

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

REGIONAL HEARING OFFICE
EPA REGION III PHILADELPHIA

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IN THE MATTER OF:)

Greiner Industries, Inc.)

Respondent.)

1650 Steel Way)
Mount Joy PA 17552-9515)

Facility)

Docket Number
CAA-03-2015-0194

Proceeding Pursuant to
Sections 113(a) and (d)
of the Clean Air Act, as
amended, 42 U.S.C.
§ 7413(a) and (d)

CONSENT AGREEMENT

I. Preliminary Statement

This administrative Consent Agreement (the "Consent Agreement") is entered into by and between the Complainant, the Director of the Air Protection Division, United States Environmental Protection Agency, Region III ("EPA" or "Complainant"), and Greiner Industries, Inc. (the "Respondent" or "Greiner"), pursuant to Section 113(a) and (d) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7413(a) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 (the "Consolidated Rules of Practice"). The Consolidated Rules of Practice at 40 C.F.R. § 22.13 provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be commenced and concluded simultaneously by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

This Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO") address alleged violations by Respondent of requirements found in 40 C.F.R. Part 63, Subpart XXXXXX, National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories ("Subpart XXXXXX"), as described below.

II. General Provisions

1. Section 113(a) and (d) of the Act, 42 U.S.C. § 7413(a) and (d), authorizes the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement, rule, plan, order, waiver, or permit promulgated, issued, or approved under Subchapters I, IV, V and VI [also referred to as Titles I, IV, V and VI] of the Act. The authority to issue the accompanying Final Order has been duly delegated to the Regional Judicial Officer, EPA Region III.
2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO and agrees not to contest EPA's jurisdiction with respect to the issuance, execution and enforcement of this Consent Agreement and the accompanying Final Order.
3. Except as provided in paragraph 2 above, Respondent neither admits nor denies the specific findings of fact and the conclusions of law set forth in this Consent Agreement and the accompanying Final Order.
4. Respondent consents to the issuance of this Consent Agreement and the accompanying Final Order, agrees to comply with the terms and conditions set forth therein, and consents to the payment of a civil penalty as set forth in this CAFO.
5. Respondent agrees to pay its own costs and attorney fees.
6. Respondent agrees that this Consent Agreement and the accompanying Final Order shall apply to, and be binding upon, Respondent, its officers, directors, servants, employees, agents, successors and assigns.

III. Findings Of Fact And Conclusions Of Law

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law:

7. Respondent is a private corporation organized under the laws of Delaware to perform welding, custom metal fabrication, and millwrighting as well as blasting and painting operations. Respondent owns and operates the metal fabrication facility located at 1650 Steel Way, Mount Joy, PA 17552 (the "Facility").

8. Respondent is a “person” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d), 42 U.S.C. § 7413(d), because it is a corporation. At all times relevant to the violations alleged in this Consent Agreement, Respondent has been the owner and operator of the Facility.
9. Section 112 in Title I of the CAA, 42 U.S.C. § 7412, governs the federal control program for hazardous air pollutants (“HAPs”) and directs EPA to define the categories of sources that are required to control emissions of HAPs. Section 112(d) of the CAA, 42 U.S.C. § 7412(d), directs EPA to establish national emissions standards for hazardous air pollutants (“NESHAPs”) for sources in each category to limit the release of specified HAPs from specific industrial sectors.
10. Pursuant to Section 112(a) of the CAA, 42 U.S.C. § 7412(a), a “major source” is a stationary source 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. The term HAP means any air pollutant listed pursuant to Section 112(b) of the CAA, 42 U.S.C. § 7412(b). An “area source” pursuant to Section 112(a) of the CAA, 42 U.S.C. § 7412(a), means any stationary source of HAP that is not a major source.
11. The Facility is an area source of HAPs because it is a stationary source which emits or has the potential to emit HAPs including, but not limited to, compounds of cadmium, chromium, lead, manganese, and nickel, at levels below major source thresholds.
12. In 2008, EPA issued Subpart XXXXXX, which established emissions standards in the form of management practices and equipment standards for new and existing operations of nine metal fabrication and finishing area source categories including, in relevant part, fabricated metal operations. 40 C.F.R. § 63.11514 *et seq.*
13. In an August 22, 2014 letter to EPA, Respondent stated that it was subject to Subpart XXXXXX for welding and abrasive blasting. Welding and abrasive blasting at the Facility are more than 50 percent of the production at the Facility.
14. Respondent is subject to Subpart XXXXXX because the Facility is “primarily engaged,” as defined in 40 C.F.R. § 63.11522, in Fabricated Structural Metal Manufacturing. 40 C.F.R. § 63.11514(a)(4) and Table 1 to Subpart XXXXXX (listing establishments primarily engaged in fabricating iron and steel or other metal for structural purposes as source categories affected by Subpart XXXXXX).
15. The Facility is an existing metal fabrication and finishing source as defined in 40 C.F.R. § 63.11522. The Facility is an “existing” affected source because it commenced construction or reconstruction before April 3, 2008. 40 C.F.R. § 63.11514(c).

