

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2024-0006
)	
Koppers Inc.)	Proceeding to Assess a Civil Penalty
Galesburg, IL,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
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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 Koppers Inc., a corporation doing business in Illinois.

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 or legal determinations 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

Title V Program

9. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for major sources of air pollution.

10. In accordance with Section 502(b) of the CAA, 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). Those regulations are codified at 40 C.F.R. Part 70.

11. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to EPA a permit program meeting the requirements of Title V.

12. On December 4, 2001, EPA provided full and final approval for the State of Illinois Title V operating permit program. See 40 C.F.R. Part 70, Appendix A; 66 Fed. Reg. 62,946. The program became effective on November 30, 2001.

13. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.

14. Pursuant to 40 C.F.R. § 70.1(b), “All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.”

15. Pursuant to 40 C.F.R. § 70.2, a “major source” for Title V purposes includes major sources as defined in Section 112 of the CAA, 42 U.S.C. § 7412, that directly emit, or have the potential to emit, 10 tons per year (TPY) of any one hazardous air pollutant or 25 TPY of any combination of hazardous air pollutants, and major stationary sources as defined in Section 302 of the CAA, 42 U.S.C. § 7602, that directly emit, or have the potential to emit, 100 TPY or more of any air pollutant subject to regulation.

16. “Hazardous air pollutant” includes naphthalene. Section 112(b)(1) of the CAA, 42 U.S.C. § 7412(b)(1).

17. “Regulated air pollutant” includes any volatile organic compounds (VOCs). 40 C.F.R. § 70.2.

18. The Illinois Environmental Protection Agency (Illinois EPA) refers to VOCs as volatile organic material (VOM). See 35 Illinois Administrative Code § 211.7150.

Illinois EPA Construction Permits

19. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan (SIP) that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards.

20. Under 40 C.F.R. § 52.23, any permit limitation or condition contained within a permit issued pursuant to regulations that are incorporated into a SIP is a requirement of the SIP and is federally enforceable under Section 113 of the CAA, 42 U.S.C. § 7413.

21. EPA promulgated approval of 35 Ill. Admin. Code Part 201, “Permits and General Conditions,” as part of the federally enforceable SIP for the State of Illinois on May 31,

1972. See 37 Fed. Reg. 10,862. Since then, EPA has approved several revisions of 35 Ill. Admin. Code Part 201 into the federally enforceable SIP.

2004 Construction Permit

22. Koppers applied to Illinois EPA for a construction permit on November 17, 2003, for its facility located at 1291 U.S. Hwy 41, Galesburg, Illinois (the Facility).

23. Illinois EPA issued the Facility a construction permit, No. 03110033 (2004 Construction Permit), on May 25, 2004, which included, amongst other changes, an increase in the permitted limit of treated wood production from 4.5 million cubic feet (mcf) per year to 7.9 mcf per year and an authorization to construct one creosote wood treatment retort and one work tank (Work Tank #2).

24. Condition 3(a) of the 2004 Construction Permit requires plant-wide operations of the wood treatment process to not exceed 7.9 mcf of wood treated per year.

25. Conditions 3(b)(i) and (ii) of the 2004 Construction Permit require plant-wide emissions of the wood preserving process to not exceed the following limits:

- a. Volatile Organic Materials (VOMs): 17.0 TPY.
- b. Naphthalene: 7.9 TPY.

26. Conditions 3(b)(i) and (ii) of the 2004 Construction Permit require emissions of the wood preserving process from the operations and emissions of new emission units (Work Tank #2) to not exceed the following limits:

- a. Volatile Organic Materials (VOMs): 5.7 TPY from new equipment (Work Tank #2).
- b. Naphthalene: 2.6 TPY from new equipment (Work Tank #2).

27. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$55,808 per day of violation up to a total of \$446,456 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.

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. Koppers owns and operates the Facility.

31. The Facility's creosote wood treatment process includes three (3) wood creosote treatment retorts and three (3) creosote work tanks. Two (2) of the three (3) creosote work tanks (Work Tanks 1 and 3) vent emissions through a knock-out tank. All three (3) of the creosote work tanks then vent emissions through a Venturi scrubber (VS) and a biological air system (BAS) in series.

32. Koppers owns or operates an "emission source" within the meaning of Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). Therefore, Koppers is subject to the requirements of Section 114(a)(1).

33. The Facility currently operates under a Lifetime Operating Permit issued by Illinois EPA on September 22, 2021. Illinois EPA Lifetime Operating Permits are not federally enforceable.

34. EPA conducted an inspection of the Facility on October 25, 2018, to assess compliance with the CAA in response to a citizen complaint.

