

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 16-7955
v.)	
)	Hon. Thomas M. Durkin
S.H. BELL COMPANY,)	Hon. Jeffrey T. Gilbert, Magistrate Judge
)	
Defendant.)	
_____)	

STIPULATED SETTLEMENT AND FINAL CONSENT ORDER

WHEREAS, prior to the submittal of this Stipulated Settlement and Final Consent Order (“Consent Order”) for approval by the Court, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint (“Complaint”) on August 9, 2016, in this action pursuant to Sections 113(b) and 114 of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7413(b) and 7414, for injunctive relief and assessment of civil penalties against Defendant S.H. Bell Company (“SHB” or “Defendant”);

WHEREAS, the Complaint alleges that Defendant, as owner and operator of the Chicago South Avenue “O” Terminal, a bulk solids storage facility (“Facility”), in Cook County, Illinois, failed to comply with an information request issued to SHB by EPA on March 4, 2015, pursuant to Section 114 of the CAA (“Section 114 Request”), 42 U.S.C. § 7414. The Section 114 Request sought to collect information from SHB;

WHEREAS, EPA contends that the Section 114 Request was issued for the purpose of determining SHB's compliance with the CAA;

WHEREAS, on October 10, 2016, SHB filed its answer denying the allegations set forth in the Complaint, including the validity of the Section 114 Request;

WHEREAS the United States and SHB ("Parties") recognize, and the Court finds, that this Consent Order has been negotiated by the Parties in good faith, will avoid further litigation between the Parties, is fair, reasonable, and in the public interest; and

WHEREAS, SHB has agreed to continue to utilize and/or install, as appropriate, the dust control measures, plans and/or programs described in Appendix B to this Consent Order.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact, law or liability, and with the consent and agreement of the Parties, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. PM₁₀ Monitoring. SHB shall install, operate, and maintain four continuous Federal Equivalent Method ("FEM") PM₁₀ monitors and one Federal Reference Method ("FRM") PM₁₀ filter-based monitor (collectively "Monitors") at the Facility for a period, producing twelve months of monitoring data ("Monitoring Period").

a. Commencement of Monitoring. SHB shall commence operation of the Monitors by the date required by the City of Chicago, except that, regardless of the date required by the City of Chicago, SHB shall commence operation of the Monitors by no later than March 1, 2017.

b. Siting of Monitors. Within thirty days of this Consent Order, SHB shall submit to EPA proposed monitoring site locations for its review and approval, consistent, to the

extent technically feasible, with EPA's Section 114 Request, attached to this Consent Order as Appendix A.

c. Operation and Reporting. During the Monitoring Period, SHB shall continuously operate and maintain the Monitors, subject to 40 CFR 50, Appendix J, excluding any Monitor downtime, and report to EPA data from the Monitors, consistent with EPA's Section 114 Request, attached to this Consent Order as Appendix A.

d. Meteorological Station. SHB shall continuously operate a meteorological station at the Facility during the Monitoring Period, consistent with EPA's Section 114 Request, attached to this Consent Order as Appendix A.

2. Contact Persons. The following individuals are identified by the Parties as contact persons for purposes of implementing this Consent Order and giving appropriate notices under this Consent Order.

For EPA

Nicole Cantello
Attorney-Advisor
U.S. EPA Region 5
77 W. Jackson Blvd., Chicago, IL 60604
(312) 886-6842 (Tel.)
cantello.nicole@epa.gov

For Defendant

Joel L. Lennen (Pa. ID 44615) (Admitted Pro Hac Vice) and
Scott Dismukes (Pa. ID 44747) (Admitted Pro Hac Vice)
ECKERT SEAMANS CHERIN & MELLOTT, LLC
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(412) 566-6000 (tel)
(412) 566-6099 (fax)
jlennen@eckertseamans.com
sdismukes@eckertseamans.com

3. Dispute Resolution. In the event that a dispute arises between the Parties regarding this Consent Order, and the dispute cannot be resolved by informal consultations, the United States shall provide to Defendant its written Statement of Position on the matter in dispute. The United States' Statement of Position shall be binding on Defendant unless, no later than fifteen days after receiving the United States' Statement of Position, Defendant files with the Court a motion requesting judicial resolution of the dispute. Defendant's failure to seek resolution of a dispute under this Subparagraph in a timely manner shall preclude Defendant from raising any such issue as a defense to an action by Plaintiff to enforce any obligation arising under this Consent Order.

a. Briefing. Defendant's motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested. The United States shall respond to Defendant's motion within fifteen days. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

b. Standard of Review. In any dispute concerning this Consent Order, Defendant shall bear the burden of demonstrating that its position complies with this Consent Order.

4. Stipulated Penalties. Defendant shall be liable for Stipulated Penalties that shall accrue per violation per day in the amounts set forth below for: (1) failure to commence operation of the Monitors by the date required by Paragraph 1.a; and (2) failure to timely report to EPA data from the Monitors, pursuant to Paragraph 1.c.

