

Connecticut Department of
**ENERGY &
 ENVIRONMENTAL
 PROTECTION**

STATE OF CONNECTICUT)
)
 VS.)
)
 BRISTOL MYERS SQUIBB)
)

Order No. 2210

CONSENT ORDER

A. With the agreement of Bristol-Myers Squibb Company ("Respondent"), the Commissioner of Energy and Environmental Protection ("Commissioner") finds the following:

1. Respondent is a corporation doing business at 5 Research Parkway, Wallingford, Connecticut ("facility").
2. At the facility, Respondent owns and operates a pharmaceutical research facility, which contains a Hazardous/Medical/Infectious Waste Incinerator ("HMIWI") which is subject to the requirements of Title 40 of the Code of Federal Regulations Part 60 ("40 CFR 60"), Subpart Ce and 40 CFR 62, Subpart HHH.
3. The operation is subject to Section 22a-174-33 of the Regulations of Connecticut State Agencies ("RCSA") due to the existence of the HMIWI.
4. On March 7, 2007, Title V Permit #189-0207-TV was issued to the Respondent, which included the requirements of Federal New Source Performances Standards as codified in Title 40 of the Code of Federal Regulations Part 62 ("40 CFR 62"), Subpart HHH for the HMIWI. On January 4, 2010, Title V Permit #189-0207-TV was modified.
5. Pursuant to Section III.C.1 Table III.C.1 of Title V Permit #189-0207-TV, the Maximum Waste Feed Incinerator Feed Rate shall not exceed 460 lbs/hr.
6. Pursuant to Section III.C.2.c(1) of Title V Permit #189-0207-TV, following the date on which the initial performance test was completed for the HMIWI, the permittee shall determine compliance with the opacity limit by conducting an annual performance test (no more than 12 months following the previous performance test) using the applicable procedures listed in Section III.C.2.b of this Title V permit.

Date Issued October 3, 2011

7. Pursuant to Section III.C.2.e of Title V Permit #189-0207-TV, the permittee shall use EPA Reference Method 9 of 40 CFR Part 60, Appendix A (“Method 9”), to measure stack opacity.
8. Pursuant to Section III.C.3.d of Title V Permit # 189-0207-TV, to maintain qualification, the trained and qualified HMIWI operator shall complete and pass an annual review or refresher course of a least four hours.
9. Pursuant to Section III.C.4.j of Title V Permit #189-0207-TV, in accordance with Section VII.F of this Title V permit, the Permittee shall make and maintain the following records for a minimum of five years, commencing on the date such records were created: Records indicating the use of the bypass stack, including dates, times and duration. Pursuant to Section III.C.2.i of Title V Permit #189-0207-TV, The Permittee shall install, calibrate (to manufacturing’s specifications), maintain, and operate a device or method for measuring the use of the bypass stack, including the date, time, and duration of such use.
10. On April 26 and April 27, 2010, an Air Pollution Control Engineer of the Department’s Air Bureau conducted a Full Premises Evaluation Inspection at the facility based on the Pre-Inspection Questionnaire (“PIQ”) dated February 19, 2010.
11. Based on data submitted at the time of inspection, the Engineer alleged that the hourly charge rate exceeded the maximum feed rate listed in Section III.C.1 Table III.C.1 of Title V Permit #189-0207-TV at least three times in 2009. The last annual Method 9 test for opacity appeared to be over four years ago. The last annual 4-hr recertification test for the operators was performed in December 2007. The Respondent did not appear to have record or monitor the use of the bypass stack.
12. On July 7, 2010, Notice of Violation (“NOV”) #16572 was issued to the Respondent for failing to comply with the terms of Title V Permit #189-0207-TV.
13. On July 28, 2010, The Respondent submitted additional information in response to the Notice of Violation. After further review of this new information, it was determined by the Department that the recording and monitoring of the use of the bypass stack was adequate to demonstrate compliance with the Title V Permit #189-0207-TV requirements.
14. According to the Respondent’s letter, dated July 28, 2010, the operators of the HMIWI were re-qualified on May 24 through May 26, 2010 pursuant to Section III.C.3.e of Title V Permit #189-0207-TV. Therefore, the Respondent was in violation from December 2008 to May 2010.
15. Pursuant to 40 CFR 62.14490, “maximum charge rate means, for continuous and intermittent HMIWI, 110 percent of the lowest 3-hour average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits”.

