



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 30 2011

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

REPLY TO THE ATTENTION OF:

John Richter  
Vice President, Environment, Health & Safety  
PPG Industries, Inc.  
One PPG Place  
Pittsburgh, Pennsylvania 15272

Re: *In the Matter of: PPG Industries Ohio, Inc.*  
Docket No.

Dear Mr. Richter:

I have enclosed a file stamped Consent Agreement and Final Order ("CAFO") which resolves case docket number, CAA-05-2011-0062, with PPG Industries Ohio, Inc. (PPG). As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 30 2011. Pursuant to paragraph 43 of the CAFO, PPG must pay the civil penalty of \$175,000 within 45 days of the date the CAFO is filed. Your check must display the case docket number, CAA-05-2011-0062, and the billing document number 2751103A061.

If you have any questions on this matter, please do not hesitate to call Mr. Charles Hall, of my staff, at (312) 353-3443, or, with legal questions, Jan Carlson, Associate Regional Counsel, at (312) 886-6059.

Sincerely,

William MacDowell  
Minnesota/Ohio  
Air Enforcement and Compliance Assurance Section

Enclosure

cc: Regional Hearing Clerk, E-19J  
Steve Faeth, PPG  
Jan Carlson/C-14J  
Adam Ward, Ohio EPA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	)	Docket No. <b>CAA-05-2011-0062</b>
	)	
PPG Industries Ohio, Inc.	)	Proceeding to Assess a Civil Penalty under
Circleville, Ohio	)	Section 113(d) of the Clean Air Act, 42
	)	U.S.C. § 7413(d)
<b>Respondent.</b>	)	
_____	)	

**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 Act), 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 Air and Radiation Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is PPG Industries Ohio, Inc., a corporation doing business in the State of Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an 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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with 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, but waives no right or remedy with respect to third parties other than EPA.

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### **Statutory and Regulatory Background**

9. Pursuant to Section 112(d) of the Act, 42 U.S.C. § 7412(d), EPA promulgated National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (hereinafter, the HWC MACT) at 40 C.F.R. Part 63, Subpart EEE, §§ 63.1200 through 63.1221.
10. The HWC MACT applies to all HWCs, including hazardous waste incinerators.
11. Pursuant to 40 C.F.R. § 63.1219(a)(1)(i)(A), the owner or operator of an existing hazardous waste incinerator equipped with a waste heat boiler or dry air pollution control system must not discharge or cause combustion gases to be emitted into the atmosphere that contain dioxins and furans in excess of 0.20 nanogram toxic equivalent 2,3,7,8-tetrachlorodibenzo-para-dioxin per dry standard cubic meter corrected to 7 percent oxygen (ng TEQ/dscm at 7% O<sub>2</sub>).
12. Pursuant to 40 C.F.R. § 63.1206(a)(1)(ii)(A), the owner or operator of an existing hazardous waste incinerator must comply with the emission standards under 40 C.F.R. § 63.1219 and the other requirements of this subpart no later than the compliance date, October 14, 2008, unless the Administrator of EPA (Administrator) grants you an extension of time under § 63.6(i) or § 63.1213.
13. 40 C.F.R. § 63.1206(c)(7) requires an HWC to prepare and operate according to an operation and maintenance plan that: a) describes in detail procedures for operation, inspection, maintenance and corrective measures for all components of the combustor, including associated pollution control equipment, that could affect emissions of regulated hazardous air pollutants; b) prescribes how the HWC will operate and maintain the combustor in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels achieved during the comprehensive performance test; and c) ensures compliance with the operation and maintenance requirements of § 63.6(e) and minimizes emissions of pollutants, automatic waste feed cutoffs, and malfunctions.
14. 40 C.F.R. § 63.6(f)(2)(i) and (ii) state that the Administrator will determine compliance with nonopacity emissions standards: (i) based on the results of performance tests conducted according to the procedures in § 63.7 unless otherwise specified in an applicable subpart of this part; and (ii) by evaluation of an owner or operator's conformance with operation and maintenance requirements, including the evaluation of monitoring data, as specified in § 63.6(e) and applicable subparts of this part.
15. 40 C.F.R. § 63.6(e)(1)(i) states that at all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and

maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section, review of operation and maintenance records, and inspection of the source.

16. 40 C.F.R. § 63.6(e)(1)(iii) states that operation and maintenance requirements established pursuant to section 112 of the Act are enforceable independent of emissions limitations or other requirements in relevant standards.
17. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a), authorizes the Administrator to initiate an enforcement action whenever the Administrator finds, among other things, that any person has violated or is in violation of a requirement or prohibition of Subchapter I of the Act, or any rule promulgated, issued or approved under Subchapter I of the Act.
18. The Administrator may assess a civil penalty of up to \$37,500 per day of violation, up to a total of \$295,000, for violations that have occurred after January 12, 2009, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.
19. 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.
20. 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**

21. Respondent owns and operates a hazardous waste incinerator located at 559 Pittsburgh Road, Circleville, Ohio (the Facility).
22. The hazardous waste incinerator at the Facility is subject to 40 C.F.R. Part 63, Subpart EEE.
23. Neither EPA nor the Ohio EPA granted to PPG an extension of time under 40 C.F.R. § 63.6(i) or § 63.1213.
24. Between August 17 and 21, 2009, PPG conducted a comprehensive performance test (CPT) on the hazardous waste incinerator at the Facility as required by 40 C.F.R. § 63.1207.
25. As part of the CPT, between August 18 and 20, 2009, Air Compliance Group, LLC (ACG), on behalf of PPG conducted a dioxin/furan performance test using EPA

Publication SW-846 Method 0023A (Method 0023A). The average dioxin/furan emission concentration during the test was 2.01 ng TEQ/dscm at 7% O<sub>2</sub>.

