



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

August 24, 2021

VIA E-MAIL
DELIVERY RECEIPT REQUESTED

Mr. Adam Labkon
Vice President
Seller Industries, Inc.
Adamlabkon@gmail.com

Mr. Steven Joseph
Manager
GII, LLC
4550 Darrow Rd.
Stow, OH 44224
SteveJoseph@reserve-group.com

Dear Messrs. Labkon and Joseph:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Seller Industries, Inc. (Seller) and GII, LLC (GII), docket no. CAA-05-2021-0026. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on August 24, 2021.

Pursuant to paragraph 62 of the CAFO, Seller and GII 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 Susan Tennenbaum, Office of Regional Counsel, 312-886-0273.

Sincerely,

NATHAN
FRANK

Digitally signed by
NATHAN FRANK
Date: 2021.08.13
15:18:59 -05'00'

Nathan Frank, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Coyle.ann@epa.gov

Regional Hearing Clerk/via electronic mail
R5hearingcleark@epa.gov

Susan Tennenbaum/via electronic mail
tennenbaum.susan@epa.gov

Kent Mohr/via electronic mail
kent.mohr@illinois.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2021-0026
)	
Seller Industries, Inc., f/k/a General Iron Industries, Inc., and GII, LLC,)	Proceeding to Assess a Civil Penalty Under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)
Chicago, Illinois)	
Respondents.)	
_____)	

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. Respondents are Seller Industries, Inc. f/k/a General Iron Industries, Inc. (Seller), a corporation doing business in Illinois, and GII, LLC (GII), an Ohio limited liability company, registered to do business in Illinois as a foreign corporation.

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. Each 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. Each Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO. Seller neither admits nor denies the factual allegations in the Notice and Finding of Violation dated July 18, 2018 (2018 NOV/FOV). GII neither admits nor denies the factual allegations in the Notice and Finding of Violation dated May 18, 2021 (2021 NOV/FOV).

8. Each 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. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that it is unlawful for any person to, among other things, operate a major source subject to Title V except in compliance with a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act.

10. Pursuant to Section 502(b) of the Act, 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. *See 57 Fed. Reg. 32,295 (July 21, 1992)*. Those regulations are codified at 40 C.F.R. Part 70.

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

12. U.S. EPA granted full approval to the Illinois Title V operating permit program (CAAPP) on December 4, 2001, set forth at 415 Illinois Compiled Statutes (ILCS) Section 5/39.5. The program became effective on November 30, 2001. 66 *Fed. Reg.* 62946.

13. 40 C.F.R. § 70.1(b) provides that all sources subject to the Part 70 regulations shall have a permit to operate that assures compliance by the source with all applicable requirements, as defined in 40 C.F.R. § 70.2.

14. Section 39.5(6)(b) of the Illinois Environmental Protection Act states that no person shall operate a CAAPP source without a CAAPP permit unless a CAAPP permit or renewal application has been timely submitted. 415 ILCS § 5/39.5(6)(b).

15. Title V of the CAA and Section 39.5 of the Illinois Environmental Protection Act apply to any source defined as a major source or major stationary source. 415 ILCS § 5/39.5(2)(a)(ii).

16. The definition of “major stationary source” includes any stationary source located in a “marginal” or “moderate” ozone non-attainment area that emits or has the potential to emit 100 tons per year or more of volatile organic compounds (VOC). 40 C.F.R. § 70.2(3); 415 ILCS § 5/39.5(2)(c)(iii).

17. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS).

18. The Administrator of EPA approved Illinois' plan for the attainment and maintenance of the NAAQS under Section 110 of the CAA. See 40 C.F.R. § 52.722 and 55 *Fed. Reg.* 40661 (October 4, 1990).

19. On May 31, 1972, EPA approved Section 201.122 of Title 35 of the Illinois Administrative Code (IAC) as part of the federally enforceable Illinois SIP. *37 Fed. Reg.* 10862.

20. 35 IAC § 201.122 states that evidence that specified air contaminant emissions, as calculated on the basis of standard emission factors or other factors generally accepted as true by those persons engaged in the field of air pollution control, exceed the limitations prescribed under 35 IAC, Chapter 1, shall constitute adequate proof of a violation, in the absence of a showing that actual emissions are in compliance.

21. On September 9, 1994, EPA approved Part 211 of the IAC as part of the federally enforceable Illinois SIP. *59 Fed. Reg.* 46567.

22. 35 IAC § 211.3690 defines "maximum theoretical emissions" as the quantity of volatile organic material emissions that theoretically could be emitted by a stationary source before add-on controls based on the design capacity or maximum production capacity of the source and 8760 hours per year.

23. 35 IAC § 211.4970 defines "potential to emit" as the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restriction on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. See also 40 C.F.R. § 70.2; 415 ILCS § 5/39.5(1).

