



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

DEC 30 2008

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael Ottenweller
President
Ottenweller Company, Inc.
3011 Congressional Parkway
Fort Wayne, Indiana 46808

RE: Ottenweller - Consent Agreement and Final Order

Dear Mr. Ottenweller:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves Ottenweller Company Inc.'s CAA Docket No. CAA-05-2009-0008. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on _____.

Pursuant to Paragraph 31 of the CAFO, Ottenweller must pay the \$13,500 civil penalty within 30 days of the date the CAFO was filed, _____. The check must display the case docket number, CAA-05-2009-0008, and the billing document number, 2750903A007.

Please direct any questions regarding this case to Kathleen Schnieders, Associate Regional Counsel, at (312) 353-8912.

Sincerely yours,

Sara Breniman

For Brent Marable, Chief
Air Enforcement and Compliance Assurance
Section (IL/IN)

Enclosure

cc: Craig Henry
Indiana Department of Environmental Management

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DEC 30 2008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
ENVIRONMENTAL
PROTECTION AGENCY

IN THE MATTER OF:) Docket No. **CAA-05-2009-0008**
)
Ottenweller Company, Inc.) Proceeding to Assess a Civil Penalty under
Fort Wayne, Indiana) § 113(d) of the Clean Air Act, 42 U.S.C.
) § 7413(d)
Respondent)
_____)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced under § 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) 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 (2004).
2. Complainant is the Director of the Air and Radiation Division, U. S. Environmental Protection Agency, Region 5.
3. Respondent is Ottenweller Company, Inc. (Ottenweller), a corporation doing business in Indiana.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an 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) (2004).
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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Ottenweller admits the jurisdictional allegations in this CAFO, and neither admits nor denies the factual allegations in this CAFO.
8. Ottenweller 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 112 of the CAA requires EPA to list categories and subcategories of major sources and area sources of hazardous air pollutants (HAPs) and to establish National Emission Standards for Hazardous Air Pollutants (NESHAPs) for the listed categories and subcategories.
10. The Miscellaneous Metal Parts and Products (Surface Coating) category of major sources was listed on July 16, 1992 (57 Fed. Reg. 31576).
11. 40 C.F.R. Part 63, Subpart M MMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products (MACT Subpart M MMM), 40 C.F.R. §§ 63.3880 – 63.3981, was proposed July 2, 2004 (69 Fed. Reg. 130).
12. The effective date for MACT Subpart M MMM is January 2, 2004.
13. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.
14. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a), authorizes the Administrator to initiate an enforcement action whenever the Administrator finds, among other things, that any person has violated or is in violation of a requirement or prohibition of Title V of the Act, or any rule promulgated, issued or approved under Title V of the Act.
15. The Administrator may assess a civil penalty of up to \$27,500 per day of violation of the Act 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 (2004).
16. Section 113(d)(1) of the Act 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.

Factual Allegations

17. Ottenweller owns and operates a general use metal coating facility at 3011 Congressional Parkway, Fort Wayne, Indiana.
18. Ottenweller is a major source of HAPs, rendering it subject to 40 C.F.R. Part 63, subpart MMMM.
19. The facility has a Title V permit, number T003-15688-00224, issued by the Indiana Department of Environmental Management on January 29, 2003.
20. The MACT Subpart MMMM requirements are incorporated into the facility's permit.
21. The facility is an affected source, as that term is defined by 40 C.F.R. § 63.3381(b), and as indicated in the facility's permit.
22. The facility was constructed prior to August 13, 2002, and is therefore an existing source, as defined by 40 C.F.R. § 63.3882, and as indicated in the facility's permit.
23. 40 C.F.R. § 63.3890 (b)(1) states that existing sources must limit organic HAP emissions to the atmosphere from the affected source to the applicable limit.
24. For each existing general use coating affected source the organic HAP emissions limit is no more than 0.31 kg (2.6 lb) organic HAP per liter (gal) coating solids used during each 12-month compliance period.
25. MACT Subpart MMMM requires that existing affected sources be in compliance by January 2, 2007.
26. On May 12, 2008, EPA issued a Finding of Violation (FOV) to Ottenweller for violating MACT Subpart MMMM.
27. On June 19, 2008, EPA met with Ottenweller in a Section 113 Conference to discuss the violations alleged in the FOV and any actions the company had taken to come into compliance.
28. Following the 113 Conference, Ottenweller changed to lower HAP or no HAP coatings and installed a new paint mixing system to reduce its rolling 12 month average HAP to solids ratio to under the 2.60 limit.

Violations

29. According to Ottenweller's February 14, 2008, Notification of Compliance Status, its 12 month rolling average of 3.63 lb of organic HAP per gallon coating solids exceeded the limit for its initial one-year compliance period. This constitutes a violation of MACT Subpart MMMM, § 63.3890, and Section D.1.9 of its Title V permit.

