

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2023-0026
)	
Cooper Heat Treating LLC)	Proceeding to Assess a Civil Penalty
Detroit, Michigan,)	Under Section 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 and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Cooper Heat Treating LLC, a corporation doing business in Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

I. Clean Air Act Subsection 112(r)

9. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

10. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that EPA shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

11. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, EPA is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

12. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that

within 3 years after November 15, 1990, EPA shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

13. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases to protect human health and the environment.

14. Pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), EPA initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4,478 (January 31, 1994), which is codified, as amended, at 40 C.F.R. § 68.130.

II. 40 C.F.R. Part 68: Chemical Accident Prevention Provisions

15. Pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), EPA promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 *Fed. Reg.* 31,668 (June 20, 1996), which is codified at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (CAPP). EPA promulgated the most recent amendment to CAPP on December 19, 2019. 84 *Fed. Reg.* 69,834.

16. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

III. Applicability

17. Section 68.10(a) of CAPP, 40 C.F.R. § 68.10(a), provides, in part, that the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under 40 C.F.R. § 68.115, shall comply with the requirements of CAPP no later than the date on which a regulated substance is first present above a threshold quantity in a process.

18. Section 68.3 of CAPP, 40 C.F.R. § 68.3, provides that “regulated substance” means any substance listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130.

19. Table 1 at Section 68.130(a) of CAPP, 40 C.F.R. § 68.130(a), lists ammonia (anhydrous) as a regulated toxic substance with a threshold quantity of 10,000 pounds.

20. Section 68.3 of CAPP, 40 C.F.R. 68.3, provides that “process” means “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.” For purposes of this definition, a single process includes “any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release.”

21. Section 68.3 of CAPP, 40 C.F.R. § 68.3, provides that a “vessel” is any reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose, or other container.

22. Section 68.3 of CAPP, 40 C.F.R. § 68.3, provides that a “covered process” means “a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.”

23. Section 68.10(g) of CAPP, 40 C.F.R. 68.10(g), provides, in part, that a covered process is subject to Program 1 requirements if the distance to a toxic or flammable endpoint for a

worst-case release assessment conducted under CAPP subpart B and 40 C.F.R. § 68.25 is less than the distance to any public receptor, as defined in 40 C.F.R. § 68.3.

24. Section 68.10(i) of CAPP, 40 C.F.R. § 68.10(i), provides, in part, that a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1 as described in 40 C.F.R. § 68.10(g) and if either of the following conditions is met: the process is in NAICS code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or the process is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management standard, 29 CFR § 1910.119.

25. Per CAPP Section 68.12(a) and (d), 40 C.F.R. §§ 68.12(a) and (d), the owner or operator of a stationary source with a covered process must meet requirements including, among other provisions:

- a. requirements regarding management systems (as provided in 40 C.F.R. § 68.15);
- b. hazard assessments (as provided in 40 C.F.R. §§ 68.20 through 68.42);
- c. prevention requirements (as provided in 40 C.F.R. §§ 68.65 through 68.87);
response actions (as provided in 40 C.F.R. § 68.93);
- d. emergency response programs (as provided in 40 C.F.R. §§ 68.90 through 68.96);
and
- e. the submittal of a single RMP that includes data on prevention program elements for Program 3 processes and a registration that reflects all covered processes (as provided in 40 C.F.R. §§ 68.150 to 68.185).

A. Process Hazard Analysis

26. 40 C.F.R. § 68.67(c) of CAPP requires the process hazard analysis to address the following:

i. Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases. 40 C.F.R. § 68.67(c)(3).

ii. Stationary source siting. 40 C.F.R. § 68.67(c)(5).

B. Mechanical Integrity

27. 40 C.F.R. § 68.73(d)(1) of CAPP requires inspections and tests to be performed on process equipment.

28. 40 C.F.R. § 68.73(d)(2) of CAPP requires inspections and testing procedures to follow recognized and generally accepted good engineering practices.

29. 40 C.F.R. § 68.73(d)(3) of CAPP requires the frequency of inspections and tests of process equipment to be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently according to prior operating experience.

30. 40 C.F.R. § 68.73(d)(4) of CAPP requires the owner or operator to document that each inspection and test has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

C. Risk Management Plan

31. 40 C.F.R. § 68.190(a) and (b)(1) of CAPP in part require an owner or operator to review and update the Risk Management Plan (RMP) at least once every five years from the date of its initial submission, and to submit the RMP in the method and format to the central point EPA specifies as of the date of submission.

