



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 15 2007

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard Gill, Unit Manager
MAPEI Corporation
530 Industrial Drive
West Chicago, IL 60185

Dear Mr. Gill:

Enclosed is a file stamped Consent Agreement and Final Order ("CAFO") which resolves case docket number CAA-05-2007-0011 with MAPEI Corporation. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUN 15 2007.

Pursant to paragraph 26 of the CAFO, MAPEI Corporation must pay the civil penalty within 30 days of the date the CAFO is filed. Your check must display the case docket number, CAA-05-2007-0011, and the billing document number, 2750703A014.

Please direct any questions regarding this case to Kathleen Schnieders, Associate Regional Counsel at 312.886.4670.

Sincerely yours,

A handwritten signature in cursive script that reads "William L. MacDowell".

William MacDowell
Section Chief, AECAS (MN/OH)

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No. CAA-05-2007-0011
)	Proceeding to Assess a Civil
MAPEI Corporation.)	Penalty under Section 113(d) of the
West Chicago, Illinois,)	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 Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).
2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).
3. Respondent is the MAPEI Corporation (MAPEI), a corporation doing business in the State of Illinois.
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) (2004).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

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

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

Statutory and Regulatory Background

9. Section 110 of the Act, 42 U.S.C. §7410 requires that each state submit to the Administrator of U.S. EPA a plan for attaining and maintaining the National Ambient Air Quality Standards.

10. On May 31, 1972, U.S. EPA approved Illinois Pollution Control Board (PCB) Rule 103(a)(1) as part of the federally enforceable state implementation plan (SIP) for Illinois. 37 Fed. Reg. 10842. Due to renumbering of the Illinois PCB Rules, that rule is currently set forth at Ill. Admin. Code Title 35, Section 201.142.

11. Section 210.142 prohibits the construction of a new emission source, or the modification of an existing source, without first obtaining a construction permit from the State of Illinois. 35 I.A.C. § 201.142.

12. 40 C.F.R. § 52.23 provides that failure to comply with any approved regulatory provision of a SIP constitutes a violation of the SIP and is subject to enforcement under Section 113 of the Act, 42 U.S.C. § 7413.

13. The Administrator may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

Factual Allegations

14. MAPEI owns and operates an adhesive, cleaner and grout manufacturing facility at 530 Industrial Drive, West Chicago, Illinois, 60185.

15. On June 8, 2006, U.S. EPA inspected the facility in order to determine compliance with certain provisions of the Act.

16. U.S. EPA followed that inspection by issuing an Information Request under Section 114 of the Act on August 24, 2006.

17. MAPEI provided its response to the Information Request on September 12, 2006.

18. On September 25, 2006, U.S. EPA issued a Notice of Violation (NOV) to the facility citing violations of the permitting requirements of the Illinois SIP regulations.

19. On November 11, 2006, U.S. EPA and MAEPI met to discuss the violations cited in the NOV.

20. At the facility MAEPI owns and operates Mixer 224A, an emission source, which was installed on March 23, 2006.

21. The facility was issued a Permit-to-Install (PTI) for Mixer 224A on June 29, 2006. A PTI is a construction permit.

22. At the facility MAEPI owns and operates Mixer T-218, an emission source, which was installed on April 28, 2006.

23. The facility was issued a PTI for Mixer T-218 on June 29, 2006. A PTI is a construction permit.

Violations

24. MAPEI's failure to obtain construction permits prior to commencing installation of emission units Mixer 224A and Mixer T-218, constitute two violations of Section 113 (a)(1) of the Act, 42 U.S.C. § 7413(a)(1).

Terms of Settlement

Civil Penalty

25. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), including the facts of this case, the nature of the violations, the cooperation demonstrated by MAEPI , MAPEI's agreement to perform Supplemental Environmental Projects (SEPs), and other relevant factors, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$5,280.

26. MAPEI must pay the \$5,280 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

27. MAPEI must send the check to:

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

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

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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

29. This civil penalty is not deductible for federal tax purposes. If MAPEI does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. MAPEI will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. MAPEI will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10

percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Supplemental Environmental Projects

30. MAPEI agrees to complete two SEPs designed to further protect the environment and public health by reducing emissions of Hazardous Air Pollutants from its West Chicago facility. The first SEP is a reformulation of MC-54 to reduce residual monomer. The second SEP is a reformulation of MC-302 and MC-341 to reduce residual monomer.