16. At the Facility, Respondent uses materials that contain or have the potential to emit metal fabrication or finishing metal HAP ("MFHAP"), defined to be the compounds of cadmium, chromium, lead, manganese and nickel, or any of these metals in the elemental form with the exception of lead. 40 C.F.R. § 63.11514(b) and 63.11522. Materials that contain MFHAP are defined to be materials that contain greater than 0.1 percent for carcinogens, as defined by OSHA at 29 C.F.R. § 1910.1200(d)(4) and greater than 1.0 percent for noncarcinogens.
17. The provisions of Subpart XXXXXX apply to each existing affected source in 40 C.F.R. § 63.11514(b)(1)-(5) using materials that contain or have the potential to emit MFHAP.
18. The Respondent has affected sources subject to Subpart XXXXXX and 40 C.F.R. § 63.11514(b), including equipment necessary to perform dry abrasive blasting and welding.
19. Pennsylvania has not accepted delegation for Subpart XXXXXX at this date. Therefore, all reports required by Subpart XXXXXX must be submitted to EPA.
20. Pursuant to 40 C.F.R. § 63.11519(a)(1) (notification, recordkeeping and reporting requirements), the owner or operator of an existing affected source must submit an Initial Notification with the information required in 40 C.F.R. § 63.11519(a)(1)(i)-(iv) no later than July 25, 2011.
21. Respondent was required, but failed, to submit its Initial Notification for the Facility to EPA no later than July 25, 2011 and is therefore in violation of 40 C.F.R. § 63.11519(a)(1).
22. Pursuant to 40 C.F.R. § 63.11519(a)(2), the owner or operator of an existing affected source must submit on or before November 22, 2011 a Notification of Compliance Status with the information in § 63.11519(a)(2)(i)-(iv) to EPA.
23. Respondent was required, but failed, to submit a Notification of Compliance Status to EPA for the Facility on or before November 22, 2011 and is therefore in violation of 40 C.F.R. § 63.11519(a)(2).
24. Pursuant to 40 C.F.R. § 63.11519(b)(1) and (2), an owner or operator of an existing affected source must prepare and submit annual certification and compliance reports with each annual certification and compliance report covering the reporting period from January 1 through December 31.
25. Pursuant to 40 C.F.R. § 63.11519(b)(2)(i) and (iii), Respondent was required, but failed, to submit its first Annual Certification and Compliance Report to EPA, covering the period of July 25, 2011 through December 31, 2011, no later than January 31, 2012 for the Facility, and is therefore in violation of 40 C.F.R. § 63.11519(b)(2).

26. Pursuant to 40 C.F.R. § 63.11519(b)(2)(ii) and (iii), Respondent was required, but failed, to submit its 2012 Annual Certification and Compliance Report to EPA, covering the period from January 1, 2012 through December 31, 2012, no later than January 31, 2013 for the Facility, and is therefore in violation of 40 C.F.R. § 63.11519(b)(2).
27. Pursuant to 40 C.F.R. § 63.11519(b)(2)(ii) and (iii), Respondent was required, but failed, to submit its 2013 Annual Certification and Compliance Report to EPA, covering the period from January 1, 2013 through December 31, 2013, no later than January 31, 2014 for the Facility, and is therefore in violation of 40 C.F.R. § 63.11519(b)(2).
28. By letter and attachments dated August 22, 2014, Respondent self-reported and submitted the overdue Initial Notification, Notification of Compliance Status and an Annual Compliance Certification and report for 2014. Because the compliance certification is based on visual observations of the stack, Greiner was not able to certify compliance for 2011-2013 because they did not perform the visual observations on which to certify compliance.
29. Section 113(d)(1) of the CAA limits the Administrator's authority to matters where the first alleged violation occurred no more than 12 months prior to initiation of an 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.
30. The Administrator and the Attorney General, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

IV. Settlement Recitation, Settlement Conditions, and Civil Penalty

31. Complainant and Respondent enter into this Consent Agreement and the accompanying Final Order in order to settle the violations specifically set forth in Section III of this Consent Agreement.
32. In settlement of the alleged violations enumerated above in Section III of this Consent Agreement, Respondent consents to the assessment and agrees to pay a civil penalty in the amount of \$10,000.00 within the time and manner specified herein.
33. The settlement amount of \$10,000.00 is based upon Complainant's consideration of and application of the statutory penalty factors set forth in Section 113(e), of the Act, 42 U.S.C. § 7413(e), which include the size of the business, economic impact of the penalty, the violator's full compliance history and good faith efforts to comply, the duration of the

violation as established by any credible evidence, the economic benefit of noncompliance, the payment of penalties previously assessed for same violation, the seriousness of violation and such other matters as justice may require, and EPA's Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991), as indexed for inflation in keeping with 40 C.F.R. Part 19 (Adjustment to Civil Monetary Penalties for Inflation). Complainant has determined that Respondent's payment of this civil penalty shall resolve the violations set forth in Section III of this Consent Agreement.

