



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUN 30 2017

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jonathan H. Sandoz
Consolidated Grain and Barge Co.
5130 Port Road
Jeffersonville, Indiana 47130

Dear Jonathan H. Sandoz:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Consolidated Grain and Barge Co., docket no. CAA-05-2017-0030. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUNE 30, 2017

Pursuant to paragraph 50, of the CAFO, Consolidated Grain and Barge Co. must pay the civil penalty within 30 days of the filing date. Your check must display the case name and case docket number.

Please direct any questions regarding this case to John Matson, Associate Attorney, 312-886-2243.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Marshal".

Sarah Marshal, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
John Matson/C-14J
Phil Perry/PPERRY@idem.IN.gov

RECEIVED
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2017
REGIONAL HEARING CLERK
USEPA
REGION 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. CAA-05-2017-0030
)
Consolidated Grain and Barge)
Co.,) Proceeding to Assess a Civil Penalty
) Under Section 113(d) of the Clean Air Act,
) 42 U.S.C. § 7413(d)
Jeffersonville, Indiana,)
)
Respondent.)
_____)

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 Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Consolidated Grain and Barge Co., (CGB or Respondent), a company that owns and operates a facility located in Jeffersonville, Indiana.

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). *See* 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 or legal 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

A. Federally Enforceable State Operating Permit Requirements

9. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including “major sources” of air pollution. The purpose of Title V is to ensure that all applicable requirements, including PSD requirements, are included in the Title V operating permit for the source.

10. A “major source” is defined in part, as any stationary source that emits, or has the potential to emit, 100 tons per year (tpy) of any regulated pollutant. *See* Section 501(2)(B) of the CAA, 42 U.S.C. § 7661, 40 C.F.R. § 70.2, and the Indiana State Implementation Plan (SIP) at 326 IAC 2-7-1(22).

11. A “major source” is required to have a Part 70 permit. *See* 40 C.F.R. § 70.3, and the Indiana SIP at 326 IAC 2-7-2(a).

12. No source subject to Part 70 requirements may operate after the time that it is required to submit a timely and complete application except in compliance with a duly issued Part 70 permit. *See* 40 C.F.R. § 70.7(b), and the Indiana SIP at 326 IAC 2-7-3.

13. On June 28, 1989, EPA issued guidance on federally enforceable state operating permits (FESOP) establishing federally enforceable limits in facilities permits. *See* 54 Fed. Reg. 27274.

14. Pursuant to EPA's FESOP guidance, approved state FESOP programs could allow a "major source" to legally avoid obtaining a Part 70 permit by applying for the issuance of a FESOP which limits its potential to emit below the applicability standard of Part 70.

15. On October 25, 1994, the Indiana Department of Environmental Management (IDEM) submitted to EPA a proposed revision to the Indiana SIP establishing a FESOP program in Indiana.

16. On August 18, 1995, EPA approved Indiana's FESOP program as part of the federally enforceable Indiana SIP. *See* 60 Fed. Reg. 43008. Indiana's FESOP program is set forth at Ind. Admin. Code tit. 326, r. 2-8-1 through 2-8-17, and in the Indiana SIP at 326 IAC 2-8-1 through 2-8-17.

17. A source required by the Indiana SIP at 326 IAC 2-7-2(a) to have a Part 70 permit (Indiana's federally approved Title V operating permit program) may apply to IDEM for a FESOP. *See* the Indiana SIP at 326 IAC 2-8-2.

18. A FESOP granted under Indiana's FESOP Program creates federally enforceable limitations on a facility's potential to emit certain regulated pollutants. *See* 60 Fed. Reg. 43008, and the Indiana SIP at 326 IAC 2-8-1 through 2-8-17.

B. Indiana State Implementation Plan Opacity Requirements

19. On July 16, 2002, EPA approved as part of the SIP for the State of Indiana, revised opacity rules set forth in the Indiana Administrative Code at 326 IAC 5-1-1 to 5-1-8. *See* 67 Fed. Reg. 46589. The federally enforceable opacity requirements of 326 IAC 5-1-1 to 5-1-8 are set forth in the Indiana SIP at 326 IAC 5-1 to 5-1-8.

