



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUL 27 2010

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael T. Scanlon
Barnes & Thornburg LLP
Attorney at Law
11 South Meridian Street
Indianapolis, Indiana 46204-3535

Dear Mr. Scanlon:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket number CAA-05-2010-0053 with Dawn Food Products, Inc. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on 7/27/2010.

Pursuant to the CAFO, Dawn Food Products, Inc. must pay the civil penalty within 30 days of the date the CAFO is filed. The check must display the case name (in the matter of Dawn Food Products, Inc.), the docket number of this CAFO, CAA-05-2010-0053, and the billing document number, 2751003A053.

Please direct any questions regarding this case to Sherry L. Estes, Associate Regional Counsel, (312) 886-7164.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bonnie Bush".

Bonnie Bush, Chief
Air Enforcement & Compliance Assurance Branch
(MI/WI Section)

Enclosure

cc: Sherry L. Estes

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JUL 27 2010

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)	Docket No. CAA-05-2010-0053
)	
Dawn Food Products, Inc.)	Proceeding to Assess a Civil Penalty
Manteno, Illinois)	Under Section 113(d) of the Clean Air
)	Act, 42 U.S.C. § 7413(d)
Respondent.)	
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Dawn Food Products, Inc. (Respondent), a corporation doing business in Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

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6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO in this proceeding and any proceeding to enforce this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. EPA approved Illinois Pollution Control Board (IPCB) Rules 101 and 103 as part of the federally enforceable Illinois State Implementation Plan (SIP). 37 Fed. Reg. 10862 (May 31, 1972).

10. IPCB Rule 101 defines an "emission source" as any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

11. IPCB Rule 101 defines a "new emission source" as any emission source that commences construction or modification on or after April 14, 1972.

12. IPCB Rule 101 defines "air contaminant" as any solid, liquid or gaseous matter, any odor or any form of energy that is capable of being released into the atmosphere from an emission source.

13. IPCB Rule 101 defines "air pollution control equipment" as any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of specified air contaminants to the atmosphere.

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14. IPCB Rule 101 defines "construction" as onsite fabrication, erection or installation of an emission source or of air pollution control equipment.

15. IPCB Rule 101 now is set forth at 35 Illinois Administrative Code (IAC) § 201.102.

16. IPCB Rule 103(a)(1) states that unless an exemption applies, no person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Illinois Environmental Protection Agency (IEPA).

17. IPCB Rule 103(a)(1) now is set forth at 35 IAC § 201.142.

18. IPCB Rule 103(b)(1) states that no person shall cause or allow the operation of any new emission source or new air pollution control equipment, for which a construction permit is required, without first obtaining an operational permit from IEPA.

19. IPCB Rule 103(b)(1) now is set forth at 35 IAC § 201.143.

20. Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), the Administrator of EPA may assess civil penalties of up to \$25,000 per day for each violation of the Act. Under the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19, that amount was increased to \$32,500 per day of violation, up to a total of \$270,000, for violations that occurred between March 15, 2004 and January 11, 2009, and up to \$37,500 per day of violation, up to a total of \$295,000, for violations that have occurred on or after January 12, 2009.

21. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States

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jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

22. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

23. Respondent operates a facility (facility) at 1340 Sycamore Road in Manteno, Illinois, which manufactures and distributes food products.

24. Respondent's Manteno facility emits air contaminants, including particulate matter and volatile organic matter, to the air.

25. On August 17, 2007, Respondent began oven construction for operations as a food manufacturer at the facility.

26. In July 2008, Respondent commenced operations as a food manufacturer at the facility.

27. Respondent "constructed" a baking oven and other associated equipment by installing this equipment for the muffin and cookie processing lines under 35 IAC § 201.102.

28. Respondent's baking oven and associated processing line equipment are "new emission sources" under 35 IAC § 201.102.

29. Respondent's dust collectors, cyclones, and oil mist collectors are "air pollution control equipment" under 35 IAC § 201.102.

30. Respondent constructed "new emission sources" and "air pollution control equipment," as defined in 35 IAC § 201.102; therefore, it is subject to IEPA's construction permit requirements.

31. Respondent did not have a construction permit when the facility initially installed an oven and associated equipment for the muffin and cookie processing lines in 2007.

32. From August 17, 2007 through July 2008, Respondent violated the requirements of 35 IAC § 201.142.

33. Respondent constructed and operated "new emission sources" and "air pollution control equipment," as defined in 35 IAC § 201.102, for which construction permits were required; therefore, it is subject to IEPA's operating permit requirements.