31. At its West Chicago facility, MAPEI must complete the reformulations of MC-54, MC-302 and MC-341 as follows, and as detailed in Attachment A, the SEP Scope of Work (SOW) which is incorporated by reference into this CAFO:

- a. Reformulate MC-54 to increase solid content to 54% and reduce Vinyl Acetate content by 1399 lbs; and,
- b. Reformulate MC-302 and MC-341 to reduce Vinyl Acetate residual by 321 lbs.

32. MAPEI must spend at least \$22,000 for the reformulation projects. No funds counted toward completion of the SEP shall be deductible for federal tax purposes.

33. MAPEI must submit a SEP Completion Report for the reformulation projects to U.S. EPA within 30 days of completion of each project, in accordance with the deadline set forth in the SOW. This completion report must contain the following information:

- a. A detailed description of the SEP as completed;
- b. A description of any operating problems and the actions taken to correct the problems;

- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services; and,
- d. A certification that MAPEI has completed the SEP in compliance with this CAFO.

34. MAPEI must submit all SEP notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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

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

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

36. Following receipt of each SEP Completion Report, as described in paragraph 33 above, U.S. EPA will notify MAPEI in writing within 30 days of receipt of each report that:

- a. It has satisfactorily completed the SEP and the SEP Completion Report;

- b. There are deficiencies in the SEP as completed or in the SEP Completion Report and U.S. EPA will give MAPEI 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP Completion Report, and U.S. EPA will seek stipulated penalties under paragraph 37, below.

Alternatively, if subparagraph (b) above has been invoked, U.S. EPA will timely notify MAPEI in writing, that:

- a. It has satisfactorily cured deficiencies in the SEP or the SEP Completion Report; or,
- b. It has failed to cure deficiencies in the SEP or the SEP Completion Report within the allotted time, and U.S. EPA will seek stipulated penalties under paragraph 37, below.

MAPEI agrees that failure to submit a SEP Completion Report shall be deemed a violation of this CAFO, and MAPEI shall become subject to stipulated penalties pursuant to paragraph 37.

37. If MAPEI violates any requirement of this CAFO relating to the SEPs, and has failed to cure any deficiencies as provided in paragraph 36 above, MAPEI must pay stipulated penalties to the United States as follows:

- a. If MAPEI fails to complete and implement the MC-54 Reformulation SEP in a timely manner, as required by this CAFO and the SOW, MAPEI must pay a stipulated penalty in the amount of \$15,000.
- b. If MAPEI fails to complete and implement the MC-302 and M-341 Reformulation SEP in a timely manner, as required by this CAFO and the SOW, MAPEI must pay a stipulated penalty in the amount of \$7,500.

c. If MAPEI completes and implements the SEPs in a timely manner, as required by this CAFO and the SOW, but fails to spend at least 90% of the amount specified in paragraph 32 above, MAPEI must pay a stipulated penalty in the amount of \$3,300.

d. If MAPEI fails to comply with the schedule in Attachment A to this CAFO for implementing the SEP or fails to submit timely the SEP Completion Reports required in paragraph 33, MAPEI must pay a stipulated penalty for each failure to meet an applicable milestone, as follows:

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

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

39. MAPEI must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. MAPEI will use the method of payment specified in paragraphs 27 and 28, above, and will pay interest and nonpayment penalties on any overdue amounts.

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

a. MAPEI must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), MAPEI's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. MAPEI must take all reasonable actions to avoid or minimize any delay. If MAPEI fails to notify U.S. EPA according to this paragraph, MAPEI will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of MAPEI caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of MAPEI caused or may cause a delay in completing the SEP, U.S. EPA will notify MAPEI in writing of its decision and any delays in completing the SEP will not be excused. If MAPEI disputes U.S. EPA's initial determination regarding delay, MAPEI must notify U.S. EPA in writing within 10 days of receipt of U.S. EPA's determination. Thereafter, U.S. EPA's final determination of whether circumstances beyond the control of MAPEI caused or may cause a delay in completing the SEP will be made by the U.S. EPA, Region 5, Air and Radiation Division Director, after considering MAPEI's position.

d. MAPEI has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEPs will not be a basis for an extension of time under subparagraph b, above.

Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

41. Any statement to the general public that MAPEI makes referring to the SEPs must include the following language, “MAPEI undertook this project under the settlement of the United States Environmental Protection Agency’s enforcement action against MAPEI for alleged violations of Clean Air Act requirements regarding Illinois’s permitting requirements.”

42. MAPEI hereby certifies that, as of the date of this CAFO, MAPEI is not required to perform or develop this SEP by any federal, state, or local law or regulation; nor is MAPEI required to perform or develop this SEP by any other agreement, grant, or as injunctive relief in this or any other case. MAPEI further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP.

Final Statement

43. This CAFO resolves only MAPEI’s liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.

44. The effect of the settlement, as defined in paragraph 43, is conditioned upon the accuracy of MAPEI’s representations to U.S. EPA.

45. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

46. This CAFO does not affect MAPEI’s responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 43 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

47. This CAFO constitutes an “enforcement response” as that term is used in “U.S. EPA’s Clean Air Act Stationary Source Civil Penalty Policy” to determine MAPEI’s “full compliance history” under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

48. The terms of this CAFO bind MAPEI, and its successors, and assigns.

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

50. Each party agrees to bear its own costs and attorneys’ fees in this action.

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

U.S. Environmental Protection Agency, Complainant

6/13/2007
Date



Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

CAA-05-2007-0011

CONSENT AGREEMENT AND FINAL ORDER

MAPEI Corp.

Docket No. CAA-05-2007-0011

MAPEI Corp., Respondent

6/1/07
Date

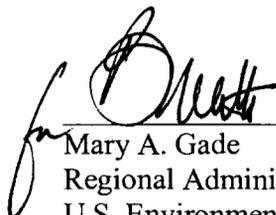
Mark H. Sheffer, Sr.
Mark H. Sheffer, Sr., Director of Operations
MAPEI Corp.

CONSENT AGREEMENT AND FINAL ORDER
MAPEI Corporation
Docket No. CAA-05-2007-0011

Final Order

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

6-14-07
Date



Mary A. Gade
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Attachment A

Supplemental Environmental Projects (SEPs) Scope of Work

MC-54 Reformulation

Respondent shall plan and implement the MC-54 Reformulation Project at MAPEI's West Chicago, IL plant. This includes process, equipment, and formulation changes in the polymer and spray dryer areas. Major portions of the vinylic polymer solutions are processed through the spray-dryer and then packaged as a dry material. The spray drying process heats the polymer solution (MC-54) and evaporates the remaining water content. The process result is a vinyl acetate/vinyl versatate copolymer powder. MAPEI will reduce the monomer emissions from the polymer and spray drying process by 1399 lbs by May 31, 2008.

MC-302 & MC-341 Reformulation

Respondent shall plan and implement the MC-302 and MC-341 Reformulation Project for MAPEI's West Chicago, Illinois Plant. Formula changes for products MC-302 and MC-341 will result in a decrease of Vinyl Acetate residual in the product. MAPEI will decrease the residual monomer content of products MC-302 and MC-341 by 321 lbs by October 31, 2007.

SEPs COST

One-time costs associated with the projects are estimated to be \$35,000.

R&D labor and travel expenses are estimated to be \$12,000. No costs for labor or travel expenses for MAPEI Corporation personnel have been included in this estimate.

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice of Violation, No. EPA-5-06-29-IL, by Certified Mail, Return Receipt Requested, to:

Richard Gill, Unit Manager
MAPEI
530 Industrial Drive
West Chicago, IL 60185

I also certify that I sent copies of the Notice of Violation by first class mail to:

Julie Armitage, Section Manager
Compliance and System Management Section
Illinois Environmental Protection Agency
1021 North Grand Avenue
Springfield, Illinois 62794-9506

on the 15th day of June, 2007.

CERTIFIED MAIL RECEIPT NUMBER: 7001 03200005 89192010

standard bcc's: official file copy w/ attachment(s)

other bcc's: