

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219**

**In the Matter of**

Neenah Foundry Company  
d/b/a Deeter Foundry, Inc.

**Respondent.**

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**Docket No. CAA-07-2024-0104**

**COMPLIANCE ORDER  
ON CONSENT**

**ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT**

This Administrative Compliance Order on Consent (“Order”) is entered into by the United States Environmental Protection Agency (“EPA”), Region 7 and Neenah Foundry, Company d/b/a Deeter Foundry, Inc. (“Deeter” or “Respondent”). This Order is issued pursuant to Section 113(a)(3)(B) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(3)(B), as amended.

EPA hereby orders Deeter to comply with the requirements set forth below. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion may be specified herein. The terms of this Order shall not be modified except by a subsequent written agreement between the parties.

**I. Statutory and Regulatory Framework**

1. The Clean Air Act establishes a regulatory framework designed to protect and enhance the quality of the nation’s air so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

2. Section 110 of the Act, 42 U.S.C. § 7410, grants the Administrator of the EPA authority to approve a state plan which provides for implementation, maintenance, and enforcement of a standard in each air quality control region within the state.

3. The Lincoln-Lancaster County Air Pollution Control Program Regulations (LLCAPCPR) were adopted as part of the federally approved SIP.

4. The regulations appearing at Article 2, Section 8, Paragraph (O) were incorporated into and part of the LLCAPCPR at the time of the violations alleged in this Notice. All citations herein refer to provisions of the LLCAPCPR as applicable at the times of the violations alleged herein.

5. Article 2, Section 8, Paragraph (O) states, “Each Class II operating permit shall include those permit requirements applicable to Class II sources and any additional requirements which the Director deems appropriate, including but not limited to, the following: (1) Emissions

limitations and standards which are at least as stringent as any applicable requirement of other requirements contained in the State Implementation Plan.” LLCAPCPR, 65 FR 3130 (Jan. 20, 2000).

6. Section 112 of the CAA addresses emissions of hazardous air pollutants. Prior to 1990, the CAA established a risk-based program under which only a few standards were developed. The 1990 CAA Amendments revised Section 112 to first require issuance of technology-based standards for major sources and certain area sources. “Major sources” are defined as a stationary source or group of stationary sources that emit or have the potential to emit 10 tons per year or more of a hazardous air pollutant or 25 tons per year or more of a combination of hazardous air pollutants. An “area source” is any stationary source that is not a major source.

7. For area sources, Section 112 requires that EPA establish emission standards that require the maximum degree of reduction in emissions of hazardous air pollutants. These emission standards are commonly referred to as “maximum achievable control technology” or “MACT” standards. Eight years after the technology-based MACT standards are issued for a source category, EPA is required to review those standards to determine whether any residual risk exists for that source category and, if necessary, revise the standards to address such risk.

8. In 2008, EPA promulgated a MACT standard for Iron and Steel Foundries Area Sources, 40 C.F.R. Part 63, Subpart ZZZZZ. This MACT applies to new and existing iron and steel foundries that are an area source. Deeter is subject to MACT ZZZZZ.

9. Under Section 112(l) of the CAA, 42 U.S.C. § 7412(l), states can develop and submit for approval a program for the implementation and enforcement of emissions standards. The program may provide for full or partial delegation of the Administrator’s authorities but will not allow a state to include less stringent standards. Nebraska accepted delegation of 40 C.F.R. Part 63, Subpart ZZZZZ on July 1, 2013. The Lincoln-Lancaster County Air Pollution Control Agency accepted delegation on July 1, 2013.

10. EPA retains concurrent enforcement authority of the MACT standards. 42 U.S.C. § 7412(l)(7).

11. 40 C.F.R. § 63.10899(c) states, “Beginning on March 9, 2021, you must submit all subsequent semi-annual compliance reports to the EPA via the CEDRI, which can be accessed through the EPA’s Central Data Exchange.

