

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

Arlwin Manufacturing Co., Inc.)
720 East Highway 36)
Smith Center, Kansas 66967)

Docket No. CAA-07-2008-0039

Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and Arlwin Manufacturing Co., Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d).

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Reinforced Plastic Composites Production, 40 C.F.R. Part 63, Subpart WWW, promulgated pursuant to Section 112 of the CAA, 42 U.S.C. § 7412; and violated the Title V air permit requirements by operating a major source without a Title V air permit, pursuant to Section 502 of the CAA, 42 U.S.C. § 7661a. Furthermore, this CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

3. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the first alleged date of violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for an administrative action.

Parties

4. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region VII, is the Director, Air and Waste Management Division, EPA, Region VII.

5. The Respondent is Arlwin Manufacturing Co., Inc. The Respondent operates a reinforced plastic composites manufacturing facility located at 720 East Highway 36, Smith Center, Kansas.

Statutory and Regulatory Background

National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry

6. Section 112 of the CAA, 42 U.S.C. § 7412, authorizes the Administrator of EPA to regulate hazardous air pollutants (HAPs) which may have an adverse effect on health or the environment.

7. The Administrator established emission standards, codified at 40 C.F.R. Part 63, Subpart WWW: National Emission Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production, for owners or operators of a reinforced plastic composites production facility that is located at a major source of HAP emissions. 40 C.F.R. § 63.5785(a).

8. Pursuant to 40 C.F.R. § 63.2, “owner or operator” is defined as “any person who owns, leases, operates, controls, or supervises a stationary source.”

9. 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, ten (10) tons per year or more of any hazardous air pollutant or twenty-five (25) tons per year or more of any combination of hazardous air pollutants.

10. Section 111(a)(3) of the CAA, 42 U.S.C. § 7411(a)(3), and 40 C.F.R. § 63.2 defines a “stationary source” as “the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the Act.”

11. Pursuant to 40 C.F.R. § 63.2, “affected source” is defined as “the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to section 112 of the Act.”

12. Pursuant to 40 C.F.R. § 63.5785(a) the provisions of the reinforced plastic composites production NESHAP applies to operations in which reinforced and/or nonreinforced plastic composites or plastic molding compounds are manufactured using thermoset resins and/or gel coats that contain styrene to produce plastic composites. The resins and gel coats may also contain materials designed to enhance the chemical, physical, and/or thermal properties of the product. Reinforced plastic composites production also includes cleaning, mixing, HAP-containing materials storage, and repair operations associated with the production of plastic composites.

13. Pursuant to 40 C.F.R. § 63.5790, the provisions of the Reinforced Plastic Composite Production NESHAP apply to the following affected sources which consist of all parts of the facility engaged in the following operations: open molding, closed molding, centrifugal casting, continuous lamination, continuous casting, polymer casting, pultrusion, sheet molding compound (SMC) manufacturing, bulk molding compound (BMC) manufacturing, mixing, cleaning of equipment used in reinforced plastic composites manufacture, HAP-containing materials storage, and repair operations on parts the facility also manufactures.

14. Pursuant to 40 C.F.R. § 63.5905(a), subject sources must submit all of the notifications in Table 13 to this subpart that apply to facility by the dates specified in Table 13 of this subpart. The notifications are described more fully in 40 C.F.R. Part 63, Subpart A, referenced in Table 13 to this subpart.

15. Pursuant to Table 13, an existing source subject to this subpart must submit an initial notification containing the information specified in § 63.9(b)(2) no later than the dates specified in § 63.9(b)(2). 40 C.F.R. Part 63, Subpart WWW, Table 13.

16. Pursuant to Section 63.9(b)(2) the owner or operator of an affected source that has an initial startup before the effective date of a relevant standard under this part shall notify the Administrator in writing that the source is subject to the relevant standard. The notification, which shall be submitted not later than 120 calendar days after the effective date of the relevant standard shall provide: (a) the name and address of the owner or operator; (b) the address of the affected source; (c) an identification of the relevant standard, or other requirements, that is the basis of the notification and the source's compliance date; (d) a brief description of the nature, size, design, and method of operation of the source and an identification of the types of emission points within the affected source subject to the relevant standard and types of hazardous air pollutants emitted; and (e) a statement of whether the affected source is a major source or an area source.

17. The effective date of the Reinforced Plastic Composites NESHAP was April 21, 2003. 68 Fed. Reg. 19374 (Apr. 21, 2003). The initial notification was required to be submitted not later than August 19, 2003.

