UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of:

Falcon Foam 911 Industrial Drive Perryville, Missouri 63775	))))))	Docket No. CAA-07-2003-0228 CLEAN AIR ACT 42 U.S.C. § 7413(a)(3)(B)

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to Section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7413(a)(3)(B), Falcon Foam is hereby ordered by the United States Environmental Protection Agency, Region VII (EPA) to comply with Section 502 of the Clean Air Act, 42 U.S.C. § 7661a and the Missouri Air Conservation Regulation, 10 CSR 10-6.065.

I. Factual Background

1. On May 24, 2002, the State of Missouri, Department of Natural Resources (MDNR) issued to Falcon Foam a Notice of Violation for failure to submit an annual compliance certification as required by Falcon Foam's Title V permit. Falcon Foam did not submit its Title V permit compliance certification to EPA for the calendar year 2002, which was due on April 1, 2003.

II. Finding of Violation

2. Falcon Foam is a person as defined by Section 302(e) of the Clean Air Act.

3. Missouri issued to Falcon Foam a Title V permit on May 3, 2000, pursuant to the Missouri approved Title V permit program.

4. Falcon Foam was required to submit an annual compliance certification for calendar year 2002, to EPA and the State of Missouri by April 1, 2003.

5. Falcon Foam's failure to submit an annual compliance certification to EPA for calendar year 2002, violated the Missouri Air Conservation Regulation, 10 CSR 10-6.605, approved pursuant to Section 502 of the Clean Air Act, 42 U.S.C. § 7661a.

III. Compliance Order

6. Within thirty (30) days of the effective date of this Order, EPA orders Falcon Foam to comply with Missouri Air Conservation Regulation, 10 CSR 10-6.605, approved pursuant to Section 502 of the Clean Air Act, 42 U.S.C. § 7661a and specifically to:

a. Submit a complete and accurate annual compliance certification in accordance with its permit and Missouri Air Conservation Regulation, 10 CSR 10-6.605, approved pursuant to Section 502 of the Clean Air Act, 42 U.S.C. § 7661a, to EPA. The annual compliance certification should be submitted to: Don Toensing, Chief, Air Permitting and Compliance, 901 North 5th Street, Kansas City, Kansas 66106; and,

b. Beginning April 1, 2004 and annually thereafter, submit a complete and accurate annual compliance certification in accordance with its permit and Missouri Air Conservation Regulation, 10 CSR 10-6.605, approved pursuant to Section 502 of the Clean Air Act, 42 U.S.C. § 7661a, to EPA and the State of Missouri. The annual compliance certification should be submitted to: EPA, Region VII, Missouri Air Compliance Coordinator, 901 North 5th Street, Kansas City, Kansas 66106 and to MDNR, Air Pollution Control Program, Enforcement Section Chief, Post Office Box 176, Jefferson City, Missouri 65102.

IV. Statutory and Regulatory Background

7. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added Subchapter V to the Clean Air Act, 42 U.S.C. § 7661, commonly referred to Title V, which establishes the minimum elements of a permit program to be administered by any air pollution control agency. Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), provides that the Administrator must promulgate regulations establishing the minimum elements of a permit program under Title V of the Clean Air Act.

8. Pursuant to the authority granted under Section 502(b) of the Clean Air Act, 42 U.S.C. § 7661a(b), the Administrator promulgated regulations providing for the establishment of Title V permitting programs, effective July 21, 1992. The regulations subsequently have been amended and are codified at 40 C.F.R. Part 70.

9. Section 503(b) of the Clean Air Act, 42 U.S.C. § 7661b(b), provides that the regulations promulgated under section 502(b) of the Clean Air Act, 42 U.S.C. § 7661a(b), must require the permittee to periodically certify that the facility is in compliance with applicable requirements of the permit and to promptly report any deviations from the permit requirements to the permitting authority.

10. Pursuant to 40 C.F.R. § 70.6(a)(3)(iii)(B) each Title V permit must require prompt reporting of deviations from permit requirements.

11. Pursuant to 40 C.F.R. § 70.6(c)(5) each Title V permit must require the permittee to certify compliance with the terms and conditions contained in the permit.

12. Section 502(d) of the Clean Air Act, 42. U.S.C. § 7661a(d), provides that each state must submit to the Administrator a permit program meeting the requirements of Title V.

13. Section 502(a) of the Clean Air Act, 42. U.S.C. § 7661a(a), provides that it is unlawful for any person to violate any requirement of a permit issued under Title V of the Clean Air Act.

14. EPA promulgated final approval of the Missouri Title V program on June 13, 1997, and the program became effective on that date.

15. The Missouri approved Title V permit program requires that each permittee submit an annual compliance certification for the previous year on April 1st of each year.

V. Potential Liability

16. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the Clean Air Act, 42 U.S.C. § 7413. Under Section 113(a) of the Clean Air Act, the Administrator is authorized to address such a violation as follows:

a. Issue an administrative penalty order assessing a civil penalty not to exceed $27,500 per day of violation;

b. Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed $27,500 per day of violation, or both; or

c. Request the Attorney General to commence a criminal action pursuant to Section 113(c)of the Clean Air Act.

Issuance of this Order does not preclude the State of Missouri or EPA from assessing penalties or taking any other action authorized under the Clean Air Act. This Order does not affect the obligation of the Falcon Foam to comply with all federal, state and local statutes, regulations and permits.

This Order shall become effective immediately upon receipt unless, within five (5) business days of receipt hereof, the Falcon Foam requests a conference with EPA. In such event, the effective date of the Order shall be extended until the date of such conference or to a time established by EPA. To request such a conference, contact Julie M. Van Horn, Attorney, Office of Regional Counsel, EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101, telephone (913)551-7889.

All information and documents submitted by the Falcon Foam to EPA pursuant to this Order shall be subject to public inspection unless identified as confidential by the Falcon Foam in accordance with the requirements of 40 C.F.R. Part 2. Information and documents so identified will be disclosed only in accordance with the provisions of 40 C.F.R. Part 2.

7/21/03
Date

William A. Spratlin
Director
Air, RCRA, and Toxics Division