



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 28 2018

REPLY TO THE ATTENTION OF:

VIA E-MAIL

Joseph Koncelik, Attorney for Falcon Foundry  
Joseph.Koncelik@tuckerellis.com

Gary Slaven  
Falcon Foundry Company  
96 6th Street  
Lowellville, OH 44436

Dear Mr. Koncelik:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Falcon Foundry Company, Lowellville, Ohio, docket no. CAA-05-2018-0028. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

*September 28, 2018.*

Pursuant to paragraph 34 of the CAFO, Falcon Foundry Company, Lowellville, Ohio must pay the civil penalty within 30 days of the filing date. Your on-line payment must display the case name and case docket number.

Please direct any questions regarding this case to Naeha Dixit, Assistant Regional Counsel, 312-353-5524

Sincerely,

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

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

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



**In the Matter of:** ) **Docket No.** CAA-05-2018-0028  
 )  
**Falcon Foundry Company** ) **Proceeding to Assess a Civil Penalty**  
**Lowellville, Ohio** ) **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 Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Falcon Foundry Company (Falcon Foundry), a corporation doing business in Ohio.

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 112 of the CAA, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP): Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries at 40 C.F.R. Part 63, Subpart ZZZZZZ.

10. The owner or operator of an existing affected facility was required to comply with the requirements of Subpart ZZZZZZ by June 27, 2011.

11. The Area Source NESHAP for Nonferrous Foundries applies to aluminum foundries, copper foundries, and other nonferrous foundries that use material containing aluminum foundry hazardous air pollutants (HAP), copper foundry HAP, or other nonferrous foundry HAP, respectively, which melt at least 600 tons per year of aluminum, copper, and other nonferrous metals, including all associated alloys, and which are area sources of HAP.

12. The Area Source NESHAP, at 40 C.F.R. § 63.11556, defines the term “copper foundry” as “a foundry that melts copper or copper-based alloys and pours molten copper or copper-based alloys into molds to manufacture copper or copper-based alloy castings (excluding die casting) that are complex shapes. For purposes of this subpart, this definition does not include primary or secondary metal producers that cast molten copper to produce simple shapes such as sows, ingots, billets, bars, anode copper, rods, or copper cake.”

13. The Area Source NESHAP, at 40 C.F.R. § 63.11556, defines the term “other nonferrous foundry” as “a facility that melts nonferrous metals other than aluminum, copper, or copper-based alloys and pours the nonferrous metals into molds to manufacture nonferrous metal castings (excluding die casting) that are complex shapes.” The definition “does not include primary or secondary metal producers that cast molten nonferrous metals to produce simple shapes such as sows, ingots, bars, rods, or billets.”

14. The Area Source NESHAP, at 40 C.F.R. § 63.11556, defines “other nonferrous foundry HAP” to mean “any compound of the following metals: chromium, lead, and nickel, or any of these metals in elemental form.”

15. The Area Source NESHAP, at 40 C.F.R. § 63.11550(a)(1), requires the owner or operator of a new or existing affected source to cover or enclose each melting furnace that is equipped with a cover or enclosure during the melting operation to the extent practicable.

16. The Area Source NESHAP, at 40 C.F.R. § 63.11550(a)(3), requires the owner or operator of a new or existing affected source to prepare and operate pursuant to a written management practices plan.

17. The Area Source NESHAP, at 40 C.F.R. § 63.11553(a), requires the owner or operator of a new or existing affected source to submit an Initial Notification within 120 days after June 25, 2009 or within 120 days after the source becomes subject to the standard.

18. The Area Source NESHAP, at 40 C.F.R. § 63.11553(b), requires the owner or operator of a new or existing affected source to submit a Notification of Compliance Status no later than 120 days after the applicable compliance date specified in 40 C.F.R. § 63.11545.

19. The Area Source NESHAP, at 40 C.F.R. § 63.11553(c), requires the owner or operator of a new or existing affected source to keep certain records.

20. The Area Source NESHAP, at 40 C.F.R. § 63.11553(e), requires the owner or operator of a new or existing affected source to submit reports if deviations occur during the semiannual reporting period.

21. 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 \$295,000 for CAA violations that occurred after January 12, 2009 through December 6, 2013, \$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, and \$46,192 per day of violation up to a total of \$369,532 for violations that occurred after 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.

22. 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.

23. 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**

24. Falcon Foundry owns and operates a foundry at 96 6<sup>th</sup> St. in Lowellville, Ohio (the Facility). The foundry melts both copper and other nonferrous metal, and thus is considered both a copper foundry and a nonferrous metal foundry pursuant to the Area Source NESHAP for Nonferrous Foundries. The Facility is an area source of HAP.

25. Since 2013, Falcon Foundry has melted both copper and bronze at its Facility. Falcon Foundry melts over 2,000 tons per year of copper and bronze. One of the bronze alloys melted at the Facility contains more than 0.1% lead.

26. Falcon Foundry's Facility is therefore an "other nonferrous foundry" which has melted material containing "other nonferrous foundry HAP" and is subject to the requirements of the Area Source NESHAP for Nonferrous Foundries.

27. EPA conducted an on-site inspection at Falcon Foundry on September 13, 2017. During the inspection, Falcon Foundry informed EPA that it had removed the lids from its furnaces and had not been using them.

28. Falcon Foundry did not prepare and operate pursuant to a written management practices plan.

29. Falcon Foundry did not submit an Initial Notification or Notification of Compliance Status to EPA, nor did it keep the records required by the Area Source NESHAP for Nonferrous Foundries nor submit reports when deviations occurred.

30. By removing the lids from its furnaces and not covering the furnaces during melting Falcon Foundry violated 40 C.F.R. § 63.11550(a)(1).

31. By failing to prepare and operate pursuant to a written management practices plan, Falcon Foundry violated 40 C.F.R. § 63.11550(a)(3).

32. By failing to submit an Initial Notification and Notification of Compliance Status to EPA, and failing to keep records and submit deviation reports to EPA, Falcon Foundry violated 40 C.F.R. §§ 63.11553(a), 63.11553(b), 63.11553(c), and 63.11553(e).

### Civil Penalty

33. 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, cooperation, and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$10,000.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a \$10,000 civil penalty by an on-line payment. To pay on-line, go to [www.pay.gov](http://www.pay.gov). Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

35. 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

Naeha Dixit (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

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

37. 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.

38. 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**

39. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: dixit.naeha@epa.gov (for Complainant), and Joseph.Koncelik@tuckerellis.com (for Respondent).

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

41. 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.

42. 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 40, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.



43. Respondent certifies that it is complying fully with the Area Source NESHAP for Nonferrous Foundries, Subpart ZZZZZZ.

44. 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).

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

46. 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.

47. Each party agrees to bear its own costs and attorneys’ fees in this action.

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

Falcon Foundry Company, Respondent

CAFO

9/26/18

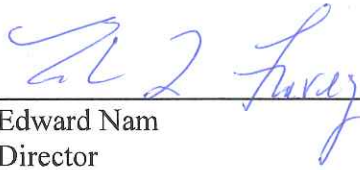
Date



Gary Slaven, President  
Falcon Foundry Company

**United States Environmental Protection Agency, Complainant**

9/27/18  
Date

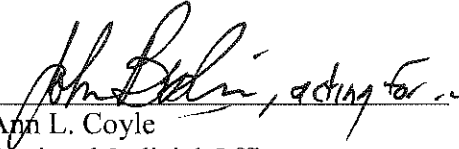
  
\_\_\_\_\_  
Edward Nam  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order  
In the Matter of: Falcon Foundry Company  
Docket No. CAA-05-2018-0028**

**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.

9/26/18  
Date

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

Consent Agreement and Final Order

In the matter of: Falcon Foundry Company, Lowellville, Ohio

Docket Number: CAA-05-2018-0028

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2018-0028, which was filed on 9/28/2018, in the following manner to the following addressees:

Copy by E-mail to  
Attorney for Complainant:

Naeha Dixit  
Dixit.Naeha@epa.gov

Gary Slaven  
Falcon Foundry Company  
96 6th Street  
Lowellville, OH 44436

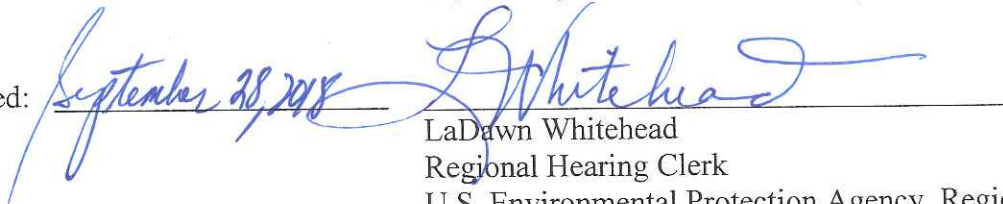
Copy by E-mail to  
Attorney for Respondent:

Joseph Koncelik  
Joseph.Koncelik@tuckerellis.com

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated: September 28, 2018

  
\_\_\_\_\_  
LaDawn Whitehead

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