

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2020-0033
)	
FCA US LLC)	Proceeding to Assess a Civil Penalty
Toledo South Paint Facility)	Under Section 113(d) of the Clean Air Act,
Toledo, Ohio,)	42 U.S.C. § 7413(d)
)	
Respondent.)	
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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 FCA US LLC (FCA or Respondent), a corporation doing business in Ohio.

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. In order to resolve this matter without litigation, 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

Title V

9. Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), requires each State to develop and submit to EPA an operating permit program which meets the requirements of Title V.

10. On August 15, 1995, EPA approved the State of Ohio's operating permit program with an effective date of October 1, 1995. 60 Fed. Reg. 42045.

11. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.

12. Title V regulations at 40 C.F.R. § 70.6(b)(1) specify that all terms and conditions in a permit issued under a Part 70 program, including any provisions designed to limit a source's potential to emit, are enforceable by the EPA under the Act.

Ohio SIP

13. On January 22, 2003, EPA approved OAC rule 3745-31-05 as part of the federally enforceable state implementation plan (SIP) for Ohio. 68 Fed. Reg. 2909 (November 30, 2001).

14. OAC rule 3745-31-05(A)(3) requires that “[t]he director shall issue a permit-to-install or PTIO [permit to install and operate], on the basis of the information appearing in the application, or information gathered by or furnished to the Ohio environmental protection agency, or both, if the director determines that the installation or modification and operation of the air contaminant source, [...] will . . . : (3) Employ BAT [best available control technology], when applicable . . .”

15. The Administrator of EPA (the Administrator) 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 CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

16. 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.

17. 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

18. FCA owns and operates the Toledo South Paint Facility (formerly known as Wrangler Paint Facility) located at 3800 Stickney Avenue, Toledo, Ohio (TSPF or Facility).

19. At the Facility, FCA owns and operates an electrodeposition prime coat (E-Coat) tank and oven controlled by a regenerative thermal oxidizer (RTO). The E-Coat tank and E-Coat oven and the associated RTO are together designated as emission unit K301 (K301).

20. The Ohio EPA issued a Title V Permit to the Facility on September 11, 2015 (2015 Title V Permit), which established conditions for emission unit K301.

21. The 2015 Title V Permit, Condition 2.b)(2)c, states that the permittee must operate and maintain the RTO with 100% capture efficiency to control VOC emissions from the E-Coat oven.

22. On February 10, 2016, EPA conducted an inspection at the Facility.

23. During the 2016 inspection, EPA observed visible emissions exiting the E-Coat oven.

24. EPA alleges that the visible emissions from the E-coat oven demonstrated that a 100% capture efficiency for VOC was not being achieved by the oven.

25. By failing to achieve 100% capture efficiency to control for VOC emissions at the E-coat oven, EPA alleges that FCA violated Section 502(a) of the Act, 42 U.S.C. § 7661a(a) and 40 C.F.R. § 70.7(b).

26. Based upon its findings from the February 10, 2016 inspection, EPA issued a Finding of Violation (FOV) to FCA on December 21, 2016.

27. Subsequently, on February 9, 2017, EPA and FCA participated in a conference to discuss the alleged violations presented in the FOV. During this conference, FCA indicated that the visible emissions which EPA had observed during its inspection of the Facility originated from the edge of an access door on the E-Coat oven. FCA also indicated that it had subsequently repaired seals and latches on the oven access doors and afterwards observed no visible emissions from the E-Coat oven.

28. After the 2017 conference, however, FCA recognized that there was minimal outward air flow from the access doors, despite its repairs, which prompted a series of technical discussions between the parties on how to demonstrate compliance with the 100% capture requirement at the existing Facility and quantify the minor amount of the release.

29. On January 30, 2020, FCA applied to the Ohio EPA for permit modifications to replace the existing permit language specifying a 100% capture efficiency and minimum 95% control efficiency for the RTO with a requirement for a minimum, overall control efficiency of 95%, to be demonstrated by multiplying the capture efficiency of the E-coat oven with the control efficiency of the RTO.

30. Ohio EPA approved FCA's January 30, 2020 application, and on April 13, 2020, issued a final Air Pollution Permit-To-Install to FCA (PTI P0128124), containing the requested modifications.

31. PTI P0128124 at § C.1.b)(2)(c) states "The permittee shall operate and maintain a thermal oxidizer, such that the overall control efficiency is a minimum of 95 percent, to control VOC emissions from the e-coat dip tank and e-coat oven. The thermal oxidizer shall be installed, operated and maintained in accordance with the manufacturer's recommendations with any amendments deemed necessary by the permittee."

32. PTI P0128124 at § C.1.f)(1)e. provides the equation to be used to demonstrate compliance with the overall control efficiency for the E-coat oven:

$$(Capture\ Efficiency)(Control\ Efficiency) \geq 95\%$$

33. PTI P0128124 at § C.1.f)(1)e. further states that if required, FCA shall demonstrate compliance with the overall control efficiency for the E-coat oven by performing emissions testing in accordance with EPA Methods 25 and 204 or an approved alternative method for determining capture efficiency.

Civil Penalty

34. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is \$29,590.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a \$29,590 civil penalty by electronic funds transfer, payable to “Treasurer, United States of America,” and sent 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 Respondent’s name and the docket number of this CAFO.

36. Respondent must send a notice of payment that states Respondent’s name and the docket number of this CAFO to EPA at the following email addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Cynthia Kawakami
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
kawakami.cynthia@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

38. If Respondent does not pay timely 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.

39. 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).

General Provisions

40. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: kawakami.cynthia@epa.gov (for Complainant), and matthew.read@fcagroup.com and kkissling@wnj.com (for Respondent).

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

42. The effect of the settlement described in paragraph 41, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraphs 18-33 of this CAFO.

43. 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.

44. 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 41 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

45. Respondent certifies that it is in compliance with Section 502(a) of the Act, 42 U.S.C. § 7661a(a) and 40 C.F.R. § 70.7(b), as it is complying with the requirements of PTI P0128124.

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

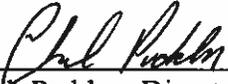
47. The terms of this CAFO bind the parties as well as their successors and assigns.

48. 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.

49. Each party agrees to bear its own costs and attorney's fees in this action.
50. This CAFO constitutes the entire agreement between the parties.

FCA US LLC Toledo South Paint Facility

AUGUST 31, 2020
Date



Chuck Padden, Director of Assembly Operations -
BVAP, TAC, WTAP
FCA US LLC Toledo South Paint Facility

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2020.09.09
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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: FCA US LLC Toledo South Paint Facility
Docket No. CAA-05-2020-0033

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 COYLE Digitally signed by ANN
COYLE
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Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5