



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
JUN 14 2017

REPLY TO THE ATTENTION OF:

H.B. Kincaid, Director of Operations
NLMK Indiana
6500 South Boundary Road
Portage, Indiana 46368

Dear Mr. Kincaid:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves the matter of NLMK Indiana, docket no. CAA-05-2017-0027. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

June 14, 2017.

Pursuant to paragraph 47 of the CAFO, NLMK Indiana must pay the civil penalty within 30 days of the filing date. Your check or 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, at 312-886-0273.

Sincerely,

A handwritten signature in cursive script that reads "Brian Dickens".

Brian Dickens, Chief
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Susan Tennenbaum/C-14J
Phil Perry/PPERRY@idem.in.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

NLMK Indiana
Portage, Indiana,

Respondent.



Docket No. CAA-05-2017-0027

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air Act,
42 U.S.C. § 7413(d)

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 or 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, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is NLMK Indiana (NLMK), a corporation doing business in Indiana.

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 111 of the Act, 42. U.S.C. § 7411 *et seq.*, the Administrator promulgated the New Source Performance Standards (NSPS) General Provisions, at 40 C.F.R. Part 60, Subpart A, and the Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983 (NSPS Subpart AAa), set forth at 40 C.F.R. § 60.270a *et seq.* NSPS Subpart AAa applies to each Electric Arc Furnace (EAF) constructed, modified or reconstructed after August 17, 1983.

10. 40 C.F.R. § 60.272a(a)(3) provides that no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from a melt shop and, due solely to operations of any EAF, 6 percent opacity or greater.

11. 40 C.F.R. § 60.273a(d) provides, among other things, that a furnace static pressure monitoring device is not required on an EAF equipped with a direct-shell evacuation control system (DEC) if observations of shop opacity are performed by a certified visible emission observer at least once per day when the furnace is operating in the meltdown and refining period in accordance with 40 C.F.R. Part 60, Appendix A, Method 9 (Method 9).

12. Title V of the Act, 42 U.S.C. §§ 7661-7661f, established an operating permit program for major sources of air pollution.

13. In accordance with 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). These regulations are codified at 40 C.F.R. Part 70.

14. 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.

15. On May 16, 2002, EPA approved the State of Indiana's operating permit program with an effective date of July 15, 2002. *See* 40 C.F.R Part 70, Appendix A, and 67 Fed. Reg. 34,844 (May 16, 2002).

16. The regulation at 40 C.F.R. § 70.6(b)(1) specifies that all terms and conditions in a permit issued under a Part 70 program, including any provisions designed to limit a source's potential to emit, are enforceable by EPA under the Act.

17. The Indiana Department of Environmental Management (IDEM) issued Title V Operating Permit No. T127-27948-00036 to NLMK for the facility, ID No. 127-00036, on October 2, 2009. IDEM approved an administrative amendment to the Title V operating permit on September 21, 2011.

18. Condition D.1.1(a) of NLMK's Title V operating permit states, among other things, that direct shell evacuation control system and canopy hoods shall be ducted to the melt shop baghouse rated at least 1.0 million actual cubic feet per minute, demonstrating 100% capture efficiency.

19. Condition D.1.7(a) of NLMK's Title V operating permit states that the permittee shall not cause to be discharged into the atmosphere visible emissions from any building opening as a result of EAF operations that exceed 3% opacity based on a six-minute average.

20. Condition D.1.13(c)(1) of NLMK's Title V operating permit states that, whenever the continuous opacity monitoring system (COMS) is malfunctioning or is down for maintenance or repairs, the permittee shall provide a certified opacity reader and that visible emission readings shall be performed in accordance with Method 9.

21. Condition D.1.13(c)(2) of NLMK's Title V operating permit states Method 9 readings shall be conducted at least twice per day during daylight operations, with at least four hours between each set of readings, until a COMS is online.

22. Condition D.1.13(d)(1) of NLMK's Title V operating permit states that shop opacity observations shall be conducted at least once per day when the furnace is operating in the meltdown and refining period.

23. Condition D.1.13(d)(2) of NLMK's Title V operating permit states that shop opacity shall be determined as the arithmetic average of 24 consecutive 15-second opacity observations of emissions from the shop taken in accordance with Method 9.

24. Condition E.1.2(f) of NLMK's Title V operating permit states that the permittee shall comply with the provisions of 40 C.F.R. § 60.273a(d); the permittee shall, among other things, conduct visible emission observations of shop opacity at least once per day in accordance with Method 9.

25. The Administrator of EPA (the Administrator) may assess a civil administrative penalty of up to \$37,500 per day of violation up to a total of \$295,000 for CAA violations that

occurred after January 12, 2009 through December 6, 2013, and may assess a civil administrative penalty of up to \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through 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.

26. The Administrator may assess a penalty greater than \$320,000 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.

27. 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 \$320,000 is appropriate for an administrative penalty action.

28. 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.

29. 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

30. NLMK owns and operates a specialty steel-producing facility located at 6500 South Boundary Road, Portage, Indiana (the facility).

31. NLMK operates at the facility an electric arc furnace (EAF), identified as EAF #7, and an EAF shop, which houses EAF #7 at the facility.

