

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA)	
a municipal corporation)	
1200 First St., N.E., 5 th Floor)	
Washington, DC 20002)	
)	Civil Action No.
Plaintiff,)	
v.)	
)	
HOWARD UNIVERSITY AND)	<u>CONSENT DECREE</u>
HOWARD UNIVERSITY HOSPITAL)	
2244 Tenth Street, NW)	
Washington, DC 20059)	
)	
Defendant.)	

WHEREAS, attached hereto is a true and correct copy of the Complaint, in which the District of Columbia and the District Department of the Environment (collectively "Plaintiff"), allege that Defendant, Howard University and Howard University Hospital (collectively "Howard"), failed to timely submit its application for a major source operating permit ("Permit"), in violation of 20 DCMR § 301.1(a)(4), and operated without a Permit, in violation of 20 DCMR § 303.2;

WHEREAS, in accordance with 20 DCMR § 301.1(a)(4), a renewal application for Howard's major source operating Permit was due on March 24, 2009;

WHEREAS, Howard did not file an application for renewal of its Permit until May 1, 2009, thirty-seven (37) days after March 24, 2009, thereby violating 20 DCMR § 301.1(a)(4);

WHEREAS, violation of 20 DCMR 301.1(a)(4) imposes a fine of one thousand dollars (\$1,000) per day of failure to cure the violation, in accordance with 16 DCMR §§ 3201.1(b)(1) and 3637.2(e) and 20 DCMR § 105.5;

WHEREAS, DDOE further alleges that due in part to the delay in submitting the renewal application, Howard's Permit expired on or about September 24, 2009, and Howard operated without a valid permit for twenty-five (25) days, through October 19, 2009, violating 20 DCMR § 303.2;

WHEREAS, according to 16 DCMR §§ 3201.1(b)(1) and 3637.2(h) and 20 DCMR § 105.5, operating without a permit imposes a fine of one thousand dollars (\$1,000) per day of violation, which equates to a fine of twenty-five thousand dollars (\$25,000) as of the date of initial settlement negotiations on October 20, 2009;

WHEREAS, in consideration of the remedial measures that Howard is agreeing to perform under this Consent Decree, DDOE is agreeing to enter into this Consent Decree;

WHEREAS, this Consent Decree constitutes a settlement of the claims in the attached Complaint, and DDOE and Howard (collectively, the "Parties"), without the necessity of trial or adjudication of any issues of fact or law, consent to the entry of this Consent Decree;

WHEREAS, the Parties agree, and the D.C. Superior Court ("Court") finds, that settlement of this matter is in the public interest, and that the entry of this Consent Decree pursuant to the terms hereof, without further litigation, is the most appropriate means of resolving this matter.

NOW, THEREFORE, without any adjudication of any issue of fact or law, without any admission of the allegations contained in the Complaint, and upon consent and agreement of the Parties to this Consent Decree, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. **Parties Bound and Notification.** The Parties agree that the provision of this Consent Decree shall apply to and be binding upon DDOE and Howard.

2. **Binding Effect on Affiliated Parties.** In the event that Howard, at any time prior to termination of this Consent Decree pursuant to Paragraph 14 (“Termination”), sells, transfers, or assigns any interest in its business that is expressly subject to this Consent Decree, Howard shall advise in writing the purchaser(s), transferee(s), or assignee(s) prior to such transaction of the existence of this Consent Decree and shall simultaneously provide them a copy of the Consent Decree. Thirty (30) days prior to the completion of the transaction, Howard shall provide in writing to DDOE’s Legal Representative, at the address provided in Paragraph 20 (“Notice”), the expected date of the transaction and the name(s) and address(es) of such purchaser(s), transferee(s) or assignee(s). No change in ownership, corporate, or partnership status, or transfer of assets by or relating to Howard will in any way alter its obligations under this Consent Decree.

3. **Jurisdiction.** This Court has subject matter jurisdiction over the Defendant pursuant to D.C. Official Code § 11-921(a)(6) (2001). This Court also has personal jurisdiction over Defendant pursuant to D.C. Official Code § 13-423(a)(1), (a)(5) (2001) (establishing personal jurisdiction over “a person, who acts directly or by an agent, as to a claim for relief arising from the person’s -- (1) transacting any business in the District of Columbia; . . . (5) having an interest in, using, or possessing real property in the District of Columbia . . .”) and D.C. Official Code § 13-421 (2001) (defining the term “person” to include “a corporation, partnership, association, or any other legal or commercial entity, whether or not a citizen or domiciliary of the District of Columbia and whether or not organized under the laws of the District of Columbia”). Solely for purposes of this Consent Decree and the underlying Complaint, including any further action to enforce the terms of this Consent Decree, Howard waives any and all objections

and defenses it might have as to jurisdiction and fully consents to the terms of this Consent Decree, and to its entirety, and enforcement of this Consent Decree by this Court.

4. **Waiver of Hearing.** Howard hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint or in this Consent Decree. Howard voluntarily consents to the entry of this Consent Decree and agrees and consents to all the terms hereof.