Title V Clean Air Act Permit

18. Title V of the CAA states in part that after the effective date of any permit program approved or promulgated under this subchapter, it shall be unlawful for any person to operate an affected source, a major source, any other source subject to standards or regulations under section 7411 or 7412 of this title, except in compliance with a permit issued by a permitting authority under this subchapter. 42 U.S.C. § 7661a(a).

19. The state of Kansas has developed, and EPA has approved a Title V operating permit program which became effective February 29, 1996.

20. Pursuant to the Kansas Air Quality Act, no person shall construct, own, operate, install, alter or use any air contaminant emission stationary source which, in accordance with rules and regulations, the secretary finds may cause or contribute to air pollution, unless an appropriate approval or permit has been issued for the source by the secretary under this act. K.S.A. 65-3008(a).

21. Pursuant to the Kansas Administrative Regulations (K.A.R.), a stationary source shall obtain a class I operating permit in accordance with the provisions of K.A.R. § 28-19-510 if the stationary source is a major source, except that a source is not required to obtain a permit if it would be classified as a major source solely because it has the potential-to-emit major amounts of a pollutant listed pursuant to section 112(r)(3) of the federal clean air act and is not otherwise required to obtain a permit under this regulation. K.A.R. § 28-19-500(a).

22. Styrene is not a pollutant listed pursuant to section 112(r)(3) of the CAA. Styrene is a listed Hazardous Air Pollutant. 42 U.S.C. § 7412(b)(1).

23. Pursuant to K.A.R. § 28-19-510, a complete application, including any applicable application fee, shall be submitted to the department by the owner or operator of any stationary source on or before the date specified by the department as published in the Kansas Register for any source which is existing on such date. The applicable date published in the Kansas Register is March 1, 1997.

24. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Section 112(r)(7). Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997 through March 15, 2004 and \$32,500 per day for each violation that occurs after March 15, 2004.

Violations

25. EPA hereby states and alleges that Respondent has violated the CAA and federal regulations, promulgated pursuant to the CAA, the Kansas Air Quality Act and the implementing regulations as follows:

General Allegations

26. Respondent is, and at all times referred to herein, was a "person" as defined at 42 U.S.C. § 7602(e).

27. On March 15, 2006, EPA conducted a Full Compliance Evaluation Inspection at Respondents facility.

28. Respondent is the owner and/or operator of a reinforced plastic composites production facility located 720 E Highway 36, Smith Center, Kansas.

29. Respondent's reinforced plastic composites production facility was a major source of hazardous air pollutants on or before December 31, 2000, and continued to be a major source at all times relevant to this CAFO.

30. Respondent operates two resin spray booths, one gelcoat spraybooth, and a product finishing area. These open molding operations are affected sources.

31. Respondent emits styrene as a result of its manufacturing operation.

32. Pursuant to Section 114(a)(1) of the CAA, 42 U.S.E. § 7414(a)(1), on July 3, 2006, EPA issued an information request letter to Respondent which required Respondent to provide EPA specific data to determine whether Respondent was a major source.

33. On July 24, 2006, Respondent submitted documentation that showed it was a major source. Specifically, the data shows that: (a) in 2000 Respondent emitted 13.04 tons of styrene into the atmosphere; (b) in 2001 Respondent emitted 12.50 tons of styrene into the atmosphere; and (c) in 2002 Respondent emitted 17.65 tons of styrene into the atmosphere; (d) in 2003 Respondent emitted 18.75 tons of styrene into the atmosphere.

34. Respondent emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant or twenty-five (25) tons per year or more of any combination of hazardous air pollutants.

35. Respondent is subject to 40 C.F.R. Part 63, Subpart WWWW, and failed to submit an initial notification to the Administrator.

36. Respondent is subject to the Title V permitting program. 42 U.S.C. § 7661a. Respondent failed to apply for and obtain an appropriate Title V permit.

Count 1

37. The facts alleged in Paragraphs 6 through 33 are realleged and incorporated herein as if fully stated.

38. Pursuant to the provisions of the Reinforced Plastic Composite Production NESHAP, Respondent shall submit all of the notifications listed in Table 13, including but not limited to an initial notification for its reinforced plastic composite production facility by August 19, 2003.

39. At the time of the March 15, 2006, EPA inspection, Respondent had not submitted an initial notification.

40. Respondent's failure to submit an initial notification as set forth in Paragraphs 38 and 39 above, is a violation of the CAA and its implementing regulations. 42 U.S.C. § 7412, 40 C.F.R. Part 63, Subpart WWWW.

