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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
SEP 29 PM 12: 29

IN RE:

Metallurgical Products Co., Inc. : Docket No. CAA-03-2016-0229
810 Lincoln Avenue :
West Chester, PA 19381 :
Respondent : Proceeding Under the Clean Air Act,
: Section 113(a) and (d)
:

CONSENT AGREEMENT

I. Preliminary Statement

This administrative Consent Agreement (the “Consent Agreement”) is entered into by and between the Complainant, the Director of the Air Protection Division, United States Environmental Protection Agency, Region III (“EPA” or “Complainant”), and the Respondent, Metallurgical Products Co., Inc. (“MPC” or the “Respondent”), pursuant to Section 113(a) and (d) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413(a) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 (the “Consolidated Rules of Practice”). The Consolidated Rules of Practice at 40 C.F.R. § 22.13 provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be commenced and concluded simultaneously by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

This Consent Agreement and the accompanying Final Order (collectively referred to as the “CAFO”) addresses alleged violations set forth herein, which occurred at Respondent’s copper alloy plant, located at 810 Lincoln Avenue, West Chester, PA (the “Facility”).

II. General Provisions

1. Section 113(a) and (d) of the Act, 42 U.S.C. § 7413(a) and (d), authorizes the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement, rule, plan, order, waiver, or permit promulgated, issued, or approved under Subchapters I, IV, V and VI [also referred to as Titles I, IV, V and VI] of the Act. The authority to issue the accompanying Final Order has been duly delegated to the Regional Judicial Officer, EPA Region III. Section 113(d)(1) of the CAA limits the Administrator's authority to matters where the first alleged violation occurred no more than 12 months prior to initiation of an 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. The Administrator and the Attorney General, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.
2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO and agrees not to contest EPA's jurisdiction with respect to the issuance, execution and enforcement of this CAFO.
3. Complainant and Respondent expressly acknowledge that the provisions of Paragraph 2 shall not constitute an admission as to any matter other than as necessary for establishing EPA's jurisdiction in this proceeding, and is neither intended nor shall be construed as an admission that may be relied upon for any purpose by any person not a party to this proceeding.
4. Except as provided in paragraph 2 above, Respondent neither admits nor denies the specific findings of fact and the conclusions of law set forth in this CAFO.
5. Respondent consents to the issuance of this CAFO, agrees to comply with the terms and conditions set forth therein, and consents to the payment of a civil penalty as set forth in this CAFO.
6. Respondent agrees to pay its own costs and attorney fees.
7. Respondent agrees that this CAFO shall apply to, and be binding upon, Respondent, its officers, directors, servants, employees, agents, successors and assigns.

III. Findings Of Fact And Conclusions Of Law

8. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law:
9. Respondent is a corporation organized under the laws of the Commonwealth of Pennsylvania and is headquartered at 810 Lincoln Avenue, West Chester, PA. Respondent operates the Facility located at 810 Lincoln Avenue, West Chester, PA, which, at all times relevant to this CAFO has been operated as a copper alloy plant manufacturing phosphorus copper pellets and ingots (the "Facility").
10. Respondent is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).
11. On April 30, 2013, duly authorized representatives of the EPA conducted a compliance evaluation at the Facility pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414 (the "Inspection").
12. Section 113 of the Act, 42 U.S.C. § 7413, authorizes the EPA to take action to ensure that air pollution sources comply with all federally applicable requirements of a permit issued by a state as part of a federally approved SIP.
13. The PA SIP was approved by EPA at 40 C.F.R. § 52.2020(b). General and non-attainment area permit requirements are promulgated at Title 25 of the Pennsylvania Code ("Pa. Code"), Section 127, Subchapter F. These requirements have been incorporated in the federally approved PA SIP.
14. The PA SIP includes 25 Pa. Code Section 127.441(a), which states that "[a] permit may contain terms and conditions [the Pennsylvania Department of Environmental Protection ("PADEP")] deems necessary to assure the proper operation of the source."
15. The PA SIP also includes 25 Pa. Code Section 127.444, which provides, in relevant part, that "[a] person may not cause or permit the operation of a source subject to [an operating permit] unless the source and air cleaning devices identified in the application for the plan approval and operating permit and the plan approval issued to the source are operated and maintained in accordance with specifications in the application and conditions in the plan approval and operating permit issued by the Department."
16. PADEP issued Respondent State Operating Permit ("SOP") # 15-00094, with an effective date of February 1, 2006, which governed the operation of control devices at the Facility for the period from February 1, 2006 through December 19, 2010.
17. On December 20, 2010, PADEP issued Respondent a revised SOP # 15-00094 with an amendment. This revised permit was in effect from December 20, 2010 until January 31, 2011.

