

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2022-0026
)	
FPT – Pontiac Division, LLC)	Proceeding to Assess a Civil Penalty
Auburn Hills, Michigan)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is FPT – Pontiac Division, LLC (“Respondent”), a limited liability corporation doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 110 of the CAA, 42 U.S.C. § 7410, each state must submit to the Administrator of EPA (the “Administrator”) a plan for attaining and maintaining the National Ambient Air Quality Standards.

10. On May 6, 1980, EPA approved Mich. Admin. Code Rule 336.1910 as part of the federally enforceable state implementation plan (SIP) for the State of Michigan. 45 Fed. Reg. 29,790 (May 6, 1980).

11. Rule 336.1910 requires: “An air-cleaning device shall be installed, maintained, and operated in a satisfactory manner and in accordance with these rules and existing law.”

12. On May 6, 1980, EPA approved Mich. Admin. Code Rule 336.1201 as part of the federally enforceable SIP for the State of Michigan. 45 Fed. Reg. 29,790 (May 6, 1980).

13. Rule 336.1201(3) provides: “A permit to install may be approved subject to any condition, specified in writing, that is reasonably necessary to assure compliance with all applicable requirements.”

14. On June 27, 1988, the Michigan Department of Environmental Quality (MDEQ, now known as the Michigan Department of Environment, Great Lakes and Energy, or EGLE) issued Permit to Operate No. 120-80 (the “Permit”) to the predecessor in interest to Respondent for its Pontiac, Michigan facility.

15. On June 17, 1999, a representative of Respondent notified the MDEQ that it had acquired ownership of the Facility and acknowledged that Respondent was subject to all restrictions and conditions in the Permit.

16. Special Condition 18 of the Permit requires: “Applicant shall not operate the car shredder unless all four cyclones and fabric collector are installed and operating properly.”

17. Special Condition 19 of the Permit requires:

Applicant shall not operate this facility unless the program describing the frequency and recording of scheduled maintenance inspections of the collector is maintained. This program shall include the following:

- a. All fans, ducts and ripple boxes shall be inspected after each 8 hours of operation and cleaned when necessary.
- b. All cyclones shall be inspected after each 40 hours of operation and cleaned when necessary.
- c. A log book shall be maintained at the company office in which the hours of operation and all maintenance, repair and pollution control measures taken shall be recorded on a daily basis.

18. Under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, the Administrator of EPA may assess a civil penalty of up to \$51,796 per day of violation up to a total of \$414,364 for violations that occurred after November 2, 2015.

19. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

21. Respondent owns and operates a scrap metal processing facility, which includes a shredder, at 500 Collier Road, Auburn Hills, Michigan (the “Facility”).

22. Emissions from Respondent’s shredder are subject to the requirements in the Permit, including Special Conditions 18 and 19.

23. On July 9, 2018, EPA conducted an on-site inspection at the Facility. During this inspection, the EPA inspector observed that the ductwork located after the shredder, which pulls particulate emissions to the primary fabric filter, was missing a rubber flap which enclosed the open metal frame, in alleged violation of Special Condition 18 of the Permit (operation without a properly operating fabric collector).

24. On April 10, 2019, EPA sent a Request for Information to Respondent pursuant to Section 114 of the Clean Air Act. Among other information requested, EPA requested the records required by Special Condition 19.c of the Permit.

25. On June 1, 2019, Respondent submitted its response to EPA’s Request for Information.

26. The activity log provided by Respondent in response to EPA’s Request for Information covered January 1, 2016 through March 31, 2019. The activity log does not identify any daily maintenance inspections or hours of operation, in alleged violation of Special Condition 19.c of the Permit. The log identifies causes of breakdowns of the shredder but does not contain records of maintenance on the cyclones or fabric filter, in alleged violation of Special Condition 19.c of the Permit.

27. EPA alleges that FPT-Pontiac violated Special Condition 19 of the Permit from at least January 1, 2016 through March 31, 2019 by failing to prepare or keep maintenance records as required by the Permit.

28. On February 7, 2020, FPT-Pontiac provided a photo to EPA which indicated that the rubber flaps had been reinstalled on the collection hood. The photo included a date stamp indicating that the photo was taken on December 4, 2019.

29. EPA alleges that FPT-Pontiac violated Special Condition 18 of the Permit from at least July 9, 2018 through December 4, 2019 by operating while missing part of the hood that collects particulate matter to be routed to the fabric filter.

30. On February 4, 2020, and in subsequent teleconferences and information exchanges, representatives of FPT-Pontiac and EPA discussed EPA's allegations and resolution of the alleged violations, including the installation of replacement air pollution control equipment with documented design components.

31. On June 10, 2022, FPT-Pontiac was issued Permit to Install 120-80A (2022 Permit) by EGLE allowing it to install the replacement air pollution control equipment.

32. Concurrently with this CAFO, EPA and FPT-Pontiac are entering an Administrative Consent Order (ACO) to require replacement of the existing air pollution control equipment.

Civil Penalty

33. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, identified litigation risks, and Respondent's cooperation, prompt return to compliance, and agreement to replace its emission control equipment, Complainant has determined that an appropriate civil penalty to settle this action is \$45,000.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a \$45,000 civil penalty by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should
read: “D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

35. Respondent must send a notice of payment that states Respondent’s name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Steven P. Kaiser
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
kaiser.steven@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

36. This civil penalty is not deductible for federal tax purposes.

37. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

39. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: kaiser.steven@epa.gov (for Complainant), and johnsons@butzel.com (for Respondent).

40. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

41. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

42. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 40, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

43. Respondent certifies that it is complying fully with the federally enforceable state implementation plan (SIP) for the State of Michigan.

44. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

45. The terms of this CAFO bind Respondent, its successors and assigns.

46. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

47. Each party agrees to bear its own costs and attorney’s fees in this action.

48. This CAFO constitutes the entire agreement between the parties.

Ferrous Processing and Trading – Pontiac Division, Respondent

9-22-22

Date



Dave Dobronos, President
FPT-Pontiac Division, LLC

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

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Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order

In the Matter of: Ferrous Processing and Trading – Pontiac Division

Docket No. CAA-05-2022-0026

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

**ANN
COYLE**

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Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5