

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2024-0009
)	
<i>Decorative Panels International, Inc</i>)	Proceeding to Assess a Civil Penalty
<i>Alpena, Michigan</i>)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

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 Decorative Panels International, Inc. (DPI), a corporation doing business in Michigan.

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. Under Section 112 of the CAA, U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Plywood and Composite Wood Products (PCWP) at 40 C.F.R. Part 63, Subpart DDDD §§ 63.2230 through 63.2292 and Appendices (July 30, 2004, 69 FR 45943, as amended, February 16, 2006, 71 Fed. Reg. 8372; August 13, 2020, 85 Fed. Reg. 49460, corrected August 21, 2020, 85 Fed. Reg. 51668).

10. The NESHAP for PCWP applies to PCWP manufacturing facilities that manufacture hardboard and that are major sources of Hazardous Air Pollutants (HAP). 40 C.F.R. § 63.2231.

11. The NESHAP for PCWP, at 40 C.F.R. § 63.2232, applies to each new, reconstructed, or existing affected source at a PCWP manufacturing facility.

12. The NESHAP, at 40 C.F.R. § 63.2240(b), requires owners of an existing affected PCWP manufacturing facility that uses an emission control system to demonstrate that the resulting emissions meet the compliance options and operating requirements in Tables 1B and 2 to Subpart DDDD.

13. The NESHAP, at 40 C.F.R. Part 63, Subpart DDDD, Table 1B, requires that for each process unit with an add-on control system the owner or operator must comply with one of the following six compliance options:

- (1) Reduce emissions of total HAP, measured as total hydrocarbon (THC) (as carbon), by 90 percent; or
- (2) Limit emissions of total HAP, measured as THC (as carbon), to 20 parts per million volume dry (ppmvd); or
- (3) Reduce methanol emissions by 90 percent; or
- (4) Limit methanol emissions to less than or equal to 1 ppmvd if uncontrolled methanol emissions entering the control device are greater than or equal to 10 ppmvd; or
- (5) Reduce formaldehyde emissions by 90 percent; or
- (6) Limit formaldehyde emissions to less than or equal to 1 ppmvd if uncontrolled formaldehyde emissions entering the control device are greater than or equal to 10 ppmvd.

14. The NESHAP, at 40 C.F.R. § 63.2271(a) and Part 63, Subpart DDDD, Table 7, requires that for each process using a biofilter, the owner or operator must demonstrate continuous compliance with the compliance options and operating requirements of Table 1B to Subpart DDDD by conducting a repeat performance test using the applicable method(s) specified in Table 4 to Subpart DDDD within two (2) years following the previous performance test and within 180 days after each replacement of any portion of the biofilter bed media with a different type of media or each replacement of more than 50 percent (by volume) of the biofilter bed media with the same type of media.

15. Title V of the CAA, 42 U.S.C. §§ 7661a-7661f, establishes an operating permit program for certain sources, including "major sources." Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), on July 21, 1992, EPA promulgated regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. 57 Fed. Reg. 32295. These regulations are codified at 40 C.F.R. Part 70.

16. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), states 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 the source except in compliance with its Title V permit.

17. 40 C.F.R. § 70.7(b) states that, no source subject to Title V may operate the source except in compliance with a Title V permit.

18. EPA granted full approval to the Michigan Title V operating permit program on December 4, 2001. 66 Fed. Reg. 62949. The program became effective on November 30, 2001.

19. On December 21, 2015, the Michigan Department of Natural Resources and Environment, now known as the Michigan Department of Environment, Great Lakes, and Energy (EGLE)), Air Quality Division (AQD) issued to DPI the Renewable Operating Permit (ROP) MI-ROP-B1476-2015a. This permit was revised on April 6, 2016, and is effective until December 21, 2020¹.

20. Permit MI-ROP-B1476-2015a indicates on page 27 of the document that DPI's No. 1 Board press, cooler, and associated equipment controlled by the No. 1 Biofilter, identified as Emission Unit ID EUPRESS2S, are subject to the requirements of 40 C.F.R. Part 63, Subpart DDDD. EUPRESS2S is equipment covered by Flexible Group category FGMACTDDDD in Permit MI-ROP-B1476-2015a.

¹ Permit MI-ROP-B1476-2015a has an expiration date of December 21, 2020. However, if a timely and administratively complete application for renewal is submitted not more than 18 months, but not less than 6 months, before the expiration date of the ROP, but the department fails to take final action before the end of the ROP term, the existing ROP does not expire until the renewal is issued or denied. DPI submitted an Administratively Complete ROP Renewal Application to the Michigan Department of Environment, Great Lakes, and Energy (EGLE) by the required deadline and is awaiting issuance of an updated ROP.

21. Permit MI-ROP-B1476-2015a, Flexible Group Conditions for FGMACTDDDD, I. Emissions Limits(s), requires DPI to meet one of the following for the Emission Unit

EUPRESS2S:

- a. 90% HAP reduction, measured as total hydrocarbons
- b. 20 ppmvd, measured as THC
- c. 90% reduction in methanol emissions
- d. 90% reduction in formaldehyde emissions
- e. Methanol: 1 ppmvd (if methanol entering control device is greater than 10 ppmvd)
- f. Formaldehyde: 1 ppmvd (if formaldehyde entering control device is greater than 10 ppmvd)

22. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$55,808 per day of violation up to a total of \$446,456 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.

23. 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.

