

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No. CAA-05-2020-0026
)	
Cardinal FG Company)	Proceeding to Assess a Civil Penalty under
Menomonie, Wisconsin,)	Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
)	
)	
)	

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7413(d).
2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.
3. Respondent is Cardinal FG Company, a corporation doing business in Wisconsin.

Statutory and Regulatory Background

4. The Act is 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. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

The National Ambient Air Quality Standards

5. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of U.S. EPA (the Administrator) to identify and issue air quality criteria for each air pollutant, the emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources.
6. Section 109 of the Act, 42 U.S.C. § 7409, requires U.S. EPA to promulgate regulations establishing primary and secondary national ambient air quality standards (“NAAQS”) for those air pollutants for which air quality criteria have been issued pursuant to Section 108 of the CAA. Under Section 109(b) of the CAA, 42 U.S.C. § 7409(b), the primary

NAAQS are to be adequate to protect the public health with an adequate margin of safety, and the secondary NAAQS are to be adequate to protect the public welfare from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

7. Pursuant to Sections 108 and 109, U.S. EPA has identified and promulgated NAAQS for nitrogen oxides (NO_x), ozone, and particulate matter with a diameter of less than or equal to 2.5 micrometers (PM_{2.5}). The NAAQS for these pollutants are set forth in 40 C.F.R. §§ 50.7, 50.9-50.11, 50.13, and 50.15.

8. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an “attainment” area. An area that does not meet the NAAQS is a “nonattainment” area. An area that cannot be classified due to insufficient data is “unclassifiable.”

9. Under the requirements of Section 110 of the Act, 42 U.S.C. § 7410, U.S. EPA designated Dunn County, Wisconsin as an attainment or unclassifiable area for the 2012 PM_{2.5} NAAQS, effective April 15, 2015. 80 Fed. Reg. 2206, 2280 (January 15, 2015).

10. Under the requirements of Section 110 of the Act, 42 U.S.C. § 7410, U.S. EPA designated Dunn County, Wisconsin as an attainment or unclassifiable area for the 2008 8-hour ozone NAAQS, effective July 20, 2012. 77 Fed. Reg. 30088, 30156 (May 21, 2012).

11. Under the requirements of Section 110 of the Act, 42 U.S.C. § 7410, U.S. EPA designated Dunn County, Wisconsin as an attainment or unclassifiable area for the 2015 8-hour ozone NAAQS, effective August 3, 2018. 83 Fed. Reg. 25776, 25846 (June 4, 2018).

12. Under the requirements of Section 110 of the Act, 42 U.S.C. § 7410, U.S. EPA designated Dunn County, Wisconsin as an attainment or unclassifiable area for the 2010 primary nitrogen dioxide (NO₂) NAAQS, effective February 29, 2012. 77 Fed. Reg. 9532, 9584 (February 17, 2012). The NAAQS for NO₂ is designed to protect against exposure to the entire

group of NO_x, and NO₂ is used as the indicator for the larger group of NO_x. 77 Fed. Reg. 9532, 9533 (February 17, 2012).

The Prevention of Significant Deterioration Requirements

13. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth provisions for Prevention of Significant Deterioration of Air Quality (“PSD”) requirements for areas designated as attainment or unclassifiable for purposes of meeting NAAQS standards. The requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470.

14. Section 165(a)(1) of the CAA, 42 U.S.C. § 7475(a)(1), prohibits the construction and operation of a “major emitting facility” in an area designated as attainment or unclassifiable unless, among other things, a permit has been issued that comports with the requirements of Section 165 of the CAA (typically called a “PSD permit”). To obtain this permit, the source must, among other things, undergo a technology review and apply Best Available Control Technology (“BACT”); perform a source impact analysis; and perform air quality modeling and analysis.

15. Sections 110(a) and 161 of the CAA, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a state implementation plan (“SIP”) containing regulations implementing the PSD program as provided in the PSD provisions of the CAA set forth at 42 U.S.C. §§ 7470-7492.

16. Upon U.S. EPA approval, SIP requirements are federally enforceable under Section 113 of the Act, 42 U.S.C. §§ 7413(a), (b); 40 C.F.R. § 52.23.

Wisconsin SIP PSD Program

17. On May 27, 1999, U.S. EPA granted final approval to Wisconsin’s PSD program as part of Wisconsin’s federally-approved SIP. *See* 64 Fed. Reg. 28745 (effective June 28, 1999).

On December 17, 2008, U.S. EPA partially approved revisions related to U.S. EPA's New Source Review (NSR) Reform regulations in Wisconsin's PSD program. 73 Fed. Reg. 76560 (effective January 16, 2009).