24. On March 12, 1997, EPA approved 35 IAC § 218.980, as part of the federally enforceable SIP. *62 Fed. Reg.* 11327.

25. 35 IAC § 218.980(a)(1) states that a source is subject to 35 IAC Part 218, Subpart TT, if it contains process emission units not regulated by the Subparts identified in 35 IAC

§ 218.980(a)(1), which as a group have a maximum theoretical emissions of 100 tons or more per calendar year of volatile organic matter (VOM) and are not limited to less than 100 tons of VOM emissions per calendar year in the absence of air pollution control equipment through production or capacity limitations contained in a federally enforceable permit or SIP revision.

26. 35 IAC § 218.980(b)(1) states, in pertinent part, that a source is subject to 35 IAC Part 218, Subpart TT, if it has the potential to emit 25 tons or more of VOM per year, in aggregate, from emission units that are not regulated by the Subparts identified in 35 IAC § 218.980(b)(1)(A) and not included in the categories listed in 35 IAC § 218.980(b)(1)(B).

27. On October 21, 1996, EPA approved 35 IAC §§ 218.986 and 218.987, as part of the federally enforceable SIP. 61 *Fed. Reg.* 54556.

28. 35 IAC § 218.986 states that every owner or operator of an emission unit subject to 35 IAC Part 218, Subpart TT, shall comply with 35 IAC § 218.986(a).

29. 35 IAC § 218.986(a) requires every owner or operator to operate emission capture and control equipment which achieves an overall reduction in uncontrolled VOM emissions of at least 81 percent from each emission unit.

30. 35 IAC §§ 218.987 and 218.106(c) require every owner or operator of an emission unit which is subject to 35 IAC Part 218, Subpart TT, to comply with the requirements of 35 IAC Part 218, Subpart TT, by March 15, 1995 or upon startup.

31. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation with a maximum of \$320,000 for violations that occurred after December 6, 2013 and before November 2, 2015 and \$48,762 per day of violation with a maximum of \$390,092 for violations that occurred after November 2, 2015, and assessed after

December 23, 2020, under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19.

32. The Administrator may assess a penalty greater than \$390,092 where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action. 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19.

33. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$390,092 is appropriate for an administrative penalty action.

34. 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.

35. 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

36. Seller owned and/or operated a metal shredding and recycling facility at 1909 North Clifton Avenue, Chicago, Illinois (the Facility), located in Cook County during the period of violations alleged in this CAFO until September 30, 2019.

37. Cook County is part of the Chicago-Naperville, IL-IN-WI nonattainment area for the 8-hour Ozone standard, which is classified as “marginal” or “moderate”. 79 *Fed. Reg.* 75233 (December 17, 2014); 80 *Fed. Reg.* 65291 (October 26, 2015).

38. The Facility received, processed, and recycled ferrous and non-ferrous scrap metals from cars and other post-consumer scrap metal at the Facility.

39. The Facility shredded scrap metal in a hammermill shredder.

40. On or about November 11, 2017, EPA issued an Information Request (2017 Information Request), pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a), to Seller regarding the Facility. The 2017 Information Request, among other things, required Seller to conduct emission testing from the Facility’s shredder and to provide results of the emission testing to EPA. The required emissions testing included an evaluation of the VOM emissions rate.

41. Seller conducted testing as required by the 2017 Information Request on May 24, 2018, and May 25, 2018, for various pollutants, including VOM emissions.

42. On or about January 12, 2018 and June 25, 2018, Seller provided responses to the 2017 Information Request, including the results of emissions testing for VOM conducted on May 24 and 25, 2018.

43. Based on Seller’s December 12, 2017 response and the results of the emissions testing, the hammermill shredder at the Facility had a maximum theoretical emissions rate of more than 100 tons and a potential to emit of 25 tons or more per calendar year of VOM.

44. The Facility, which ceased operations at the end of 2020, was a “major source” as defined at 42 U.S.C. § 7661(2), 40 C.F.R. § 70.2(3) and 415 ILCS § 5/39.5(2)(c)(i), because it had the potential to emit more than 100 tons of VOM per year.

45. By operating as a major source, the Facility was subject to the requirements of Title V of the CAA, 42 U.S.C. §§ 7661a-7661f.

46. The Facility was also subject to 35 IAC Part 218, Subpart TT, because it had the potential to emit 25 tons or more of VOM per year, in aggregate, from emission units that are not regulated by the Subparts identified in 35 IAC § 218.980(b)(1)(A) and not included in the categories listed in 35 IAC § 218.980(b)(1)(B).

47. On July 18, 2018, EPA issued to Seller an NOV/FOV for violations of the CAA and the Illinois SIP. The 2018 NOV/FOV alleged, among other things, that Sellers had: 1) operated without a CAAPP permit from Illinois EPA, in violation of Section 502 of the CAA, 40 C.F.R. §§ 70.1(b), and 415 ILCS § 5/39.5(6)(b); and 2) failed to install emission capture and control equipment that achieves an overall reduction of uncontrolled VOM emissions of at least 81 percent from the hammermill shredder, in violation of 35 IAC § 218.986(a) of the Illinois SIP.

