



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

MAR 30 2017

REPLY TO THE ATTENTION OF:

VIA E-MAIL

Mike McMahon
McMahon DeGulis LLP
812 Huron Rd E #650
Cleveland, OH 44115
Email: mmcmahon@mdllp.net

Dear Mr. McMahon:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Rust-Oleum docket no. CAA-05-2017-0018. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on March 30, 2017.

Pursuant to paragraph 53 of the CAFO, Rust-Oleum must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Gary Steinbauer, Associate Regional Counsel, 312-886-4306.

Sincerely,

A handwritten signature in black ink that reads "Brian Dickens".

Brian Dickens, Chief
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Gary Steinbauer/C-14J
Maria Hill, WDNR/Maria.Hill@wisconsin.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Rust-Oleum Corporation
Pleasant Prairie, Wisconsin

Respondent.



Docket No. CAA-05-2017-0018

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air Act,
42 U.S.C. § 7413(d)

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 Rust-Oleum Corporation (Rust-Oleum), a corporation incorporated in Illinois and doing business in Wisconsin.
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. Each state must submit to the Administrator of EPA an implementation plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the CAA, 42 U.S.C. § 7410.

10. On January 18, 1995, EPA approved Wisconsin's Federally Enforceable State Operating Permits (FESOP) program as part of the Wisconsin State Implementation Plan (SIP). 60 Fed. Reg. 3538.

11. On February 6, 2006, EPA approved Wisconsin's Registration Permit program, to exempt facilities with low annual emissions from the FESOP program, as part of the Wisconsin SIP. 71 Fed. Reg. 5979. The Registration Permit program became effective on March 8, 2006.

12. Wisconsin's Registration Permits are provided for in the Wisconsin Statutes at 10 Wis. Stats. § 285.60(2g), with implementing regulations found at Wisconsin Administrative Code (Wis. Admin. Code) NR §§ 406.17 and 407.105. These Registration Permits authorized under 10 Wis. Stats. § 285.60 include registration permits known as Type A Registration Permits (ROP-A) and Type B Registration Permits (ROP-B).

13. According to Wis. Admin. Code NR § 407.105(2)(a)1., a Registration Permit is appropriate for facilities whose calendar year sum of actual emissions of each air contaminant do

not exceed 25% of any major source threshold set forth in Wis. Admin. Code NR § 407.02(4). *See also* Wis. Admin. Code NR § 406.17(2)(a)1.

14. The major stationary source threshold is 100 tons per year (tpy) for volatile organic compounds (VOCs) in areas classified as “marginal” or “moderate” nonattainment. Wis. Admin. Code NR § 407.02(4); 40 C.F.R. § 70.2.

15. On August 15, 1994, EPA approved revisions to the Wisconsin SIP for ozone. These revisions included the approval of Wis. Admin. Code NR § 424 into the Wisconsin SIP. 59 Fed. Reg. 41709.

16. Wis. Adm. Code NR § 424 applies to all process lines which emit organic compounds, solvents or mixtures located within the Southeastern Wisconsin Intrastate Air Quality Control Region on which construction or modification was commenced after April 1, 1972, with certain exceptions inapplicable here.

17. Wis. Adm. Code NR § 424.03(2) provides that process lines on which construction or modification commenced on or after August 1, 1979 and which are not subject to emission limitations listed elsewhere in Wis. Admin. Code NR § 419 or § 423 shall control VOC emissions by at least 85%, unless 85% control has been demonstrated to be technologically infeasible for a specific process line.

18. Under Section 112 of the CAA, U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing (NESHAP Subpart CCCCCC) on December 3, 2009. 74 Fed. Reg. 63504. This Subpart is codified at 40 C.F.R. §§ 63.11599 –63.11607.

19. 40 C.F.R. § 63.11599(a) provides that “[y]ou are subject to this subpart if you own or operate a facility that performs paints and allied products manufacturing that is an area

source of hazardous air pollutant (HAP) emissions and processes, uses, or generates materials containing HAP, as defined in [40 C.F.R.] § 63.11607.”