34. Respondent shall pay the civil penalty of \$10,000.00 no later than thirty (30) days after the effective date of this Consent Agreement and accompanying Final Order in order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this Consent Agreement and accompanying Final Order.
35. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
36. Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of this executed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
37. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. §13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
38. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 40 C.F.R. §13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

39. Thus, in accordance with the above provisions, to avoid the assessment of interest, late payment penalties, and handling charges on the penalty set forth herein, Respondent must pay the full amount of the civil penalty, in the manner directed, within thirty (30) days of the effective date of this Consent Agreement and accompanying Final Order.
40. Payment of the penalty in Paragraph 32 shall be made by cashier's check, certified check, or electronic wire transfer, Automated Clearing House ("ACH"), or an on line, internet payment as specified below. All payments are payable to "Treasurer, United States of America" and shall reference the above case caption and docket number, CAA-03-2015-0194
41. Instructions for submitting payment of the penalty using the methods, or combination of methods, described above are provided at the following EPA website addresses:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>
<http://www2.epa.gov/financial/makepayment>
42. Any payment made by any method must reference the above case caption and docket number, CAA-03-2015-0194. Within 24 hours of payment of any penalty amount, Respondent shall send copies of any corresponding check, or written notification confirming any electronic transfer through wire transfer, ACH, or internet payment, to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, to Wanda Lewis, Senior Paralegal Specialist (3RC60), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and to Gwendolyn Supplee (3AP20), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029.
43. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in, and any civil penalty amount paid pursuant to, this Consent Agreement and accompanying Final Order.
44. Payment of the penalty specified in Paragraph 32 in the manner set forth in this Consent Agreement and payment of any applicable interest, handling costs and/or late payment charges as set forth above shall constitute satisfaction of all civil claims for penalties for the specific violations alleged in Section III of this Consent Agreement. Compliance with this Consent Agreement and accompanying Final Order shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations administered by EPA.

45. Respondent's failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in referral of this matter to the United States Attorney for enforcement of this Consent Agreement and the accompanying Final Order in the appropriate United States District Court, in accordance with Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5).

V. Reservation of Rights

46. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in Section III of this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this Consent Agreement and Final Order be construed to limit the United States' authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.

VI. Effective Date

47. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Consent Agreement and Final Order is filed with the Regional Hearing Clerk of EPA Region III.

VII. Waiver of Hearing

48. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), with respect to any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the accompanying Final Order.

VIII. Entire Agreement

49. This Consent Agreement and the accompanying Final Order constitute the entire agreement

and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the accompanying Final Order. Nothing in this Consent Agreement or the accompanying Final Order shall be construed to affect or limit in any way the obligation of Respondent to comply with all federal, state and local laws and regulations governing any activity required by this Consent Agreement and the accompanying Final Order.

IX. Execution

50. The person signing this Consent Agreement on behalf of Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Respondent, to the terms and conditions of this Consent Agreement and the accompanying Final Order.

For the Respondent:

8-26-15
Date

Frank Greiner
Frank Greiner
Owner
Greiner Industries, Inc.

For the Complainant:

9/2/15
Date

Wanda Lewis
Wanda Lewis
Senior Paralegal Specialist
U.S. Environmental Protection Agency, Region III

Accordingly, the Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, ratify this Consent Agreement and issue the accompanying Final Order (CAA-03-2015-0194). The amount of the recommended civil penalty assessment is \$10,000.

9/3/2015
Date

Diana Esher
Diana Esher, Director
Air Protection Division
U.S. Environmental Protection Agency, Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF:

Greiner Industries, Inc.,
1650 Steel Way
Mount Joy PA 17552-9515

Respondent.

EPA Docket Number
CAA-03-2015-0194

Final Order

Proceeding Under
Sections 113(a) and (d)
of the Clean Air Act, as
amended, 42 U.S.C.
§ 7413(a) and (d)

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FINAL ORDER

Complainant, the Director of the Air Protection Division, U.S. EPA Region III, and Respondent, Grenier Industries, Inc., have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991) and the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

NOW, THEREFORE, PURSUANT TO Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TEN THOUSAND DOLLARS** (\$10,000.00), in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: 9-9-2015



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III

CERTIFICATE OF SERVICE

I certify that I filed an original and one copy of the signed Consent Agreement and Final Order (CAFO) for *In The Matter Of: Greiner Industries, Docket No. CAA-03-2015-0194* with the Regional Hearing Clerk and sent a true and correct copy of the CAFO to Respondent's attorney as indicated below:

VIA UPS overnight:

Michael W. Davis, Esquire
Barley Snyder Attorneys At Law
126 East King Street
Lancaster, PA 17602-2893

9/9/15
Date

Donna L. Mastro

Donna L. Mastro, Esq.
Air Branch Chief
U.S. Environmental Protection Agency, Region III

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