26. PPG discontinued burning hazardous waste in its hazardous waste incinerator at the Facility between approximately September 17, 2009, and October 14, 2009.
27. On October 21, 22, and 23, 2009, ACG on behalf of PPG conducted three dioxin/furan performance tests using Method 0023A while PPG operated its hazardous waste incinerator at the Facility under three different operating conditions. On October 23, 2009, PPG repeated the operating conditions of the August 2009 test. The average dioxin/furan emission concentration was 0.0217 ng TEQ/dscm at 7% O<sub>2</sub>. On October 21, 2009, the average dioxin/furan emission concentration was 0.0111 ng TEQ/dscm at 7% O<sub>2</sub>. On October 22, 2009, the average dioxin/furan emission concentration was 0.00699 ng TEQ/dscm at 7% O<sub>2</sub>.
28. On January 21, 2010, EPA issued a Finding of Violation (FOV) to Respondent for violating Subpart EEE of the HWC MACT.
29. On February 17, 2010, EPA had a meeting with Respondent to discuss the violations alleged in the FOV and any actions the company has taken to come into compliance.
30. In April 2010, EPA sent an information request to Respondent pursuant to Section 114 of the Act.
31. On June 24, 2010 and May 25, 2010, EPA received responses from Respondent to the information request.
32. Respondent submitted its Startup, Shutdown and Malfunction (SSM) Plan in response to EPA's information request.
  - a. Paragraph 4.2 and Table 4-6 of the SSM Plan identify system alarms for detecting carbon bed plugging and failure of the carbon bed support system;
  - b. Malfunction Form No. 46 of the SSM Plan states that "plugging of a carbon bed should trigger an alarm for high differential pressure across the carbon bed." Form No. 46 also states: "Plugging of a carbon bed could restrict flue gas flow through the carbon bed or cause inadequate flow distribution. Either of these problems will likely result in improper functioning of the carbon bed system and may lead to an increase in D/F and mercury emissions."
  - c. Malfunction Form No. 47 of the SSM Plan states that "failure of a carbon bed support system would likely manifest itself in a decline in the differential pressure across the carbon bed. A complete and sudden failure of the carbon bed support system would lead to a drastic change in differential pressure across the bed."

33. Respondent's response to 1.h/i and 1.j of EPA's request states the following: "PPG does not maintain a system alarm or signal when the differential between those two values reaches a certain limit. PPG does not believe that a differential pressure monitoring system in and of itself, would identify malfunctions in the carbon bed system and therefore does not maintain such a monitor on the carbon bed system."
34. Respondent has not amended its O & M Plan or its SSM Plan with a new method for detecting carbon bed plugging and failure of the carbon bed support system at the Facility.
35. Respondent submitted Ducon Technologies Inc.'s Installation, Operation & Maintenance Instructions dated February 2003 for PPG's Ducon Carbon Bed Adsorber to EPA in response to EPA's information request.
  - a. Page 7 of the Ducon Plan recommends installation of the following instruments for the system: i) Six Annubar Flow Transmitters; ii) Six Differential Pressure Transmitters; iii) Six Temperature Transmitters; iv) One Humidity Analyzer/Transmitter; and v) One Carbon Monoxide Analyzer/Transmitter.
  - b. The Ducon Plan states that the maximum pressure drop through the PPG's Carbon Beds is 1.8 inches of water column ("H<sub>2</sub>O") per foot or 5.4"H<sub>2</sub>O per 3-foot bed.
36. Respondent submitted records to EPA that showed the daily average pressure drop across the carbon bed system exceeded 5.4"H<sub>2</sub>O on 22 of the 28 days between August 21, 2009 and September 17, 2009. The 10-minute average pressure drop across the carbon bed system exceeded 5.4"H<sub>2</sub>O during 77.1% of the 10-minute periods between August 21, 2009, at midnight and September 17, 2009, at 11:50 pm.
37. Respondent provided EPA with a report dated February 11, 2011 concerning an investigation it conducted after failure of the CPT test and subsequent shutdown of the hazardous waste incinerator on September 17, 2009. The report stated the following regarding the state of the carbon bed system in September 2009: "[I]t was discovered that carbon in the bottom bed of #3 Adsorber had fallen through the support screen near the outlet pipe. This created a possible pathway for stack gases to flow through, bypassing the carbon in the bed, and being left untreated. It was also discovered that the carbon in the bottom bed of #1 Adsorber had been shifted to the sides of the vessel thus reducing the bed height in the center of the bed by approximately 1 [foot]."
38. Respondent certifies that it has installed an "Automatic Waste Feed Cut Off" system, which will cut off waste feed when abnormal conditions are detected at one of the six carbon beds at the Facility.
39. Respondent certifies that within 30 days of the entry of this CAFO, it will amend its O & M Plan to describe in detail the operation, inspection, maintenance, and corrective procedures for the carbon bed system at the Facility.