20. 40 C.F.R. § 63.11599(b) provides that the “affected source” consists of “all paints and allied products manufacturing processes that process, use, or generate materials containing HAP at the facility.” An affected source is “existing” if its construction or reconstruction commenced before June 1, 2009. 40 C.F.R. § 63.11599(b)(1).

21. 40 C.F.R. § 63.11607 defines “paints and allied products manufacturing” as “the production of paints and allied products, the intended use of which is to leave a dried film of solid material on a substrate. Typically, the manufacturing processes that produce these materials are described by Standard Industry Classification (SIC) codes 285 or 289 and North American Industry Classification System (NAICS) codes 3255 and 3259 and are produced by physical means, such as blending and mixing, as opposed to chemical synthesis means, such as reactions and distillation. Paints and allied products manufacturing does not include: (1) The manufacture of products that do not leave a dried film of solid material on the substrate, such as thinners, paint removers, brush cleaners, and mold release agents; (2) The manufacture of electroplated and electroless metal films; (3) The manufacture of raw materials, such as resins, pigments, and solvents used in the production of paints and coatings; and (4) Activities by end users of paints or allied products to ready those materials for application.”

22. 40 C.F.R. § 63.11607 defines “paints and allied products” as “materials such as paints, inks, adhesives, stains, varnishes, shellacs, putties, sealers, caulks, and other coatings from raw materials that are intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives.”

23. 40 C.F.R. § 63.11607 defines “material containing HAP” as “material containing benzene, methylene chloride, or compounds of cadmium, chromium, lead, and/or nickel, in amounts greater than or equal to 0.1 percent by weight for carcinogens, as defined by the Occupational Safety and Health Administration at 29 CFR 1910.1200(d)(4), or 1.0 percent by weight for non-carcinogens, as shown in formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet for the material. Benzene and methylene chloride are volatile HAP. Compounds of cadmium, chromium, lead and/or nickel are metal HAP.”

24. 40 C.F.R. § 63.11603(a)(1) requires owners and operators of existing affected facilities to submit an Initial Notification of Applicability no later than June 1, 2010.

25. 40 C.F.R. § 63.11603(a)(2) requires owners and operators of existing affected facilities to submit a Notification of Compliance Status no later than June 3, 2013.

26. NESHAP Subpart CCCCCC requires owners and operators of affected sources to comply with certain emission control standards (40 C.F.R. § 63.11601), conduct certain inspections and monitoring activities (40 C.F.R. § 63.11602), and prepare an annual compliance certification report and keep certain records (40 C.F.R. § 63.11603(b)-(c)).

27. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred between January 13, 2009 and December 6, 2013, and up to \$320,000 for violations that occurred after December 6, 2013 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

28. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(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.

29. 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

30. Rust-Oleum owns and operates a paint manufacturing facility at 8105 Fergusson Drive, Pleasant Prairie, Wisconsin (facility). The NAICS Code for its facility is 325510. Emission units at the facility include storage tanks, mixing tanks, thindown tanks and four paint fill lines. Rust-Oleum currently uses enclosures and a regenerative thermal oxidizer (RTO) to control emissions from paint lines 1-4.

31. Rust-Oleum is a corporation, and is therefore a “person” as defined in Section 302 of the CAA, 42 U.S.C. § 7602.

32. Effective July 20, 2012, part of Kenosha County, including Pleasant Prairie, was designated marginal nonattainment for the 2008 8-hour ozone NAAQS. 77 Fed. Reg. 34221.

33. The Wisconsin Department of Natural Resources (WDNR) issued Rust-Oleum a Type A Registration Permit (ROP-A), number 23072040-ROPA, on November 25, 2009.

