

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2023-0012
)	
Rain CII Carbon LLC)	Proceeding to Assess a Civil Penalty
Robinson, IL)	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 Rain CII Carbon LLC, a limited liability company doing business in Illinois.

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 and conclusions of law 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. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan that provides for the implementation, maintenance, and enforcement of primary and secondary National Ambient Air Quality Standards in each air quality control region (or portion thereof) within the state. Upon approval by EPA, the plan becomes a part of the applicable state implementation plan (“SIP”) for the state.

10. On May 31, 1972, EPA approved 35 Illinois Administrative Code (“Ill. Adm. Code” or “IAC”) Title (tit.) 201, “Permits and General Conditions,” into the federally enforceable SIP of Illinois. 37 Fed. Reg. 10,862 (May 31, 1972) (codified at 40 C.F.R. 52.722). Since then, EPA has approved several revisions of 35 IAC tit. 201 into the federally enforceable SIP. *See, e.g.*, 82 Fed. Reg. 30,363 (June 30, 2017).

11. 35 Ill. Adm. Code 201.144 states that “[n]o person shall cause or allow the operation of any existing emission source or any existing air pollution control equipment without first obtaining an operating permit from the [Illinois Environmental Protection] Agency (“Agency” or “IEPA”), except as provided in Section 201.146.”

12. On December 17, 1992, EPA approved the incorporation of the Illinois state operating permit program into the federally enforceable SIP of Illinois as 40 C.F.R. 52.737. 57 Fed. Reg. 59,935 (Dec. 17, 1992).

13. 40 C.F.R. 52.737 states that “[e]mission limitation and other provisions contained in operating permits issued by the State in accordance with the provisions of the federally approved permit program shall be the applicable requirements of the federally approved Illinois SIP for the purpose of section 113 of the Clean Air Act and shall be enforceable by USEPA and by any person in the same manner as other requirements of the SIP.”

14. On January 2, 2014, the IEPA issued Permit No. 95120092 (2014 Permit) to Rain CII Carbon.

15. Section 4.2(2)(f)(i)(A) of the 2014 Permit sets forth that pursuant to Section 39.5(7)(a) of the Illinois Environmental Protection Act (“Act”), Rain CII Carbon “shall maintain and operate all equipment associated with the Petroleum Coke Calcining Operations in a manner consistent with safety and good air pollution control practice for minimizing emissions.”

16. Section 4.2(2)(d)(i)(A)(II) of the 2014 Permit sets forth that pursuant to 35 IAC 215.302(c), for the kilns, emissions of organic material in excess of those permitted by 35 IAC 215.301 are allowable if Volatile Organic Materials (“VOM”) emissions are controlled by air pollution control equipment capable of reducing by 85 percent or more the uncontrolled organic material that would be otherwise emitted to the atmosphere.

17. On March 17, 2015, the Office of the Attorney General, on behalf of the People of the State of Illinois (“People”), filed a third amended complaint against Rain CII Carbon, LLC (Respondent). *See* Third amended compl., People v. Rain CII Carbon LLC, PCB No. 04-137 (Mar. 17, 2015).

18. On January 10, 2017, Rain CII Carbon electronically received the Stipulation and Settlement Agreement in the case referenced in item 17 above. In the terms of settlement, the “future compliance” section sets forth that:

- a. “Except during startup and malfunction/breakdown conditions of either Line #1 (Kiln #1) or Line #2 (Kiln #2), Respondent shall operate its pyro scrubbers as follows:
- b. Maintain a minimum temperature of 1800°F, measured at the thermocouple(s) located at the inlet to each pyro scrubber, using a 3-hour rolling average as per current Compliance Assurance Monitoring Plan (“CAM Plan”) and current CAAPP Permit; Monitor the pyro scrubber inlet temperatures of each unit, so as to ensure that the minimum temperature is maintained; and
- c. Utilize the inlet temperature of each pyro scrubber as the CAM indicator and develop a CAM indicator range.”

19. On May 13, 2019, the IEPA issued Permit No. 95120092 to Rain CII Carbon (“2019 Permit”). This permit reflects the future compliance set forth in the January 10, 2017 Stipulation and Settlement Agreement.

20. Section 4.2(4)(a)(i)(A) of the 2019 Permit sets forth that pursuant to 35 IAC 201.149, 201.261, and 201.262, Rain CII Carbon is authorized to operate kiln 1 and kiln 2 and their associated pyroscrubbers in violation of the applicable requirements of Condition 4.2(2)(a)(i)(A), 4.2(2)(b)(i)(A), and 4.2(2)(d)(i)(A) during start-up. The start-up time shall be no more than 24 hours. For this purpose, the start-up time is defined as the duration from when green coke feed is introduced to the kiln until the temperature at the pyroscrubber inlet achieves the minimum operating temperature indicated in the CAM plan.

