



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

AUG 30 2011

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Cynthia A. Faur
Attorney at Law
Quarles & Brady, LLP
300 North LaSalle Street
Suite 4000
Chicago, Illinois 60654

Re: Rubschlager Baking Corporation Consent Agreement and Final Order

Dear Ms. Faur:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves Rubschlager Baking Corporation, CAA Docket No. CAA-05-2011-0051. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 2, 2011.

Pursuant to paragraph 41 of the CAFO, Rubschlager Baking Corporation must pay the \$66,000 civil penalty within 30 days of the date the CAFO was filed, October 2, 2011. The check must display the case docket number, CAA-05-2011-0051, and the billing document number, 2751103A050.

Please direct any questions regarding this case to Kasey Barton, (312) 886-7163.

Sincerely,

Brent Marable
Chief
Air Enforcement and Compliance Assurance (IL/IN)

Enclosure

cc: Ray Pilapil, Manager
Bureau of Air
Compliance and Enforcement Section
Illinois Environmental Protection Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2011-0051
)	
Rubschlager Baking Corporation)	Proceeding to Assess a Civil Penalty
Chicago, 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

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY.

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 (U.S. EPA), Region 5.

3. Respondent is Rubschlager Baking Corporation (Rubschlager), 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.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this 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 and alleged violations in this 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, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Each state must submit to the Administrator of U.S. EPA a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the Act, 42 U.S.C. § 7410.

10. On May 31, 1972, U.S. EPA approved the Illinois Pollution Control Board (IPCB) Rule 101¹ [35 IAC § 201.102] as part of the federally enforceable State Implementation Plan (SIP) for Illinois. 37 Fed. Reg. 10842 (May 31, 1972).

11. On May 31, 1972, U.S. EPA approved IPCB Rule 103(a)(1) and (b)(1) [35 IAC § 201.142-143] as part of the federally enforceable Illinois SIP. 37 Fed. Reg. 10842 (May 31, 1972).

12. IPCB Rule 103(a)(1) [35 IAC § 201.142] states that 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

¹ The relevant U.S. EPA-approved Illinois SIP provisions were codified and renumbered as follows: Rule 101 is found at 35 Illinois Administrative Code (IAC) § 201.102; Rule 103(a)(1) is found at 35 IAC § 201.142; and Rule 103(b)(1) is found at 35 IAC § 201.143. The current IAC citations hereinafter appear in brackets following each reference to the Illinois SIP in this CAFO.

(IEPA), and lists exceptions not relevant here.

13. IPCB Rule 103(b)(1) [35 IAC § 201.143] 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 operating permit from the IEPA.

14. IPCB Rule 101 [35 IAC § 201.102] 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.

15. IPCB Rule 101 [35 IAC § 201.102] defines “emission source” as any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

16. IPCB Rule 101 [35 IAC § 201.102] defines “new emission source” as any emission source that commences construction or modification on or after April 14, 1972.

17. IPCB Rule 101 [35 IAC § 201.102] defines “construction” as commencement of on-site fabrication, erection or installation of an emission source or of air pollution control equipment.

18. IPCB Rule 101 [35 IAC § 201.102] defines “modification” as any physical change in, or change in the method of operations, of an emission source or of air pollution control equipment which increases the amount of any specified air contaminant emitted by such source or equipment or which results in the emission of any specified air contaminant not previously emitted. It shall be presumed that an increase in the use of raw materials, the time of operation or the rate of production will change the amount of any specified air contaminant emitted.

19. Pursuant to IPCB Rule 101 [35 IAC § 201.102], modified emission sources are considered “new emission sources.”

20. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to 32,500 per day of violation up to a total of \$270,000 for violations of Section 110 of the Act that occurred after March 15, 2004 through January 12, 2009, and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations of Section 110 of the Act that occurred after January 12, 2009, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

21. Section 113(d)(1) of the Act 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 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. Rubschlager owns and operates a bakery located at 3220 West Grand Avenue and 3052 West Chicago Avenue, in Chicago, Illinois (the facility).

24. At the facility, Rubschlager operates three bread manufacturing lines, which consist of the following: a line that manufactures cocktail bread (cocktail bread line), a line that manufactures square and rye-ola bread (square and rye-ola bread line), and a line that manufactures rolls and sandwich bread (roll bread line).

25. Before 1990, Rubschlager operated two bread manufacturing lines, the cocktail bread line and the square and rye-ola bread line. Before 1990, sandwich bread was produced on the cocktail bread line. Following installation of the roll bread line, sandwich bread production moved to that line.

26. Rubschlager's facility consists of the following: raw material storage silos equipped with a pneumatic conveyance system, dough mixers, dough proofing equipment, ovens, coolers, freezers, bread slicing units and packaging areas.

27. Rubschlager's facility emits volatile organic materials (VOM), including ethanol, into the atmosphere during the bread manufacturing process.

28. VOM, including ethanol, are air contaminants, as defined in IPCB Rule 101 [35 IAC § 201.102].

29. Rubschlager's facility is an emission source, as defined in IPCB Rule 101 [35 IAC § 201.102].

30. In 1990, Rubschlager installed a roll bread line at the facility. This included the installation of the following: a dough divider for the new line; an approximately 100-ft long Baker Perkins tunnel oven; and a proof box and connecting conveyors.

