

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2020-0020
)	
Flint CPS Inks North America LLC)	Proceeding to Assess a Civil Penalty
Warsaw, Indiana,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
)	

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. Respondent is Flint CPS Inks North America LLC (formerly known as Flint Group North America Corporation; hereafter “Flint Group” or “Respondent”), 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 interests 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

HAPs and NESHAPs

9. Pursuant to Section 112(b) of the CAA, 42 U.S.C. § 7412(b), EPA designates Hazardous Air Pollutants (HAPs) that present or may present a threat of adverse effects to human health or the environment.

10. Section 112(a) of the CAA, 42 U.S.C. § 7412(a), defines “major source” as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAPs.

11. Section 112(c) and (d) of the CAA, 42 U.S.C. §§ 7412(c), (d), requires EPA to publish a list of categories of sources that EPA finds present a threat of adverse effects to human health or the environment due to emissions of HAPs, and to promulgate emission standards for each source category. These standards are known as “national emission standards for hazardous air pollutants” or “NESHAP.” EPA codifies these requirements at 40 C.F.R. Parts 61 and 63.

12. The NESHAP in 40 C.F.R. Part 63 are national technology-based performance standards for HAP sources in each category that become effective on a specified date. The purpose of these

standards is to ensure that all sources achieve the maximum degree of reduction in emissions of HAPs that EPA determines is achievable for each source category.

13. Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3), prohibits any person subject to a NESHAP from operating an existing source in violation of a NESHAP after its effective date. See 40 C.F.R. § 63.4.

14. The NESHAP, at 40 C.F.R. Part 63, Subpart A, contains general provisions applicable to the owner or operator of any stationary source that contains an affected source subject to a relevant standard in 40 C.F.R. Part 63, to the extent specified in such standard.

15. The NESHAP for Miscellaneous Coating Manufacturing at 40 C.F.R. Part 63, Subpart HHHHH (NESHAP HHHHH) applies to owners or operators of miscellaneous coating manufacturing operations. 40 C.F.R. § 63.7985.

16. NESHAP HHHHH, at 40 C.F.R. § 63.7985(a), states that you are subject to the requirements of NESHAP HHHHH if you are located at or are a part of a major source of HAP emissions, as defined in section 112(a) of the CAA; manufacture coatings, as defined in 40 C.F.R. § 63.8105; process, use, or produce HAP; and are not part of an affected source under another subpart of this part 63.

17. NESHAP HHHHH, at 40 C.F.R. § 63.8105, defines a coating as “a material such as paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives, where the material is produced by a manufacturing operation where materials are blended, mixed, diluted, or otherwise formulated. Coating does not include materials made in processes where a formulation component is synthesized by chemical reaction or separation activity and then transferred to another vessel where it is formulated to produce a material used as a coating, where the synthesized or

separated component is not stored prior to formulation. Typically, coatings include products described by the following North American Industry Classification System (NAICS) codes, code 325510, Paint and Coating Manufacturing, code 325520, Adhesive and Sealant Manufacturing, and code 325910, Ink Manufacturing.”

18. NESHAP HHHHH, at 40 C.F.R. § 63.7985, states that miscellaneous coating manufacturing operations include the facility-wide collection of equipment including process vessels, storage tanks for feed products, components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and wastewater tanks and transfer racks.

19. NESHAP HHHHH, at 40 C.F.R. § 63.8015(a), states “[y]ou must meet each requirement in Table 3 to this subpart that applies to your equipment leaks....”

20. NESHAP HHHHH, at Table 3, states that for all equipment in organic HAP service at an existing source, you must comply with the requirements in sections 63.424(a) through (d) and 63.428(e), (f), and (h)(4), except as specified in section 63.8015(b) (NESHAP R); or comply with the requirements of subpart TT of this part; or comply with the requirements of subpart UU of this part, except as specified in sections 63.8015(c) and (d).

21. NESHAP HHHHH, at 40 C.F.R. § 63.8105(g), states that “in organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAP as determined according to the provisions of § 63.180(d). The provisions of § 63.180(d) also specify how to determine that a piece of equipment is not in organic HAP service.”

22. NESHAP HHHHH, at 40 C.F.R. § 63.8100, states that this subpart can be implemented and enforced by the U.S. Environmental Protection Agency.

The NESHAP for Gasoline Distribution Facilities, Subpart R

23. The provisions of the National Emission Standards for Gasoline Distribution Facilities at 40 C.F.R. §§ 63.424(a) through (d) and 63.428(e), (f), and (h)(4), except as specified in section 63.8015(b), apply to the control of air emissions from equipment leaks.