12. 40 C.F.R. § 63.10899(e), states, “within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (e)(1) through (3) of this section.” 40 C.F.R. § 63.10899(e)(1) requires that the Facility to submit the results of the performance test to the EPA via the CEDRI.

13. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating the

40 C.F.R. Part 63, Subpart ZZZZZ regulations or any waiver, requirement or prohibition of Section 112 of the CAA, 42 U.S.C. § 7412. The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7.

## **II. Definitions**

14. An “area source” is any stationary source (i.e., any building, structure, facility or installation which emits or may emit any air pollutant) that is a source of hazardous air pollutants that is not a major source. 42 U.S.C. § 7412(a)(2).

15. A “stationary source” means generally any source of air pollution except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this title. 42 U.S.C. § 7602(z).

16. For iron and steel foundries located at an area source of HAP emissions, a source is “existing” if the owner or operator commenced construction or reconstruction of the source before September 17, 2007. 40 C.F.R. § 63.10880(b)(1).

## **III. Factual Background**

17. Deeter is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(a).

18. Respondent is the owner or operator of the gray iron foundry located at 5945 N. 70th Street, Lincoln, Nebraska (the “Facility”).

19. The Facility is a “stationary source” as defined by Section 302(z) of the Clean Air Act, 42 U.S.C. § 7602(z).

20. The Facility is an “area source” as defined by Section 7412(a)(2) of the Clean Air Act, 42 U.S.C. § 7412(a)(2).

21. The facility produces gray iron castings for the municipal and construction sectors. Operations include melting, pouring, casting, green sand mold and core production, and parts finishing. Emissions from the furnace are controlled by an afterburner followed by a baghouse.

22. The Lincoln-Lancaster County Air Pollution Control Agency issued a construction permit to Deeter on July 27, 2022 (the “construction permit”).

23. The Lincoln-Lancaster County Air Pollution Control Agency issued a Class II operating permit to Deeter on November 1, 2015, and renewed the permit on July 27, 2022 (the “operating permit”).

24. The operating permit, Section XXXIV Cupola Requirements, (B)(1) Emission

Control requirements states, “The cupola shall be equipped with a gas-fired afterburner, identified as “Control Device II” in the approved application. The following requirements apply to the afterburner: (b) The afterburner must be capable of maintaining a minimum temperature of 1200 degrees Fahrenheit (°F) in the area above the charge door after start-up is complete. For the purposes of this operating permit, “start-up” shall mean any period of time during which the cupola is returned to operating mode following a shutdown of the cupola.”

25. The Facility conducted a stack test on May 4, 2021, to demonstrate compliance with MACT ZZZZZ.

#### **IV. Violations**

26. Based on review of the records required to be kept by the operating permit, the EPA finds that Deeter has violated its Class II operating permit and the LLCAPCPR by failing to maintain the minimum temperature required by Section XXXIV(B)(1)(b) of the permit for 5402 hours over a period of 45 months.

27. The EPA finds that Deeter has violated 40 C.F.R. § 63.10899(c) because it failed to submit the semi-annual reports for 2021 and the first half of 2022 to CEDRI.

28. The EPA finds that Deeter has violated 40 C.F.R. § 63.10899(e) because it failed to submit a 2021 stack test to CEDRI.

#### **V. Compliance Order**

29. Deeter shall submit permit applications, for both the construction permit and operating permit, to the Lincoln-Lancaster County Permitting Department that includes revisions to the compliance, monitoring, and record keeping requirements for the cupola within 180 days of the Effective Date of this Order. The revisions shall address the definition of start-up and its relation to the cupola blast rate. Additionally, monitoring and record keeping requirements for the cupola blast rate shall be included in the permits.