Count 2

41. The facts alleged in Paragraphs 6 through 33 are realleged and incorporated herein as if fully stated.

42. Pursuant to the permitting requirements of Title V of the CAA, the Kansas Air Quality Act and its implementing regulations, a stationary source shall obtain a class I operating permit if the stationary source is a major source by March 1, 1997.

43. At the time of the March 15, 2006, EPA inspection, Respondent had not obtained an operating permit.

44. Respondent's failure to obtain an operating permit, as set forth in Paragraphs 42 and 43, above, is a violation of the CAA, the Kansas Air Quality Act and the implementing regulations. 42 U.S.C. § 7661a, K.S.A. § 65-3025, and K.A.R. §§ 28-19-500(a), 28-19-510.

CONSENT AGREEMENT

45. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

46. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

47. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

48. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CAFO.

49. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

50. This CAFO addresses all civil and administrative claims for the CAA violations identified above, existing through the effective date this CAFO. EPA reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

51. Respondent certifies by signing this CAFO that, to the best of its knowledge, Respondent's facility is presently in compliance with the CAA, 42 U.S.C. § 7401 *et. seq.* and all regulations promulgated thereunder.

52. The effect of settlement described in Paragraph 50 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 51 above.

53. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Twenty Thousand Dollars (\$20,000.00) plus interest as set forth in Paragraph 1 of the Final Order.

54. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

55. Nothing in this CAFO shall be construed as a release from any other action under any law and/or regulation administered by EPA. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

56. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

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due date through the date of payment.

57. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

58. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in Paragraph 53, above.

59. This Final Order portion of this CAFO shall apply to and be binding upon Respondent, and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

FINAL ORDER

Pursuant to the provisions of the CAA, 42 U.S.C. § 7401 *et seq.*, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Twenty Thousand Dollars (\$ 20,000.00), plus interest of Six Hundred Eighty Dollars and Eighty-Eight Cents (\$ 680.88) over a period of two years for a total payment of Twenty Thousand Six Hundred Eighty Dollars and Eighty-Eight Cents (\$ 20,680.88). The total payment shall be paid in quarterly payments of Two Thousand Five Hundred Eighty Five Dollars and Eleven Cents (\$ 2,585.11). The first payment must be received at the address below on or before thirty (30) days after the effective date of the Final Order. Each subsequent payment shall be paid ninety (90) days after the previous payment. Payment shall be made by cashier or certified check which shall reference Docket Number CAA-07-2008-0039, and made payable to "United States Treasury" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

2. A copy of the check shall simultaneously be sent to the following:

Kelley Catlin
Office of Regional Counsel
United States Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101

and to:

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and to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

3. In the event that Respondent dissolves, winds up, or closes its business affairs, payment of the entire principal sum and applicable interest shall be due and payable within one hundred and eighty (180) days of dissolution under K.S.A. Chapter 17, Article 68. Respondent shall notify EPA within thirty (30) days of its decision to dissolve, wind up, or close its business affairs. Notification shall be sent to Kelley Catlin at the address listed in Paragraph 2, above.

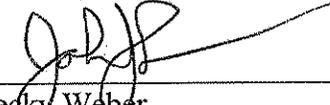
4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

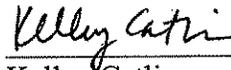
In the Matter of Arlwin Manufacturing Co., Inc.
Docket No. CAA-07-2008-0039
COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/2/09

By: 
Betty Weber
Director
Air and Waste Management Division

Date: 12/30/08

By: 
Kelley Catlin
Assistant Regional Counsel

In the Matter of Arlwin Manufacturing Co., Inc.
Docket No. CAA-07-2008-0039
RESPONDENT:

Arlwin Manufacturing Co., Inc.

Date: 12-30-08

By: *Joe Wilson*

Printed Name: Joe Wilson

Title: Pres.

In the Matter of Arlwin Manufacturing Co., Inc.
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IT IS SO ORDERED. This Order shall become effective immediately.

Date: Jan. 6, 2009

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

IN THE MATTER OF Arlwin Manufacturing Co., Inc., Respondent
Docket No. CAA-07-2008-0039

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kelley Catlin
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Richard E. Dietz, Esq.
Dietz and Hardman Law Office
206 South Main Street
P.O. Box 345
Smith Center, Kansas 66967-0345

Dated: 1/6/09



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7