34. Respondent did not have an operating permit when the facility began operating in July 2008.

35. Respondent has operated continuously since July 2008.

36. IEPA issued a lifetime operating permit to Respondent on August 24, 2009 addressing all but the volatile organic compound emissions. Respondent submitted a revised lifetime operating permit application to IEPA on November 11, 2009 to address volatile organic matter compounds.

37. IEPA issued a revised lifetime operating permit to Respondent on February 4, 2010.

38. From July 2008 through August 24, 2009, Respondent violated the requirements of 35 IAC § 201.143. From July 2008 through February 4, 2010, Respondent violated the requirements of 35 IAC § 201.143 for volatile organic compound emissions.

39. On April 3, 2009, EPA issued a Notice of Violation to Respondent for violations of the Illinois SIP regulations 35 IAC §§ 201.142 and 201.143 from August 17, 2007 to the present.

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40. On May 26, 2009, EPA and Respondent held a conference to discuss the April 3, 2009 Notice of Violation.

41. On March 26, 2010, EPA issued a Notice of Intent to file a civil administrative complaint to Respondent. In the letter, EPA stated that it intended to propose that a \$120,277 penalty be assessed against Respondent for the violations EPA would allege in the complaint.

Civil Penalty

42. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e) and the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is \$102,235.

43. Respondent agrees to pay the United States of America a civil penalty of \$102,235. Any payments Respondent makes more than 30 days after the effective date of this CAFO will incur interest. Respondent must pay either online, by accessing the webpage www.pay.gov, entering "sfo 1.1" in the search field, and opening and completing the required fields, or by sending a cashier's or certified check payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must note: the case name (*In the matter of Dawn Food Products, Inc.*), the docket number of this CAFO, and the billing document number.

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44. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany each payment. Respondent must send a copy of each check and transmittal letter to:

Attn: Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
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

Sherry L. Estes (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

45. This civil penalty or any penalty subsequently assessed for nonpayment of this civil penalty under Section 113(d)(5) is not deductible for federal tax purposes.

46. If Respondent does not pay timely the civil penalty, 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.

47. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15

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handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must 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

48. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

49. The CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

50. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 48, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

51. Respondent certifies that it is complying fully with its Revised Lifetime Operating Permit (I.D. No. 091806AAR).

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

53. The terms of this CAFO bind Respondent, its successors, and assigns.

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

55. Each party agrees to bear its own costs and attorneys' fees in this action.

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

Dawn Food Products, Inc., Respondent

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U.S. ENVIRONMENTAL
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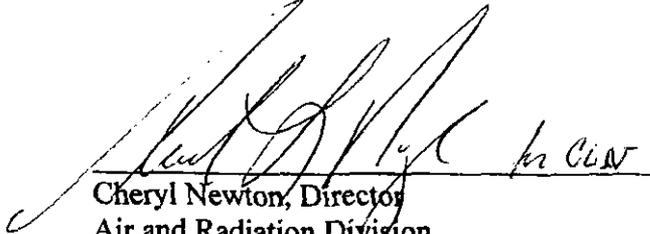
7/15/10
Date



Stuart A. Smith, Assistant Secretary
Dawn Food Products, Inc.

U.S. Environmental Protection Agency, Complainant

7/22/10
Date



Cheryl Newton, Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5 (A-18J)

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of: Dawn Food Products, Inc.

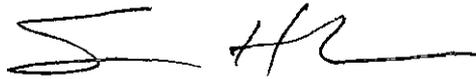
Docket No. CAA-05-2010-0053

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31.

7-26-10

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency

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In the Matter of:
Dawn Food Products, Inc.
Docket No. CAA-05-2010-0053

CERTIFICATE OF SERVICE

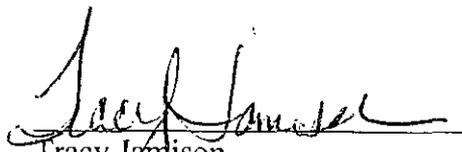
I, Tracy Jamison, certify that I hand delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, the original and one copy of the Consent Agreement and Final Order, docket number CAA-05-2010-0053. Further, I certify that I mailed correct copies of the Consent Agreement and Final Order, by first-class, postage prepaid, certified mail, return receipt requested, to Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Michael T. Scanlon
Barnes & Thornburg, LLP
Attorney at Law
11 South Meridian Street
Indianapolis, Indiana 46204-3535

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JUL 27 2010

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

on the 27 day of July, 2010.


Tracy Jamison
Office Automation Assistant
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7009 11680 0000 76674300