BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In re:	:	
	:	
American Furniture Company, Inc.	:	
Martinsville, Virginia Plant	:	
	:	**Docket No. CAA-03-2004-0283**
Respondent	:	
	:	
.....	:	

CONSENT AGREEMENT

I. Preliminary Statement

1. This Consent Agreement is entered into by the Complainant, the Director of the Air Protection Division, U.S. Environmental Protection Agency, Region 3 (the "EPA") and American Furniture Company, Inc. (hereinafter referred to as "American Furniture" or the "Respondent") and filed along with the attached Final Order pursuant to Section 113 of the Clean Air Act (the "Act"), 42 U.S.C. § 7413, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 (2003) ("Consolidated Rules of Practice"). Section 22.13 provides, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). This Consent Agreement and the accompanying Final Order address alleged violations of the Act by the Respondent at its Martinsville, Virginia furniture manufacturing facility (AFS # 51089000064).

II. General Provisions

2. Respondent admits to any jurisdictional allegations set forth in Paragraph 1 above and in the Findings of Fact and Conclusions of Law below.

3. Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement and Final Order.

4. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO"), the issuance of the accompanying Final Order, or the enforcement of the CAFO.

5. Respondent consents to the issuance of the attached Final Order and consents to the performance of the Supplemental Environmental Project and payment of a civil penalty as set forth in this Consent Agreement and the attached Final Order.

6. Respondent agrees to pay its own costs and attorney fees.

III. Findings of Fact and Conclusions of Law

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law:

7. Respondent owns and operates a facility located on Route 966 in Martinsville, Virginia, 24112, which manufactures wood furniture (the "Facility"). The Facility has, at all times relevant to this matter, operated a wood-fired boiler, called the Combustion Engineering boiler ("CE boiler"), to produce steam for furniture production and building heating.

8. The particulate emissions from the CE boiler at this facility are regulated by Condition #5 of a Title V permit issued by Virginia, Permit # VA30692, which limits particulate emissions to 0.26 pounds particulate matter per million British Thermal Units ("lbs./MMBTU") of heat input to the CE boiler. This Title V permit was issued by the Virginia Department of Environmental Quality ("Va. DEQ") on December 28, 2001 and amended on June 18, 2002.

9. By letter dated April 16, 2002, EPA Region 3 issued a letter under Section 114 of the Clean Air Act requiring that American Furniture conduct particulate matter testing of the CE boiler to prove its compliance with the particulate matter emission limit in Virginia's Title V permit.

10. The testing was conducted by Trigon Engineering on December 4, 2002, once the weather was sufficiently cold to require the use of the large CE boiler. The test results confirmed violation of the Title V permit limit at both high boiler steam load and low boiler steam load conditions. The test results found 0.28 lbs./MMBTU at the high load condition and 0.36 lbs./MMBTU at the low load condition.

11. On January 22, 2003, EPA issued a Notice of Noncompliance/Request to Show Cause to Respondent to notify it that EPA would take enforcement action under Section 113 of the Act, which allows, among other things, the issuance of an order by EPA requiring the Respondent to comply with the emission requirements of its Title V permit.

12. Respondent requested a meeting with EPA to discuss the Notice of Noncompliance. EPA and Respondent met on March 25, 2003, to discuss the cause of the noncompliance and Respondent's plans and schedule for bringing the CE boiler back into compliance with the particulate emission limit in its Title V permit.

13. Following the Notice of Noncompliance, Respondent continued to operate the CE boiler

until sometime in late March or early April of 2003, when the CE boiler was shut down for the warm weather months in favor of another, smaller boiler. Respondent did not operate the CE boiler until the repairs and modifications were made to the CE boiler and cold weather sufficient to operate the boiler at high steam loads returned.

14. EPA issued an administrative compliance order under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), to American Furniture on June 2, 2003. The administrative compliance order required, among other things, that American Furniture submit to EPA a plan for bringing the CE boiler back into compliance, and re-test the CE boiler for compliance within 45 days of re-starting the CE boiler.

15. Another stack test of the CE boiler was performed on December 1, 2003. The results of the stack test showed that the CE boiler was now in compliance with the particulate emission limit contained in the Title V permit issued by Virginia.