24. NESHAP R, at 40 C.F.R. § 63.424(a), states that “[e]ach owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart shall perform a monthly leak inspection of all equipment in gasoline service. For this inspection, detection methods incorporating sight, sound, and smell are acceptable. Each piece of equipment shall be inspected during the loading of a gasoline cargo tank.”

a. NESHAP HHHHH, at 40 C.F.R. § 63.8015(b), provides that “[w]hen § 63.424(a) refers to ‘a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart,’ the phrase ‘a miscellaneous coating manufacturing affected source subject to 40 C.F.R. part 63, subpart HHHHH’ shall apply for the purposes of this subpart.”

b. NESHAP HHHHH, at 40 C.F.R. § 63.8015(b), provides that “[w]hen § 63.424(a) refers to ‘equipment in gasoline service,’ the phrase ‘equipment in organic HAP service’ shall apply for the purposes of this subpart.”

c. NESHAP HHHHH, at 40 C.F.R. § 63.8015(b), provides that “[w]hen § 63.424(a) specifies that ‘each piece of equipment shall be inspected during loading of a gasoline cargo tank,’ the phrase ‘each piece of equipment must be inspected when it is operating in organic HAP service’ shall apply for the purposes of this subpart.”

25. NESHAP R, at 40 C.F.R. § 63.421 defines equipment as “each valve, pump, pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in the gasoline liquid transfer and vapor collection systems.”

26. NESHAP R, at 40 C.F.R. § 63.424(b), states that “A log book shall be used and shall be signed by the owner or operator at the completion of each inspection. A section of the log shall contain a list, summary description, or diagram(s) showing the location of all equipment in gasoline service at the facility.”

27. NESHAP R, at 40 C.F.R. § 63.424(c), states that “[e]ach detection of a liquid or vapor leak shall be recorded in the log book. When a leak is detected, an initial attempt at repair shall be made as soon as practicable, but no later than 5 calendar days after the leak is detected. Repair or replacement of leaking equipment shall be completed within 15 calendar days after detection of each leak, except as provided in paragraph (d) of this section.”

28. NESHAP R, at 40 C.F.R. § 63.428(e) states that each owner or operator complying with the provisions of sections 63.424 (a) through (d) shall record the following information in the log book for each leak that is detected:

- a. The equipment type and identification number;
- b. The nature of the leak (i.e., vapor or liquid) and the method of detection (i.e., sight, sound, or smell);
- c. The date the leak was detected and the date of each attempt to repair the leak;
- d. Repair methods applied in each attempt to repair the leak;
- e. “Repair delayed” and the reason for the delay if the leak is not repaired within 15 calendar days after discovery of the leak;

f. The expected date of successful repair of the leak if the leak is not repaired within 15 days; and

g. The date of successful repair of the leak.

29. NESHAP R, at 40 C.F.R. § 63.428(f), states that each owner or operator subject to the provisions of § 63.424 shall report to the Administrator a description of the types, identification numbers, and locations of all equipment in gasoline service. Further, section 63.428(f)(1) states that, in the case of an existing source, the report shall be submitted with the notification of compliance status required under section 63.9(h).

30. The Administrator of EPA (the Administrator) may assess a civil 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; \$47,357 per day of violation up to a total of \$378,852 for violations that occurred after November 2, 2015 and where penalties were assessed on or after February 6, 2019 but before January 13, 2020; and \$48,192 per day of violation up to a total of \$385,535 for violations that occurred after November 2, 2015 and where penalties were assessed on or after January 13, 2020, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

31. 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.

32. 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

33. Flint Group owns and operates an ink manufacturing facility at 3025 West Old Road 30, Warsaw, Indiana (the Facility).

34. As provided in its permit under Title V of the CAA (Permit), Flint Group emits or has the potential to emit toluene and other HAPs in a combined quantity of over 25 tpy, and is thus a major source of HAPs, as defined in Section 112(a) of the CAA, 42 U.S.C. § 7412(a).

35. Flint Group produces a material such as paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives, where the material is produced by a manufacturing operation where materials are blended, mixed, diluted, or otherwise formulated and is, therefore, subject to NESHAP HHHHH.

36. As provided in its Permit, Flint Group operates existing affected sources that are subject to NESHAP HHHHH.

37. As a facility subject to NESHAP HHHHH, Flint Group must comply with the Leak Detection and Repair (LDAR) requirements in one of the following: sections 63.424(a) through (d) and 63.428(e), (f), and (h)(4), except as specified in section 63.8015(b) (NESHAP R); Subpart TT; or Subpart UU of this part, except as specified in sections 63.8015(c), (d). 40 C.F.R. § 63.8015(a) and Table 3.