32. NLMK's facility commenced construction, modification or reconstruction after August 17, 1983, and is thus an affected facility pursuant to 40 C.F.R. § 60.270a.

33. On May 13, 2014, EPA representatives inspected the NLMK facility and conducted Method 9 visible emissions observations at the EAF shop.

34. Based on EPA's observations of the visible emissions measured at the EAF shop, the following exceedances of the visible emissions limits were recorded at the facility:

Date	Time	Six-Minute Average Percent Opacity
May 13, 2014	10:41am – 10:46 am	18%
May 13, 2014	10:47 am - 10:52 am	10%
May 13, 2014	10:53 am - 10:58 am	17%
May 13, 2014	10:59 am - 11:05 am	12%

35. NLMK's excess visible emissions from the EAF shop are violations of the opacity limits in Condition D.1.7(a) of its Title V permit and 40 C.F.R. § 60.272a(a)(3).

36. On June 27, 2014, EPA issued a request for information pursuant to Section 114 of the CAA, 42 U.S.C. § 7414.

37. Based on NLMK's July 11, 2014 response to EPA's information request pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, NLMK failed to determine EAF shop opacity in accordance with Method 9 requirements when the COMS was malfunctioning or was

down for maintenance or repairs on 20 instances between January 21, 2014 and February 12, 2014.

38. NLMK's failure to determine EAF shop opacity in accordance with Method 9 requirements when the COMS was malfunctioning or was down for maintenance or repairs is a violation of Condition D.1.13(c)(1) of its Title V operating permit.

39. Based on NLMK's July 11, 2014 response, NLMK failed to conduct Method 9 readings when the COMS was malfunctioning or was down for maintenance or repairs with at least 4 hours between each set of readings on at least 3 occasions to determine EAF shop between January 21, 2014 and February 12, 2014.

40. NLMK's failure to conduct Method 9 readings when the COMS was malfunctioning or was down for maintenance or repairs with at least 4 hours between each set of readings is a violation of Condition D.1.13(c)(2) of its Title V permit.

41. Based on NLMK's July 11, 2014 response, NLMK failed to conduct EAF shop opacity readings in accordance with Method 9 requirements on 383 occasions between January 1, 2013 and May 31, 2014.

42. NLMK's failure to determine EAF shop opacity in accordance with Method 9 is a violation of Conditions D.1.13(d)(2) and E.1.2(f) of its Title V permit and of 40 C.F.R. § 60.273a(d).

43. On May 13, 2014, EPA representatives witnessed uncaptured particulate emissions from the EAF travel to the East Bay of the EAF shop and via the roof monitor to the environment.

44. On January 21, 2015, EPA representatives confirmed that normal operations continued to result in particulate emissions from the EAF to the East Bay of the EAF shop.

45. The failure of the EAF control system, including direct shell evacuation control system and canopy hoods that are ducted to the EAF shop baghouse, to capture 100% of the particulate emissions from the EAF is a violation of Condition D.1.1(a) of NLMK's Title V permit.

Civil Penalty

46. 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, NLMK's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$ 375,027.00.

47. Within 30 days after the effective date of this CAFO, Respondent must pay a \$375,027.00 civil penalty by either check or Automated Clearinghouse (ACH).

48. If using regular U.S. Postal Service mail, send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

49. For checks sent by express mail, send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name and the docket number of this CAFO.

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

50. For Automated Clearinghouse (ACH) also known as REX or remittance express, make ACH electronic funds transfer, payable to "Treasurer, United States of America," and send 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 Respondent's name and the docket number of this CAFO.

51. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-18J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Susan Tennenbaum (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

53. 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.

54. 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

55. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, 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 Terri.Czaka@icemiller.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

57. 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.

58. 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 55, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

59. Respondent certifies that it is complying fully with the Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 18, 1983, 40 C.F.R. § 60.270a *et seq.*, and Respondent's Title V permit.

60. 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).

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

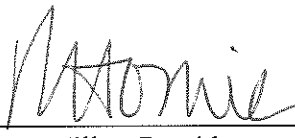
62. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

63. Each party agrees to bear its own costs and attorney fees in this action.

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

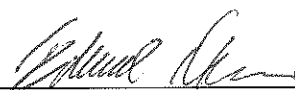
NLMK Indiana, Respondent

4/26/17
Date


Robert Miller, President
NLMK Indiana

United States Environmental Protection Agency, Complainant

6/8/17
Date

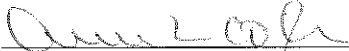

Edward Nam
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order CAA-05-2017-0027
In the Matter of: NLMK, Portage, Indiana

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.

June 15, 2017
Date



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

Consent Agreement and Final Order
In the matter of: NLMK Indiana
Docket Number: CAA-05-2017-0027

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number [CAA-05-2017-0027], which was filed on *6/14/2017*, in the following manner to the following addressees:


Copy by E-mail to Respondent: H.B. Kincaid
hbkincaid@us.nlmk.com

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

Copy by E-mail to Attorney for Respondent: Terri Czajka
terri.czajka@icemiller.com

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

Dated: June 14, 2017


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