16. The operating conditions and operating parameters of the CE boiler during the stack test represented typical, routine operating conditions for the CE boiler for at least one year prior to the stack test, and therefore the CE boiler was in noncompliance with the permitted particulate emission limit for at least one year prior to the first stack test, as well as from the date of the first stack test until the CE boiler was shut down in March or April of 2003. This noncompliance with the permit limit constitutes a violation of Section 502(a) of the Act, 42 U.S.C. § 7661a(a).

17. The federally-approved Virginia State Implementation Plan ("SIP") includes 9 VAC 5-80-10.01(K) (previously codified as Section 120-08-01K.(4)), which provides for appropriate enforcement actions when construction and/or operating permit conditions are violated.

18. Under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the Administrator and the Attorney General, through their delegated representatives, have jointly determined that this matter, involving a first alleged date of violation more than 12 months prior to the initiation of the administrative action, is appropriate for an administrative penalty action.

IV. Compliance

19. Respondent herein certifies to EPA that, upon investigation, to the best of its knowledge and belief, Respondent is presently in compliance with the provisions of the Act, and the regulations promulgated thereunder that are referenced in this Consent Agreement, and that all violations alleged in the Consent Agreement have been remedied.

V. Settlement Terms

American Furniture hereby agrees to implement the following Supplemental Environmental Project ("SEP") at its Martinsville facility:

20. American Furniture shall convert a large silo next to the boiler room from coal storage to wood dust storage by removing the existing systems and installing a new unloader, exit auger, and fuel hopper. A new cyclone and closed loop duct system will also be installed to divert the wood dust to the silo and convey dust from the converted coal silo to the three wood dust silos behind the plant. American shall also install a cyclone, airlock, and ductwork at the dust storage shed to convey dust from the three silos behind the plant to the nearby dust storage shed. Finally, American will install a hopper at the storage shed and additional ductwork to convey dust from the storage shed behind the plant to the converted coal silo next to the boiler room. The purpose of the SEP will be to allow American to store more wood dust at the boiler room where it is needed; pneumatically transfer dust from the converted coal silo when it is full to the three other silos, which are approximately 1500 feet away; and pneumatically transfer dust through closed loop systems from the three silos behind the plant to the dust shed, and from the shed back to the boiler room.

21. Implementation of this SEP will reduce the amount of wood dust transferred to\from the boiler room located mid-plant and the three silos and dust shed located behind the plant, and eliminate the need to transfer dust via trucks and front-end loader from the silos to the dust shed and from the dust shed to the boiler room. This will significantly reduce the fugitive dust emissions associated with the dust storage and transfer systems.

22. Construction and modification of the dust storage and transfer systems shall begin no later than August 1, 2004 and shall be completed and fully operational by no later than January 31, 2005. Respondent shall operate the dust storage and transfer systems for a minimum of three years following the start of operation of the systems while the remainder of the plant is operating.

23. The total capital cost of the SEP shall be at least $220,100, and the annual maintenance and operation costs shall be at least $4,500.

24. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not obligated to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or injunctive relief in this or any other case. Respondent further agrees that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

25. SEP Completion Report - Respondent agrees to submit a SEP Completion Report within 30 days of January 31, 2005. The SEP Completion Report will include at least the following information:

A. A detailed description of the SEP as implemented, including a description of the exact equipment installed, and the dates on which installation of the SEP was completed and operation of the SEP began;

B. A description of operating problems encountered, if any, the solutions to those problems, and the effect of those problems, if any, on the expected reduction in emissions from the SEP;

C. An itemized report concerning the SEP expenditures so far, including capital costs and operational and maintenance costs incurred so far, if any; and

D. Certification that the SEP has been installed pursuant to the terms of this Consent Agreement.

26. Annual SEP Reporting Requirement - Respondent shall submit an annual SEP status report every year on the one year anniversary of the date on which installation of the SEP was completed. This annual SEP status report shall be submitted for three years. The annual SEP status report shall, at the least, contain the following information:

A. Certification that the equipment installed in connection with the SEP in accordance with paragraph 20 above has been operated in such a manner as to achieve the stated purpose in paragraph 21 above during the past year while the remainder of the plant has been in operation. Any modification or replacement of equipment installed pursuant to the SEP shall be noted and shall meet or exceed the emission and waste reduction goals of the SEP;

B. Any capital costs and/or operation and maintenance costs incurred by Respondent to maintain and operate the SEP equipment required by this Consent Agreement during the one year period of time covered by each annual SEP status report; and

C. If the equipment and systems installed pursuant to the SEP have not been operated in a manner to achieve the stated purpose in paragraph 21 above while the remainder of the plant was operating, a description of those periods of time and an explanation as to why the equipment was not operated properly.