18. On January 31, 2011, PADEP issued Respondent a renewed SOP #15-00094, with an effective date of February 1, 2011. This renewed permit was in effect from February 1, 2011 until January 31, 2016.
19. On January 22, 2016, PADEP issued Respondent a renewed SOP #15-00094, with an effective date of February 1, 2016, which continues to govern the operation of the control devices at the Facility.
20. All versions of SOP #15-00094 identified in Paragraphs 16 through 19 above required the Respondent to maintain a pressure drop of 1-8 inches water gauge (“w.g.”) across Baghouse #1, at Section D, Condition No. 009 for Source I.D. C01 in the versions of SOP #15-00094 identified in Paragraphs 16 through 18, and at Section D, Condition No. 010 for Source I.D. C01 in the version of SOP #00094 identified in Paragraph 19.
21. All versions of SOP #15-00094 identified in Paragraphs 17 through 19 above required the Respondent to maintain a pressure drop of 1-9 inches w.g. across Baghouse #2, at Section D, Condition No. 004(c) for Source I.D. C03.
22. The SOP #15-00094 with an effective date of February 1, 2006, required the Respondent to maintain records of the pressure drop across Baghouse #1, on a daily basis, when Baghouse #1 is in operation, at Section D. Condition No. 004 for Source I.D. C01.
23. The SOP #15-00094 with a revision date of December 20, 2010, required the Respondent to keep daily records of the pressure drop across Baghouse #2 when Baghouse #2 is operating, at Section D, Condition No. 003(a) for Source I.D. C03.
24. The SOP #15-00094 with a revision date of December 20, 2010, required the Respondent to monitor, daily, the pressure drop for both Baghouse #1 and Baghouse #2, at Section D, Condition No. 002 for Source I.D. 111.
25. The Facility is located in Chester County, PA, which was, at all times relevant to this CAFO, a non-attainment area for the PM 2.5 National Ambient Air Quality Standards (“NAAQS”).
26. Baghouse #1 at the Facility utilizes an intermittent shaker system to prevent excessive caking or blockage of the bags.
27. Between March 2011 and March 2013, Respondent’s records indicate the pressure drop at Baghouse #1 was below the lower limit of 1 inch w.g. on numerous separate occasions.
28. Between March 2011 and March 2013, Respondent’s records indicate the pressure drop at Baghouse #1 was above the upper limit of 8 inches w.g. on numerous separate occasions.
29. Baghouse #2 at the Facility utilizes a continuous pulse-jet system to prevent excessive caking or blockage of the bags.

30. Between March 2011 and March 2013, Respondent's records indicate the pressure drop at Baghouse #2 was below the lower limit of 1 inch w.g. on numerous separate occasions.
31. Between March 2011 and March 2013, Respondent's records indicate the pressure drop at Baghouse #2 was above the upper limit of 9 inches w.g. on numerous separate occasions.
32. On certain dates during the time periods identified in Paragraphs 27 and 28, above, Respondent operated Baghouse #1 at the Facility at a pressure drop outside the permitted range of between 1 and 8 inches w.g. This constitutes a violation of the federally enforceable SOP #15-00094, the federally enforceable PA SIP at 25 Pa. Code Section 127.444, 40 C.F.R § 52.23, and Section 113 of the CAA, 42 U.S.C. § 7413.
33. On certain dates during the time periods identified in Paragraphs 30 and 31, above, Respondent operated Baghouse #2 at the Facility at a pressure drop outside the permitted range of between 1 and 9 inches w.g. This constitutes a violation of the federally enforceable SOP #15-00094, the federally enforceable PA SIP at 25 Pa. Code Section 127.444, 40 C.F.R. § 52.23, and Section 113 of the CAA, 42 U.S.C. § 7413.

