



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 28 2018

REPLY TO THE ATTENTION OF:

VIA E-MAIL
RETURN RECEIPT REQUESTED

Craig Moyer
Quemetco, Inc.
7870 W. Morris Street
Indianapolis, Indiana 46231

Email: cmoyer@manatt.com

Dear Mr. Moyer:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Quemetco, Inc., docket no. CAA-05-2018-0027. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on _____.

Pursuant to paragraph 95 of the CAFO, Quemetco, Inc. must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Nidhi O'Meara, Assistant or Associate Regional Counsel, (312) 886-0568.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Marshall".

Sarah Marshall, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Nidhi O'Meara/C-14J
Phil Perry, Air Compliance Branch Chief, IDEM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Quemetco, Inc.
Indianapolis, Indiana,

Respondent.



Docket No. CAA-05-2018-0027

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

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

3. Respondent is Quemetco Inc. (Quemetco), a corporation doing business in Indiana.

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 and alleged violations 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

National Emission Standards for Hazardous Air Pollutants

9. Section 112(c) of the CAA, 42 U.S.C. § 7412(c), requires the EPA to publish a list of all categories and subcategories of new and existing “major sources” of hazardous air pollutants (HAPs), and establish emissions standards for the categories and subcategories. These emission standards are known as National Emission Standards for Hazardous Air Pollutants (NESHAP). The EPA codified these standards at 40 C.F.R. Parts 61 and 63.

10. Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), defines “major source” as “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 considering controls, in the aggregate, 10 tons per year or more of any HAP, or 25 tons per year or more of any combination of HAPs.” See also 40 C.F.R. § 63.2.

11. Section 111(a)(3) of the CAA, 42 U.S.C. § 7411(a)(3), defines “stationary source” as “any building, structure, facility, or installation, which emits or may emit any air pollutant.” See also Section 112(a)(3) of the CAA, 42 U.S.C. § 7412(a)(3) and 40 C.F.R. § 63.2.

12. Section 112(a)(6) of the CAA, 42 U.S.C. § 7412(a)(6), defines “hazardous air pollutant” as “any air pollutant listed in or pursuant to” Section 112(b) of the CAA, and includes, among other pollutants, lead compounds. See also 40 C.F.R. § 63.2.

13. Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3), prohibits any person subject to a NESHAP from operating an existing source in violation of a NESHAP after its effective date. See also 40 C.F.R. §§ 61.05 and 63.4.

The NESHAP General Provisions

14. The General Provisions for the NESHAP are codified at 40 C.F.R. Part 63, Subpart A.

15. 40 C.F.R. § 63.8(c)(2)(i) requires that all continuous monitoring systems, such as differential pressure monitors, be installed such that representative measures of emissions or process parameters from the effective source are obtained.

16. 40 C.F.R. § 63.9(h) requires that the owner or operator of an affected source submit to the Administrator a notification of compliance status.

17. 40 C.F.R. § 63.9(h)(2)(ii) specifies that the notification must be sent before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in the relevant standard.

18. 40 C.F.R. § 63.10(b)(1) requires that the owner or operator of an affected source maintain files of all information required by 40 C.F.R. Part 63 in a form suitable and readily available for expeditious inspection and review.

19. 40 C.F.R. § 63.10(b)(2)(vii) requires that the owner or operator of an affected source maintain relevant records of required measurements needed to demonstrate compliance with a relevant standard (including, but not limited to, 15-minute averages of continuous monitoring system data, raw performance testing measurements, and raw performance evaluation measurements, that support data that the source is required to report).

The NESHAP for Secondary Lead Smelting

20. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, the EPA promulgated a NESHAP for Secondary Lead Smelting, which has been amended periodically and is codified at 40 C.F.R. Part 63, Subpart X (the Secondary Lead NESHAP). See 60 Fed. Reg. 32587 (June 23, 1995); 62 Fed. Reg. 32216 (June 17, 1997); 64 Fed. Reg. 4572 (January 29, 1999); 64 Fed. Reg. 69643 (December 14, 1999); 70 Fed. Reg. 75320 (December 19, 2005); and 77 Fed. Reg. 555 (January 5, 2012).