27. Document Retention and Certification - Respondent shall maintain legible copies of documentation for the SEP project, including cost documentation, for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and shall provide the documentation to EPA not more than seven (7) days after the receipt of a request for such

information. In all documents or reports, including, without limitation, any SEP reports submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify, under penalty of law, that the information in such document or report is true, accurate, and not misleading by signing the following statement:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

28. After receipt of the SEP Completion Report described in paragraph 25 above, EPA will notify the Respondent in writing regarding, i) any deficiencies in the SEP Report itself, along with a grant of up to thirty (30) additional days for Respondent to correct those deficiencies; or ii) indicate that EPA concludes that the SEP projects have been installed satisfactorily, or iii) its determination that one or more of the SEP projects have not been installed satisfactorily and seek additional penalties in accordance with paragraph 31 below.

29. After receipt of each Annual SEP report required to be submitted by paragraph 26 above, EPA will notify the Respondent in writing regarding i) any deficiencies in the Annual SEP report itself, and give Respondent thirty (30) days to correct those deficiencies, and/or ii) any deficiencies in the installation, operation or execution of the SEP projects apparent from the Annual SEP report. EPA will give Respondent a reasonable period of time, not to exceed ninety (90) days, to correct the deficiencies in the installation, operation or execution of the SEP before invoking paragraph 31 below.

30. Within 60 days of Respondent's submission of the last Annual SEP report required under paragraph 26 above, EPA shall make a determination as to whether the SEP has been satisfactorily completed and notify Respondent in writing.

31. Additional penalties for failure to complete SEP or failure to spend agreed-upon amount.

> A. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in paragraphs 20 through 22 above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 23 above, Respondent shall be liable for additional penalties according to the provisions set forth below:
>
> > (i) Except as provided in subparagraphs (ii) and (iii) immediately below, for a SEP which has not been satisfactorily completed pursuant to this Consent Agreement, Respondent shall pay an additional penalty to the United States in the amount of $50,588.

(ii) If the SEP is not completed in accordance with paragraphs 20 through 23 above, but the EPA determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies with supporting documentation that at least 90 percent of the amount of money which was required to be spent on the project was expended on the SEP, Respondent shall not be liable for any additional penalties.

(iii) If the SEP is completed in accordance with paragraphs 20 through 23 above, and the Respondent spent less than 90 percent of the amount of money required to be spent for the SEP, Respondent shall pay additional penalties in the amount of the difference between the amount actually spent and 90 percent of the amount required to be spent.

(iv) If the SEP is completed in accordance with paragraphs 20 through 23 above, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any additional penalty.

(v) For failure to submit the SEP completion report required by paragraph 25 above, Respondent shall pay an additional penalty in the amount of $50 for each day after the report was originally due until the report is submitted.

(vi) For failure to submit any other report required above, Respondent shall pay an additional penalty in the amount of $50 for each day after the report was originally due until the report was submitted.

B. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made good faith, timely efforts to implement the SEP shall be in the sole discretion of EPA.

C. Additional penalties for subparagraphs (v) and (vi) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

D. Respondent shall pay any additional penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 35 below. Interest and late charges shall be paid as stated in the attached Final Order.

32. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement or of the statutes or regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

33. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: " This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act."

VI. Civil Penalty

34. In settlement of the allegations enumerated above, Respondent agrees to pay a civil penalty in the amount of $17,000 in satisfaction of all claims for civil penalties for the violations as alleged in Paragraphs 7 through 18 above of this Consent Agreement. This civil penalty amount was determined after consideration of the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e). Such payment shall be made by Respondent no later than thirty (30) days after the effective date of the accompanying Final Order.

