Section MN/OH

Enclosure

cc: Robert Hodanbosi, OEPA

SAR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
Degussa Engineered Carbons,)
LP)
Belpre, Ohio,)
)
Respondent.)

Docket No. CAA-05-2004-0044

RECEIVED
JAN 20 12:12
REGION 5

CONSENT AGREEMENT AND ORDER

Complainant, the United States Environmental Protection Agency (EPA), having filed the Complaint herein on September 27, 2004, against Respondent Degussa Engineered Carbons, LP (Degussa); and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Order without further litigation is the most 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 Ordered and Adjudged as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding 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).

2. The Complaint alleges that Respondent failed to comply with emission limits and fuel feedstock sulfur limits contained in a 1997 Permit to Install issued pursuant to the Ohio State Implementation Plan and a 2002 Title V Permit in violation of Sections 110 and 152 of the Clean Air Act.

3. Respondent filed an Answer and requested a hearing pursuant to Section 113(d) of the Clean Air Act and 40 C.F.R. Part 22.

4. This Consent Agreement and Order shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, successors and assigns, including, but not limited to, subsequent purchasers.

5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting the factual allegations contained in the Complaint, consents to the terms of this Consent Agreement and Order.

6. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

II. TERMS OF SETTLEMENT

7. Pursuant to § 113(d) of the Clean Air Act, taking into consideration the nature of the violations, the penalty assessment criteria contained in § 113(e) of the Clean Air Act, Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **One Hundred Five Thousand dollars (\$105,000)**.

8. Respondent consents to the issuance of the Consent Agreement 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 the SEP.

9. Within sixty (60) days of receiving a copy of this Consent Agreement and Order signed by the 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 **One Hundred Five Thousand dollars (\$105,000)**, to:

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

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, (E-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

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

10. The penalty specified in Paragraph 7, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

11. Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental or public health protection and improvements:

Degussa will replace fireplaces and wood stoves installed prior to 1988 with new, clean-burning fireplaces, EPA certified wood stoves, or natural gas stoves. This stove replacement will occur within Washington County, Ohio and surrounding counties. The replacement stoves and fireplaces will be provided to low income households in the following priority: first in Washington County, Ohio; then in those Ohio counties contiguous to Washington County and/or in Wood County, West

Virginia. Degussa may contract with the American Lung Association of Ohio or other appropriate organization to administer the replacement program, but Degussa will be solely responsible under this CAFO for the performance of this SEP. Degussa will spend \$245,000 in implementing this SEP. All stove replacements will be completed on or before June 1, 2007.

12. Certification that SEP is not otherwise required

Respondent hereby certifies that, as of the date of this Consent Agreement, 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 as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

13. SEP Reports

a. Periodic Reports On or before July 1, 2006,

Respondent shall provide a report identifying the stove replacements which have been completed by that date. This Report shall include a list of each residence that has received a replacement stove under the SEP, the date of installation, a description of the replacement stove by make, model and serial number, and the invoice for the purchase and installation of the stove.

b. **SEP Completion Report** Respondent shall submit a SEP Completion Report to EPA on or before July 1, 2007. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report and Periodic Reports.

The SEP Report shall contain 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 and receipts or canceled checks;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Order; and
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
- vi) A list of each residence that has received a replacement stove under the SEP, the date of installation, a description of the replacement stove by make, model and serial number, and the invoice for the purchase and installation of the stove.
- vii) The criteria by which a residence was determined to be a low income household.

c. Respondent agrees that failure to submit the SEP Completion Report or any Periodic Report required by subsections a. and b. above shall be deemed a violation of this Consent Agreement and Order and Respondent shall become liable for stipulated penalties pursuant to paragraph 16 below.

d. Respondent shall submit all notices and reports required by this Consent Agreement and Order by first class mail to:

Brian Dickens
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

14. **Document retention and certification** Respondent shall maintain legible copies of any and all documents or reports submitted to EPA pursuant to this Consent Agreement, In all documents or reports, including, without limitation, the SEP Report, submitted to EPA pursuant to this Consent Agreement, 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.

15. **EPA acceptance of SEP Completion Report**

a. Following receipt of the SEP Completion Report described in paragraph 13b. above, EPA will do one of the following: (i) accept the SEP Completion Report; (ii) reject the SEP Completion Report, notify the Respondent, in writing, of deficiencies in the SEP Completion Report and grant Respondent an

additional thirty (30) days in which to correct any deficiencies; or (iii) reject the SEP Completion Report and seek stipulated penalties in accordance with paragraph 16 below.

b. If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by the EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement and Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 16 herein.

16. Stipulated Penalties

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 11 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 11 above,

Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraphs (ii) and (iii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$255,000.