21. 40 C.F.R. § 63.541(a) states that an owner or operator of a reverberatory and/or electric furnace is subject to the Secondary Lead NESHAP.

22. 40 C.F.R. § 63.541(b) states that Table 1 of the Secondary Lead NESHAP specifies which provisions of the NESHAP General Provisions, at 40 C.F.R. Part 63, Subpart A, apply to owners and operators that are subject to the Secondary Lead NESHAP under 40 C.F.R. Part 63, Subpart X.

23. 40 C.F.R. § 63.541(c) states that any owner or operator subject to 40 C.F.R. Part 63, Subpart X, is also subject to Title V permitting requirements under 40 C.F.R. Parts 70 or 71, as applicable.

24. 40 C.F.R. § 63.541(d) states that emissions standards in 40 CFR Part 63, Subpart X, apply at all times.

Definitions

25. 40 C.F.R. § 63.542 defines “affected source” in pertinent part as “any of the following sources at a secondary lead smelter: Blast, reverberatory, rotary, and electric furnaces.”

26. 40 C.F.R. § 63.542 defines “leeward wall” as “the furthest exterior wall of a total enclosure that is opposite the windward wall.”

27. 40 C.F.R. § 63.542 defines “windward wall” as “the exterior wall of a total enclosure that is most impacted by the wind in its most prevailing direction determined by a wind rose using available data from the closest representative meteorological station. When openings into enclosures are not impacted by ambient wind due to the enclosure being part of a larger structure, the owner or operator may designate which wall of the enclosure to define as the windward wall.”

28. 40 C.F.R. § 63.542 defines “total enclosure” as “a containment building that is completely enclosed with a floor, walls, and a roof to prevent exposure to the elements and to assure containment of lead bearing material with limited openings to allow access and egress for people and vehicles. The total enclosure must provide an effective barrier against fugitive dust emissions such that the direction of air flow through any openings is inward and the enclosure is maintained under constant negative pressure.”

Process Vents Standards

29. 40 C.F.R. § 63.543(f) states that if an affected source does not combine the furnace charging process fugitive emissions with the furnace process emissions, and discharges such emissions to the atmosphere through separate emissions points, the affected source must maintain the total hydrocarbons (THC) concentration in the exhaust gas at or below 20 parts per million by volume, expressed as propane.

30. 40 C.F.R. § 63.543(h) states that following the initial performance or compliance test to demonstrate compliance with the THC emissions limits in 40 C.F.R. § 63.543 (c) and (f), an affected source must conduct an annual performance test for THC emissions from each

process vent that has established limits for THC (no later than 12 calendar months following the previous compliance test), unless the affected source installs and operates a continuous emission monitoring system (CEMS) meeting the requirements of 40 C.F.R. § 63.8.

31. 40 C.F.R. § 63.543(l) requires an affected source to submit a signed statement in the Notification of Compliance Status report that indicates that startups and shutdowns are being conducted according to the manufacturer's recommended procedures, if available, and the standard operating procedures are designed to minimize emissions of THC.

Total Enclosure Standards

32. 40 C.F.R. § 63.544(c)(1) requires that a process fugitive emissions source ventilate the total enclosure continuously to ensure negative pressure values of at least 0.013 mm of mercury (0.007 inches of water).

Compliance Dates

33. 40 C.F.R. § 63.546 states that an owner or operator of a reverberatory and/or electric furnace that commenced construction or reconstruction on or before May 19, 2011, must demonstrate compliance with the requirements of 40 C.F.R. Part 63, Subpart X, no later than January 6, 2014.

