

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
Alcoa Inc.)
1501 Airport Road)
Hutchinson, Kansas 67501)
)
Respondent)

Docket No. CAA-07-2008-0025

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and Alcoa Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d).
2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated the Federal Plan Requirements for Commercial and Industrial Solid Waste Incinerators (CISWI), 40 C.F.R. Part 62, Subpart III, promulgated pursuant to Section 111(d) of the CAA, 42 U.S.C. § 7411(d); and Section 129 of the CAA, 42 U.S.C. § 7429, and that Respondent is therefore in violation of Section 111(d) of the CAA, 42 U.S.C. § 7411(d); and Section 129 of the CAA, 42 U.S.C. § 7429. Furthermore, this CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region VII, is the Director, Air and Waste Management Division, EPA, Region VII.

4. The Respondent is Alcoa Inc. The Alcoa Aerospace Center located at 1501 Airport Road, Hutchinson, Kansas, is owned by Respondent and polishes aluminum sheet products used in the aerospace industry.

Statutory and Regulatory Background

5. Under Section 129 of the CAA, as amended in 1990, EPA is required to develop new source performance standards (NSPS) and emissions guidelines for solid waste incinerators.

6. Sections 111(b), 111(f), and 129(a) of the CAA require EPA to establish NSPS for new units, while Sections 111(d) and 129(b) require EPA to establish emissions guidelines for existing units.

7. Pursuant to Section 129(b)(3) of the CAA, EPA issued a Federal Plan for existing commercial and industrial solid waste incinerators (CISWI) that were built on or before November 30, 1999.

8. The Federal Plan implements the emission guidelines for CISWI units located in States or Tribal areas that have not submitted an acceptable State plan to EPA pursuant to Section 129(b)(2) of the CAA. The state of Kansas does not have an approved State plan in effect.

9. The Federal Plan, described at 40 C.F.R. Part 62, Subpart III, implements EPA's CISWI emission guidelines and sets forth the emissions requirements and compliance schedules for the control of emissions from CISWI units that are not covered by an EPA approved and currently effective State Plan.

10. As defined in 40 C.F.R. § 62.14840, CISWI unit means any combustion device that combusts commercial and industrial waste.

11. Pursuant to 40 C.F.R. § 62.14535(a)(1), owners or operators of CISWI units must comply with the operator training and qualification requirements and inspection requirements by October 4, 2004.

12. Pursuant to 40 C.F.R. § 62.14535(a)(2), owners or operators of CISWI units must submit a waste management plan no later than April 5, 2004.

13. Pursuant to 40 C.F.R. § 62.14535(a)(3), owners or operators of CISWI units are required to incorporate all process changes and complete retrofit construction of control devices to meet emission limits specified in Table I of Subpart III by October 4, 2004.

14. Pursuant to 40 C.F.R. § 62.14535(a)(4), owners or operators of CISWI units must conduct an initial performance test within 90 days after the date of compliance required under 40 C.F.R. § 62.14535(a)(3).

15. Pursuant to 40 C.F.R. § 62.14535(a)(5), owner or operators of CISWI units must submit an initial report including the results of the initial performance test no later than 60 days following the initial performance test.

16. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Section 112(r)(7). Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997 through March 15, 2004 and \$32,500 per day for each violation that occurs after March 15, 2004.

Alleged Allegations

17. EPA alleges that Respondent has violated the CAA and federal regulations, promulgated pursuant to the CAA, as follows:

18. Respondent is, and at all times referred to herein, was a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

19. Respondent is subject to 40 C.F.R. Part 62 Subpart III, because it is an owner or operator of a commercial and industrial solid waste incinerator that was built on or before November 30, 1999.

20. Respondent was required under section 129 of the CAA, 42 U.S.C. § 7429, and 40 C.F.R. Part 62, Subpart III, to comply with the Federal Plan.

21. Respondent failed to comply with certain of the requirements of the Federal Plan. Specifically, Respondent failed to: (1) comply with certain operator training and qualification requirements and inspection requirements by October 4, 2004, as required by 40 C.F.R. § 62.14535(a)(1); (2) submit a waste management plan no later than April 5, 2004, as required by 40 C.F.R. § 62.14535(a)(2); (3) to incorporate all process changes and complete retrofit construction of control devices to meet emission limits specified in Table I of Subpart III by October 4, 2004, as required by 40 C.F.R. § 62.14535(a)(3); (4) conduct an initial performance test, as required by 40 C.F.R. § 62.14535(a)(4); and (5) submit an initial report including the results of the initial performance test no later than 60 days following the initial performance test, as required by 40 C.F.R. § 62.14535(a)(5).

22. Respondent's failure to comply with the Federal Plan, 40 C.F.R. Part 62, Subpart III, as set forth above is a violation of Section 113(d) and 129 of the CAA, 42 U.S.C. §§ 7411(d) and 7429.

CONSENT AGREEMENT

23. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

24. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

25. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

26. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this Consent Agreement and Final Order.

27. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

28. This CAFO addresses all civil and administrative claims for the CAA violations identified above, existing through the effective date this CAFO. EPA reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

29. Respondent agrees that Respondent has ceased all operation of the solid waste incinerator at the Hutchinson, Kansas facility. In the event that Respondent resumes operation of the solid waste incinerator at this facility, Respondent agrees to comply with all requirements for Commercial and Industrial Solid Waste Incinerators, 40 C.F.R. Part 62, Subpart III.

30. Respondent certifies by signing this CAFO that, to the best of its knowledge, Respondent's Hutchinson, Kansas facility is presently in compliance with the CAA, 42 U.S.C. § 7401 *et. seq.* and all regulations promulgated thereunder.

31. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Sixty-Three Thousand Dollars (\$63,000) as set forth in Paragraph 1 of the Final Order, below.

32. The effect of settlement described in paragraph 31 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 30 above.

33. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

34. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in Paragraph 31, above.

35. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

36. This CAFO shall not relieve Respondent of its obligation to comply with all applicable federal, state, and local laws, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

37. This Final Order portion of this CAFO shall apply to and be binding upon Respondent, and Respondent's agents, successors, and / or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

FINAL ORDER

Pursuant to the provisions of the CAA, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Sixty-Three Thousand Dollars (\$63,000), within thirty (30) days of entry of this Final Order. Payment shall be by cashier or certified check which shall reference Docket Number CAA-07-2008-0025, and made payable to "United States Treasury" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

2. A copy of the check shall simultaneously be sent to the following:

Kelley Catlin
Office of Regional Counsel
United States Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101

and to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

5. This executed CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 N. Fifth Street, Kansas City, Kansas 66101.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/29/08

By: Becky Weber
Becky Weber
Director
Air and Waste Management Division

Date: 7/28/00

By: Kelley Catlin
Kelley Catlin
Assistant Regional Counsel

RESPONDENT:

Alcoa Inc.

Date: 7.23.2008

By: 

Printed Name: Malcolm Murphy

Title: Vice President and General Manager
Davenport Works and Satelliter

IT IS SO ORDERED. This Order shall become effective immediately.

Date: Aug. 4, 2008

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

IN THE MATTER OF Alcoa Inc., Respondent
Docket No. CAA-07-2008-0025

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Kelley Catlin
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Rick Dworek
Alcoa Corporate Center
201 Isabella Street
Pittsburgh, Pennsylvania 15212-5858

Dated: 8/4/08


Kathy Robinson
Hearing Clerk, Region 7