IV. Settlement Recitation, Settlement Conditions, and Civil Penalty

34. Respondent herein certifies to Complainant EPA that upon investigation, to the best of its knowledge and belief, all violations alleged in this Consent Agreement in Paragraphs 32 and 33, above, have been remedied.
35. Complainant and Respondent enter into this CAFO in order to settle and resolve all alleged violations set forth in Section III of this Consent Agreement.
36. In settlement of the alleged violations enumerated above in Section III of this Consent Agreement, Respondent consents to the assessment and agrees to pay a civil penalty in the amount of Twenty-Eight Thousand Dollars (\$28,000.00) within the time and manner specified herein.
37. The settlement amount of Twenty-Eight Thousand Dollars (\$28,000.00) is based upon Complainant's consideration of and application of the statutory penalty factors set forth in Section 113(e) of the Act, 42 U.S.C. § 7413(e) (which include the size of the business, economic impact of the penalty, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, the payment of penalties previously assessed for same violation, the seriousness of violation and such other matters as justice may require), and EPA's Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991), as indexed for inflation in keeping with 40 C.F.R. Part 19 (Adjustment to Civil Monetary Penalties for Inflation). Complainant has determined that Respondent's payment of this civil penalty shall constitute full and final satisfaction of the alleged violations set forth in Section III of this Consent Agreement.

38. Respondent shall pay the civil penalty of Twenty-Eight Thousand Dollars (\$28,000.00) no later than thirty (30) days after the effective date of this CAFO in order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO.
39. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
40. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
41. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period in which the penalty remains unpaid.
42. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
43. Payment of the civil penalty set forth in Paragraph 36, above, shall be made by cashier's check, certified check, or electronic wire transfer, Automated Clearing House ("ACH"), or an on line, internet payment as specified below. All payments are payable to Treasurer, United States of America and shall reference the above case caption and docket number (CAA-03-2016-0229).

44. All checks shall be made payable to Treasurer, United States of America and shall be mailed to the attention of:

U.S. Environmental Protection Agency
Cincinnati Finance Center
Box 979077 St. Louis, MO 63197-9000
Contact: (513) 487-2091

45. As an alternative to the payment of the civil penalty by certified or cashier's check pursuant to Paragraph 44, Respondent may elect to pay the civil penalty by electronic wire transfer. Any such wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA = 02130004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Beneficiary: US Environmental Protection Agency

Payments through ACH (also known as REX or remittance express) shall be directed to:

U.S Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737
Contact: 866-234-5681

46. An on-line, internet payment option, is also available through the United States Department of Treasury. This payment option can be accessed from www.pay.gov. Enter sfo 1.1 in the search field. Open form and complete required fields.

Additional payment guidance is available at:
http://www.epa.gov/ocfo/finservices/make_a_payment.htm

47. All payments made by check also shall reference the above case caption and docket number, CAA-03-2016-0229. At the same time that any payment is made, copies of any corresponding check or written notification confirming any electronic transfer through wire transfer, ACH, or internet payment shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, to Daniel E. Boehmcke, Senior Assistant Regional Counsel (3RC10), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and to Chip Hosford (3AP20), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029.
48. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in, and any civil penalty amount paid pursuant to, this CAFO.
49. Payment of the penalty specified in Paragraph 36, above, in the manner set forth in this Consent Agreement and payment of any applicable interest, handling costs and/or late payment charges as set forth above shall constitute satisfaction of all civil claims for penalties for the specific violations alleged in Section III of this Consent Agreement. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations administered by EPA.
50. Respondent's failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in referral of this matter to the United States Attorney for enforcement of this CAFO in the appropriate United States District Court. Additionally, Respondent's failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in the assessment of additional interest, penalties and/or late payment penalty charges.

