



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 30 2009

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dan Croal, Vice President - Operations
A & A Manufacturing Company, Inc.
2300 South Calhoun Road
New Berlin, Wisconsin 53151

Dear Mr. Croal:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket number CAA-05-2009-0038 with A & A Manufacturing Company, Inc. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 30 2009.

Pursuant to paragraph 31 of the CAFO, A & A Manufacturing Company, Inc. must pay the civil penalty within 30 days of the date the CAFO is filed. Your check must display the case docket number, CAA-05-2009-0038, and the billing document number, 2750903A040.

Please direct any questions regarding this case to Padmavati Bending, Associate Regional Counsel, (312) 353-8917.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bonnie Bush".

Bonnie Bush, Chief
Air Enforcement & Compliance Assurance Branch
(MI/WI Section)

Enclosure

cc: Arthur J. Harrington
Godfrey & Kahn, S.C.
780 North Water Street
Milwaukee, Wisconsin 53202-3590

Daniel Schramm, Air Management Supervisor
Wisconsin Department of Natural Resources
Southeast Region
2300 North Dr. Martin Luther King Jr. Dr.
Milwaukee, Wisconsin 53212

Bill Baumann, Section Chief Compliance and Enforcement
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, Wisconsin 53707-7921

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
A & A Manufacturing Company, Inc.)
New Berlin, Wisconsin)

Respondent.)
_____)

Docket No. CAA-05-2009-0038

**Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)**

RECEIVED

SEP 30 2009

**REGIONAL HEARING CLERK
USEPA
REGION 5**

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)(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 Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is A & A Manufacturing Company, Inc. (A & A Manufacturing Company or Respondent), a corporation doing business in Wisconsin.

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

9. Effective February 17, 1995, EPA approved Wis. Admin. Code NR Chapter 406.03, "Permit requirements and exemptions for construction permits," NR Chapter 407.04, "Permit application requirements," and NR Chapter 407.08, "Dates by which permits are required," as part of the federally enforceable Wisconsin SIP at *60 Fed. Reg. 3538* (January 18, 1995). 40 C.F.R. § 52.2570(c)(75) and (76).

10. Wis. Admin. Code NR Chapter 407.08 requires that the owner or operator of a new or modified air contaminant source which is required to obtain an operation permit may not operate without an operation permit. For Waukesha County, the Part 70 application date was October 1, 1995.

11. 40 C.F.R. § 70.1(b) states that "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements."

12. 40 C.F.R. § 70.2 defines "major source" as, for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act,

25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule.

13. Toluene is a hazardous air pollutant listed under Section 112(b) of the Act, 42 U.S.C. § 7412(b).

14. 40 C.F.R. § 70.5 requires that the owner or operator of each Part 70 source submit a complete application within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.

15. 40 C.F.R. § 52.23 provides, among other things, that a person who fails to comply with any approved regulatory provision of a SIP is in violation of and subject to an enforcement action under Section 113 of the Act.

16. Pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, the Administrator 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 between March 15, 2004, and January 11, 2009, and up to \$37,500 per day of violation, up to a total of \$295,000, for violations that have occurred on or after January 12, 2009. See 73 Fed. Reg. 75340-75346 (December 11, 2008).

17. 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

18. 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.

Factual Allegations and Alleged Violations

19. A & A Manufacturing Company owns and operates the New Berlin facility located at 2300 South Calhoun Road, New Berlin, in Waukesha County, Wisconsin, which manufactures telescopic metal products and flexible rubber products.

20. On March 26, 2008, under the authority of Section 114 of the Act, 42 U.S.C. 7414, EPA sent an Information Request to Respondent requesting copies of air permits, air permit applications, and other air emission records.

21. On April 16, 2008, EPA received A & A Manufacturing Company's response to EPA's March 26, 2008, information request.

22. The materials which Respondent provided to EPA on April 16, 2008, did not contain a Part 70 permit that is in effect or application to the Wisconsin Department of Natural Resources (WDNR) for such permit.

23. On June 25, 2008, EPA received a copy of an air operating permit application and a letter indicating that Respondent concurrently submitted an air operating permit application to WDNR that included the following emission units: Natural Gas Boiler, Bus Bellows Assembly, Gortiflex, Paint Booths, Solvent Wipe Cleaning, and Specialty Bellows.

24. Respondent calculated their potential to emit as 126.2 tons of toluene per year and calculated their actual emissions of toluene to be 28.02 tons during 2007.

25. As a result, Respondent is a major source of hazardous air pollution, as defined in 40 C.F.R. § 70.2.

26. On December 22, 2008, EPA issued a Notice and Finding of Violation to Respondent for violations of the Wisconsin SIP regulation Chapter NR 407.08 and 40 C.F.R. § 70.5.

27. On January 27, 2009, EPA and Respondent held a conference to discuss the December 22, 2008, Notice and Finding of Violation.

28. Respondent failed to submit a timely application for a Part 70 operating permit as required in 40 C.F.R. § 70.5 and therefore, has been in violation from October 1, 1995 to June 25, 2008, when it applied for a permit.