35. Payment of the amount required under the terms of Paragraph 34, above, as well as payment of any additional penalties incurred under paragraph 31, shall be made by sending a certified or cashier's check, made payable to the "Treasurer, United States of America," to the U.S. Environmental Protection Agency, Region III, Regional Hearing Clerk, P.O. Box 360515, Pittsburgh, Pennsylvania 15251-6515. The required payment shall reference the name and address of the Facility, Respondent's name and address, and the EPA Docket number of this Consent Agreement. A copy of each check shall be sent simultaneously to the Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029 and Douglas J. Snyder (3RC10), Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029.

36. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and Final Order.

VII. Reservation of Rights

37. This Consent Agreement and the attached Final Order only resolve those claims which are alleged in this Consent Agreement. Nothing herein shall be construed to limit the authority of the EPA to undertake action against any person, including the Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nor shall anything in this Consent Agreement and the attached Final Order be construed to limit the United States' authority to pursue criminal sanctions.

38. EPA reserves any rights and remedies available to it to enforce the provisions of this Consent Agreement, the Act and its implementing provisions, and of any other federal laws or regulations for which it has jurisdiction, following the entry of this Consent Agreement.

VIII. Waiver of Hearing

39. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), concerning the finality or validity of this CAFO, or with respect to any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the accompanying Final Order.

IX. Effective Date

40. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk of U.S. EPA Region 3.

X. Entire Agreement

41. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the accompanying Final Order.

The undersigned representative of Respondent certifies that he or she is fully authorized to execute this Consent Agreement and to legally bind the party he or she represents.

For Respondent:

6/29/04
Date

Noel L. Chitwood, President
American Furniture Company, Inc.

For the Complainant:

7/2/04
Date

Douglas J. Snyder
Assistant Regional Counsel

The Air Protection Division, United States Environmental Protection Agency, Region 3, recommends that the Regional Judicial Officer of EPA Region 3 issue the accompanying Final Order.

7/7/04
Date

Judith Katz, Director
Air Protection Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In re:	:	
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Martinsville, Virginia Plant	:	
	:	**Docket No. CAA-03-2004-0283**
Respondent	:	
	:	
.....	:	

FINAL ORDER

The undersigned accepts and incorporates into this Final Order by reference the Findings of Fact and Conclusions of Law set forth in the foregoing Consent Agreement to which the Respondent neither admits nor denies.

NOW THEREFORE, pursuant to 40 C.F.R. § 22.18(c), it is hereby ordered that American Furniture Company, Inc. (hereinafter referred to as "Respondent" or "American Furniture") pay a civil penalty in the amount of $17,000. Payment of the civil penalty shall be made by Respondent within thirty (30) days of the effective date of this Final Order, which shall be the date upon which this Final Order is filed with the Regional Hearing Clerk.

The following notice concerns interest and late payment penalty charges that will accrue if the civil penalty is not paid as directed.

> Pursuant to 31 U.S.C. § 3717, an executive agency is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on this civil penalty if it is not paid as directed. 4 C.F.R. § 102.13(b). Interest will be assessed at the rate of the United States Treasury tax and loan rate. 4 C.F.R. § 102.13(c). In addition, a penalty charge of no more than six percent per year will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due. 4 C.F.R. § 102.13(e).

Thus, in accordance with the above provisions, to avoid the assessment of interest and handling charges on the penalty set forth herein, you must pay the full amount of the civil penalty, in the manner directed, within thirty (30) days of the effective date of this Final Order. To avoid the assessment of penalty charges on the debt, the Respondent must pay the full amount of the civil penalty, in the manner directed, within one hundred twenty (120) days of the effective date of this Final Order.

7/8/04
Date

Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

American Furniture Company, Inc.
Docket No. CAA-03-2004-0283

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date shown below, the original of the Consent Agreement and Final Order in this matter was hand-delivered to the Regional Hearing Clerk, EPA Region 3, and that a true and correct copy was sent by first class mail, postage pre-paid, to the following person:

Mr. Michael W. Hewett
Corporate Environmental Manager
La-Z-Boy, Incorporated
1284 North Telegraph Road
Monroe, Michigan 48162

7/12/04
Date

Douglas J. Snyder
Douglas J. Snyder
Assistant Regional Counsel
EPA Region 3