Test Methods

34. 40 C.F.R. § 63.547(a)(5) specifies that, when testing to determine compliance with lead compound emission standards, facilities must use EPA Method 12 or 29 with a minimum sample volume of 2.0 dry standard cubic meters, or 70 dry standard cubic feet (dscf), for each run.

Monitoring Requirements

35. 40 C.F.R. § 63.548(j) requires an affected source to demonstrate continuous compliance with the THC and Dioxin and Furans (D/F) emissions standards.

36. 40 C.F.R. § 63.548(j)(1) requires an affected source to install, calibrate, maintain, and continuously operate a device to monitor and record the temperature of the afterburner or furnace exhaust streams consistent with the requirements for continuous monitoring systems in 40 C.F.R. § 63.8.

37. 40 C.F.R. § 63.548(j)(4) states that to demonstrate continuous compliance with the standards for THC and D/F, the affected source must maintain an afterburner or exhaust temperature such that the average temperature in any 3-hour period does not fall more than 28 °C (50°F) below the average established pursuant to 40 C.F.R. § 63.548(j)(3).

38. 40 C.F.R. § 63.548(k) states that the affected source must install, operate, and maintain a digital differential pressure monitoring system to continuously monitor each total enclosure.

39. 40 C.F.R. § 63.548(k)(1) states that, for buildings with a total ground surface area of 10,000 square feet or more, a minimum of one building digital differential pressure monitoring system must be maintained at the leeward wall, at the windward wall, and at an exterior wall that connects the leeward and windward walls.

Recordkeeping and Reporting Requirements

40. 40 C.F.R. § 63.550(a)(1) requires that records must be maintained in a form suitable and readily available for expeditious review, in accordance with 40 C.F.R. § 63.10(b)(1).

41. 40 C.F.R. § 63.550(c)(5) requires that electronic records of the output from the continuous temperature monitor required in 40 C.F.R. § 63.548(j)(1) must be maintained for a

period of five years, along with an identification of periods when the 3-hour average temperature fell below the minimum established under 40 C.F.R. § 63.548(j)(4), and an explanation of the corrective actions taken.

42. 40 C.F.R. § 63.550(c)(6) requires that facilities maintain electronic records of the continuous pressure monitors for the total enclosures required in 40 C.F.R. § 63.544(c)(1) for a period of five years.

43. Table 1 of the Secondary Lead NESHAP incorporates 40 C.F.R. §§ 63.4, 63.8(c)(2)(i), 63.9(h), 63.10(b)(1) and 63.10(b)(2)(vii) by reference.

The Indiana State Implementation Plan

44. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to the EPA a plan that provides for the implementation, maintenance, and enforcement of primary and secondary NAAQS in the state. Upon approval by the EPA, the plan becomes part of the applicable State Implementation Plan (SIP) for the state. See also 40 C.F.R. Part 52, Subpart P.

45. On March 29, 2007, the EPA approved the Indiana SIP requirement at Title 326 IAC 2-6-3 and 2-6-4 (effective May 29, 2007). 72 Fed. Reg. 14678.

46. The Indiana SIP, at 326 IAC 2-6-3(b)(1), provides that facilities located in Marion County submit, starting in 2005 and every three years thereafter, an emission statement covering the previous calendar year.

47. The Indiana SIP, at 326 IAC 2-6-4(a)(2), requires that the triennial emission statements include estimated actual emissions of Volatile Organic Compounds (VOC).

Title V Permit Program

48. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for major sources of air pollution.

49. In accordance with Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), the EPA promulgated regulations establishing the minimum elements of a Title V permit program to be administered by any air pollution control agency. See 57 Fed. Reg. 32295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.

50. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to the EPA a permit program meeting the requirements of Title V.

51. On December 4, 2001, EPA granted Indiana final approval of its Title V CAA Permit Program, effective November 30, 2001. 66 Fed. Reg. 62969. See also 40 C.F.R. Part 70, Appendix A.