20. The opacity limitations set forth in the Indiana SIP at 326 IAC 5-1 [Ind. Admin. Code tit. 326, r. 5-1-2(2)] apply to facilities in the areas set forth therein, including Jeffersonville Township in Clark County, Indiana. *See* the Indiana SIP at 326 IAC 5-1 [Ind. Admin. Code tit. 326, r. 5-1-1(c)(1)].

C. EPA's Enforcement and Penalty Authority

21. EPA may enforce all terms and conditions in a FESOP, including any provisions designed to limit a source's potential to emit. *See* the Indiana SIP at 326 IAC 2-8-6(b).

22. Pursuant to 40 C.F.R. § 52.23, a person failing to comply with any permit limitation or condition contained within a permit to operate issued under an EPA-approved regulatory program that is incorporated into a SIP, shall render that person in violation of the SIP, thus making that person subject to an enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413.

23. Pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator of EPA (the Administrator) may *inter alia*, without regard to the period of violation, issue an administrative penalty order pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

24. The Administrator may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for the CAA violations that occurred after January 12, 2009 through December 6, 2013, \$37,500 per day of violation up to a total of \$320,000 for violations that occurred after December 6, 2013 through November 2, 2015, and/or \$45,268 per day of violation with a maximum of \$362,141 for violations that occurred after November 2, 2015, pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

25. Section 113(d)(1) of the CAA 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

26. 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

27. CGB is a subsidiary of CGB Enterprises, Inc., a corporation headquartered in Covington, Louisiana.

28. CGB is a "person," as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

29. At all times relevant to this Complaint, CGB owned and operated a grain elevator located at 5130 Port Road, Jeffersonville, Indiana (Facility).

30. The Facility is located in Jeffersonville Township, Clark County, Indiana, thus making the Facility a source listed in the Indiana SIP at 326 IAC 5-1 [Ind. Admin. Code tit. 326, r. -1(c)].

31. From 2005 through the present, Clark County was designated as a non-attainment area for the 1997 PM_{2.5} standard. *See 76 Fed. Reg.* 12860 (March 9, 2011) and 40 C.F.R. § 81.336.

32. On August 30, 2012, IDEM issued to CGB a Sixth Amendment to FESOP No. F019-21478-00001 (CGB's FESOP) limiting the Facility's potential to emit Particulate Matter (PM) to less than 250 tons per year (tpy), and identifying the Facility as a non-major source at Section A.1.

33. The Facility has the potential to emit more than 250 tpy of PM without the limitations contained in CGB's FESOP.

34. The Facility is a "major emitting facility" within the meaning of Section 169(1) of the CAA, 42 U.S.C. § 7479(1), and is a "major stationary source" within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a) without the limitations contained in CGB's FESOP.

35. Emissions from CGB's Facility are subject to the Indiana SIP opacity limitations set forth at 326 IAC 5-1 [Ind. Admin. Code tit. 326, r. 5-1-2(2)], as set forth in CGB's FESOP.

36. On February 12, 2013, EPA conducted an inspection of the Facility.

37. EPA issued Notices of Violation to CGB on May 15, 2013 and on March 31, 2015.

Count I

38. Complainant re-alleges and incorporates Paragraphs 9 through 37 as if set forth in this paragraph.

39. Pursuant to the Indiana SIP at IAC 2-8-4, and in order to render the PSD requirements of 326 IAC 2-2, *et seq.* not applicable to the Facility, Section D. 1 .1(b) of CGB's FESOP requires that CGB comply with 12-month throughput limits on the total throughput of grain, grain by-products, and gluten (collectively "Grain Throughput") processed by specified processes at the Facility (the 12-month Rolling Throughput Limits).

40. At all times relevant to this Complaint, the 12-month Rolling Throughput Limit for the grain dryer at the Facility was 116,000 tons per year (tpy). *See* Section D.1.1(b) of CGB's FESOP.

41. CGB's compliance with the 12-month Rolling Throughput Limit for the grain dryer set forth in Section D.1.1 (b) of CGB's FESOP is determined at the end of each month based on the prior twelve consecutive month time period.