Terms of Settlement

Civil Penalty

30. 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, Ottenweller's agreement to perform Supplemental Environmental Projects (SEPs), and information that Ottenweller has submitted, EPA has determined that an appropriate civil penalty to settle this action is \$ 13,500.
31. Ottenweller must pay the \$ 13,500 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America" within 30 days after the effective date of this CAFO to the following address:

US checks sent by regular US Postal Service mail:

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

US checks in US dollars sent by Fed Ex and other non-US-Postal-Service express mail:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

32. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter 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

Kathleen K. Schnieders, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

33. This civil penalty is not deductible for federal tax purposes.
34. If Ottenweller does not pay timely the civil penalty, 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.
35. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Ottenweller will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Ottenweller will 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 Projects

36. Ottenweller agrees to complete two SEPs designed to further protect the environment and public health by reducing emissions of HAPs from its facility.
37. Ottenweller must complete the following projects as detailed in Attachment A, the SEP Scope of Work (SOW) which is incorporated by reference into this CAFO. Ottenweller will commence both projects within 90 days of the effective date of the CAFO, and will perform both SEPs for at least two years following commencement.
38. Ottenweller's total expenditures must not be less than \$ 44,000 on the two projects in conformance with the SOW. No funds counted toward completion of the SEP shall be deductible for federal tax purposes.

39. Ottenweller must submit a SEP Completion Report to EPA within 60 days of completion of each project, in accordance with the deadline set forth in the SOW. This Completion Report must contain the following information:
- a) Detailed description of the SEP(s) as completed;
 - b) A 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 that specifically identify and itemize the individual costs of the goods and services; and,
 - d) A certification that Ottenweller has completed the SEP in compliance with this CAFO.

40. Ottenweller 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

Kathleen Schnieders, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

41. In each report that Ottwenweller submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by a responsible corporate official or an authorized designee:

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, the information 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.

42. Following receipt of each SEP Completion Report, as described in paragraph 39 above, EPA will notify Ottwenweller in writing within 30 days of receipt of each report that:
- a) It has satisfactorily completed the SEP and the SEP Completion Report;
 - b) There are deficiencies in the SEP as completed or in the SEP Completion Report and

- EPA will give Ottenweller 30 days to correct the deficiencies; or,
- c) It has not satisfactorily completed the SEP or the SEP Completion Report, and EPA will seek stipulated penalties under paragraph 43, below.

Alternatively, if subparagraph (b) above has been invoked, EPA will timely notify Ottenweller in writing, that:

- d) It has satisfactorily cured deficiencies in the SEP or the SEP Completion Report; or,
- e) It has failed to cure deficiencies in the SEP or the SEP Completion Report within the allotted time, and EPA will seek stipulated penalties under paragraph 43, below.

Ottenweller agrees that failure to submit a SEP Completion Report shall be deemed a violation of this CAFO, and Ottenweller shall become subject to stipulated penalties pursuant to paragraph 43.

- 43. In the event that Ottenweller fails to comply with any of the terms or provisions in this Agreement relating to the performance of the SEPs described in paragraph 37 above and/or to the extent that actual expenditures for the SEPs do not equal or exceed the cost of the SEPs described in paragraph 38 above, and has failed to cure any deficiencies as per paragraph 42 above, Ottenweller shall be liable for stipulated penalties to the United States as follows:
 - a) If Ottenweller halts or abandons or fails to complete either of the SEPs in a timely manner and fund them for the full compliance period, as required by this CAFO and the SOW, Ottenweller must pay a stipulated penalty in the amount of 1.25 times the total unspent portion of the projected cost, as per the SOW, for each SEP.
 - b) If Ottenweller completes and implements the SEPs in a timely manner, as required by this CAFO and the SOW, but fails to spend at least 90% of the amount specified in paragraph 38 above, Ottenweller must pay a stipulated penalty in the amount of \$ 5,000.
 - c) If Ottenweller fails to comply with the schedule in Attachment A to this CAFO for implementing the SEPs or fails to submit timely the SEP Completion Reports required in paragraph 39, Ottenweller must pay a stipulated penalty for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1 st through 20 th day
\$ 500	21 st through 30 th day
\$ 750	31 st day and beyond.

- 44. EPA's determination of whether Ottenweller completed each SEP as required by the CAFO and the SOW will bind Ottenweller. If Ottenweller disputes EPA's initial determination regarding completion of a SEP, Ottenweller must notify EPA in writing within 10 days of receipt of EPA's determination. Thereafter, EPA's final determination of whether Ottenweller completed the SEP as required by the CAFO and the SOW will be made by the EPA, Region 5, Air and Radiation Division Director, after considering Ottenweller's position.

