

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2020-0018
)	
Wheatland Tube, LLC)	Proceeding to Assess a Civil Penalty
Chicago, Illinois)	Under Section 113(d) of the Clean Air Act,
)	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 Wheatland Tube, LLC, also known as Wheatland Tube Company, is a limited liability company doing business in 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).

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

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

Jurisdiction and Waiver of Right to Hearing

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

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

Statutory and Regulatory Background

9. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including major sources, and other sources made subject under Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

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

11. On March 7, 1995, EPA granted interim approval of Illinois' Title V operating permit program. EPA granted final approval effective on November 30, 2001. 40 C.F.R. Part 70, Appendix A. The Illinois Title V operating permit program, known as the Clean Air Act Permit Program, is codified at 415 ILCS 5/39.5.

12. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and EPA's implementing regulations at 40 C.F.R § 70.7(b) have at all relevant times made it unlawful for any person 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.

13. The Illinois Environmental Protection Agency issued a Title V permit renewal to Respondent, Permit No. 96030029, on April 2, 2015 (the Title V Permit).

14. The Title V Permit, at Section 4.1.2(c)(i)(C)(I)(1), requires that the weight of volatile organic material (a.k.a. volatile organic compound or VOC) per volume of coating applied on interior tubes at Mills 3 and 4 is not to exceed 1.8 pounds of VOC per gallon (1.8 lb VOC/gal) of coating (minus water and exempt compounds) for electrical metallic tubing (EMT) with outside diameters less than or equal to 2.0 inches.

15. The Title V Permit, at Section 4.1.2(c)(i)(C)(I)(2), requires that the weight of VOC per volume of coating applied on interior tubes at Mills 3 and 4 is not to exceed 2.3 lb VOC/gal (minus water and exempt compounds) for tubing other than the tubing described in paragraph 14, above.

16. The Title V Permit, at Section 4.1.2(c)(i)(C)(II)(2), requires that, if clear water-based coatings are applied on the exterior tubes in Mills 3 and 4 to meet the requirements of Section 4.1.2(c)(i)(C)(II) of the Permit, they must contain less than 1.0 lb VOC/gal (minus water and exempt compounds), provided that the annual emissions from the use of clear water-based exterior coatings shall not exceed 6.7 tons/year for the mill or 10.0 tons/year for the combination of the Mills 3 and 4.

17. The Title V Permit, at Section 4.1.2(e)(i)(A), requires that Respondent shall maintain pressure drop monitoring devices on its coating lines' scrubbers within 3-6 inches of water as per vendor's recommendation.

18. The Title V Permit, at Section 4.1.2(e)(ii)(A)(II), requires that a record indicating pressure drop monitoring data of each scrubber on the coating lines shall be collected and recorded each week for each control device.

19. The Title V Permit, at Section 4.2.2(d)(i)(A), requires that Respondent maintain pressure drop monitoring devices on the hydrochloric acid (HCl), galvanizing and thread metallizer control devices within a range in accordance with vendor's recommendation as follows:

- a. Scrubbers – 3-6 inches of water as per vendor's recommendation;
- b. Acid Fume Scrubber – 3-6 inches of water as per vendor's recommendation; and
- c. Zinc Dust Collector – 1-4 inches of water as per vendor's recommendation.

20. The Title V Permit, at Section 4.2.2(d)(ii)(A)(II), requires that a record indicating pressure drop monitoring data of each control device on the HCl, galvanizing and thread metallizer units shall be collected and recorded each week for each control device.

21. The Title V Permit, at Section 4.1.2(c)(ii)(C)(I), requires that the following information be recorded and maintained at the facility for 3 years:

- a. The name and identification of each coating as applied on each coating line;
- b. The weight of VOC per volume of each coating (minus water and exempt compounds) as applied each day on each coating line; and
- c. For coating lines subject to the limitations of 35 IAC § 218.204(q), the weight of VOC per volume of each coating, or the weight of VOC per volume of solids in each coating, as applicable, as applied each day on each coating line, and certified product data sheets for each coating.

22. In September 2019, Illinois EPA issued a revised Construction Permit to Respondent for Mill 4 (Mill 4 construction permit). The Mill 4 construction permit increased the limits related to the VOC content of coatings applied to in these mills to exterior tubing and reduced the overall permitted annual VOC emissions in these mills. Exterior coatings at both mills must now meet a limit of 2.3 lb VOC/gal (minus exempt compounds).

23. 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 \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015 and \$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.

24. 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.

25. 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

26. Respondent owns and operates a steel pipe and tube product manufacturing facility at 4435 South Western Boulevard, Chicago, Illinois.

27. Respondent applies coatings containing VOCs and hazardous air pollutants (HAP) to the inside of its steel pipe and tube products, and coatings containing VOCs to the outside of its steel pipe and tube products.

