



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 25 2008

REPLY TO THE ATTENTION OF
AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Katherine Hodge, Esq.
Hodge, Dwyer, and Zeman
3150 Roland Avenue
Springfield, Illinois 62703

Dear Ms. Hodge:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves Vesuvius USA Corporation, CAA Docket No. CAA-05-2008-0040. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on 26 Sept. 2008.

Pursuant to Paragraph 33 of the CAFO, Vesuvius USA Corporation must pay the \$25,000.00 civil penalty within 30 days of the date the CAFO was filed, 26 Sept. 2008. The check must display the case docket number, CAA-05-2008-0040, and the billing document number, 2750803A034.

Please direct any questions regarding this case to Susan Prout, Associate Regional Counsel, (312) 353-1029.

Sincerely yours,

William MacDowell, Chief
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

Cc: Julie Armitage, Section Manager
Compliance and Systems Management Section
Illinois Environmental Protection Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2008-0040
)	
Vesuvius USA Corporation)	Proceeding to Assess a Civil Penalty
Charleston, Illinois,)	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 Act), 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 Vesuvius USA Corporation (Vesuvius or Respondent), a corporation doing business in Illinois.

4. Pursuant to 40 C.F.R. § 22.13(b), 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).

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. Vesuvius consents to entry of this CAFO and the assessment of the specified civil

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penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

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

8. Vesuvius 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. Section 608 of the Act, 42 U.S.C. § 7671g, requires the Administrator of EPA to promulgate regulations establishing standards and requirements regarding the use and disposal of “Class I” and “Class II” ozone-depleting substances.

10. On May 14, 1993, in accordance with Section 608 of the Act, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F, applicable to Recycling and Emissions Reduction (the Subpart F regulations).

11. 40 C.F.R. § 82.150(b) provides that the Subpart F regulations apply to any “person” servicing, maintaining, or repairing “appliances,” as those terms are defined at 40 C.F.R. § 82.152.

12. The Subpart F regulations, at 40 C.F.R. § 82.156(i)(2), require that an owner or operator of industrial process refrigeration equipment normally containing more than 50 pounds of refrigerant must have leaks repaired if the appliance is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge during a 12-month period. Repairs must bring annual leak rates to below 35 percent during a twelve month period.

13. The Subpart F regulations, at 40 C.F.R. § 82.156(i)(9), require that owners or operators of industrial process refrigeration equipment must repair leaks pursuant to 40 C.F.R.

§ 82.156(i)(2) within 30 days after discovery of the leak.

14. The Subpart F regulations, at 40 C.F.R. § 82.156(i)(3), require that an owner or operator of industrial process refrigeration equipment conduct an initial verification test at the conclusion of the repair efforts.

15. The Subpart F regulations, at 40 C.F.R. § 82.156(i)(3), require that an owner or operator of industrial process refrigeration equipment conduct a follow-up verification test within 30 days after the initial verification test.

16. The Subpart F regulations, at 40 C.F.R. § 82.156(i)(6), state that an owner or operator of industrial process refrigeration equipment are not required to repair a leak if they develop a one-year retrofit or retirement plan within 30 days of discovering the exceedance of the applicable leak rate or within 30 days of a failed follow-up verification test. The plan must be dated and kept at the site of the appliance.

17. The Subpart F regulations, at 40 C.F.R. § 82.156(i)(3)(ii), require that an owner or operator of industrial process refrigeration equipment must retrofit or retire such equipment within one year of failing the follow-up verification test.

18. The Subpart F regulations, at 40 C.F.R. § 82.156(i)(3)(iii), require that an owner or operator of industrial process refrigeration equipment that fails a follow-up verification test must notify EPA within 30 days of the failed follow-up verification test.

19. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

20. 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.

21. 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

22. Vesuvius owns and operates a facility in Charleston, Illinois, that manufactures ceramic parts for the iron and steel industry (the Facility). The Facility contains several industrial process refrigeration units with normal charges of over 50 pounds, including Unit 12.

23. Unit 12 is an "appliance" as defined in 40 C.F.R. § 82.152, and uses the class II refrigerant R-22.

24. On August 9, 2006, EPA conducted an inspection of the Facility which included a review of the maintenance records regarding Unit 12.

25. Between August 4, 2002, and September 26, 2003, Unit 12 experienced leaks that resulted in an annual leak rate exceeding 35 percent, in violation of 40 C.F.R. § 82.156(i)(2) and Section 608 of the Act, 42 U.S.C. § 7671g.