18. The PSD requirements in the federally-approved Wisconsin SIP, at Wis. Adm. Code ch. NR 405, include the following definitions:

- a. NR 400.02(63) defines "facility" as "an establishment – residential, commercial, institutional or industrial – which emits or causes emissions of air contaminants."
- b. NR 400.02(113) defines "operator" as "any person who leases, controls, operates or supervises a facility, an air contaminant source, or air pollution control equipment."
- c. NR 405.02(11) defines "construction" as "any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit which would result in a change in emissions."
- d. NR 405.02(28) defines "stationary source" as "any building, structure, facility or installation which emits or may emit any air contaminant subject to regulation under the [CAA]."
- e. NR 405.02(12) defines "emissions unit" as any part of a stationary source that emits or would have the potential to emit any regulated NSR contaminant. Under the PSD rules, emissions units are either new or existing. A new emissions unit is any emissions unit that is, or will be, newly constructed and that has existed for less than two years from the date the emissions unit first operated. An existing emissions unit is any emissions unit which is not new, and includes replacement units of an existing emissions unit.
- f. NR 405.02(22)(a)(2) defines a glass manufacturing facility as a "major

stationary source” if it emits or has the potential to emit two-hundred fifty (250) tons per year (tpy) or more of a regulated NSR air contaminant.

- g. NR 405.02(1) defines “actual emissions” as the “actual rate of emissions of a regulated NSR air contaminant from an emissions unit, as determined in accordance with [NR 405.02(1)(a)-(c)].”
- h. NR 405.02(25i) defines “regulated NSR contaminant” as, among other things, any contaminant for which a NAAQS has been promulgated and any pollutant identified as a constituent or precursor to the pollutant.
- i. NR 405.02(6) defines “begin actual construction” as “in general, initiation of physical on-site construction activities on an emission unit that are of a permanent nature.”
- j. NR 405.02(7) defines “best available control technology” or “BACT” as “an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each air contaminant subject to regulation under the Act which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts, and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including clean fuels, fuel cleaning or treatment or innovative fuel combination techniques for control of the air contaminant. ...”
- k. NR 405.02(21) defines “major modification” as “any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR air contaminant and a significant net emissions increase of that air contaminant from the major stationary source.”

- l. NR 405.02(24)(a) defines a “net emissions increase” of a regulated NSR air contaminant emitted by a major stationary source as the amount by which the difference between the increase in emissions (as calculated pursuant to the PSD rules) from a particular physical change or change in the method of operation at a stationary source, and any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the relevant change and otherwise creditable, exceeds zero.
- m. NR 405.02(25e) defines “project” as “a physical change in, or change in the method of operation of, an existing major stationary source.”
- n. NR 405.02(25i)(ar)1. states that NO_x is a precursor to ozone.
- o. NR 405.02(25i)(ar)3. states NO_x is a precursor to PM_{2.5}.
- p. NR 405.02(27) defines “significant” in reference to a net emissions increase in the emission rate of NO_x to be one that would equal or exceed 40 tpy ; for ozone, one that would equal or exceed 40 tpy of VOC or NO_x; and for PM_{2.5}, one that would equal or exceed 10 tpy of PM_{2.5}, 40 tpy of NO_x, or 40 tpy of sulfur dioxide.
- q. NR 405.02(27m) defines “significant emissions increase” as an increase in emissions of a regulated NSR contaminant that is significant, as defined in NR 405.02(27), for that air contaminant.

19. NR 405.01(1) of the federally-approved Wisconsin SIP provides that the PSD regulations “apply to the construction of any new major stationary source or any project at an existing major stationary source located in an area designated as attainment or unclassifiable” for a regulated NSR pollutant.

20. In determining if a major stationary source will construct a major modification, the source must determine its change in emissions due to the construction using the correct applicability procedures in the federally-approved Wisconsin SIP at NR 405.025.

21. Pursuant to the federally-approved Wisconsin SIP at NR 405.07(1), no major modification shall begin actual construction unless the requirements of NR 405.08 to 405.16, which include, but are not limited to, undergoing a technology review and applying BACT, performing a source impact analysis, and performing air quality modeling and analysis prior to beginning construction of the modifications, have been met.

22. Pursuant to NR 405.08(3), a major modification shall apply BACT for each air contaminant for which the modification would result in a significant net emissions increase at the source. Furthermore, this requirement applies to each proposed emissions unit at which a net emissions increase of the contaminant would occur as a result of a physical change or change in method of operation in the unit.

Waiver

23. Section 113(d)(1) limits the Administrator's authority to issue a civil administrative order assessing a civil penalty 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.

24. 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 complaint.

General Allegations

25. Respondent owns and operates a flat glass manufacturing facility at 2200 Stokke Parkway, Menomonie, Dunn County, Wisconsin (the "Facility"). The Facility includes one glass furnace which, prior to 2015, had a maximum capacity of 600 tons of glass pulled per day (tpd).

26. The Facility is a "major stationary source" under NR 405 because it emits more than 250 tpy of NO_x, which is a regulated NSR air contaminant.

27. At all times relevant to this Complaint, Cardinal FG Company has been the operator

of the Facility located in Dunn County, which is an area that has been designated as attainment or unclassifiable for NO_x, ozone, and PM_{2.5}.

Count I

28. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

29. On July 22, 2015, the Facility installed a canal cooler in the glass furnace in order to achieve production rates above 600 tpd.

30. On October 19, 2015, the Facility installed new gas orifice plates in the glass furnace in order to continue achieving production rates above 600 tpd.