34. Condition A.1 of the ROP-A requires Rust-Oleum to limit its annual actual emission of VOCs and federally regulated hazardous air pollutants to less than 25% of any major source threshold set forth in Wis. Adm. Code § NR 407.02(4), on a calendar year basis.

35. For VOCs, 25% of the major source threshold in a moderate or marginal nonattainment area for the 2008 8-hour ozone NAAQS is 25 tons per year. Wis. Adm. Code NR § 407.02(4).

36. Condition A.3 of the ROP-A requires Rust-Oleum to comply with Wis. Admin. Code NR § 424.03 as applicable.

37. Rust-Oleum uses a control device that is listed in the ROP-A (e.g., regenerative thermal oxidizer) to reduce its facility-wide emissions. Thus, under Condition D.1.b. of the ROP-A, Rust-Oleum is required to use the control efficiencies listed in Section G of the Permit to calculate its annual actual emissions, unless an applicable requirement sets forth higher control efficiencies. Where the control efficiencies listed in Section G of the ROP-A and the specific control efficiencies required in an applicable requirement differ, the higher control efficiency may be used to calculate annual actual emissions.

38. Condition D.3. of the ROP-A requires Rust-Oleum to meet, at a minimum, the control efficiency listed in Section G of the ROP-A or the specific control efficiency required by an applicable requirement as defined under Wis. Admin. Code NR § 400.02(26), whichever one is higher.

39. Section G of the ROP-A requires sources using a thermal oxidizer with a hood to capture emissions to achieve a VOC control efficiency of at least 76%. Sources using a thermal oxidizer with a total enclosure are required to achieve a VOC control efficiency of at least 95%.

40. On February 11, 2014, EPA conducted an on-site inspection at Rust-Oleum's facility. During the inspection, Rust-Oleum's environmental manager told EPA that the air flow to the RTO was about 9,000 to 10,000 standard cubic feet per minute before the installation of paint fill line 4. Based on engineering calculations, the same environmental manager stated that

air flow to the RTO since the installation of paint fill line 4 should be about 14,000 to 15,000 cubic feet per minute.

41. On April 17, 2014, Rust-Oleum conducted three runs of EPA Reference Method 25A to determine the destruction efficiency of the RTO at the facility. The destruction efficiency of the RTO during the test was 99.6% and the air flow was measured to be 10,187 dry standard cubic feet per minute as an average over the three one-hour test runs.

42. Rust-Oleum collected additional samples to estimate the capture efficiency across its four paint lines on February 20, 2014. These samples were not collected pursuant to an approved method, but EPA's review of the method indicates that it is likely to produce reasonable results. This testing determined the capture efficiency of the paint fills lines to be 8% for line 1, 21% for line 2, 54% for Line 3, and 92% for line 4. According to this testing, the capture efficiency of the gashouses was 7% for line 1, 43% for line 3, and 52% for line 4. The capture efficiency of the gashouse for line 2 was not determined. Finally, the testing determined the capture efficiencies of the quart line to be 35% and the gallon line to be 20%.

43. Based on available information, Rust-Oleum did not meet the 85% control requirement for each process line as set forth in Wis. Admin. Code NR § 424.03(2)(b) and Condition A.3. of the ROP-A, nor did it meet the 95% control requirement set forth in Condition D.3. of the ROP-A for paint line 4, from March 1, 2014 until February 6, 2015.

44. At the facility, Rust-Oleum uses the following materials that contain compounds of cadmium, or nickel in amounts greater than 0.1 percent by weight, as shown on the Material Safety Data Sheet for the material:

- a. StaySteel: 16–18% chromium and 10–14% nickel
- b. Chromaflair: 1.0–10.0% chromium
- c. Chromium oxide green: greater than 98% chromic (III) oxide
- d. Siscotan yellow: 95–99% chromium

45. Rust-Oleum's facility is an affected facility pursuant to NESHAP Subpart CCCCCC because it is a paint and allied products manufacturing facility that processes, uses, or generates materials containing HAPs.