48. On or about July 16, 2019, Seller completed installation of a Regenerative Thermal Oxidizer (RTO) to control VOM emissions from the shredder and to address the related violations alleged in the 2018 NOV/FOV.

49. On August 22, 2019, Seller entered into an Administrative Consent Order (ACO) with EPA memorializing installation of the RTO and requiring a Compliance Program consisting of performance measures for the RTO, performance testing to demonstrate the VOM destruction efficiency of the RTO, and the submittal of a FESOP application to the Illinois EPA.

50. Pursuant to Paragraph 58 of the ACO, the terms of the ACO are binding on Seller and its assignees and successors.

51. On September 30, 2019, GII was a purchaser of the assets of Seller and Seller's business operations and permits were transferred to GII.

52. On September 30, 2019, GII became the new operator of the Facility.

53. The Facility ceased operations on December 31, 2020.

54. Seller remains an existing legal entity.

55. Respondents have fully complied with the terms of the Compliance Program in the ACO.

56. On May 18, 2021, EPA issued to GII the 2021 NOV/FOV for violations of the CAA and Illinois SIP. The 2021 NOV/FOV alleged, among other things, that from September 30, 2019 to November 18, 2019, GII: 1) operated without a CAAPP permit from the Illinois EPA in violation of Section 502 of the CAA, 40 CFR § 70.1(b), and 415 ILCS 5/39.5(6)(b); and 2) operated without any emission capture and control equipment that achieves an overall reduction of uncontrolled VOM emissions of at least 81 percent from the hammermill shredder, in violation of 35 IAC § 218.986(a) of the Illinois SIP.

Count I

57. Complaint incorporates paragraphs 1 through 56 of this CAFO, as if set forth in this paragraph.

58. EPA alleges that Respondents operated a major source without a CAAPP permit, in violation of Section 502 of the CAA, 40 C.F.R. §§ 70.1(b), and 415 ILCS § 5/39.5(6)(b).

Count II

59. Complainant incorporates paragraphs 1 through 56 of this CAFO, as if set forth in this paragraph.

60. EPA alleges that Respondents failed to install or operate emission capture and control equipment that achieves an overall reduction of uncontrolled VOM emissions of at least 81 percent at the hammermill shredder, in violation of 35 IAC § 218.986(a) of the Illinois SIP.

Civil Penalty

61. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is \$500,000.

62. Within 30 days after the effective date of this CAFO, Respondents must pay a total \$500,000 civil penalty by ACH electronic funds transfer, 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 electronic funds transfer, state each Respondent’s name and the docket number of this CAFO.

63. Respondents must send a notice of payment that states each Respondent’s name and the docket number of this CAFO to EPA at the following addresses when Respondents pay the penalty:

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

Susan Tennenbaum
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
tennenbaum.susan@epa.gov

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

65. If Respondents do 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.

66. Respondents 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). Respondents must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondents 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

67. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: tennenbaum.susan@epa.gov (for Complainant), and azwick@freeborn.com (for Seller).

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

69. 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.

70. This CAFO does not affect each Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 68, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

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

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

73. 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.

74. Each party agrees to bear its own costs and attorney's fees in this action.

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

Consent Agreement and Final Order

In the Matter of: Seller Industries, Inc. f/k/a General Iron Industries, Inc., and GII, LLC

Seller Industries, Inc. f/k/a/General Iron Industries, Inc., Respondent

8/17/2021
Date

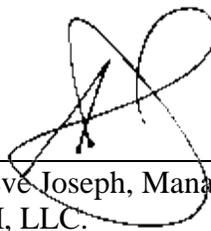

Name, Title
Seller Industries, Inc.

Consent Agreement and Final Order
In the Matter of: Seller Industries, Inc. f/k/a General Iron Industries, Inc., and GII, LLC

GII, LLC, Respondent

8/6/21

Date



Steve Joseph, Manager
GII, LLC.

Consent Agreement and Final Order

In the Matter of: Seller Industries, Inc. f/k/a General Iron Industries, Inc., and GII LLC

United States Environmental Protection Agency, Complainant

Harris,
Michael

Digitally signed by Harris,
Michael
Date: 2021.08.23
17:41:15 -05'00'

Date

Michael D. Harris
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order

In the Matter of: Seller Industries, Inc. f/k/a General Iron Industries, Inc., and GII, LLC
Docket No. CAA-05-2021-0026

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2021.08.24
15:10:41 -05'00'

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

Consent Agreement and Final Order
In the matter of: Seller Industries, Inc. and GII, LLC
Docket Number: **CAA-05-2021-0026**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2021-0026, which was filed on August 24, 2021, in the following manner to the following addressees:

Copy by E-mail to Respondents: Adam Labkon
Adamlabkon@gmail.com

Steven Joseph
SteveJoseph@reserve-group.com

Copy by E-mail to
Attorney for Complainant: Susan Tennenbaum
tennenbaum.susan@epa.gov

Copy by E-mail to
Attorney for Respondent: Ann Zwick
azwick@freeborn.com

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

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