38. On April 9, 2018 and April 10, 2018, EPA conducted an unannounced CAA investigation of the Facility for compliance with NESHAP HHHHH and the applicable equipment leaks or leak repair and detection (LDAR) NESHAP (the April Inspection).
39. During the April Inspection, EPA requested records of any pressure relief device repairs. Flint Group personnel did not provide any records and stated that they check the pressure relief devices only once per quarter or every six months.
40. During the April Inspection, EPA requested any documentation that showed which components were monitored at the Facility. Flint Group personnel stated that they did not have any documents on site that showed which components were monitored at the Facility.
41. During the April Inspection, Flint Group provided copies of Flint Group's semi-annual compliance reports for December 1, 2013 through November 30, 2017. Each semi-annual compliance report contains an attached LDAR inspection and leak detection logbook (Logbook Attachment(s)).
42. Each Log Book Attachment does not contain a list, summary description, or diagram(s) showing the location of all equipment in HAP service at the Facility.
43. Every Log Book Attachment from December 1, 2013 through November 30, 2017 reported zero leaks from equipment at the Facility.
44. During the April Inspection, Flint Group personnel stated that leaks have been found during times when monthly monitoring was not being conducted, but that those leaks and subsequent repairs were not recorded or reported. Further, Flint Group personnel stated that only the leaks detected during required monitoring periods were recorded and reported.
45. After the April Inspection, EPA requested that Flint Group provide a copy of its Notification of Compliance for NESHAP HHHHH (Initial Notification).

46. The Initial Notification provides process flow diagrams that state they show all equipment subject to the LDAR program at the Facility. The process flow diagrams do not identify which components of the flow diagram are subject to periodic monitoring nor do they describe the types of equipment to be monitored.

47. Attachment C of the Initial Notification provides an example of the logbook that Flint Group uses for leak monitoring at the Facility. The logbook at Attachment C contains no list, summary description, or diagram(s) showing the location of all equipment in organic HAP service.

48. By monitoring pressure relief devices less frequently than on a monthly basis, Flint Group violated 40 C.F.R. § 63.424(a) and 40 C.F.R. § 63.8015(a).

49. Since the logbook in the Initial Notification and the Logbook Attachments do not contain a list, summary description, or diagram(s) showing the location of all equipment in organic HAP service nor was a logbook containing contain a list, summary description, or diagram(s) showing the location of all equipment in organic HAP service provided during the April Inspection, Flint Group violated 40 C.F.R. § 63.424(b) and 40 C.F.R. § 63.8015(a).

50. By failing to record the equipment type and identification number, the nature of the leak, the date the leak was detected, each attempt to repair the leak, methods of repair, any delay of repair, or the date of successful repair of every leak that occurred at the facility, Flint Group violated 40 C.F.R. §§ 63.424(c) and 63.428(e) and 40 C.F.R. § 63.8015(a).

51. By failing to identify which components are subject to periodic monitoring and describing the types of equipment to be monitored in the Initial Notification, Flint Group violated 40 C.F.R. § 63.428(f) and 40 C.F.R. § 63.8015(a).

Civil Penalty

52. 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 and cooperation by Flint Group, Complainant has determined that an appropriate civil penalty to settle this action is \$75,000.

53. Within 30 days after the effective date of this CAFO, Respondent must pay a \$75,000 civil penalty by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should
read: “D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

54. 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
Enforcement and Compliance Assurance Division
r5airenforcement@epa.gov,
hullinger.luke@epa.gov, and
schenandoah.jason@epa.gov
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Jillian Rountree (C-14J)
rountree.jillian@epa.gov

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

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

56. 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.

57. 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

58. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: rountree.jillian@epa.gov (for Complainant), and thor.ketzback@bclplaw.com (for Respondent). The parties waive their right to service by other methods specified in 40 C.F.R. § 22.6.

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

60. 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.

61. 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 59, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

62. Respondent certifies that it is complying fully with NESHAP HHHHH.

63. 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).

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

65. 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.

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

67. This CAFO constitutes the entire agreement between the parties regarding penalties for the alleged violations herein.

Flint CPS Inks North America LLC, Respondent

June 4, 2020

Date

Melanie Caple

Melanie Caple, VP Operations NA
Flint CPS Inks North America LLC

United States Environmental Protection Agency, Complainant

6/19/2020

Date

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2020.06.19
15:15:38 -05'00'

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: Flint CPS Inks North America LLC
Docket No.**

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 23, 2020

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2020.06.23
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Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5