31. The roll bread line emits VOM, including ethanol, into the atmosphere.

32. By installing a roll bread line, Rubschlager increased the emission of VOM, including ethanol, into the atmosphere.

33. Because Rubschlager installed the roll bread line, which increased the emission of VOM, including ethanol, into the atmosphere, Rubschlager made modifications to the facility, as defined in IPCB Rule 101 [35 IAC § 201.102].

34. In 1990, Rubschlager failed to obtain a construction permit from IEPA prior to modifying its existing emission source in violation of Rule 103(a)(1) [35 IAC § 201.142] of the Illinois SIP and Section 110 of the ACT, 42 U.S.C. § 7410.

35. Since 1990, Rubschlager's facility has been and is a new emission source, as defined in IPCB Rule 101 [35 IAC § 201.102].

36. From 1990 to the present, Rubschlager has operated a new emission source, for which a construction permit is required, without obtaining an operating permit for the facility from IEPA, in violation of IPCB Rule 103(b)(1) [35 IAC § 201.143] and Section 110 of the ACT, 42 U.S.C. § 7410.

37. On January 14, 2011, U.S. EPA issued a Notice of Violation to Rubschlager for violations of the Illinois SIP IPCB Rule 103(a)(1) [35 IAC § 201.142] and Rule 103(b)(1) [35 IAC § 201.143] since at least 1990.

38. On February 15, 2011, U.S. EPA and Respondent held a conference to discuss the January 14, 2011 Notice of Violation.

39. On June 23, 2011, Respondent submitted an operating permit application dated June 8, 2011 to the Illinois Environmental Protection Agency (IEPA) for the facility, as required by IPCB Rule 103(b)(1) [35 IAC § 201.143] and Section 110 of the ACT, 42 U.S.C. § 7410.

Civil Penalty

40. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, prompt return to compliance and cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$66,000.00.

41. Within 30 days after the effective date of this CAFO, Respondent must pay a \$66,000 civil penalty by check or online payment. If paying by check, the check must note the case name, docket number of this CAFO, and the billing document number.

a. For checks sent by regular U.S. Postal Service mail: send a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

b. For checks sent by express mail: send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

c. For on-line payment: to pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

42. Respondent must send a notice of payment that states the case name, the docket number of this CAFO, and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Kasey Barton, Assistant Regional Counsel, at the following addresses when it pays the penalty:

**Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance
Branch
Air and Radiation Division
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604**

**Kasey Barton (C-14J)
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604**

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

44. If Respondent 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.

45. 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 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

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

47. The effect of the settlement described in paragraph 46, above, is conditioned upon the accuracy of Respondent's representations to U.S. EPA, as set forth in paragraphs 39 and 50 of this CAFO and Respondent's execution of and compliance with the terms of its submitted permit application to IEPA dated June 8, 2011, subject to any revisions or modifications required by IEPA.

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

49. 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 46, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by U.S. EPA.

50. Respondent certifies that it is complying fully with the terms of its submitted permit application to IEPA dated June 8, 2011, subject to any revisions or modifications required by IEPA, and that it will comply with IPCB Rule 103(a)(1) [35 IAC § 201.142], IPCB Rule 103(b)(1) [35 IAC § 201.143] and Section 110 of the Act, 42 U.S.C. § 7410.

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

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

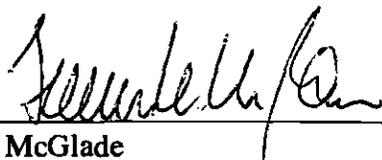
53. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

54. Each party agrees to bear its own costs and attorney's fees in this action.

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

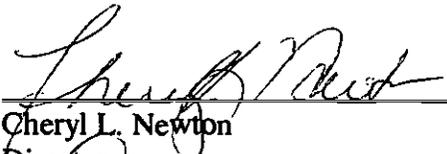
Rubschlager Baking Corporation, Respondent

8/19/2011
Date


Tom McGlade
President and Chief Executive Officer
Rubschlager Baking Corporation

United States Environmental Protection Agency, Complainant

8/30/11
Date


Cheryl L. Newton
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Rubschlager Baking Corporation
Docket No. CAA-05-2011-0051

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. IT IS SO ORDERED.

8-30-11
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

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PROTECTION AGENCY

**Consent Agreement and Final Order
In the Matter of: Rubschlager Baking Corporation
Docket No. CAA-05-2011-0051**

CERTIFICATE OF MAILING

I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2011-0051 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 Rubschlager Baking Corporation, and Rubschlager Baking Corporation Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Tom McGlade
President and Chief Executive Officer
Rubschlager Baking Corporation
3220 West Grand Avenue
Chicago, Illinois 60651

Cynthia A. Faur
Attorney at Law
Quarles & Brady, LLP
300 North LaSalle Street
Suite 4000
Chicago, Illinois 60654

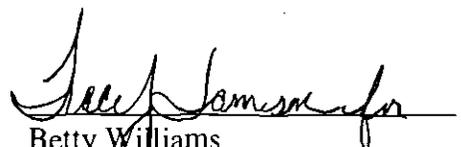
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U.S. ENVIRONMENTAL
PROTECTION AGENCY

I also certify that a copy of the CAFO was sent by first-class mail to:

Ray Pilapil, Manager
Bureau of Air
Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 63702

on the 2 day of September 2011.


Betty Williams
Administrative Program Assistant
AECAB, PAS