52. Section 502(a) of the CAA, 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 CAA, no source subject to Title V may operate except in compliance with a Title V permit.

53. 40 C.F.R. § 70.5(a) provides that “for each part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this section.”

54. 40 C.F.R. § 70.5(c) provides the information that is to be provided in a permit application for such application to be considered complete. The required information includes all emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under 40 C.F.R. § 70.5(c).

55. 40 C.F.R. § 70.5(d) requires that the permit application contain a certification by a responsible official of truth, accuracy, and completeness.

56. 40 C.F.R. § 70.6(b)(1) provides that all terms and conditions in a Title V permit are enforceable by the EPA.

57. On November 14, 1995, the EPA approved the Indiana Title V requirements at 326 Indiana Administrative Code (IAC) 2-7(effective December 14, 1995). 60 Fed. Reg. 57188.

58. 326 IAC 2-7-3 provides that it is unlawful to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V.

59. 326 IAC 2-7-4 requires that a source submit a complete permit application which, among other things, identifies all emissions of pollutants for which the source is major and emission rates of all pollutants.

60. 326 IAC 2-7-4(b) states that any applicant who fails to submit any relevant facts shall, upon becoming aware of the failure or incorrect submittal, promptly submit the supplementary facts or corrected information.

Quemetco Title V Permit Requirements

61. The Facility operates under a Title V Permit, Air Emission Permit No. T097-27020-00079, issued by IDEM on September 13, 2011 (Title V Permit). There were permit modifications on May 15, 2012, October 18, 2012, December 12, 2012, April 11, 2013, September 27, 2013, and significant permit modifications on March 28, 2013, (No. 097-32501-00079) and March 18, 2016 (No. 097-35395-00079). An additional Title V Permit modification is currently pending with IDEM.

62. The Title V Permits, at Condition C.18, require that Quemetco submit an emission statement every three years pursuant to 326 IAC 2-6-3(b)(1).

63. The Title V Permits, at Section E.2.2, identify the provisions of the Secondary Lead NESHAP that are applicable to the Facility.

Federal Enforcement

64. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for CAA violations that occurred after January 12, 2009, through December 6, 2013; \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013, through November 2, 2015; and \$45,268 per day of violation up to a total of \$362,141 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.

65. 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.

66. 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.

EPA's Factual Allegations

67. Quemetco owns and operates a secondary lead smelting facility, which includes among other things, a reverberatory furnace, an electric arc furnace, refining kettles and a rotary dryer, located at 7870 W. Morris Street, Indianapolis, Indiana (the Facility).

68. The Facility is therefore subject to the requirements of the Secondary Lead NESHAP (40 C.F.R. Part 63, Subpart X).

69. EPA conducted an inspection of the Facility on or about July 21, 2014, to assess compliance with the CAA.

70. On September 30, 2016, EPA issued a Notice and Finding of Violation (NOV/FOV) to Quemetco alleging that it violated provisions of the Indiana SIP, its Title V Permit, and the NESHAP for Secondary Lead Smelting.

71. EPA has not alleged that any of the alleged violations resulted in any economic benefit to Quemetco or any unpermitted releases.

EPA's Allegations Regarding Total Enclosure Requirements

72. The total enclosure at the Facility has a total ground surface area of 10,000 square feet or more.

73. During the inspection, the EPA inspectors observed three differential pressure monitors on the Facility's roof near the associated leeward, windward and adjoining walls.

74. The EPA inspectors observed that the three differential pressure monitors were not installed in accordance with the requirements of 40 C.F.R. § 63.8(c)(2)(i).

75. From January 6, 2014, to December 17, 2016, Quemetco maintained analog circle charts, instead of electronic records, to record the 15-minute rolling average from each total enclosure differential pressure monitor.