V. Reservation of Rights

This CAFO resolves only the civil claims for the specific violations alleged in Section III of this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this Consent Agreement and Final Order be construed to limit the United States' authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

VI. Effective Date

The effective date of this CAFO is the date on which the CAFO is filed with the Regional Hearing Clerk of EPA Region III.

VII. Waiver of Hearing

For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), with respect to any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the accompanying Final Order.

VIII. Entire Agreement

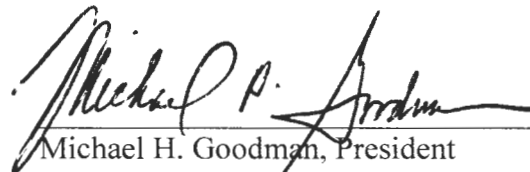
This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO. Nothing in this CAFO shall be construed to affect or limit in any way the obligation of Respondent to comply with all federal, state and local laws and regulations governing any activity required by this CAFO.

IX. Execution

The person signing this Consent Agreement on behalf of Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Respondent, to the terms and conditions of this CAFO.

For the Respondent:

SEPT. 23, 2016
Date:

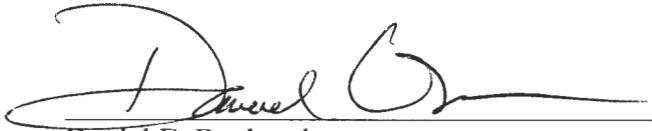


Michael H. Goodman, President
Metallurgical Products Co., Inc.

For the Complainant:

9/27/16

Date



Daniel E. Boehmcke
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III

Accordingly, the Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, ratify this Consent Agreement and issue the accompanying Final Order. The amount of the recommended civil penalty assessment is Twenty-Eight Thousand Dollars (\$28,000.00).

9/28/16

Date



Cristina Fernandez, Director
Air Protection Division
U.S. Environmental Protection Agency, Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:

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Respondent : Proceeding Under the Clean Air Act,
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:

FINAL ORDER


Complainant, the Director of the Air Protection Division, U.S. Environmental Protection Agency, Region III, and Respondent, Metallurgical Products Co., Inc., have executed a document entitled "Consent Agreement", which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991), as indexed for inflation in keeping with 40 C.F.R. Part 19 (Adjustment to Civil Monetary Penalties for Inflation), and the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

NOW, THEREFORE, PURSUANT TO Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TWENTY-EIGHT THOUSAND DOLLARS (\$28,000.00)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Sept. 29, 2016
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN RE:

**Metallurgical Products Co., Inc.
810 Lincoln Avenue
West Chester, PA 19381**

Respondent

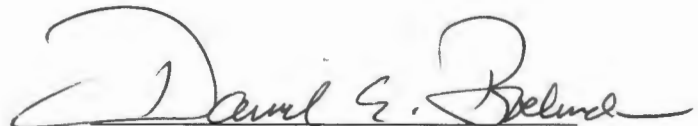
**: Docket No. CAA-03-2016-0229
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: Proceeding Under the Clean Air Act,
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:**

CERTIFICATE OF SERVICE

I hereby certify that the original and true and correct copies of the foregoing Consent Agreement and Final Order were hand delivered to the Regional Hearing Clerk, and delivered via e-mail and overnight mail, to the following persons:

Kate Vaccaro, Esquire
Manko Gold Katcher Fox LLP
401 City Avenue
Suite 901
Bala Cynwyd, PA 19004

9/29/16
Date


Daniel E. Boehmcke
Senior Assistant Regional Counsel