31. On January 1, 2016, the Facility installed a rail cooler in the glass furnace in order to continue achieving production rates above 600 tpd.

32. The activities described in paragraphs 29 - 31, and any additional changes related to adding cooling equipment to the glass furnace in 2015 and 2016, constituted physical changes of the glass furnace under the PSD requirements of the federally-approved Wisconsin SIP.

33. The physical changes described in paragraphs 29 - 31 constituted construction of a project under the PSD requirements of the federally-approved Wisconsin SIP.

34. The physical changes described in Paragraphs 29 - 31 resulted in an emissions increase and a net emissions increase of NO_x from the glass furnace above the significance threshold of 40 tpy, thus making the physical changes described in Paragraphs 29 - 31 a major modification of the glass furnace for NO_x under the PSD requirements in the federally-approved Wisconsin SIP.

35. The major modification of the glass furnace described in Paragraph 34 resulted in an emissions increase and a net emissions increase of NO_x, which is a precursor to both ozone and PM_{2.5}. Because the resultant net emissions increase of NO_x was above 40 tpy, the major modification described in Paragraph 34 led to significant emissions increases for ozone and PM_{2.5}, and therefore constitute a major modification for ozone and PM_{2.5} under the PSD

requirements in the federally-approved Wisconsin SIP.

36. Respondent began actual construction of the major modification of the glass furnace described in Paragraph 34 without applying for or obtaining a permit from WDNR containing the necessary PSD requirements, including performing a source impact analysis, performing air quality modeling, undergoing a technology review, and applying BACT, in violation of Section 165(a) of the CAA and the federally-approved Wisconsin SIP at NR 405.07(1).

37. On March 18, 2019, U.S. EPA issued to Respondent a Notice of Violation (NOV), alleging that it violated the PSD requirements of the Wisconsin SIP by making physical changes to the glass furnace that allowed it to operate at a production rate of over 600 tpd and that caused a significant emissions increase and significant net emissions increase of NO_x, without installing pollution controls constituting BACT.

38. On April 17, 2019, June 14, 2019, and March 10, 2020, representatives of Respondent and Complainant held conferences to discuss the March 18, 2019 Notice of Violation.

Count II

39. Complainant incorporates paragraphs 1 through 38 of this complaint, as if set forth in this paragraph.

40. From the commencement of the major modification of the glass furnace described in Paragraph 34 to the present, Respondent has not installed pollution controls that meet BACT emissions limitations for NO_x from the glass furnace, in violation of Section 165(a) of the CAA and the federally-approved Wisconsin SIP at NR 405.08(3).

Proposed Civil Penalty

41. The Administrator may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for violations that occurred on or after December 6, 2013 through November 2, 2015, and may assess a civil penalty of up to \$48,192 per day of violation up to a total of \$385,535 for violations that occurred after November 2, 2015, under Section 113(d)(1) of

the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

42. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

43. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$385,535. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

44. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

45. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

46. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

47. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Josh

Zaharoff, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Zaharoff at (312) 886-4460.

Mr. Zaharoff's address is:

Josh Zaharoff, Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3511
zaharoff.josh@epa.gov

Penalty Payment

48. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Josh Zaharoff, Associate Regional Counsel, and to:

Attn: Compliance Tracker, (ECA-18J)
Air Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Opportunity to Request a Hearing

49. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 50 through 55 below.

Answer

50. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 46, above, and must serve copies of the written answer on the other parties.

51. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

52. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

53. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

54. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 49 above.

55. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual

allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

56. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Josh Zaharoff, Associate Regional Counsel, at the address or phone number specified in paragraph 47, above.

57. Respondent's request for an informal settlement conference does not extend the 30-calendar-day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

58. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

Date

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2020.07.27
19:02:17 -05'00'

Michael D. Harris, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Attachments included with APO:

1. Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits
2. CAA Stationary Source Penalty Policy
3. Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or the Regional Judicial Officer under the Consolidated Rules dated March 27, 2015

In the Matter of: Cardinal FG Company
Docket No.

Certificate of Service

I, Erik Olson, certify that I hand delivered the original and one copy of the Complaint, docket number _____, to the Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, delivered a copy of the Complaint by intra-office mail to the Regional Judicial Officer, and that I mailed a correct copy of the Complaint, a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22, and a copy of the penalty policy described in the Complaint by United Parcel Service Overnight Mail, to the Respondent as follows:

Mark Piper
Environmental Compliance Director
Cardinal FG Company
2200 Stokke Parkway
Menomonie, Wisconsin, 54751

I also certify that I sent a copy of the Complaint by email to:

Rick Snyder, Frederickson & Byron, P.A.
rsnyder@fredlaw.com

Maria Hill, Wisconsin Department of Natural Resources
Maria.Hill@wisconsin.gov

On the _____ day of _____, 2020.

Erik Olson
Section Chief
Office of Regional Counsel, EPA Region 5

UPS TRACKING NUMBER _____

Standard bcc's: Official file copy w/Attachment(s)
Originating Organization Reading File w/Attachment(s)

Other bcc's: Josh Zaharoff (C-14J)
Naeha Dixit (C-14J)
Virginia Galinsky (ECA-18J)