76. On or about December 17, 2016, Quemetco installed new differential pressure monitors on the walls of the Facility.

**EPA's Allegations Regarding THC and D/F Continuous Compliance
Demonstration/Monitoring**

77. From January 6 to June 30, 2014, Quemetco did not monitor and record the temperature from its exhaust furnace streams.

78. From July 1, 2014, to the December 17, 2016, Quemetco maintained analog circle charts, instead of electronic records, to record the 3-hour rolling average temperature measured at each furnace exhaust.

79. From January 2017 to March 2017, Quemetco was not continuously meeting minimum temperature requirements at the exhaust furnace stream during startup and shutdown.

80. On or about December 11, 2017, Quemetco requested an alternative monitoring plan (AMP) to address monitoring the exhaust furnace stream during startup and shutdown, which was subsequently resubmitted based on EPA comments and approved on July 2, 2018.

EPA's Allegations Regarding Lead Performance Testing

81. From March 10 to March 20, 2014, Quemetco performed emissions testing to demonstrate compliance with lead emission standards at the following emission points:

- a. The exhaust of the reverberatory furnace and the electric arc slag reduction furnace, which are routed to Baghouses #035 and #037, respectively. These exhausts then flow to the scrubber (#046) which is exhausted to the Duct after 046;
- b. The exhaust from the kiln and the refinery that are routed to sampling point S100B;
- c. The General Building Ventilation of bin 10 feed storage area (identified as Stack S-103); and
- d. The General Building Ventilation of slag warehouse dumping bin and slag dump truck loading (identified as GV105).

82. For each of the lead emissions tests listed in paragraph 81, above, the sample volume collected during each run of the test did not meet the minimum volume of 70 dscf.

83. In or about August 2015, Quemetco performed the required emission testing to demonstrate compliance with the lead emissions standards.

EPA's Allegations Regarding VOC Emissions

84. On July 1, 2014, Quemetco submitted to IDEM a Triennial Emissions Statement providing the annual emissions for reporting year 2013. Quemetco erroneously reported the total VOC emissions for the Facility as 5.29 tons.

85. Following the NOV/FOV, Quemetco conducted a performance test to accurately quantify VOC emissions from the Facility.

86. The total VOC emissions for the Facility for reporting year 2013 were 47.84 tons.

EPA's Alleged Violations

Alleged Violation 1 – Total Enclosure Requirements

87. EPA alleges that, from January 6, 2014, to the January 31, 2017, Quemetco violated 40 C.F.R. § 63.548(k)(1) by failing to maintain differential pressure monitoring systems at the leeward wall, the windward wall and at an exterior wall that connects the leeward and windward walls.

88. EPA alleges that, from January 6, 2014, to December 17, 2016, Quemetco violated 40 C.F.R. §§ 63.10(b)(1), 63.550(a)(1) and 63.550(c)(6) by failing to maintain electronic records of the continuous pressure for the total enclosure in a form suitable and readily available for expeditious inspection and review of the records to determine compliance with 40 C.F.R. § 63.544(c)(1).

Alleged Violation 2 – THC and D/F Compliance Demonstration/Monitoring

89. EPA alleges that, from January 6 to June 30, 2014, Quemetco violated 40 C.F.R. § 63.548(j)(1) by failing to continuously monitor and record the temperature from its exhaust furnace streams.

90. EPA alleges that, from July 1, 2014, to December 17, 2016, Quemetco violated 40 C.F.R. §§ 63.10(b)(1), 63.10(b)(2)(vii), 63.550(a)(1) and 63.550(c)(5) by failing to maintain electronic records of the 3-hour average temperature measured at each furnace exhaust in a form suitable and readily available for expeditious inspection and review of the records to determine compliance with 40 C.F.R. § 63.548(j)(4).

91. EPA alleges that, from January 2017 to March 2017, Quemetco violated 40 C.F.R. § 63.548(j) by, on occasion, failing to meet the minimum temperature requirements at the exhaust furnace stream during startup.

