

Informal & Formal Enforcement Actions

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Compliance and Enforcement Section
Bureau of Air

**Our Mission: To protect and improve the health and
environment of all Kansans.**



**“If you think
compliance is
expensive –
try non-compliance.”**

Former U.S. Deputy Attorney General Paul McNulty



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Informal Enforcement Actions

Notice of Noncompliance (NON)

- Record keeping
- Notifications
- Emission reports
- Adding emission units without approval/permit
- Late annual/semi-annual reports and CR-02's

Letter of Warning (LOW)

- NON list
- Repeat of NON

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NON's and LOW's

-Will state the violation

**-Deadline for initial response
(usually 30 days from date of
letter)**

**-Deadline for corrections (usually
60 days from date of letter)**

(Facility name) is hereby advised that continued noncompliance of any provisions of the Kansas Air Quality Regulations will subject (facility name) to enforcement proceedings as described in K.S.A. 65-6018, which provides for the assessment of penalties up to \$10,000 per day and/or other enforcement actions as described in K.S.A. 65-3008b.



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Map back to compliance

- Letter will state compliance schedule and or plan**
- Once facility completes the schedule, follow-up inspection may occur**
- Once all violations addressed and corrected, follow-up letter sent stating back in compliance for those violations**



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3007c

- Letters of inquiry**
- Have to reply by certain date**
- If no reply, could face further enforcement actions**

In accordance with K.S.A. 65-3007(c), KDHE is requesting specific information related to the operation of this facility. The information requested within this letter is to be submitted to KDHE within 30 days of the date of this letter. Note: This information is being requested under the provisions of K.S.A. 65-3007(c) for requesting facility specific information from air contaminant sources operating in Kansas. Failure to submit the requested information within the specified time period contained in this paragraph may subject Facility to additional enforcement proceedings, as described at K.A.R. 65-3018, which provides for the assessment of civil penalties up to \$10,000 per day per violation.



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Numbers....

2016:

2 - 3007c

6 - LOW (repeated late reports)

59 - NON's (late reports, open burning, permit violations)



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Formal Enforcement Actions

Consent Agreement and Final Order (CAO)

- Willing to work with KDHE
- Negotiate lower penalty
- Negotiable timetable
- Consideration of SEPs or abeyance

Administrative Order (AO)

- No cooperation
- Penalty not reduced
- Strict timetable
- No SEPs or abeyance

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The Enforcement Process

- Made aware of a violation**
 - Self disclosure**
 - Inspection report**
 - Deviation report**
 - Complaint**
 - Stumbled across it**

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The Enforcement Process

-Determine severity

- Major or Minor/Area Source?**
- Federal or State Regulations?**
- Repeat Violation?**

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The Enforcement Process

-Case building

-Determine:

-Relevant dates

-Number and types of violations

-Details of the violations

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The Enforcement Process

-Enforcement meeting

-Violations

-Penalty (matrix)

-Supplemental Environmental Program (SEP)

<http://www.kdheks.gov/air-permit/forms/Air-SEP-policy-4-8-2014.pdf>

-Abeyance

-Consent letter/email

-Draft CAO

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**STATE OF KANSAS
BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT**

IN THE MATTER OF:

Facility Name
Address
City, Town, Zip

Case No. 17-E-1 BOA

Source ID No. #####

CONSENT AGREEMENT AND FINAL ORDER OF THE SECRETARY

The Parties hereto are the Kansas Department of Health and Environment ("KDHE") and Facility ("the Parties"). Facility operates a plant and is subject to Kansas air quality permits and approvals, described below in the Findings of Fact.

KDHE has made Findings of Fact and Conclusions of Law that are set forth below, based on KDHE's position that Facility commenced construction of an emissions unit without obtaining a construction approval and failed to adequately maintain required records.

The Parties have met and exchanged information on these disputed facts, and in the interests of conserving resources and avoiding litigation, have agreed that it is in the best interests of the Parties and the public health and environment to resolve this matter by agreement.

The Parties recognize, and the Secretary of KDHE ("Secretary") by entering into this Consent Agreement and Final Order ("CAO") finds that this CAO has been negotiated by the Parties in good faith and avoids litigation between the Parties and this CAO is fair, reasonable, and in the public interest.

The Secretary, having information that the facility violated laws governing air quality and pollution control in Kansas, K.S.A. 65-3001, *et seq.*, (the "Kansas Air Quality Act" or "KAQA") and regulations promulgated thereunder, deems it in the public interest to dispose of the matter by agreement and on an informal non-adjudicatory basis.

NOW, THEREFORE, before taking any testimony, without the adjudication or admission of any fact or law except as provided in the Jurisdiction section below, and with the consent of the Parties, this CAO is entered into this ____ day of _____, 2017, ("Date of the CAO") by and between KDHE and Facility. Upon the Secretary's signature, it will become the Final Order in this case.

The Enforcement Process

-Key parts of the action

-Findings of Fact

-Conclusions of Law

-Schedule of Compliance

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The Enforcement Process

-1st half of concurrence (CAO)

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**BUREAU OF AIR
CONCURRENCE SHEET**

This sheet with attachments is being circulated for your review and concurrence on the following issue(s):

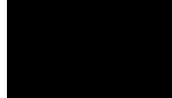


Air Violations Case No. 15-E-10 BOA

Action:

Company/or Institution:

Source ID Number:



Comments	Name	Date

Check Originating Section:

- Bureau Director
- Air Compliance & Enforcement
- Air Operating & Construction Permits
- Air Monitoring, Inventory, & Modeling

ORDER OF CONCUR.	NAME	DATE
1	Originator (Ahumada)	
2	Clerical (Moon)	
3	Legal (Gleeson)	
4	Associate Chief Counsel (Dernovish)	
5	Section Chief	
6	Bureau Director (Brunetti)	
7	Return to Originator (Ahumada)	
8	Send to Legal (Rosdahl)	
9	Send to facility	
10	Date action returned	
11	Division Director (Mitchell)	
12	Deputy Chief Counsel (Keck)	
13	Deputy Secretary (Mason)	
14	KDHE Secretary (Mosier)	
15	Return to Legal for Mailing	Submit to Facility
16	Return packet to Agency with signed copy	Originator (Ahumada)

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The Enforcement Process

-Draft CAO sent to facility for signature

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The Enforcement Process

-2nd half of concurrence

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Air Violations

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The Enforcement Process

-Secretary executes CAO

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**AUTHORIZATION OF SIGNATORIES TO EXECUTE
THE CONSENT ORDER AND BIND THE PARTIES**

39) The Parties hereto have affixed their signatures on the dates inserted below to acknowledge their agreement to this CAO. The signatories to this CAO certify that they are authorized to execute and legally bind the Parties they represent to this CAO.

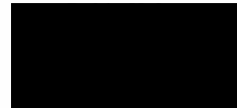
IT IS THEREFORE ORDERED AND AGREED that this CAO, when signed by all the Parties hereto, shall become a Final Order of the Secretary of KDHE.

IT IS SO ORDERED.

 _____ Susan Mosier, MD, Secretary Kansas Department of Health & Environment	 _____
Date <u>12/2/15</u> _____	Date <u>11-2-15</u> _____

CERTIFICATE OF SERVICE

I do hereby certify that on this 8th day of December, 2015, a true and correct copy of the foregoing CONSENT AGREEMENT AND FINAL ORDER was deposited in the United States mail, postage paid, and addressed to:





KDHE Staff Member

Now what?

-Once penalty paid and compliance schedule is completed, termination letter is sent

-If on abeyance, after period of set time is over, then termination letter sent

-Consent agreement is closed out

Proceed Compliantly



Questions?



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