32. 40 C.F.R. § 68.185(b) provides that, for processes covered under Program 3, the owner or operator shall submit in the RMP a single certification that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.

IV. Administrative Authority

33. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$55,808 per day of violation up to a total of \$446,456 for violations that occurred after November 2, 2015, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

34. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

35. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

I. General

36. Respondent owns and operates a metal parts heat treatment operation at 20251 Sherwood, Detroit, Michigan 48234 (the Facility).

37. Respondent maintains a maximum inventory of 60,000 pounds of the regulated toxic substance, anhydrous ammonia, at the Facility, which exceeds the threshold quantity of 10,000 pounds of anhydrous ammonia as set forth in Table 1 at 40 C.F.R. § 68.130.

38. Respondent uses anhydrous ammonia in its heat treatment process.

39. Respondent's metal parts heat treatment operation at the Facility was and is a "process" as that term is defined at 40 C.F.R. § 68.3.

40. Respondent's metal parts heat treatment operation at the Facility was and is a "covered process," as that term is defined at 40 C.F.R. § 68.3.

41. The covered process at the Facility is subject to the OSHA process safety management standard because it contains greater than the threshold quantity of 10,000 pounds of anhydrous ammonia that is a highly hazardous chemical as defined in 29 C.F.R. § 1910.119(b), (a), and Appendix A.

42. Respondent's metal parts heat treatment operation process at the Facility does not meet the Program 1 requirements at 40 C.F.R. § 68.10(g) because its worst-case release of anhydrous ammonia reaches at least one public receptor, as defined in 40 C.F.R. § 68.3.

43. The Facility is subject to Program 3 because the covered process is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119, in accordance with 40 C.F.R. § 68.10(i), and does not meet the Program 1 eligibility requirements at 40 C.F.R. § 68.10(g).

44. The Facility is subject to the requirements of the CAPP in accordance with 40 C.F.R. Part 68, Subpart A.

45. EPA inspectors completed an announced CAA 112(r) inspection on June 15 through June 16, 2022 (June 2022 Inspection).

46. Respondent provided records during and after the June 2022 Inspection relating to its implementation of the CAPP, including the Facility's RMP involving the management system, process safety information, the Process Hazard Analysis (PHA), operating procedures, training, mechanical integrity, management of change, pre-startup safety review, compliance audits, hot work permits, employee participation, and contractors.

47. Respondent's RMP was due on July 24, 2020, five years after the RMP it previously submitted on July 24, 2015. The Facility did not submit its RMP until June 20, 2022, 696 days late.

48. On January 23, 2023, EPA issued a Finding of Violation (FOV) to Respondent.

49. On February 23, 2023, EPA and Respondent met to discuss the allegations presented in the FOV. Paragraphs 50-56 represent EPA's current understanding of the alleged violations at issue.

II. Process Hazard Analysis (Count 1)

50. Respondent failed to include in its PHA an evaluation of the potential failures of engineering and administrative controls applicable to the hazard, specifically the potential failure of the anhydrous-ammonia sensor, as the Facility had only one anhydrous ammonia sensor at the time of the June 2022 Inspection.

51. Respondent's PHA failed to evaluate stationary source siting.

52. Respondent's failure to address engineering and administrative controls applicable to the hazards and to evaluate stationary source siting in the PHA is a violation of 40 C.F.R. §§ 68.67(c)(3) and (5).

III. Mechanical Integrity (Count 2)

53. Respondent failed to periodically inspect the Facility pipes that are a part of the covered process in a way that follows recognized and generally accepted good engineering practice.

54. Respondent's failure to periodically inspect the Facility pipes is a violation of 40 C.F.R. §§ 68.73(d)(1)-(3).

IV. Risk Management Plan (Count 3)

55. Respondent failed to submit an updated RMP five years after its previously submitted RMP, that was due on July 24, 2020.

56. Respondent's failure to submit an updated RMP five years after its previously submitted RMP is a violation of 40 C.F.R. §§ 68.190(a) and (b)(1).

Civil Penalty

57. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, cooperation, a prompt return to compliance, and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$12,300.