Alleged Violation 3 – Lead Performance Testing

92. EPA alleges that, from March 10 through 20, 2014, Quemetco violated 40 C.F.R. § 63.547(a)(5) by failing to collect a minimum sample value of 70 dscf for each run to determine compliance with the lead compound standards when performing emissions testing at:

- a. The exhaust of the reverberatory furnace and the electric arc slag reduction furnace, which are routed to Baghouses #035 and #037, respectively. These exhausts then flow to the scrubber (#046) which is exhausted to the Duct after 046;
- b. The exhaust from the kiln and the refinery that are routed to sampling point S100B;
- c. The General Building Ventilation of bin 10 feed storage area (identified as Stack S-103); and
- d. The General Building Ventilation of slag warehouse dumping bin and slag dump truck loading (identified as GV105).

Alleged Violation 4 – VOC Emissions

93. EPA alleges that Quemetco violated 326 IAC 2-6-3(b)(1), 326 IAC 2-6-4(a)(2), and Condition C.18 of the Title V Permits, by underreporting VOC emission from the Facility as a whole for reporting year 2013.

Civil Penalty

94. 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 and Quemetco's agreement to perform a supplemental environmental project (SEP), Complainant has determined that an appropriate civil penalty to settle this action is \$89,911.

95. Within 30 days after the effective date of this CAFO, Respondent must pay the 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.

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

Attn: Compliance Tracker (AE-18J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Nidhi O'Meara (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

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

98. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 114, below, 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.

99. 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 Project

100. The Respondent may complete a supplemental environmental project (SEP) designed to protect the environment and public health by monitoring lead concentrations in the ambient air at the Facility.

101. The EPA will provide Respondent with location(s) where Respondent may install the ambient air monitoring system. Within 10 days of receiving such EPA notification, Respondent shall provide written notification to EPA electing, at Respondent's sole discretion, to perform or not perform the SEP (Written Election Notification). In the event that Respondent elects to not perform the SEP, Respondent shall pay an additional Civil Penalty of \$73,534 within 30 days of providing the Written Election Notification to the EPA.

102. The Written Election Notification must be sent to the Compliance Tracker and Ms. O'Meara at the addresses set forth in paragraph 96. In the event that Respondent elects not to perform the SEP, the Written Election Notification must also be sent to CINWD_AcctsReceivable@epa.gov, indicating that Quemetco will pay an additional Civil Penalty in the amount of \$73,534 within 30 days of providing the Written Election Notification to the EPA. The notification must include the CAFO docket number with the following hyphenation to the CAFO docket number: "-SEP." The additional Civil Penalty shall be made in accordance with paragraphs 95 and 96.

103. Respondent shall be subject to the requirements set forth in paragraphs 104 through 119 solely in the event Respondent so elects to perform the SEP.

104. Respondent must complete the SEP at its Facility, as follows:

- a. Quemetco must install, in accordance with the requirements of 40 C.F.R. Part 58, Appendix E, a high-volume ambient air monitoring system (the "Monitoring System") at the Facility, at a location to be approved by EPA. The installation must occur within 30 days of the Written Election Notification.

- b. Within 45 days after providing EPA with the Written Election Notification, Quemetco must begin operating the Monitoring System.
- c. The Monitoring System will be designed, installed, operated, and managed in accordance with 40 C.F.R. Part 58, Appendix A. Samples will be taken in accordance with the one-day-in-six sampling schedule established in 40 C.F.R. Part 50, Appendix R.
- d. The Monitoring System will be operated for at least two years. In the event the documented costs for the monitoring system at the end of two years does not amount to \$100,000, Quemetco will continue to operate the Monitoring System so that it meets the required costs of \$100,000.
- e. In the event that any single reading of lead concentration measured by the Monitoring System exceeds $0.12\mu\text{g}/\text{m}^3$, Quemetco will conduct an analysis to determine the root cause of the elevated lead concentration, and document the results of the investigation. If corrective action can be taken to prevent future occurrences, those actions will be implemented and documented.
- f. Quemetco will submit to EPA a Quarterly Reports containing (i) each measured lead concentration during the reporting period, (ii) the ambient rolling three-month average of lead concentrations, (iii) copies of any root cause analyses documentation associated with elevated lead readings during the reporting period, (iv) copies of any corrective action documentation, and (v) records of any maintenance or repair conducted at the Monitoring System during the reporting period. The Quarterly Reports shall be submitted 30 days after the end of each calendar quarter during which the Monitoring System recorded data.
- g. Quarterly Reports submitted pursuant to this CAFO will be available to the public upon request.