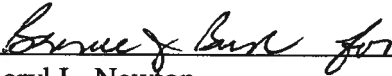
45. Ottenweller must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Ottenweller will use the method of payment specified in paragraphs 31 and 32, above, and will pay interest and nonpayment penalties on any overdue amounts.
46. If an event occurs which causes or may cause a delay in completing a SEP as required by this CAFO:
- a) Ottenweller must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Ottenweller's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Ottenweller must take all reasonable actions to avoid or minimize any delay. If Ottenweller fails to notify EPA according to this paragraph, Ottenweller will not receive an extension of time to complete the SEP.
 - b) If the parties agree that circumstances beyond the control of Ottenweller caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
 - c) If EPA does not agree that circumstances beyond the control of Ottenweller caused or may cause a delay in completing the SEP, EPA will notify Ottenweller in writing of its decision and any delays in completing the SEP will not be excused. If Ottenweller disputes EPA's initial determination regarding delay, Ottenweller must notify EPA in writing within 10 days of receipt of EPA's determination. Thereafter, EPA's final determination of whether circumstances beyond the control of Ottenweller caused or may cause a delay in completing the SEP will be made by the EPA, Region 5, Air and Radiation Division Director, after considering Ottenweller's position.
 - d) Ottenweller has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEPs will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.
47. Any statement to the general public that Ottenweller makes referring to the SEPs must include the following language, "Ottenweller undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Ottenweller for alleged violations of Clean Air Act requirements regarding Indiana's permitting requirements."
48. Ottenweller hereby certifies that, as of the date of this CAFO, it is not required to perform or develop these SEPs by any federal, state, or local law or regulation; nor is Ottenweller required to perform or develop these SEPs by any other agreement, grant, or as injunctive relief in this or any other case. Ottenweller further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for these SEPs.

Final Statement

49. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.
50. This 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.
51. This CAFO does not affect Ottenweller's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 49 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.
52. Ottenweller certifies that it is complying fully with the applicable requirements of the Clean Air Act.
53. This CAFO constitutes an "enforcement response" as that term is used in "EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Ottenweller's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).
54. The terms of this CAFO bind Ottenweller, and its successors, and assigns.
55. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.
56. Each party agrees to bear its own costs and attorneys' fees in this action.
57. This CAFO constitutes the entire agreement between the parties.

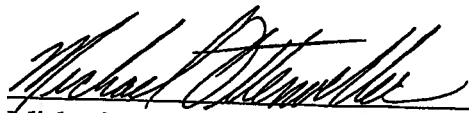
U.S. Environmental Protection Agency, Complainant

12/29/08
Date


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

CONSENT AGREEMENT AND FINAL ORDER
Ottenweller Company, Inc.
Docket No. CAA-05-2009-0008

12/23/08
Date



Michael Ottenweller, President

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U.S. ENVIRONMENTAL
PROTECTION AGENCY**

CONSENT AGREEMENT AND FINAL ORDER


Otteweller Company, Inc.

Docket No. CAA-05-2009-0008

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

12/30/08
Date


for Lynn Buhl
Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

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ATTACHMENT A

Supplemental Environmental Projects (SEPs) Scope of Work

Purchase/Installation of new Graco PRO-MIX II mixing system

Respondent shall purchase, install and utilize a new Graco PRO-MIX II paint mixing system in the large product paint booth at Ottenweller Co, Inc.'s Fort Wayne, Indiana plant. This system will have capacity for four paint colors, and will reduce HAP and VOC emissions generated during manual mixing of paint in pots due to color or coating changes the current two color system does not accommodate.

Installation of the PRO-MIX would also prevent potential additional emissions and pollution. A new radiator guard paint design planned by our customer will require mixing up to six additional paint pots of topcoat paint per day. Mixing, painting and cleanup from paint pots generates more paint waste and allows more emissions to escape than an automated mixing system. The system also automatically records usage, eliminating potential errors in reporting from manual log entries. With this project, Ottenweller Company will prevent Hazardous Air Pollutants and VOC emissions as well as paint and solid wastes. Ottenweller Company will prevent an additional 101.04 lbs HAPS emissions per year by automating this mixing process, or 202.08 lbs by December 31, 2010.

SEP COST

One-time cost associated with the project are estimated to be \$25,299.00. Annual costs of the system are estimated to be related to maintenance labor of approximately \$245.00.

Switch to Low-Haps yellow topcoat paint

Respondent shall plan and implement a switch from current yellow topcoat primer to a Low-Haps alternative at Ottenweller Company, Inc.'s Fort Wayne, Indiana plant. The new formulation will result in a decrease of Hazardous Air Pollutants of 1380.54 lbs. by December 31, 2010.

SEP COST

The Low-HAPS replacement product suggested by our supplier is \$15.86 more expensive per gallon than our current yellow topcoat paint. At our current usage levels, this product replacement is estimated to cost an additional \$9678.32 per year, for a two-year total of \$19,357.00.

CONSENT AGREEMENT AND FINAL ORDER

Ottenweller Company, Inc.

Docket No. CAA-05-2009-0008

CERTIFICATE OF SERVICE


I, Betty Williams, certify that I hand delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, the original and one copy of the Consent Agreement and Final Order, docket number CAA-05-2008-____. Further, I certify that I mailed correct copies of the Consent Agreement and Final Order, by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent by placing them in the custody of the United States Postal Service addressed as follows:

on the 30th day of December, 2008.

Mr. Michael Ottenweller
President
Ottenweller Company, Inc.
3011 Congressional Parkway
Fort Wayne, Indiana 46808

I also certify that a copy of the CAFO was sent by first-class mail to:

Craig Henry, Acting Section Chief
Office of Enforcement Air Section
Indiana Department of Environmental Management
100 North Senate Avenue / Mail Code 60-02
Indianapolis, Indiana 46204


Betty Williams
Administrative Program Assistant
AECAS (IL-IN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0187 3835

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