21. Pursuant to 40 C.F.R. 64.7(a) and Section 7.5(b). of the 2019 Permit, Rain CII Carbon shall comply with the monitoring requirements of the CAM Plans described in Section 7.5(e) of the 2019 Permit.

22. Section 4.2(2)(f)(i)(A) of the 2019 Permit sets forth that the Permittee shall maintain and operate all equipment associated with the Petroleum Coke Calcining Operations according to manufacturer specifications and in a manner consistent with safety and good air pollution control practice for minimizing emissions.

23. Section 4.2(2)(f)(i)(E) of the 2019 Permit sets forth that except during start-up and malfunction/breakdown conditions of either Line #1 (Kiln #1) or Line #2 (Kiln #2), the Permittee must maintain a 3-hour rolling average minimum temperature of 1800°F at its pyroscrubbers, measured at the thermocouples located at the inlet to each pyroscrubber.

24. Section 4.2(4)(b)(i)(C)-(D) of the 2019 Permit sets forth that for baghouse maintenance lasting up to thirty minutes, emissions from Cooler 1 may be vented through Pyroscrubber 1, and emissions from Cooler 2 may be vented through Pyroscrubber 2.

25. The Administrator of EPA (the Administrator) 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 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

26. 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.

27. 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

28. Rain CII Carbon owns and operates a petroleum and coal products manufacturing facility at 12187 E 950th Avenue, Robinson, IL 62454.

29. On January 23, 2020, EPA issued an information request (“January 2020 Information Request”) to Rain CII pursuant to Section 114(a)(1)(G) and (a)(2) of the CAA, 42 U.S.C. § 7414(a)(1)(G) and (a)(2). EPA requested information including 3-hour rolling average temperatures of the Pyroscrubber inlets, cooler gas diversions, and hourly green coke feed rates from January 2016 to present.

30. On December 21, 2020, EPA issued an information request (“December 2020 Information Request”) to Rain CII pursuant to Section 114(a)(1)(G) and (a)(2) of the CAA, 42 U.S.C. § 7414(a)(1)(G) and (a)(2). EPA requested information including baghouse bag replacements, baghouse pressure drops, cooler gas diversions procedures, baghouse maintenance information, and baghouse cleanout actions for specific dates.

31. On September 9, 2021, EPA issued to Rain CII Carbon a Notice of Violation alleging that it violated the SIP provisions for federally enforceable operating permit limitations and provisions by failing to maintain a 3-hour rolling average minimum temperature of 1800°F at its pyroscrubbers and repeat cooler gas diversions for non-maintenance offline baghouse cleanouts.

32. On November 3, 2021, representatives of Rain CII Carbon and EPA discussed the September 9, 2021, Notice of Violation.

33. Rain CII Carbon violated 35 IAC 215.302(c), Section 39.5(7)(a) of the Act, and Section 4.2(2)(d)(i)(A)(II) of the 2014 Permit by failing to maintain the pyroscrubbers at a 3-hour rolling average minimum temperature of 1800°F for four events where coke was in the kiln.

34. Rain CII Carbon violated Section 4.2(2)(f)(i)(E) of the 2019 Permit by failing to maintain a 3-hour rolling average minimum temperature of 1800°F, measured at the thermocouples located at the inlet to each pyroscrubber for seven events where coke was in the kiln.

35. Rain CII Carbon violated Section 4.2(2)(f)(i)(A) of the 2019 Permit by diverting cooler gas through pyroscrubbers during 449 offline baghouse cleanouts between May 14, 2019, and February 12, 2020. In particular for 155 of those 449 offline baghouse cleanouts, multiple offline baghouse cleanouts occurred within a 24-hour period on 62 days.

Civil Penalty

36. 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 Rain CII Carbon’s cooperation in resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$125,000.

37. Within 30 days after the effective date of this CAFO, Respondent must pay a \$125,000 civil penalty by Automated Clearinghouse (ACH) electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

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

38. 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

Robert H. Smith
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
smith.roberth@epa.gov

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

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

40. If Respondent does not pay timely the civil penalty, then 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.

41. 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 attorney's 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

42. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: smith.roberth@epa.gov (for Complainant), and todd.silliman@dentons.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

44. 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.

45. 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 43, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

46. Respondent certifies that it is complying fully with its 2019 Permit, 35 IAC 215.302(c), and Section 39.5(7)(a) of the Act.

47. 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).

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

49. 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.

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

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

Rain CII Carbon LLC, Respondent

13FEB23

Date

Dan Fearday
Plant Manager
Rain CII Carbon LLC

United States Environmental Protection Agency, Complainant

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: Rain CII Carbon LLC
Docket No. CAA-05-2023-0012**

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