58. Penalty Payment. Respondent agrees to:

- a. pay the civil penalty of \$12,300 within 30 days after the effective date of this CAFO.
- b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
Automated Clearinghouse (ACH) payments made through the US Treasury	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
Wire transfers made through Fedwire	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p>	<p>For standard delivery: U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc): U.S. Environmental Protection Agency Government Lockbox 979078 U.S. EPA Fines and Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, Missouri 63101</p>

59. Within 24 hours of the payment of the civil penalty, respondent must send a notice of payment and states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Justin Berchiolli
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
Berchiolli.justin@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

61. If Respondent does not timely pay the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

62. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This

nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Supplemental Environment Projects

63. In response to the alleged violations of 40 C.F.R. Part 68 and in settlement of this matter, although not required by 40 C.F.R. Part 68 or any other federal, state, or local law, Respondent agrees to complete three supplemental environmental projects (SEPs), as described below in paragraph 65(a), (b), and (c).

64. These SEPs are consistent with applicable U.S. EPA policy, specifically the [“2015 Update to the 1998 U.S. Environmental Protection Agency Supplemental Environmental Projects Policy,”](#) dated March 10, 2015. These SEPs advance at least one of the objectives of 40 C.F.R. Part 68 by preventing and reducing the risk of an ammonia release and by enhancing the ability of Facility employees and emergency responders to respond to a release of ammonia at the Facility. These SEPs are not inconsistent with any provision 40 C.F.R. Part 68. These SEPs relate to the alleged violations, and are designed to reduce:

- a. The adverse impact to public health and the environment to which the alleged violations contribute, specifically by assisting local emergency responders and Facility personnel to locate and remediate an ammonia or nitrogen release, reducing the impact of such a release on the surrounding community, which has potential environmental-justice concerns, and on the environment; and
- b. The overall risk to public health and the environment potentially affected by the alleged violations by enhancing the Facility’s ability to identify and mitigate ammonia and nitrogen leak risks and actual ammonia and nitrogen leaks.

65. Respondent shall complete three SEPs, consisting of the projects below:

- a. SEP #1: Installation of Ammonia and Oxygen Sensors
- i. SEP # 1 consists of Respondent installing six (6) permanent ammonia sensors and three (3) permanent oxygen sensors: two (2) ammonia sensors and one (1) oxygen sensor will be located around and proximate to the main ammonia tank, based on prevailing wind direction, and the other four (4) ammonia sensors and two (2) oxygen sensors will be located throughout the Facility. Each sensor will have text and email notification capabilities set to alert following the detection of ammonia or oxygen. The installation of these additional sensors will enhance the Facility's ability to detect ammonia and nitrogen leaks.
 - ii. Respondent agrees to spend at least \$34,000 on implementing SEP #1. Respondent shall include documentation of the expenditures made in connection with SEP #1 as part of the SEP Completion Report. This \$34,000 expenditure may not include any amount expended to update the Facility's current network. If Respondent's implementation of SEP #1 as described in paragraph 65(a)(i) does not expend the full amount set forth in this paragraph, and if U.S. EPA determines that the amount remaining reasonably could be applied toward installing more permanent ammonia or oxygen sensors along the ammonia process line, Respondent will expend the full amount toward the purchase and installation of more permanent ammonia or oxygen sensors, as identified above in paragraph 65(a)(i).
 - iii. Respondent shall complete SEP #1 by **April 30, 2024**.

- iv. Respondent must continuously use and operate the equipment installed in SEP #1 for **five (5) years** following its installation.
- b. SEP #2: Installation of 5MP IP Turret Dome Cameras
 - i. SEP #2 consists of Respondent installing fifteen (15) 5MP IP turret dome cameras that can be remotely accessed to provide visuals of each of the furnace control panels, which will enhance the Facility's ability to complete daily monitoring of the ammonia process line and provide emergency-response personnel with remote visual access during emergency situations.
 - ii. Respondent agrees to spend at least \$17,000 on implementing SEP #2. Respondent shall include documentation of the expenditures made in connection with SEP #2 as part of the SEP Completion Report. This \$17,000 expenditure may not include any amount expended to update the Facility's current network. If Respondent's implementation of SEP #2 as described in paragraph 65(b)(i) does not expend the full amount set forth in this paragraph, and if U.S. EPA determines that the amount remaining reasonably could be applied towards installing more 5MP IP turret dome cameras, Respondent will expend the full amount toward the purchase and installation of more cameras, as identified above in paragraph 65(b)(i).
 - iii. Respondent shall complete SEP #2 by **January 31, 2024**.
 - iv. Respondent must continuously use and operate the equipment installed in SEP #2 for **five (5) years** following its installation.
- c. SEP #3: Purchase and Use of Infrared (IR) Camera