24. 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

25. On January 28, 2019 and subsequent dates, representatives of DPI and EPA discussed NESHAP violations for PCWP at DPI's No. 1 Biofilter based on performance tests conducted on November 1, 2018, March 14 and 15 2019 and referenced in paragraph 32 below.

26. At all times relevant to this CAFO DPI owned and operated a PCWP manufacturing facility at 416 Ford Avenue, Alpena, Michigan (Alpena Facility).

27. At all times relevant to this CAFO, DPI manufactured hardboard at its Alpena Facility.

28. At all times relevant to this CAFO, DPI's Alpena facility was an emission source subject to the requirements of the CAA, including 40 C.F.R. Part 63, Subpart DDDD.

29. At all times relevant to this CAFO, DPI's Alpena facility was located at a major source of HAP emissions as set forth at 40 C.F.R. § 63.2231.

30. At all times relevant to this CAFO, DPI owned and operated two reconstituted wood product presses, known as the No. 1 Press and the No. 3 Press at the manufacturing facility.

31. At all times relevant to this CAFO, DPI's No. 1 and No. 3 Presses were existing affected sources according to § 63.2232(b).

32. At all times relevant to this CAFO, the No. 1 Press, cooler, and associated equipment were identified in Permit MI-ROP-B1476-2015a as Emission Unit EUPRESS2S. Emissions from EUPRESS2S are controlled by the No. 1 Biofilter.

33. At all times relevant to this CAFO, the No. 3 Press and cooler were identified in Permit MI-ROP-B1476-2015a as Emission Unit EUPRESS-AREA. Emissions from EUPRESS-AREA are controlled by the No. 3 Biofilter.

34. At all times relevant to this CAFO, DPI owned or operated an “emission source” within the meaning of Section 114 (a)(1) of the CAA, 42 U.S.C. § 7414(a)(1).

35. As a result, at all times relevant to this CAFO, DPI was subject to the requirements of Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1).

36. On November 1, 2018, March 14 and 15, 2019, DPI conducted performance tests at its No. 1 Biofilter which showed that DPI was violating the NESHAP for PCWP by failing to demonstrate compliance with at least one of the six compliance options of Table 1B to Subpart DDDD at its No. 1 Press. DPI violated 40 C.F.R. § 63.2240(b) and Permit MI-ROP-B1476-2015a, Flexible Group Conditions for FGMACTDDDD, I. Emissions Limits(s).

37. On August 20-22, 2019, DPI conducted a repeat performance test on its No. 1 Biofilter. The results of the August 20-22, 2019 test demonstrated DPI had achieved compliance at its No.1 Biofilter.

38. Based on the performance tests, from at least November 1, 2018 through August 20, 2019, DPI was violating the NESHAP for PCWP at its Biofilter No. 1 by failing to demonstrate compliance with at least one of the six compliance options of Table 1B to Subpart DDDD at its No. 1 Press.

39. By failing to demonstrate compliance with at least one of the six compliance options of Table 1B to Subpart DDDD at its No. 1 Press, DPI violated 40 C.F.R. § 63.2240(b) and Permit MI-ROP-B1476-2015a, Flexible Group Conditions for FGMACTDDDD, I. Emissions Limit(s) from at least November 1, 2018 through August 20, 2019.

40. DPI conducted a performance test on Biofilter No. 3 on October 14, 2020, which demonstrated compliance with at least one of the six compliance options of Table 1B to Subpart DDDD.

41. 40 C.F.R. § 63.2271(a) and Part 63, Subpart DDDD, Table 7, required DPI to conduct a performance test on Biofilter No. 3 within two (2) years following the previous October 14, 2020 performance test, or no later than October 14, 2022.

42. DPI conducted the required performance test on Biofilter No. 3 on November 29, 2022, 46 days late.

43. By failing to conduct the required performance test on Biofilter No. 3 within two (2) years following its previous October 14, 2020 performance test, DPI violated 40 C.F.R. § 63.2271(a) and Part 63, Subpart DDDD, Table 7.

Civil Penalty

44. 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 DPI's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$73,000.

45. Penalty Payment. Respondent agrees to:
- a. pay the civil penalty of \$73,000 within 30 days after the effective date of this CAFO.
 - b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
Automated Clearinghouse (ACH) payments made through the US Treasury	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
Wire transfers made through Fedwire	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p>	<p>For standard delivery: U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979078 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc): U.S. Environmental Protection Agency Government Lockbox 979078 U.S. EPA Fines and Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, Missouri 63101</p>

46. Within 24 hours of the payment of the civil penalty, respondent must send a notice of payment and states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

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

Cathleen Martwick
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
Martwick.cathleen@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

48. 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.

49. 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

50. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Martwick.cathleen@epa.gov (for Complainant), and Daryl.Clendenen@decpanels.com; and Timothy.Rombach@decpanels.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

52. 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.

53. 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 51, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

54. Respondent certifies that it is complying fully with the NESHAP for PCWP, at 40 C.F.R. § 63.2230 – § 63.2292.


55. 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).

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

57. 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.
58. Each party agrees to bear its own costs and attorney's fees in this action.
59. This CAFO constitutes the entire agreement between the parties.

Decorative Panels International, Inc., Respondent

10-26-23
Date


Daryl S. Clendenen,
General Manager
Decorative Panels, International, Inc.

20-1014249
Tax Identification Number

United States Environmental Protection Agency, Complainant

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: Decorative Panels International, Inc.
Docket No. CAA-05-2024-0009**

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