26. Within 30 days after September 26, 2003, Vesuvius failed to repair the leaks in Unit 12 within 30 days of detection in violation of 40 C.F.R. 156(i)(2) and Section 608 of the Act, 42 U.S.C. § 7671g.

27. Vesuvius failed to perform initial verification tests at Unit 12 to verify that the repairs performed on September 26, 2003, had brought the leak rates to below 35 percent in violation of 40 C.F.R. § 82.156(i)(3) and Section 608 of the Act, 42 U.S.C. § 7671g.

28. Within 30 days after September 26, 2003, Vesuvius failed to perform follow-up verification tests at Unit 12 to verify that the repairs performed on the units had brought the leak rates to below 35 percent in violation of 40 C.F.R. § 82.156(i)(3) and Section 608 of the Act, 42 U.S.C. § 7671g.

29. Within 30 days after September 26, 2003, Vesuvius failed to develop for Unit 12 a retrofit or retirement plan when repairs performed on the units were unable to bring the leak rate below 35 percent in violation of 40 C.F.R. § 82.156(i)(6) and Section 608 of the Act, 42 U.S.C. § 7671g.

30. Vesuvius failed to retrofit or retire the Unit 12 within one year following the exceedance of the applicable leak rate or a failed follow-up verification test in violation of 40 C.F.R. § 82.156(i)(3)(ii) and Section 608 of the Act, 42 U.S.C. § 7671g.

31. Vesuvius failed to notify EPA within 30 days of failed follow-up verification tests at Unit 12, in violation of 40 C.F.R. § 82.156(i)(3)(iii) and Section 608 of the Act, 42 U.S.C. § 7671g.

Civil Penalty

32. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Vesuvius' cooperation, prompt return to compliance, and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$25,000.

33. Within 30 days after the effective date of this CAFO, Vesuvius must pay a

\$25,000 civil penalty by sending a cashier's or certified check payable to the "Treasurer, United States of America," and noting the case name, docket number of this CAFO and the billing document number to:

for checks sent by regular
U.S. Postal Service mail:

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

for checks sent by express mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

Or by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York

ABA No. 021030004

Account No. 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, NY 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 the case name, the docket number of this CAFO and the billing document number.

34. If paying by check, Vesuvius must include a transmittal letter that accompanies the payment and which states the case name, the case docket number, and the billing document number must accompany the payment. Vesuvius must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

Susan Prout, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

36. If Vesuvius does not pay timely the civil penalty, or any stipulated penalties due under paragraph 50, below, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

37. Pursuant to 31 C.F.R. § 901.9, Vesuvius 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. Vesuvius must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Vesuvius must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

Supplemental Environmental Project

38. Vesuvius must complete a supplemental environmental project (SEP) designed to protect the environment and public health by reducing the amount of greenhouse gases and volatile organic compounds that may be released into the environment. Specifically, Vesuvius must complete a project that involves replacing the existing mix plant incinerator (FI-6) at the Facility with a Regenerative Thermal Oxidizer (RTO). The RTO must control volatile organic compound (VOC) emissions from the run cycle of Tube Dryers TD-2 and TD-3. Vesuvius shall also install piping to vent the purge cycle VOC emissions from Tube Dryers TD-2 and TD-3 to the RTO.

39. Vesuvius must complete the SEP as follows:

- a. Vesuvius shall file an application with the Illinois Environmental Protection Agency (IEPA) for a construction permit for the RTO within 90 days of the effective date of this CAFO;
- b. Vesuvius shall commence construction of the RTO within 90 days of the issuance of the construction permit by the IEPA;
- c. The RTO shall be installed and fully operational within 150 days after commencing construction of the RTO; and
- d. Vesuvius shall thereafter conduct testing on the RTO after receiving approval by the Illinois EPA of testing protocol and subject to scheduling with vendor.

40. Vesuvius must spend at least \$215,000 to plan, implement, and operate the SEP for purposes of this CAFO.

41. For federal income tax purposes, Vesuvius agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

42. Vesuvius must maintain the SEP following its implementation for the duration of the lifetime of the RTO.

43. Vesuvius certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Vesuvius further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

44. EPA may inspect the Facility at any time to monitor Vesuvius' compliance with this CAFO's SEP requirements.

45. Vesuvius must submit to EPA a SEP Completion Report within 30 days of completion of the actions described above in paragraph 39. This completion report must contain the following information:

- a. detailed description of the SEP as completed;
- b. description of any operating problems and the actions taken to correct the problems;
- c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks or other documents that specifically identify and itemize the individual costs of the goods and services;
- d. certification that Vesuvius has completed the SEP in compliance with this CAFO; and

e. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

46. Vesuvius must submit all SEP notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

47. In each report that Vesuvius submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

48. Following receipt of the SEP completion report described in paragraph 44 above, EPA must notify Vesuvius in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Vesuvius 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 50

49. If EPA exercises option b, above, Vesuvius may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Vesuvius' objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Vesuvius a written decision on its objection. Vesuvius will comply with any

requirement that EPA imposes in its decision. If Vesuvius does not complete the SEP as required by EPA's decision, Vesuvius will pay stipulated penalties to the United States under paragraph 50, below.