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$750
15th through 30th day	\$2000
31st day and beyond	\$5000

5. Civil Penalty. SHB shall pay the United States a civil penalty in the amount of \$100,000, together with interest accruing from the date of entry of this Consent Order, at the rate specified in 28 U.S.C. § 1961 as of the date of entry. SHB shall pay \$50,000 within thirty days of the date of entry of this Consent Order and the remaining amount within six months of the date of entry. Payment of this sum shall constitute full settlement and satisfaction of all civil penalties sought on behalf of the EPA as alleged or sought in the Complaint.

a. Defendant shall make the above referenced payments by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the United States Department of Justice account in accordance with current electronic funds procedures, referencing DOJ Case No. 90-5-2-1-11405. Payment shall be made in accordance with instructions provided to Defendant by the Financial Litigation Unit of the United States Attorney’s Office for the Northern District of Illinois. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of payment of the sum required by Paragraph 5 of this Consent Order, Defendant shall simultaneously provide written notice of payment (and a copy of any payment transmittal documentation) to:

Edward Nam
Acting Director, Air and Radiation Division
U.S. EPA Region 5
77 W. Jackson Blvd., Chicago, IL 60604
(WC-15J)

Nicole Cantello
Attorney-Advisor
U.S. EPA Region 5
77 W. Jackson Blvd., Chicago, IL 60604
(C-14J)
cantello.nicole@epa.gov

and

Thomas A. Mariani, Jr.
Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
DOJ No. 90-5-1-1-10196

b. If payment is not made when due, interest shall accrue at the statutory interest rate, in accordance with 28 U.S.C. § 1961, on any amount overdue. If interest is due, Defendant shall submit a statement with payment to the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Illinois setting forth the calculation of the interest due. Personnel from the United States Attorney's Office, Financial Litigation Unit will advise Defendant in the event such calculation requires adjustment.

6. Late Payment of Civil Penalty. In the event that Defendant fails to pay the amount specified in Paragraph 5, when due, then in addition to the interest required by Paragraph 5.b of this Consent Order, Defendant shall pay a Stipulated Penalty of \$2000 per day for each day that payment is not paid in full. Stipulated penalties will not apply to any installments received in accordance with the dates provided in Paragraph 5.

a. If Stipulated Penalties are due, Defendant shall pay the same by certified or cashier's check. Payment made by certified or cashier's check shall be payable to the Treasurer, the United States of America, and tendered to the United States Attorney's Office, for the Northern District of Illinois.

b. Defendant shall be liable for attorney's fees and costs incurred by the United States in collecting any amounts not paid when due under this Consent Order.

7. Effect of Consent Order. This Consent Order fully resolves the civil claims of the United States for the violations alleged in the Complaint through the date of entry of this Consent

Order. Nothing herein shall be construed as an admission by Defendant as to any of the allegations contained, or legal and/or equitable liability through any of the allegations, in the Complaint.

8. Reservation of Rights. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Order, except as expressly stated in Paragraph 7. This Consent Order shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal, state, or local laws, regulations, or permit conditions, except as expressly stated in Paragraph 7. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Order or otherwise.

9. Collateral Estoppel. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 7.

10. Effect on Third Parties. This Consent Order does not limit or affect the rights of the Defendant or of the United States against any third parties not party to this Consent Order, nor does it limit the rights of third parties not party to this Consent Order, against Defendant, except as otherwise provided by law. This Consent Order shall not be construed to, nor does it,

create any rights in, or grant any cause of action to, any third party not party to this Consent Order.

11. Retention of Jurisdiction. The Court shall retain jurisdiction over this case until termination of this Consent Order pursuant to Paragraph 12, for the purpose of resolving disputes arising under this Consent Order, entering orders modifying this Consent Order, or effectuating, interpreting, or enforcing compliance with the terms of this Consent Order.

12. Termination. After Defendant has completed all the requirements of Paragraph 1 and has paid the civil penalty and any accrued penalties as required by Paragraphs 4 and 5, Defendant may serve upon the United States a Request for Dismissal, stating that Defendant has satisfied those requirements, together with all necessary, if any, supporting documentation. Following receipt by the United States of Defendant's Request for Dismissal, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has complied with the requirements for termination of this Consent Order. If the United States agrees that Defendant has completed all such requirements, the Parties shall submit for the Court's approval, a joint stipulation terminating the Consent Order and dismissing the action with prejudice.

13. Separate Agreement. There are no separate agreements or understandings with respect to this matter that have not been set forth in this Consent Order.

14. Attorneys' Fees. Except as expressly set forth above, each Party shall bear its own costs and attorneys' fees.

15. If for any reason this Court should decline to approve this Consent Order in the form presented, this agreement and stipulation shall be deemed void and the terms of the agreement and stipulation may not be used as evidence in any litigation between the parties.

16. This Consent Order may not be used as evidence that the Section 114 Request was valid or enforceable, or as an admission by Defendant as to any of the allegations in the Complaint, in any litigation (whether administrative or judicial) between the Parties.

17. This Consent Order may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute a one and the same instrument.

18. Upon approval and entry of this Consent Order by the Court, this Consent Order shall constitute a final judgment between the United States and the Defendant.

Dated and entered this 5 day of December, 2016.

A handwritten signature in black ink, appearing to read 'T M Durkin', written over a horizontal line.

THOMAS M. DURKIN
UNITED STATES DISTRICT JUDGE
Northern District of Illinois

Signature Page for *United States of America v. S.H. Bell Co.* Stipulated Settlement and Final Consent Order.

FOR THE UNITED STATES OF AMERICA



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12-02-2016
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Signature Page for *United States of America v. S.H. Bell Co.* Stipulated Settlement and Final Consent Order.

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 5



ROBERT A. KAPLAN
Acting Regional Administrator
U.S. EPA Region 5

DATE: 12/1/16

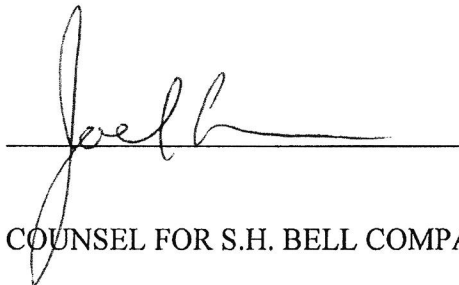


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FOR S.H. BELL COMPANY


COUNSEL FOR S.H. BELL COMPANY

DATE: 12/2/16