42. On January 31, 2013, April 9, 2014, July 7, 2014, and October 7, 2014, CGB submitted FESOP Certification quarterly reports to IDEM (FESOP Certification Quarterly Reports), as required by CGB's FESOP.

43. The FESOP Certification Quarterly Reports showed that CGB's 12-month rolling total Grain Throughput at its grain dryer for each month from December 2013 to September 2014 was:

Table 1	Dryer
Month/Year	12-Month Rolling Total Throughput
13-Dec	145,073
14-Jan	161,663
14-Feb	160,465
14-Mar	160,465
14-Apr	160,465
14-May	160,465
14-Jun	161,766
14-Jul	164,314
14-Aug	163,560
14-Sep	163,146

44. CGB's failure to comply with the 12-Month Rolling Throughput Limit on the total Grain Throughput processed by the grain dryer at its Facility set forth in Section D.1.1 (b) of CGB's FESOP violated the Indiana SIP at 326 IAC 2-8-4, 326 IAC 2-2 *et seq.*, and 326 IAC 2-3 *et seq.*

Count II

45. Complainant re-alleges and incorporates Paragraphs 9 through 37 as if set forth in this paragraph.

46. Part D. 1 .2(d)(3) of CGB's FESOP incorporates the opacity limit set forth in the Indiana SIP at 326 IAC 6.5-1 [Ind. Admin. Code tit 326, r. 6.5-1-2(2)(C)], requiring CGB to limit opacity emissions from the affected areas, operations, equipment, and systems to less than twenty percent (20%) opacity.

47. On February 12, 2013, a certified EPA inspector read opacity at the Facility's barge loading area in accordance with 40 C.F.R. Part 60, Appendix A, Reference Method 9. The inspector's readings are shown in Exhibit 1 to this CAFO.

48. On February 12, 2013, the opacity emissions from the barge loading area at the Facility violated the opacity limits in Parts C.2(a) and D.1.2(d)(3) of CGB's FESOP and the applicable Indiana SIP opacity limitations at 326 IAC 5-1 [Ind. Admin. Code tit. 326, r. 5-1-2(2)(A)] and 326 IAC 6.5-1 [Ind. Admin. Code tit. 326, r. 6.5-1-2(2)(C)].

Civil Penalty

49. 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 and cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$62,500.00.

50. Within 30 days after the effective date of this CAFO, Respondent must pay a \$62,500.00 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Or, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

51. 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:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

John C. Matson (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

53. 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.

54. 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

54. 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

55. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: matson.john@epa.gov (for Complainant), and eboyd@thompsoncoburn.com and jonathan.sandoz@cgb.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

56. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Notices of Violation EPA issued to CGB on May 15, 2013 and on March 31, 2015.

57. 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.

58. 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 56, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

59. Respondent certifies that it is complying fully with its FESOP and with all applicable requirements of the Indiana SIP.

60. 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).

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


62. 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.

63. Each party agrees to bear its own costs and attorneys’ fees in this action.

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


Consolidated Grain and Barge Co., Respondent

JUNE 6, 2017
Date


Jonathan H. Sandoz, Secretary
Consolidated Grain and Barge Co.

United States Environmental Protection Agency, Complainant

6/29/17
Date



Edward Nam
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of Consolidated Grain and Barge Co.
Docket No.**

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.

6/30/17
Date


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

Consent Agreement and Final Order
In the matter of: Consolidated Grain and Barge Co.
Docket Number: CAA-05-2017-0030

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number [**CAA-05-2017-0030**], which was filed on [*6/30/2017*], in the following manner to the following addressees:

Copy by Certified Mail to Respondent: Jonathan H. Sandoz
Consolidated Grain and Barge Co.
5130 Port Road
Jeffersonville, Indiana 47130

*Certified mail copy sent on July 3, 2017
LA WH*

Copy by E-mail to Attorney for Complainant: John Matson
matson.john@epa.gov

Copy by E-mail to Attorney for Respondent: Eric Boyd
EBoyd@thompsoncoburn.com

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

*on July 3, 2017
LA WH*

Dated: 6/30/2017 *LA WH* for
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): _____