(ii) If the SEP is partially completed, and the Respondent a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP on or before June 1, 2007, Respondent shall not be liable for any stipulated penalty.

(iii) If the SEP is partially completed, but Respondent spent less than 90 percent of the amount of money required to be spent for the project on or before June 1, 2006, and the Respondent a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, the amount of money which was expended on the SEP on or before June 1, 2007, Respondent shall pay a stipulated penalty to the United States in an amount equal to the difference between the amount required to be spent on the SEP (\$245,000) and the amount actually spent on the SEP on or before June 1, 2007.

(iv) For failure to submit the SEP Completion Report required by paragraph 13b. above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after July 1, 2007, until the report is submitted.

(v) For failure to submit the Periodic Report required by paragraph 13a. above, Respondent shall pay a stipulated penalty in the amount of \$50 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 EPA.

c. Stipulated penalties for subparagraphs (iv) and (v) 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 EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 9 above. Interest and late charges shall be paid as stated in paragraph 17 herein.

e. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of 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.

17. **Payment Provisions** Pursuant to 31 U.S.C. § 3717, 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).

18. 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 Sections 110 and 152 of the Clean Air Act."

19. This Consent Agreement and Order 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 EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this Agreement.

20. Respondent hereby agrees that any funds expended in the performance of the SEP shall not be deductible as a business expense for purposes of Federal taxes. In addition, Respondent hereby agrees that, within thirty (30) days of the date it submits its Federal tax reports for the calendar year in which the above-identified SEP is completed, it will submit to EPA certification that any funds expended in the performance of the SEP have not been deducted from Federal taxes.

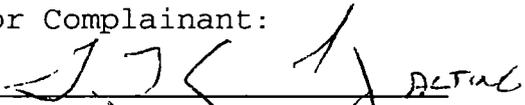
21. This Consent Agreement and Order constitutes a settlement by EPA of all claims for civil penalties pursuant to Clean Air Act Section 113 for the violations alleged in the Complaint. Nothing in this Consent Agreement and Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and

regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

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

23. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Agreement and Order.

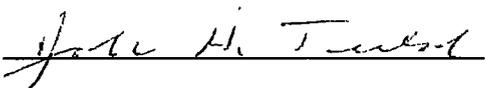
For Complainant:



Steven H. Rothblatt, Director
Air Enforcement Division

U.S. Environmental Protection
Agency, Region 5

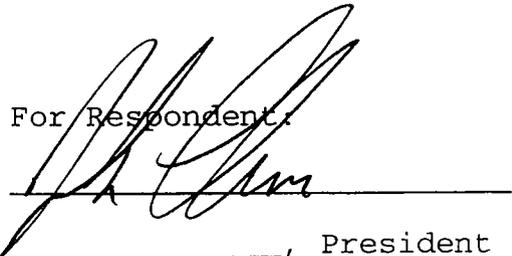
Date: 11/13/06



John H. Tielsch
Associate Regional Counsel
U.S. Environmental Protection
Agency, Region 5

Date: 12/13/05

For Respondent:



_____, President
Degussa Engineered Carbons, LP

Date: 12/16/05



William D. Hayes, Esq.
Vorys, Sater, Seymour and
Pease
221 East Fourth Street,
Suite 2000
Cincinnati, OH 45202

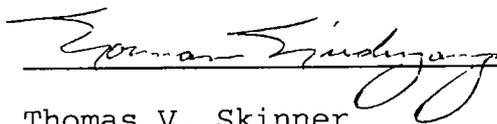
Date: 12/15/05

In the Matter of Degussa Engineered Carbons, LP
Docket No. CAA-05-2004-0044

III. ORDER

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

Date: 1/18/06



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

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I hand delivered the original Consent Agreement and Final Order (CAFO), docket number CAA-05-2004-044 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a correct copy by first-class, postage prepaid, certified mail, return receipt requested, to William Hayes by placing it in the custody of the United States Postal Service addressed as follows:

William D. Hayes, Esq.
Vorys, Sater, Seymour and Pease LLP
221 East Fourth Street, Suite 2000
Cincinnati, OH 45202

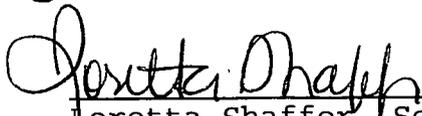
I also certify that I sent copies of the CAFO to

APC Supervisor
Southeast District Office
2195 Front Street
Logan, Ohio 43138

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

US E.P.A.
REGION 5
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REGISTRATION

on the 20th day of January, 2006.


Loretta Shaffer, Secretary
AECAS, (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 70010320000590256275