5. **Consideration and Mitigation Measures.** As consideration for a reduced fine, Howard will retain an environmental consultant to complete the following within 90 days of the effective date of this Agreement:

a. **Conduct a Major Source Operating Permit Compliance Assessment** that will include a review of the Site's operations and equipment, as well past records, notifications, and reports. Using this information, Howard's environmental consultant will provide expert assistance to ensure compliance with Permit requirements. Such expert assistance will include the preparation of the required semi-annual reports and annual certification reports.

b. **Develop and conduct an on-site Major Source Operating Permit Compliance Training Program** at the Site for on-site management and supervisory maintenance personnel. Training will include a discussion of the District of Columbia Air Pollution Control Act, D.C. Official Code §§ 8-101.04–8-101.6 (2001), the District of Columbia air pollution control regulations pertaining to major source operating permits (20 DCMR §§ 100–2099), and the federal Clean Air Act, 42 U.S.C. §§ 7401–7671q (2006). The training will focus on the major source Permit program's operational and

recordkeeping requirements, visible emissions observations, and ozone-depleting substances requirements.

c. Develop a compliance tracking program for the Site that will monitor compliance obligations, including deadlines for all major source operating permit requirements. The components of the compliance tracking program will be provided to DDOE for review and comment at least 30 days prior to the due date.

6. **Terms of Settlement.** In consideration of sections 1 through 5, DDOE agrees to reduce the fine to twenty-five thousand dollars (\$25,000.00), in lieu of the sixty-two thousand dollars (\$62,000.00) that could be imposed under 16 DCMR §§ 3201.1(b)(1), 3637.2(e), and 3637.2(h), and 20 DCMR § 105.5 for Howard's violations of 20 DCMR §§ 301.1(a)(4) and 303.2 (thirty-seven thousand dollars (\$37,000) for Howard's late application thirty-seven (37) days after its Permit reapplication deadline, and twenty-five thousand dollars (\$25,000) for operating without a permit for twenty-five (25) days).

a. The fine specified in the Paragraph above shall represent a civil fine assessed by DDOE, and shall not be deductible for purposes of federal, state, or local taxes.

b. The fine specified in the Paragraph above shall be paid to person listed in Paragraph 20 within thirty (30) days of the effective date of this agreement.

c. Howard certifies that it has not received, and will not in the future seek to receive, credit in any other enforcement action under any federal, state, or local law or regulation for the mitigation measures specified in Paragraph 5 herein. Howard further certifies that it is not required to perform or develop or pay for said mitigation measures by any other agreement or grant, or as injunctive relief.

7. **Compliance Plan.** Pursuant to 20 DCMR § 301.3(h)(3)(C), the Parties agree that Howard will comply with Permit #006, (which DDOE's predecessor issued on September 24, 2004, and which expired on September 24, 2009), and with the Title V Operating Permit Application submitted to DDOE on May 1, 2009, until DDOE issues a new Permit to Howard.

8. **Stipulated Penalties.** In the event that Howard fails to comply with any of the terms or provisions of this Consent Decree, Howard shall be liable for stipulated penalties in the following amounts for each day of violation, until such violation is cured or ceases: one thousand dollars (\$1,000) for each day up to and including the seventh day of such failure; two thousand dollars (\$2,000) for each additional day of such failure up to and including the fourteenth day thereof; and four thousand dollars (\$4,000) for each day thereafter.

a. Stipulated penalties 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 or until the violation is otherwise fully cured or ceases, whichever is later.

b. Howard shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by DDOE for such penalties. Method of payment shall be by check or money order, payable to the D.C. Treasurer, to the attention of DDOE.

9. **Public Statements Must Acknowledge Enforcement Action.** Any public statement, oral or written, in print, film, or other media, made by Howard making reference to any of the mitigation measures specified in Paragraph 5 herein shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the District Department of the Environment."

10. **No Relief from Compliance; No Endorsement by DDOE.** This Consent Decree shall not relieve Howard of its obligation to comply with all applicable provisions of federal, state, or local law; nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, approval, or other requirement. Additionally, nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of DDOE to require Howard to conduct any sampling or monitoring at or about the Site.

11. **Covenant Not to Sue.** DDOE covenants not to sue and not to take any other form of administrative or judicial enforcement against Howard and its successors, as well as its officers, directors, and employees, with respect to any of the acts, omissions, or other matters alleged in or encompassed by the Complaint, including any and all acts or omissions relating to Howard's late application and operation without a permit for the Site that occurred (or failed to occur) through the date of the filing of this Consent Decree and the Complaint. The Complaint, filed with this Consent Decree, alleges that Howard's major source permit application, filed with DDOE on May 1, 2009, was thirty-seven (37) days late, in violation of 20 DCMR § 301.1(a)(4), and that Howard operated the Site without a permit for twenty-five (25) days from September 24, 2009 through October 19, 2009, in violation of 20 DCMR § 303.2. DDOE's covenant not to sue shall take effect upon the date of entry of this Consent Decree. If Howard breaches and fails to cure any breach of this Consent Decree within 60 days, unless extended by the District, the foregoing release and covenant shall be deemed null and void. Further, nothing in this Consent Decree is intended nor shall be construed to operate in any way to limit or otherwise preclude DDOE from taking additional enforcement action with regard to Howard or any other person who has violated or

violates hereinafter District of Columbia laws, regulations, or other legal requirements, by reason of acts or omissions other than those encompassed by the first sentence of this paragraph.