35. EPA submitted an information request to the Facility under Section 114 of the CAA, 42 U.S.C. § 7414, dated February 27, 2019 (Information Request), requesting records associated with demonstrating compliance with applicable regulations and requiring a performance test at the condenser outlet, the VS inlet, the BAS outlet, and each of the three pressure relief valves (PRVs) on each of the creosote work tanks.

36. Koppers provided responses to the Information Request on April 19, 2019, April 22, 2019, and May 17, 2019.

37. Information provided in response to the Information Request stated, “The facility requested installation of a venturi scrubber and biological air system (VS/BAS) in November 2003 as part of a permit modification applicaiton [sic]. Note that while the work tanks vent through the VS-BAS that provides emissions and odor reductions, as stated in the aforementioned permit modifcaiton [sic] application the VS-BAS was installed as a best management practice and Respondent takes no emissions reduction credit for the installation and use of the VS-BAS. The facility meets all federal and state criteria as minor source without the emission control equipment. Therefore, the presence of no controls is indicated in the emissions calculations.”

a. The VS/BAS has been and remains a permanently installed piece of equipment on the process, and there is no bypass or other means for exhaust from the system to escape to the atmosphere except via the stack at the outlet of the VS/BAS.

38. The emission units, the third creosote wood treatment retort and Work Tank #2, permitted for construction by Illinois EPA in the 2004 Construction Permit were identified by Respondent as minor sources of emissions in its permit application.

39. Respondent conducted the performance tests at the Facility on September 29, 2020 and October 1, 2020 (2020 Performance Test) and submitted the performance test report to EPA on November 25, 2020.

40. Respondent provided additional information to EPA related to performance testing performed at the Facility on May 22, 2019, May 29, 2019, January 27, 2021, February 1, 2021, and February 2, 2021.

41. On April 1, 2021, EPA issued Respondent a notice of violation and finding of violation (NOV/FOV). On June 10 and November 16, 2021, representatives of Respondent and EPA discussed the April 1, 2021, NOV/FOV.

42. The 2020 Performance Test demonstrated that the Facility had the potential to emit greater than 10 TPY of naphthalene, a hazardous air pollutant before emissions are routed to the VS/BAS, and is therefore a major source, subject to Title V of the CAA.

43. The 2020 Performance Test demonstrated that the Facility has the potential to emit greater than 100 TPY of VOCs before emissions are routed to the VS/BAS, and is therefore a major source, subject to Title V of the CAA.

44. Respondent violated 40 C.F.R. §§ 70.1(b) and 70.7(b) by operating without a Title V permit as a major source of HAPs and VOCs.

45. The 2020 Performance Test demonstrated that the Facility emitted greater than 7.9 TPY of naphthalene before the emissions are routed to the VS/BAS.

46. Respondent violated Condition 3.b.ii of the 2004 Construction Permit by failing to comply with the plant-wide emission limit for naphthalene of 7.9 TPY.

47. The 2020 Performance Test demonstrated that the Facility emitted greater than 2.6 TPY of naphthalene from Work Tank #2 before the emissions are routed to the VS/BAS.

48. Respondent violated Condition 3.b.ii of the 2004 Construction Permit by failing to comply with the Work Tank #2 emission limit for naphthalene of 2.6 TPY.

49. The 2020 Performance Test demonstrated that the Facility emitted greater than 17 TPY of VOMs before the emissions are routed to the VS/BAS.

50. Respondent violated Condition 3.b.i of the 2004 Construction Permit by failing to comply with the plant-wide emission limit for VOM of 17 TPY.

51. The 2020 Performance Test demonstrated that the Facility emitted greater than 5.7 TPY of VOMs from Work Tank #2 before the emissions are routed to the VS/BAS.

52. Respondent violated Condition 3.b.i of the 2004 Construction Permit by failing to comply with the Work Tank #2 emission limit for VOM of 5.7 TPY.

Civil Penalty

53. 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, Complainant has determined that an appropriate civil penalty to settle this action is \$172,314.

54. Penalty Payment. Respondent agrees to:

- a. pay the civil penalty of \$172,314 within 30 days after the effective date of this CAFO.

- b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
Automated Clearinghouse (ACH) payments made through the US Treasury	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
Wire transfers made through Fedwire	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p>	<p>For standard delivery: U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc): U.S. Environmental Protection Agency Government Lockbox 979077 U.S. EPA Fines and Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, Missouri 63101</p>

55. Within 24 hours of the payment of the civil penalty respondent must send a notice of payment and states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Naeha Dixit
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
dixit.naeha@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

57. 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.

58. 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

59. 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 ekouimel@winston.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

61. 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.

62. 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 60, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

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.

Koppers Inc., Respondent

9/25/2023

Date



Joseph P. Dowd
Global Vice President, Zero Harm
Koppers Inc.

25-1588399

Tax Identification Number

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of: Koppers Inc.
Docket No. CAA-05-2024-0006**

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.

Date

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