46. On October 22, 2014, Rust-Oleum submitted an Initial Notification of Applicability under NESHAP Subpart CCCCCC.

47. On November 18, 2014, Rust-Oleum submitted an Initial Notification of Compliance Status under NESHAP Subpart CCCCCC.

48. Rust-Oleum violated 40 C.F.R. §§ 63.11603(a)(1) and (a)(2) by failing to submit the required notifications by the applicable deadlines.

49. On September 10, 2014, EPA issued to Rust-Oleum a Notice and Finding of Violation alleging that it violated the Wisconsin SIP and NESHAP Subpart CCCCCC.

50. On November 13, 2014 and in several subsequent telephone calls and meetings, representatives of Rust-Oleum and EPA discussed the September 10, 2014 Notice and Finding of Violation.

51. Since receiving the September 10, 2014 Notice and Finding of Violation, Rust-Oleum has made the following changes at its facility to improve its air pollution control system: (1) Rust-Oleum installed, and verified the performance of, permanent total enclosures on the following emission units: Line 1 Filler, Conveyor & Valve; Line 1 Gasser; Line 2 Filler, Conveyor & Valve; Line 2 Gasser; Line 3 Filler & Gasser; Line 3 Pump Cabinet; Line 4 Filler; Line 4 Gasser; Gallon Line; Quart Line; Brushed Can Crushing; Big Aerosol Can Crushing; and Small Aerosol Can Crushing; and (2) Rust-Oleum installed a concentrator wheel to be used in conjunction with its existing regenerative thermal oxidizer.

52. In a letter, dated September 29, 2016, WDNR approved Rust-Oleum's request for coverage under WDNR's Type B Registration Permit (ROP-B).

53. Based upon actions taken by Respondent under paragraphs 51 and 52, Respondent has addressed the violations alleged above.

Civil Penalty

54. 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 Rust-Oleum's cooperation, and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$181,000.

55. Within 30 days after the effective date of this CAFO, Respondent must pay a \$181,000 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.

56. 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

Gary Steinbauer (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

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

58. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 59, below, 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.

59. 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 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

60. Consistent with the “Standing Order Authorizing E-Mail Service of Order 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: steinbauer.gary@epa.gov (for Complainant); and mmcmahon@mdllp.net (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

62. 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.

63. 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 61, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

64. Respondent certifies that it is complying fully with the Wisconsin SIP and NESHAP Subpart CCCCCC.

65. 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).

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

67. 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.

68. Each party agrees to bear its own costs and attorney fees in this action.

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

Rust-Oleum Corporation, Respondent

3/23/17

Date

Ken Clusman
Ken Clusman, Regional Director of Operations
Rust-Oleum Corporation

United States Environmental Protection Agency, Complainant

3/28/17

Date

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

Consent Agreement and Final Order
In the Matter of: Rust-Oleum Corporation
Docket No. CAA-05-2017-0018

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.

3/29/17

Date



Ann L. Coyle

Regional Judicial Officer

U.S. Environmental Protection Agency

Region 5

Consent Agreement and Final Order
In the matter of: Rust-Oleum
Docket Number: CAA-05-2017-0018

CERTIFICATE OF SERVICE

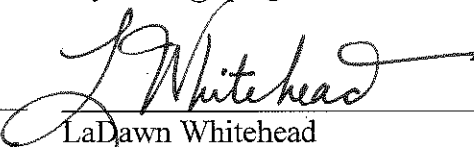
I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CAA-05-2017-0018**, which was filed on *3/30/2017*, in the following manner to the following addressees:

Copy by E-mail to Respondent: Ken Clusman
kclusman@rustoleum.com

Copy by E-mail to Attorney for Complainant: Gary Steinbauer
Steinbauer.gary@epa.gov

Copy by E-mail to Attorney for Respondent: Mike McMahon
mmcmahon@mdllp.net

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

Dated: *March 30, 2017* 

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5