12. **Reservation of Rights.** DDOE reserves any and all legal and equitable remedies, sanctions, and penalties that may be available to it to enforce the provisions of this Consent Decree against Howard for failure to comply with the requirements of this Consent Decree.

13. **Modification.** There shall be no material modification of this Consent Decree without the prior written approval of the Parties to this Consent Decree and the approval of the Court. All non-material modifications, such as a change to the person to receive notice under this Consent Decree, may be made by written agreement of the Parties.

14. **Termination.** This Consent Decree shall terminate after the Parties have complied with Paragraphs 5, 6 and 7, and Howard has paid any outstanding penalties. When a new Permit is issued in compliance with Paragraph 7, Howard may file a motion with the Court seeking termination, for which motion concurrence shall not be unreasonably withheld by DDOE.

15. **Retention of Jurisdiction.** Until the terms of this Consent Decree have been satisfied, this Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree, in order to resolve disputes arising hereunder as may be necessary or appropriate for the construction, execution, or implementation of this Consent Decree.

16. **Final Judgment.** Consistent with and in no way abrogating the preceding paragraph regarding retention of jurisdiction, the Consent Decree shall constitute a final

judgment pursuant to D.C. S.C.R.-Civil Rule 54, upon approval and entry of this Consent Decree by this Court.

17. **Release from Liability.** DDOE agrees to release Howard from all liability under all claims brought in or which could have been brought pursuant to the Complaint upon completion and satisfaction of all terms and conditions of the Consent Decree.

18. **Governing Law.** This Consent Decree is made and executed in the District of Columbia, and it is agreed that this Consent Decree shall be interpreted in accordance with the laws of the District of Columbia.

19. **Integration Clause.** This Consent Decree supersedes any and all prior agreements and understandings of the Parties and constitutes the entire understanding between and among the Parties with regard to the matters set forth. There are no representations, warranties, agreements, arrangements, nor undertakings, written or oral, between or among the Parties thereto, relating to the subject matter of the Consent Decree that are not fully expressed herein.

20. **Notice.** Written communications submitted under this Consent Decree shall be addressed as follows, unless the listed individuals or their successors give written notice of change(s) to the Parties:

District of Columbia

Kimberly Katzenbarger
General Counsel
District Department of the Environment
1200 First Street, NE, 5th Floor
Washington, D.C. 20002-3347
Office: (202) 535-2608
Fax: (202) 535-2881
kimberly.katzenbarger@dc.gov

Howard University and Howard University Hospital

Michael A. Maddox
Senior Associate General Counsel
for Employment & Labor Relations
Howard University
2400 6th Street, N.W., Suite 321
Washington, DC 20059-0002
Office: (202) 806-2650
Fax: (202) 806-6357
m_maddox@howard.edu

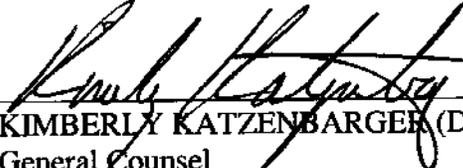
21. **Service.** For purposes of this action, the Complaint filed in this action, and the Consent Decree, Howard hereby agrees to accept service by mail at the address provided in Paragraph 20, above, and to waive the formal service requirements of D.C. SCR-Civil Rule 4, including but not limited to service of a summons.

Dated and entered on _____ day of _____, 2011.

For Plaintiff:

IRVIN B. NATHAN
Attorney General for the
District of Columbia

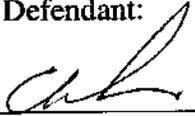
ELLEN EFROS
Deputy Attorney General
Public Interest Division


KIMBERLY KATZENBARGER (DC Bar # 476049)
General Counsel
District Department of the Environment
1200 First Street, N.E., 5th Floor
Washington, D.C. 20002
(202) 535-2608
kimberly.katzenbarger@dc.gov

Attorneys for the District of Columbia

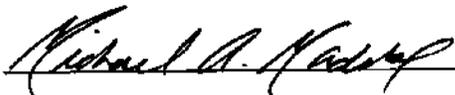
Date: 2-3-12

For Defendant:



Chris Calhoun
Executive Director of PFM
Howard University
2244 Tenth Street, NW
Washington, DC 20059
(202) 806-1002

Date: February 1, 2012



MICHAEL A. MADDUX
Senior Associate General Counsel
for Employment & Labor Relations
Howard University
2400 6th Street, N.W., Suite 321
Washington, DC 20059-0002
(202) 806-2650

Date: 2/1/12