- i. SEP #3 consists of Respondent purchasing and using an IR camera, with the ability to sense thermal differences and increase the Facility's capabilities of detecting ammonia and nitrogen leaks, to be used during routine mechanical integrity inspections and proactive leak monitoring throughout the Facility.
 - ii. Respondent agrees to spend at least \$7,500 on implementing SEP #3. Respondent shall include documentation of the expenditures made in connection with SEP #3 as part of the SEP Completion Report. If Respondent's implementation of the SEP as described in paragraph 65(c)(i) does not expend the full amount set forth in this paragraph, and if U.S. EPA determines that the amount remaining reasonably could be applied towards expanding SEP #3, Respondent will expend the full amount toward the purchase of a second IR camera, as identified above in paragraph 65(c)(i).
 - iii. Respondent shall complete SEP #3 by **October 31, 2023**.
 - iv. Respondent must continuously use and operate the equipment purchased in SEP #3 for **five (5) years** following the date Respondent receives the equipment.
66. Respondent certifies the truth and accuracy of each of the following:
 - a. That all cost information provided to U.S. EPA in connection with U.S. EPA's approval of the SEP is complete and accurate, that it in good faith estimates that the cost to implement SEP #1 is about \$35,000; SEP #2 is about \$18,000; and SEP #3 is about \$8,000, for a total expenditure of about \$61,000;

- b. That it will not include administrative costs or employee oversight of the implementation of the SEPs in its project costs;
- c. That, as of the date it signs this CAFO, it is not required to perform or develop any of these SEPs by any law, regulation, grant, order, or agreement, or as injunctive relief awarded in any other action in any forum;
- d. That it has not received, and will not have received, credit for any of these SEPs in any other enforcement action;
- e. That it will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That the SEPs are not projects that it was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
- g. That, for Federal Income Tax purposes, it will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEPs; and
- h. That it is not party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEPs described in paragraph 65(a), (b), and (c).

67. U.S. EPA may inspect the Facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

68. SEP Completion Report

- a. Respondent must submit a SEP Completion Report to U.S. EPA by **May 1, 2024**.
- b. This SEP Completion Report must contain the following information, with supporting documentation:

- i. Detailed description of each SEP as implemented;
- ii. Description of any operating problems and the actions taken to correct the problems;
- iii. Itemized costs;
 1. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
- iv. Certification that Respondent has fully implemented the SEPs pursuant the provisions of this CAFO. The appropriate corporate officer must sign the following statement:
 1. I certify that Cooper Heat Treating LLC has fully implemented the SEPs pursuant to the provisions of the CAFO. 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, it 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.

- v. Description of the environmental and public-health benefits resulting from the SEPs (with quantification of the benefits, if feasible)
- c. Respondent agrees that failure to submit the SEP Completion Report required by paragraph 68(a) and (b) shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 70 below.
- d. Respondent must submit all notices and reports required by this CAFO via email to:

Erin DuMontelle
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
DuMontelle.Erin@epa.gov

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

- 69. U.S. EPA acceptance of SEP Completion Report
 - a. Following receipt of the SEP Completion Report described in paragraph 68, above, U.S. EPA will notify Respondent, in writing, indicating:
 - i. That there are deficiencies in the SEPs as completed or in the SEP Completion Report; U.S. EPA will give Respondent 30 days (or more, if appropriate) to correct the deficiencies; and/or

- ii. That Respondent has achieved satisfactory completion of the SEPs or the SEP Completion Report; and/or
 - iii. That Respondent has not achieved satisfactory completion of the SEPs or the SEP Completion Report; U.S. EPA may seek stipulated penalties under paragraph 70.
- b. If U.S. EPA elects to exercise the option indicated in paragraph 69(a)(i), above, i.e., if U.S. EPA determines the SEP Completion Report to be deficient but U.S. EPA has not yet made a final determination about the adequacy of the completion of any the three SEPs, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. U.S. EPA and Respondent shall have an additional thirty (30) days from the receipt by U.S. EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, U.S. EPA shall provide a written statement of its decision on adequacy of the completion of the three SEPs to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by U.S. EPA as a result of any failure to comply with the terms of this CAFO.