28. Respondent is a major source of VOC and HAP emissions, subject to Title V permitting requirements.

29. Respondent owns or operates an “emission source” within the meaning of Section 114 (a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). Therefore, Respondent is subject to the requirements of Section 114(a)(1).

30. EPA issued an information request pursuant to Section 114 of the CAA to Respondent on November 30, 2017 and its response was received on January 18, 2018.

31. On June 22, 2018, EPA, issued to Respondent a Finding of Violation (FOV) alleging that Respondent violated its Title V permit by applying coatings that exceeded VOC limits; emitting excess VOC emissions at two of its production mills; incurring pressure drop exceedances of air pollution control equipment; and failing to keep required records.

32. On July 27, 2018, Respondent submitted information to EPA regarding the FOV and on August 2, 2018, EPA and Respondent discussed the FOV. During the conference, Respondent indicated that it had reformulated or discontinued its noncompliant coatings. After the conference, Respondent conducted 40 C.F.R. Part 60, Appendix A, Method 24 (Method 24) testing on all its coatings to check their VOC content. Respondent submitted to EPA a report dated February 27, 2019, of its Method 24 testing. Based on review of the information, Respondent has violated its Title V permit and 40 C.F.R § 70.7(b), as described in paragraphs 33 through 39, below.

33. Beginning from at least June 1, 2015, to July 2018, Respondent applied an interior coating (ID-143B) with a VOC content above 1.8 lb VOC/gallon to electrical magnetic tubing (EMT) with an outer diameter of 2 inches or less in Mills 3 and 4 in violation of Section 4.1.2(c)(i)(C)(I)(1) of its Title V Permit.

34. Beginning from at least July 24, 2015, to June 2017, Respondent applied a clear water-based coating (OD-W1846) with a VOC content above 1.0 lb VOC per gallon on exterior tubes in Mills 3 and 4 in violation of Section 4.1.2(c)(i)(C)(II)(2) of its Title V Permit.

35. Beginning from at least June 1, 2015, to at least March 1, 2019, Respondent applied a clear water-based coating (OD-1735) with a VOC content above 1.0 lb VOC per gallon on exterior tubes in Mills 3 and 4 in violation of Section 4.1.2(c)(i)(C)(II)(2) of its Title V Permit.

36. Respondent's rolling annual emissions of VOC from clear water-based coatings from Mills 3 and 4 exceeded 10 tons from February 2016 to September 2016 and from February 2017 to December 2017, in violation of Section 4.1.2(c)(i)(C)(II)(2) of its Title V Permit.

37. Between at least June 1, 2015, to November 27, 2017, Respondent recorded on 89 days pressure drops of air pollution control equipment that were outside the required pressure drop operating ranges, in violation of Section 4.1.2(e)(i)(A) and 4.2.2(d)(i)(A) of its Title V Permit.

38. Between at least May 31, 2015, to December 26, 2015, Respondent failed to record pressure drop monitoring data on at least 3 separate weeks in which air pollution control equipment was in operation, in violation of Section 4.1.2(e)(ii)(A)(II) of its Title V Permit.

39. Between at least September 1, 2017 to September 13, 2017, Respondent failed to record coating usage for 13 days in violation of Section 4.1.2(c)(ii)(C)(I) of its Title V Permit.

Civil Penalty

40. 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 Respondent's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$205,558.00.

41. Within 30 days after the effective date of this CAFO, Respondent must pay a \$205,558.00 civil penalty by electronic funds transfer or ACH electronic funds transfer. Electronic funds transfer is 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.

ACH electronic funds transfer is payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the ACH electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

42. 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:

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

Tamara Carnovsky (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
Carnovsky.Tamara@epa.gov

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

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

44. 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.

45. 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

46. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: Carnovsky.Tamara@epa.gov (for Complainant), and mbooher@bakerlaw.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

48. The effect of the settlement described in paragraph 40, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph 32 of this CAFO and Respondent's letter dated July 27, 2018 and Respondent's Method 24 test results submitted February 27, 2019.

49. 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.

50. 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 47, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

51. Respondent certifies that it is complying fully with its most recently issued Title V Permit.

52. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

53. 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).

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

55. 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.

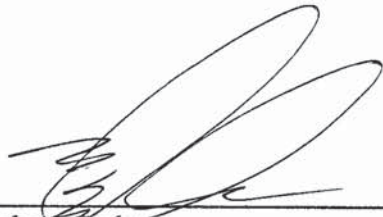
56. Each party agrees to bear its own costs and attorneys' fees in this action.

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

Wheatland Tube, LLC, Respondent

April 13, 2020

Date



Michael Graham
EVP & CFO
Wheatland Tube, LLC

United States Environmental Protection Agency, Complainant

4/27/20

Date

**MICHAEL
HARRIS**

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MICHAEL HARRIS
Date: 2020.04.27
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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: Wheatland Tube, LLC
Docket No. CAA-05-2020-0018**

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.

4/28/20

Date

ANN COYLE

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