30. Deeter shall submit a copy of this application to EPA in accordance with the notification provisions below.

#### **Notifications/Reporting**

31. All documents required to be submitted to EPA by this Order shall contain the following certification, signed by an official of Deeter:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

The submissions required by the above paragraphs and subparagraphs shall be made to the following EPA Project Coordinators:

Sara Hertz Wu  
US EPA Region 7  
ORC/ACCIB  
11201 Renner Blvd.  
Lenexa, KS 66219  
*Hertzwu.sara@epa.gov*

and

Chris Appier  
US EPA Region 7  
ECAD/AB  
11201 Renner Blvd.  
Lenexa, KS 66219  
*Appier.christopher@epa.gov*

## **VI. Force Majeure**

32. The Respondent agrees to perform all requirements under this Order within the time limits established under this Order unless the performance is delayed by a force majeure. For the purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of the Respondent, or any entity controlled by the Respondent, or the Respondent's contractors, which delays or prevents performance of any obligation under this Order despite the Respondent's best efforts to fulfill the obligation. The requirement that the Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address any potential force majeure event: (1) as it is occurring, and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Force majeure does not include financial inability to complete the work described in paragraphs 29 and 30 of the Order, increased cost of performance, changes in the Respondent's business or economic circumstances, but may include significant delays caused by weather.

33. If an event occurs that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, the Respondent shall notify EPA in writing within five (5) days of when the Respondent knew or should have known that the event might cause a delay. Such notice shall: (1) identify the event causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; (2) provide the Respondent's rationale for attributing such delay to a force majeure event; (3) state the measures taken or to be taken to prevent or minimize the delay; (4) estimate the timetable for implementation of those measures; and (5) state whether, in the opinion of the Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. The Respondent shall undertake best efforts to avoid and minimize the delay. Failure to comply with the notice provisions of this

paragraph and to undertake best efforts to avoid and minimize delay shall preclude the Respondent from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The Respondent shall be deemed to know of any circumstance of which the Respondent, any entity controlled by the Respondent, or the Respondent's contractors knew or should have known.

34. If EPA determines the delay in performance or anticipated delay in fulfilling a requirement of this Order is or was attributable to a force majeure, then the time period for performance of the requirement will be extended as deemed necessary by EPA. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure, then EPA will notify the Respondent, in writing, of the length of the extension, if any, for performance of such obligations affected by the force majeure. Any such extensions shall not alter the Respondent's obligation to perform or complete other tasks required by this Order which are not directly affected by the force majeure.

35. If EPA disagrees with the Respondent's assertion of a force majeure, then the Respondent may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in the Dispute Resolution section of this Order. In any such proceeding, the Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted, under the circumstances, that the Respondent's best efforts were exercised to avoid and mitigate the effects of the delay, and that the Respondent complied with the requirements of this Section. If the Respondent satisfies this burden, then EPA will extend the time for performance as EPA determines is necessary.

## **VII. Modification of this Order**

36. If at any time during the implementation of the work described in paragraphs 29 and 30, the Respondent identifies a need for a compliance date or schedule modification, the Respondent shall submit a memorandum documenting the need for the modification to the EPA Project Coordinators. EPA in its discretion will determine if the modification or revision is warranted and may provide written approval or disapproval. Any approved modified compliance date or schedule modification is incorporated by reference into this Order.

37. Except for modification of any compliance date or schedule as provided for in paragraph 40, this Order may only be modified by the mutual agreement of EPA and the Respondent. The agreed modifications shall be in writing and signed by both parties. The effective date of any modification shall be the date on which it is signed by EPA. Any such written modification shall be incorporated into this Order.

38. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is modified in accordance with this Section. Any deliverables, plans, technical memoranda, reports, specifications, schedules and

attachments required by this Order are, upon approval by EPA, incorporated into and enforceable under this Order.