### Violations

40. PPG violated 40 C.F.R. § 63.1219(a)(1)(i)(A) by discharging combustion gases into the atmosphere that exceeded 0.20 ng TEQ/dscm at 7% O<sub>2</sub> from its hazardous waste incinerator at the Facility between August 18, 2009, and September 17, 2009.
41. PPG violated 40 C.F.R. § 63.6(e)(1)(i) by failing to operate in compliance with its O & M Plan and SSM Plan; and by failing to operate and maintain its facility in a manner consistent with safety and good air pollution control practices for minimizing emissions during 2009.

### Civil Penalty

42. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation during and after the inspection, and information that Respondent has submitted, EPA has determined that an appropriate civil penalty to settle this action is \$ 175,000.
43. Within 45 days after the effective date of this CAFO, Respondent must pay the \$ 175,000 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, refer to the case title, the docket number of this CAFO, and the billing document number.

44. Respondent must send a notice of payment that states the case title, Respondent's name, complete address, the case docket number, and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and the EPA attorney at the following addresses:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Janet Carlson, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

45. This civil penalty is not deductible for federal tax purposes.
46. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest at rates established pursuant to 26 U.S.C. § 6621(a)(2), nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
47. Interest will accrue on any overdue amount from the date payment was due at a rate established under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). Respondent will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

#### **General Provisions**


48. This CAFO resolves only Respondent's liability for federal civil penalties for the factual allegations and violations alleged in the Violations section of this CAFO.
49. This CAFO does not affect the right 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 Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 48 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.
51. Respondent certifies that it is complying fully with the HWC MACT at 40 C.F.R. Part 63, Subpart EEE.
52. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Source Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).
53. The terms of this CAFO bind Respondent, and its successors, and assigns.
54. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.
55. Each party agrees to bear its own costs and attorneys' fees in this action.
56. This CAFO constitutes the entire agreement between the parties.



**CONSENT AGREEMENT AND FINAL ORDER  
PPG Industries Ohio, Inc.**

**PPG Industries Ohio, Inc., Respondent**

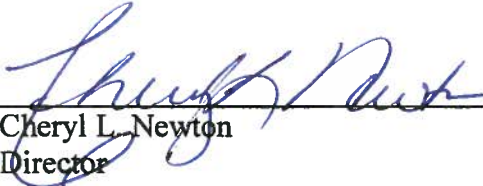
9/23/2011  
Date

  
\_\_\_\_\_  
John Richter  
Vice President  
Environment, Health & Safety  
PPG Industries, Inc.

**CONSENT AGREEMENT AND FINAL ORDER  
PPG Industries Ohio, Inc.**

**U.S. Environmental Protection Agency, Complainant**

9/29/11  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Cheryl L. Newton  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**CONSENT AGREEMENT AND FINAL ORDER**

**PPG Industries Ohio, Inc.**

**Docket No.**

**CAA-05-2011-0062**

**Final Order**

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

9-30-11

Date



Susan Hedman

Regional Administrator

U.S. Environmental Protection Agency, Region 5

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PROTECTION AGENCY

In the Matter of  
PPG Industries Ohio, Inc.  
Docket No. **CAA-05-2011-0062**

### CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, the original and one copy of the Consent Agreement and Final Order, docket number CAA-05-2011-0062. Further, I certify that I mailed correct copies of the Consent Agreement and Final Order, by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent by placing them in the custody of the United States Postal Service addressed as follows:

John Richter  
Vice President, Environment, Health & Safety  
PPG Industries, Inc.  
One PPG Place  
Pittsburgh, PA 15272

Steven F. Faeth  
Senior Counsel Environmental, Health, and Safety Law Department  
PPG Industries, Inc.  
One PPG Place  
Pittsburgh, PA 15272-0001

I certify that I mailed copies of the CAFO by first-class mail, addressed as follows:

Honorable Susan Biro  
Chief Administrative Law Judge  
U.S. Environmental Protection Agency  
Ariel Rios Building/Mail Code 1900L  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
50 West Town Street, Suite 700  
Columbus, Ohio 43215

Adam Ward  
Air Pollution Control Supervisor  
Central District Office  
Ohio Environmental Protection Agency  
50 W. Town Street, Suite 700

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PROTECTION AGENCY

Columbus, Ohio 43215

I also certify that I delivered a copy of the CAFO by intra-office mail, addressed as follows:

Marcy Toney  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard/Mail Code C-14J  
Chicago, Illinois 60604

on the 30 day of September 2011



Betty Williams  
Administrative Program Assistant  
PAS

Certified Mail Receipt Number: 7009 1680 0000 7673 8637

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