70. Stipulated Penalties: If Respondent violates any requirement of this CAFO relating to the SEP, upon demand by U.S. EPA, Respondent must pay stipulated penalties to the United States as follows:

a. Late SEP Completion: Except as provided in subparagraphs (b) and (c) below, if Respondent did not achieve satisfactory completion of the SEPs specified in paragraph 65 by the agree-upon deadline according to the requirements of this CAFO including the schedules in paragraph 65(a)(iii), (b)(iii), and (c)(iii), Respondent agrees to pay, in addition to the assessed civil penalty in paragraph 57, the following per-day per-violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement, not to exceed the amount specified in paragraph 70(c):

- i. \$150 per day for days 1-30
- ii. \$250 per day for days 31-60
- iii. \$300 per day for days 61 and on

b. Late SEP Completion Report: If Respondent did not timely submit a SEP Completion Report, as set forth in paragraph 68, in accordance with the timelines set forth in the CAFO, Respondent agrees to pay the following per-day stipulated penalty for each day after the SEP Completion Report was due until Respondent submits the SEP Completion Report in its entirety, not to exceed the amount specified in paragraph 70(c):

- i. \$100 per day for days 1-30
- ii. \$150 per day for days 31-60
- iii. \$200 per day for days 61 and on

U.S. EPA, at its sole discretion, will determine whether Respondent timely submitted the SEP Completion Report.

- c. Failure to achieve satisfactory completion of the SEPs: If Respondent does not achieve satisfactory completion of one or more of the SEPs, including spending the minimum amount on each SEP as set forth in paragraph 65(a), (b), and (c), Respondent shall pay a stipulated penalty to the United States in the following amounts: \$40,000 for failure to satisfactorily complete SEP #1; \$20,000 for failure to satisfactorily complete SEP #2; and \$9,000 for failure to satisfactorily complete SEP #3. “Satisfactory completion” of a SEP means Respondent spent no less than \$34,000 for SEP #1; \$17,000 for SEP #2; and \$7,500 for SEP #3 (for a total of \$58,500) to complete the SEPs, per their respective deadlines, described in paragraph 65(a), (b), and (c). U.S. EPA, at its sole discretion, will determine whether Respondent has achieved satisfactory completion of the SEPs.
- d. U.S. EPA, at its sole discretion, may waive or reduce a stipulated penalty under paragraph 70.
- e. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by U.S. EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 58(a) above. Interest and late charges shall be paid as stated in paragraph 62.

71. Any public statement, oral or written, in print, film, or other media, that Respondent or a representative of Respondent makes in reference to the SEPs under this CAFO from the date of its execution of this CAFO shall include the following language, “Cooper Heat Treating LLC undertook this project under the settlement of the United States Environmental Protection Agency’s enforcement action against Cooper Heat Treating LLC for alleged

violations of 40 C.F.R. Part 68, which EPA promulgated pursuant to Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

72. If an event occurs which causes or may cause a delay in completing the SEPs as required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within ten days after learning of an event which caused or may cause a delay in completing any of the SEPs. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past, current, and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this subparagraph, Respondent will not receive an extension of time to complete the SEPs.
- b. If the parties agree that unforeseeable circumstances beyond the control of Respondent caused or may cause a delay in completing any of the SEPs, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that unforeseeable circumstances beyond the control of Respondent caused or may cause a delay in completing one or more of the SEPs, U.S. EPA will notify Respondent in writing of its decision and any delay in completing any of the SEP will not be excused.
- d. Respondent has the burden of proving that unforeseeable circumstances beyond its control caused or may cause a delay in completing the SEPs. Increased costs for completing the SEP 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.

73. Nothing in this CAFO is intended to, nor will be construed to, constitute U.S. EPA approval of the equipment or technology installed by the Respondent in connection with the SEP under this CAFO.

General Provisions

74. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: berchiolli.justin@epa.gov (for Complainant), and mcooper@cooperht.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

76. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

77. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 75, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

78. Respondent certifies that it is complying fully with 40 C.F.R. Part 68.

79. This CAFO constitutes an "enforcement response" as that term is used in EPA's Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R.

Part 68 to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

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


81. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

82. Each party agrees to bear its own costs and attorneys' fees in this action.

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

Cooper Heat Treating LLC, Respondent

9/25/2023
Date


Charles M Cooper, President *Manager*
Cooper Heat Treating LLC

38-3903828
Tax Identification Number

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of: Cooper Heat Treating LLC
Docket No. CAA-05-2023-0026**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5