16. It was determined that based on the October 2007 performance test, the maximum allowable charge rate was calculated to be 497.5 lbs/hr. Upon further review of the data submitted by the Respondent for the operation of the HMIWI on March 11 and March 12, 2009, the highest charge rate was calculated to be 496.5 lbs/hr. Contrary to the allegation in NOV#16572, it appears that there were no violations of the maximum allowable charge rate during that period of HMIWI operation.
 17. Upon further review, it was determined that a Method 9 test was performed during the October 2007 and the October 2010 performance test. Therefore, the Respondent was in violation of Section III.C.2.c(1) of Title V Permit #189-0207-TV only from October 2008 through October 2010. Pursuant to Section III.C.2.c(1) of Title V Permit #189-0207-TV, the next Method 9 test for opacity shall be conducted on or before October 26, 2011.
 18. Air Administrative Enforcement staff discovered that the Respondent does not calculate or record the actual hourly charge rate. Pursuant to Section III.C.4.c of Title V Permit #189-0207-TV, "in accordance with Section VII.F of this Title V permit, the Permittee shall make and maintain the following records for a minimum of five years, commencing on the date such records were created: The HMIWI charge dates, times, weights and hourly charge rates."
 19. Pursuant to Section III.C.2.n of Title V Permit #189-0207-TV, "Operation above the established maximum or below the established minimum operating constitutes a violation of the established parameters. Operating parameter limits do not apply during shutdown, start-up malfunction, and performance tests". Pursuant to 40 CFR 62.14455(c), if the HMIWI operates above the maximum allowable charge rate and above or below the established parameter as measured by the 3-hr average of the established parameters, simultaneously; then the HMIWI have violated the Carbon Monoxide, dioxin/furan, hydrochloric acid, and particulate emission rates as specified in Section III.C.1 of the Title V Permit #189-207-TV.
 20. Since the Respondent does not calculate the hourly charge rate and therefore, the 3-hr rolling charge rate average, the Respondent does not demonstrate continual compliance with Section III.C.2.n of Title V Permit #189-0207-TV.
 21. By virtue of above, the Respondent violated of Title V Permit #189-0207-TV, 40 CFR 60, 40 CFR 62 and Section 22a-174-33 of the RCSA.
- B With the agreement of the Respondent, the Commissioner, pursuant to Sections 22a-6, 22a-171, 22a-174, 22a-177, and 22a-178 of the Connecticut General Statutes, orders as follows:
1. On or before October 26, 2011, The Respondent shall perform opacity testing for the HMIWI pursuant to Reference Method 9 of 40 CFR Part 60, Appendix A ("Method 9").

2. Preventive Maintenance Plan: Within ninety (90) days after the issuance of this Consent Order, Respondent shall update the preventative maintenance plan for the facility in order to maintain compliance with Title V Permit #189-0207-TV. The Respondent shall submit the updated preventative maintenance plan to the Commissioner for review and written approval. The Respondent shall respond to any written notice of deficiency or inquiry regarding the plans by the deadline specified in such notice or inquiry. The updated preventative maintenance plan shall include, at least, the following modifications:
 - a. Procedures to calculate and record the actual hourly charge rate and the 3-hour rolling charge rate average of the HMIWI.
 - b. Procedures to monitor and record the operation of the bypass stack including time, duration and reason for use of bypass stack for the HMIWI.
 - c. Procedures for the annual Method 9 testing for opacity of the HMIWI.
 - d. Procedures for the annual training for the operators of the HMIWI as required.
3. Civil Penalty. On or before 30 days after the issuance of this Consent Order, the Respondent shall pay a penalty of \$20,000 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraphs A.14, and A.17 through A.21 of this Consent Order.
4. Payment of penalties. Payment of penalties under this Consent Order shall be mailed or personally delivered to Bureau of Financial & Support Services--Accounts Receivable Office ["F&SS"], Department of Energy and Environmental Protection, 79 Elm Street, Hartford, CT 06106, and shall be by certified or bank check payable to the "Treasurer, State of Connecticut.". The check shall state on its face, "Air Management Civil Penalty, Engineering and Enforcement Division, Consent Order No. 2210".
5. Full compliance. Respondent shall not be considered in full compliance with this Consent Order until all actions required by this Consent Order have been completed as approved and to the Commissioner's satisfaction.
6. Approvals. Respondent shall use best efforts to submit to the Commissioner all documents required by this Consent Order in a complete and approvable form. If the Commissioner notifies Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondent shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within 30 days of the Commissioner's notice of deficiencies. In approving any document or other action under this Consent Order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this Consent Order. Nothing in this paragraph shall excuse noncompliance or delay.

7. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner or a representative of the Commissioner.
8. Dates. The date of "issuance" of this Consent Order is the date the Consent Order is deposited in the U.S. Mail or personally delivered, whichever is earlier. The date of submission to the Commissioner of any document required by this Consent Order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this Consent Order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this Consent Order, the word "day" as used in this Consent Order means calendar day. Any document or action which is required by this Consent Order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.
9. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this Consent Order shall be signed by Respondent or, if Respondent is not an individual, by Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in §22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and Respondent or Respondent's chief executive officer and each such individual shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information is punishable as a criminal offense under Section §53a-157b of the Connecticut General Statutes and any other applicable law."
10. Noncompliance. This consent order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this Consent Order may subject Respondent to an injunction and penalties.
11. False statements. Any false statement in any information submitted pursuant to this Consent Order is punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.
12. Notice of transfer; liability of Respondent. Until Respondent has fully complied with this Consent Order, Respondent shall notify the Commissioner in writing no later than 15 days after transferring all or any portion of the facility, the operations, the site or the business which is the subject of this Consent Order or after obtaining a new mailing or

location address. Respondent's obligations under this Consent Order shall not be affected by the passage of title to any property to any other person or municipality.

13. Commissioner's powers. Nothing in this Consent Order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondents pursuant to this Consent Order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondents to undertake further investigation or further action to prevent or abate violations or pollution.
14. Respondent's obligations under law. Nothing in this Consent Order shall relieve Respondent of other obligations under applicable federal, state and local law.
15. No assurance by Commissioner. No provision of this Consent Order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondent pursuant to this Consent Order will result in compliance.
16. Access to site. Any representative of the Department of Energy and Environmental Protection may enter the facility without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Consent Order.
17. No effect on rights of other persons. This Consent Order neither creates nor affects any rights of persons or municipalities that are not parties to this Consent Order.
18. Notice to Commissioner of changes. Within 15 days of the date Respondent becomes aware of a change in any information submitted to the Commissioner under this Consent Order, or that any such information was inaccurate or misleading or that any relevant information was omitted, Respondent shall submit the correct or omitted information to the Commissioner.
19. Notification of noncompliance. In the event that Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this Consent Order or of any document required hereunder, Respondent shall immediately notify by telephone the Bureau of Air Management Unit in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, Respondent shall submit in writing the date, time, and duration of the noncompliance and the reasons for the noncompliance or delay and propose for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondent shall not excuse noncompliance or

delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay.

20. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order, unless otherwise specified in this Consent Order or in writing by the Commissioner, shall be directed to:

Aileen Matta
Engineering and Enforcement Division
Bureau of Air Management
Department of Energy and Environmental Protection
79 Elm Street, 5th Floor
Hartford, Connecticut 06106-5127

Respondent consents to the issuance of this Consent Order without further notice. The undersigned certifies that he/she is fully authorized to enter into this Consent Order and to legally bind Respondent to the terms and conditions of the Consent Order.

Bristol Myers Squibb Company

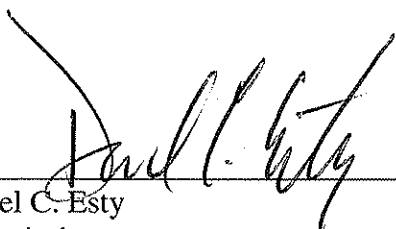
Signature: 

Type Name: CARL D. GRANT

Type Title: DIRECTOR, WALLINGFORD FACILITIES

Date: SEPTEMBER 22, 2011

Issued as an order of the Commissioner of Energy and Environmental Protection.


Daniel C. Esty
Commissioner

9/30/11
Date

* Public Act 11-80, effective July 1, 2011, established the Department of Energy and Environmental Protection as the successor agency to the Department of Environmental Protection.

CITY OF WALLINGFORD
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