29. Respondent has operated and continues to operate emission units without a Part 70 operating permit as required in the Wisconsin SIP regulation Chapter NR 407.08, and therefore, has been in violation from October 1, 1995 to the present. This violation will be resolved when Wisconsin Department of Natural Resources issues the Part 70 operating permit for which Respondent applied on June 25, 2008.

Civil Penalty

30. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation and prompt actions to return to compliance, and Respondent's agreement to carry out the Supplemental Environmental Projects described in Paragraph 37, below, Complainant has determined that an appropriate civil penalty to settle this action is \$79,429.

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$79,429 civil penalty by sending a cashier's or certified check payable to the "Treasurer, United States of America," to:

For checks sent by regular U.S. Postal Service mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Or, for checks sent by express mail:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must note the following: the case name (*In the matter of A & A Manufacturing Company, Inc.*), the docket number of this CAFO and the billing document number.

Or, if paying via electronic funds transfer payable to the "Treasurer, United States of America," to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the case name, the docket number of this CAFO, and the billing document number.

32. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check or proof of EFT payment and transmittal letter to:

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

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, IL 60604

Padmavati Bending, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

34. If Respondent does not pay timely the civil penalty, 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.

35. Pursuant to 31 C.F.R. § 901.9, 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. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must 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 Project

36. Respondent agrees to complete the two Supplemental Environmental Projects (SEPs) described in paragraph 37 which are designed to further protect the environment and

public health by reducing emissions of toluene, a hazardous air pollutant (HAP), and emissions of volatile organic compounds (VOC) from its facility.

37. Respondent must commence the following projects subject to the conditions imposed by this CAFO:

- a. Product substitution of its "Black Neoprene Paint" to a water-based or low-VOC formula, reducing toluene emissions, total HAP emissions, and VOC emissions from this coating, by December 31, 2009.
- b. Product substitution of its "White Hypalon Paint" to reduce toluene emissions and total HAP emissions from this coating, by December 31, 2010.

38. Respondent must spend at least \$22,280 to implement the SEPs.

39. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

40. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements

41. Respondent must maintain copies of all reports submitted to EPA according to this CAFO.

42. Respondent must submit a SEP completion report to EPA within 30 days of completion of the SEP. This report must contain the following information:

- a. Detailed description of the SEP including actual toluene and VOC emission reductions, as completed;
- b. 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, canceled checks, or other documentation

including internal accounting documents that specifically identify and itemize the individual costs of the goods and services; and,

- d. Certification that Respondent has completed the SEP in compliance with this CAFO.

43. Respondent 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

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

44. In each report that Respondent 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.

45. Following receipt of the SEP Completion Report, as described in paragraph 42 above, EPA will notify Respondent in writing within 30 days of receipt of the 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 EPA will give Respondent 30 days to correct the deficiencies; or

- c. It has not satisfactorily completed the SEP or the SEP Completion Report, and EPA will seek stipulated penalties under paragraph 47, below.

46. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 47, below.

47. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent spent less on the SEP than the amount set forth in paragraph 38, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 38.
- b. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$22,280 in addition to any penalty required under subparagraph 47.a, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- c. If Respondent fails to comply with the schedule in paragraph 37, above, for implementing the SEP or fails to submit timely the SEP completion report required by paragraph 42, above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$250	15 th through 30 th day
\$500	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

48. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

49. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 31, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

50. Any public statement that Respondent makes referring to the SEP must include the following language, "A & A Manufacturing Company, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action for violations of the Clean Air Act."

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

- a. Respondent must notify EPA in writing within 10 calendar 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), Respondent's past 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 EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent 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 EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

- d. Respondent 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 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.

52. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

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

55. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 53, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

56. Respondent certifies that it has taken all necessary actions to fully comply with the Act, including, but not limited to, the filing of the permit application described in Paragraph 29, above, and will be fully "compliant" or "in compliance" with the Act when the permit is issued by the WDNR.

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

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

59. Each person signing this consent agreement certifies that he or she has the authority

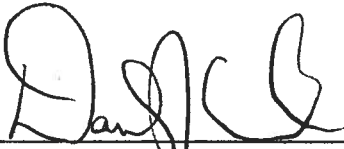
to sign for the party whom he or she represents and to bind that party to its terms.

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

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

A & A Manufacturing, Inc., Respondent

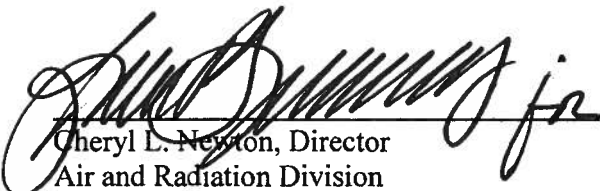
9/24/09
Date



Dan Croal, Vice President - Operations
A & A Manufacturing Company, Inc.

U.S. Environmental Protection Agency, Complainant

9/29/09
Date



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

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of:

A & A Manufacturing Company, Inc.

Docket No. CAA-05-2009-0038

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.

9/29/09
Date

Walter W. Kordulak
for
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5

RECEIVED
SEP 30 2009

REGIONAL HEARING CLERK
USEPA
REGION 5