### **VIII. Dispute Resolution**

39. The Respondent shall raise any disputes concerning the work described in paragraphs 17-18 required under this Order to EPA in writing, within fifteen (15) business days after receiving written notice from EPA regarding any aspect of the work required in paragraphs 29 and 30 of this Order that the Respondent disputes. EPA and the Respondent shall expeditiously and informally attempt to resolve any disagreements as follows:

- a. EPA and the Respondent Project Coordinators shall first confer in an effort to resolve the dispute.
- b. If the Project Coordinators are unable to informally resolve the dispute within three (3) business days of the first conference, the Respondent shall notify EPA, within five (5) business days, in writing of its objections.
- c. Written objections shall identify the Respondent's objections, state the basis for those objections, and provide all data, analysis and information relied upon by the Respondent.
- d. EPA and the Respondent then have an additional fourteen (14) business days from EPA's receipt of the objections to reach agreement. If an agreement is not reached within the fourteen (14) business days, the Respondent may request in writing, within five (5) business days, a determination resolving the dispute by EPA Region 7's Regional Judicial Officer ("RJO").
- e. The request should provide all information that Respondent believes is relevant to the dispute. EPA may also submit to the RJO all information that the EPA believes is relevant to the dispute. If the Respondent's request is submitted within five (5) business days, the RJO shall issue a determination in writing which will be EPA's final decision.
- f. EPA's final decision shall be incorporated into and become an enforceable part of this Order and shall no longer be subject to dispute pursuant to this Order. The Respondent shall proceed in accordance with the RJO's decision regarding the matter in dispute, regardless of whether the Respondent agrees with the decision.
- g. If the Respondent does not perform the work described in paragraphs 29 and 30 in accordance with EPA's decision, EPA reserves the right in its sole discretion to seek enforcement of this Order, seek stipulated penalties, and/or any other appropriate relief.

- h. Any disputes arising under this Order are not subject to judicial review until such time as EPA seeks to enforce this Order, including an action for penalties or an action to compel the Respondent's compliance with the terms and conditions of the Order.

40. If EPA and the Respondent reach agreement on the dispute at any time, the agreement shall be set forth in writing and shall, upon signature of both parties, be incorporated into and become an enforceable part of this Order.

41. The existence of a dispute and EPA's consideration of matters placed in dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Order during the pendency of the dispute resolution process except as agreed by EPA in writing. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this Order.

### **IX. Stipulated Penalties**

42. Respondent shall be liable for stipulated penalties to the United States in the amounts set forth in subparagraphs a. through c. below for failure to comply with the requirements of this Order.

- a. The following stipulated penalties shall accrue per violation per day for failure to comply with any requirement of paragraph 29 or 30:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$150	1 <sup>st</sup> through 15 <sup>th</sup> day
\$500	15 <sup>th</sup> day and beyond

- b. The following stipulated penalties shall accrue per day for failure to comply with any requirement not specifically included in subparagraph a. above.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$150	1 <sup>st</sup> through 30 <sup>th</sup> day
\$500	31 <sup>st</sup> day and beyond

43. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

44. The payment of penalties under this Order shall not alter in any way Respondent's obligations to comply with the provisions of this Order.

45. All penalties accruing under this section shall be due and payable to the United States within 30 days of Respondent's receipt from EPA of a demand for payment of penalties.



All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "Treasurer, United States of America" and remitted to:

US Environmental Protection Agency  
Fines and Penalties -CFC  
PO Box 979078  
St. Louis, MO 63197-9000.

46. Failure to pay any portion of the stipulated penalties on the date upon which they are due will result in the accrual of interest on the unpaid portion of the stipulated penalties at the rate of two percent (2%) per annum.

**X. Other Terms and Conditions**

47. Respondent admits the jurisdictional allegations contained in this Order.

48. Respondent neither admits nor denies the violations in Section IV of this Order.

**XI. Potential Liability**

49. Section 113(a)(3) of the Act grants EPA the authority to issue an order to any person found in violation of the Act and the regulations promulgated pursuant thereto.

50. Section 113(a)(3) of the Act provides that whenever EPA finds that any person has violated, or is in violation of an order issued pursuant to the Act, the EPA Administrator may issue an administrative penalty order pursuant to Section 113(d) for civil administrative penalties of up to \$25,000 per day for each violation; or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and the Civil Monetary Penalty Inflation Adjustment Rule, this penalty maximum was increased to a maximum of \$57,617 per day. In addition, Respondent may be subject to an administrative or civil action for similar penalties and/or injunctive relief, pursuant to Sections 113(b) and (d) of the Act, based on the violations addressed by this Order. Furthermore, for any person who knowingly violates the provisions of the Clean Air Act as set forth in Section 113(c) of the Act, Section 113(c) provides for criminal penalties or imprisonment, or both.

51. This Order shall not relieve Respondent of its obligation to comply with all applicable federal, State, and local laws, regulations and other legal requirements, including but not limited to the Clean Air Act, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State or local permit.

52. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Order, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708 and Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

53. Nothing in this Order limits the EPA's authority to seek appropriate relief, including penalties, under Section 113 of the CAA, 42 U.S.C. § 7413, for the violations alleged in this Order.

54. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of a regulated substance, other extremely hazardous substance, or other substance on, at, or from the Facility. EPA reserves the right to bring an action against Respondent assessing or seeking penalties and/or other relief for any violations, including, without limitation, the violations referred to in the Factual Background and Violations subheadings set forth above. This Order shall not constitute or be construed as a release of any liability that the Respondent or any other person has under the Clean Air Act, the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26, the Clean Water Act, 33 U.S.C. §§ 1251-1387, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001-11050, or any other law. EPA also reserves all of its rights to obtain access to the Facility and require Respondent's submission of information to EPA.

55. The terms of this Order are binding on the Respondent, its assignees and successors. The Respondent must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.

56. The Respondent may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If the Respondent fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined at 40 C.F.R. § 2.301.

57. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

58. EPA may use any information submitted under this Order in an administrative, civil judicial or criminal action.

## **XII. Effective Date; Opportunity for a Conference**

59. This Order shall become effective immediately upon receipt unless, within five (5) business days of receipt hereof, the Respondent requests a conference with EPA concerning the violations alleged in, and the requirements of, this Order. In such event, the effective date of the Order shall be extended until the date of such conference or to a time established by EPA.

Respondent has the right to be represented by counsel at such a conference. If a conference is held, this Order shall become effective the day after the conference, unless the effective date is extended by EPA.

60. In the event this Order is signed by both EPA and the Respondent, the Order shall become effective immediately. Signature of the Order by the Respondent shall indicate that the Respondent waives its right to a conference with EPA, as described in paragraph 59, and that the Respondent waives its right to contest or appeal issuance of this Order.

61. The request for a conference and other inquiries concerning this Order shall be addressed to:

Sara Hertz Wu  
Senior Counsel  
US EPA Region 7  
ORC/ACCIB  
11201 Renner Boulevard  
Lenexa, KS 66219  
*Hertzwu.sara@epa.gov*  
Phone: (913) 551-7316

62. Respondent consents to electronic service of the Administrative Consent Order to the following email address: Craig LeNoble, *craig.lenoble@groupnei.com*. Respondent understands that the Administrative Order on Consent will become publicly available upon filing.

**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:**

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David Cozad  
Director  
Enforcement and Compliance Assurance Division

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Date

**FOR THE RESPONDENT:**

Neenah Foundry d/b/a Deeter Foundry Inc.

  
Signature

8/15/2024  
Date

CRAIG LENOBLE  
Printed Name

ENVIRONMENTAL DIRECTOR  
Title

**CERTIFICATE OF SERVICE**  
*(to be completed by EPA)*

I certify that that a true and correct copy of the foregoing Administrative Order on Consent in the matter of Neenah Foundry Company d/b/a Deeter Foundry Inc., EPA Docket No. CAA-07-2024-0104, was sent this day in the following manner to the addressees:

Copy via E-mail to Complainant:

Sara Hertz Wu, *hertzwu.sara@epa.gov*

Chris Appier, *appier.christopher@epa.gov*

Tracey Casburn, *casburn.tracey@epa.gov*

Milady Peters, *peters.milady@epa.gov*

Copy via E-mail to Respondent:

Craig LeNoble, *craig.lenoble@groupnei.com*.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signed