50. If Vesuvius violates any requirement of this CAFO relating to the SEP, Vesuvius must pay stipulated penalties to the United States as follows:

- a. If the SEP is not completed satisfactorily, but the Vesuvius: i) made good faith and timely efforts to complete the project; and ii) certifies, with supporting documentation, that at least 90% of the amount of money which was required to be spent was expended on the SEP, no stipulated penalty is necessary;
- b. If the SEP is satisfactorily completed, but the Vesuvius spent less than 90 percent and more than 75 percent of the amount of money required to be spent for the project, a stipulated penalty of \$53,750 must be paid;
- c. If Vesuvius completed the SEP but the SEP is not satisfactory, or if Vesuvius halts or abandons work on the SEP, Vesuvius must pay \$75,000.
- d. If Vesuvius fails to comply with the schedule in paragraph 39, above, for implementing the SEP, or fails to submit timely the SEP completion report required by paragraph 45, above, then Vesuvius must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$200	1 st through 14 th day
\$400	15 th through 30 th day
\$600	31 st day and beyond

These penalties will accrue from the date Vesuvius was required to meet each milestone until it achieves compliance with the milestone.

51. EPA's determination of whether Vesuvius satisfactorily completed the SEP will bind Vesuvius.

52. Vesuvius must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Vesuvius will use the method of payment specified in paragraphs 33 and 34, above, and will pay interest, handling charges, and nonpayment penalties

on any overdue amounts.

53. Any public statement that Vesuvius makes referring to the SEP must include the following language, "Vesuvius USA Corporation undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Vesuvius USA Corporation for violations of the Clean Air Act."

General Provisions

54. This CAFO resolves Vesuvius' liability for federal civil penalties for the violations alleged in this CAFO.

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

56. This CAFO does not affect Vesuvius' responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 53, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

57. Vesuvius certifies that it is complying fully with 40 C.F.R. Part 82, Subpart F.

58. This CAFO constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Vesuvius' "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

59. The terms of this CAFO bind Vesuvius, its successors, and assigns.

60. Each person signing this CAFO 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.

61. Each party agrees to bear its own costs and attorneys' fees in this action.

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

63. The effective date of this CAFO is the date on which it is signed by the Regional Administrator.

Vesuvius USA Corporation, Respondent

SEPT. 23, 2008
Date

Donald M. Satina
Donald M. Satina, Esq.
Secretary and General Counsel
Vesuvius USA Corporation

United States Environmental Protection Agency, Complainant

9/25/08
Date

Cheryl L. Newton
Cheryl L. Newton
Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of: Vesuvius USA Corporation, Charleston, Illinois
Docket No. CAA-05-2008-0040

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.

9/25/08
Date

Walter W. Kovalich for
Lynn Buhl
Regional Administrator
U.S. Environmental Protection
Agency, Region 5

CASE NAME: In the Matter of Vesuvius USA Corp.
DOCKET No. CAA-05-2008-0040

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this document entitled "Consent Agreement and Final Order" in the office of the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be promptly mailed via certified mail, return receipt requested, to:

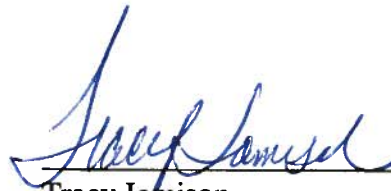
Katherine Hodge, Esq.
Hodge, Dwyer, & Zeman
3150 Roland Avenue
Springfield, IL 62703

Receipt No. 7001-0320-0006-0185-7170

and by first class mail, postage prepaid, to:

Julie Armitage, Section Manager
Compliance and Systems Management Section
Illinois Environmental Protection Agency
1021 North Grand Avenue
Springfield, IL 62702

Dated: September 26, 2008



Tracy Jamison
Office Automation Clerk
Air & Radiation Division
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, IL 60604-3590
(312) 886-6205

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