105. Respondent must spend at least \$100,000 to install, maintain and operate the Monitoring System.

106. Respondent certifies as follows:

I certify that Quemetco is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Quemetco has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Quemetco is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable

inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

107. EPA may inspect the facility or request records at any time to monitor

Respondent's compliance with this CAFO's SEP requirements.

108. Respondent must maintain copies of the expenditure receipts and data for all reports submitted to EPA pursuant to this CAFO. Respondent must provide the documentation of any expenditures and data to EPA within seven days of EPA's request for the information.

109. Respondent must submit a SEP completion report to EPA by 60 days after the SEP has been completed. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

110. Respondent must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 96, above.

111. 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 one of its officers:

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.

112. Following receipt of the SEP completion report described in paragraph 109, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 114, below.

113. 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 pay stipulated penalties to the United States under paragraph 114, below.

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

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$100,000.

- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 105, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 105, Respondent must pay a penalty of \$25,000.
- d. If Respondent did not submit timely the SEP completion report or any other report required by paragraph 104, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<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

115. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

116. 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 95, above, and will pay interest and nonpayment penalties on any overdue amounts.

117. Any public statement that Respondent makes referring to the SEP must include the following language: "Quemetco, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Quemetco, Inc. for alleged violations of the Clean Air Act."

118. 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 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.

119. 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

120. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: omeara.nidhi@epa.gov (for Complainant), and cmoyer@manatt.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

122. 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.

123. 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 121, above, ~~compliance with this CAFO will not be a defense to any actions subsequently commenced~~ pursuant to federal laws administered by EPA.

124. Respondent certifies that, to the best of its knowledge as of the date hereof, it is complying with the CAA.

125. 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).

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

127. 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.

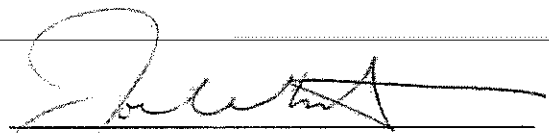
128. Each party agrees to bear its own costs and attorneys' fees in this action.

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

Quemetco, Inc., Respondent

9-24-15

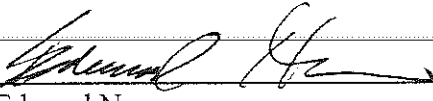
Date



Joe Wheat
Vice President
Quemetco, Inc.

United States Environmental Protection Agency, Complainant

9/26/18
Date



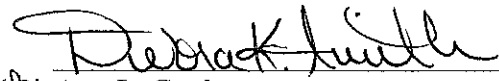
Edward Nam
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Quemetco, Inc.
Docket No. CAA-05-2018-0027

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.

9/27/18
Date


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

Consent Agreement and Final Order
In the matter of: Quemetco, Inc.
Docket Number: CAA-05-2018-0027

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2018-0027, which was filed on September 28, 2018, in the following manner to the following addresses:

Copy by E-mail to
Attorney for Complainant:

Nidhi O'Meara
omeara.nidhi@epa.gov

Copy by E-mail to
Attorney for Respondent:

Craig Moyer
cmoyer@manatt.com
Quemetco, Inc.
7870 W. Morris Street
Indianapolis, Indiana 46231

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: September 28, 2018


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5