



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

FEB 28 2020

REPLY TO THE ATTENTION OF

VIA E-MAIL

Van Anthony, Plant Manager  
Email: [vana@nmaluminum.net](mailto:vana@nmaluminum.net)

Ann Prouty, Attorney  
Email: [ann.prouty@faegrebd.com](mailto:ann.prouty@faegrebd.com)



Van Anthony  
6875 S Inwood Dr.  
Columbus, IN 47201

Dear Mr. Anthony:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Nikkei MC Aluminum America Inc., docket no. CAA-05-2020-0009. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

*February 28, 2020*

Pursuant to paragraph 35 of the CAFO, Nikkei MC Aluminum America Inc. must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Mark Koller, Associate Attorney, 312-353-2591.

Sincerely,

Sarah Marshall, Chief  
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail  
Regional Hearing Clerk/via electronic mail  
Mark Koller/via electronic mail  
Phil Perry/via electronic mail: [pperry@idem.in.gov](mailto:pperry@idem.in.gov)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of: ) Docket No. CAA-05-2020-0009  
)  
Nikkei MC Aluminum America, Inc. ) Proceeding to Assess a Civil Penalty  
Columbus, 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 Acting Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Nikkei MC Aluminum America, Inc., 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. On March 23, 2000, the EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production at 40 C.F.R. Part 63, Subpart RRR, 65 Fed. Reg. 15,690 (March 23, 2000).

10. The EPA twice amended the NESHAP for Secondary Aluminum Production. 67 Fed. Reg. 79,808 (December 30, 2002); 70 Fed. Reg. 75,320 (December 19, 2005).

11. Under Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production at 40 C.F.R. §§ 63.1500 through 63.1520. The NESHAP for Secondary Aluminum applies to the owner or operator of each secondary aluminum production facility as defined in 40 C.F.R. § 63.1503.

12. The NESHAP, at 40 C.F.R. § 63.1501(a), requires the owner or operator of an existing affected source to comply with the requirements of the NESHAP for Secondary Aluminum by March 24, 2003.

13. Pursuant to 40 C.F.R. § 63.1506(a), on or after March 24, 2003, the owner or operator must operate all new and existing affected sources and control equipment according to the operating requirements of 40 C.F.R. § 63.1506.

14. Pursuant to 40 C.F.R. § 63.1506(c)(1), for each affected source or emission unit equipped with an add-on air pollution control device, the owner or operator must “[d]esign and install a system for the capture and collection of emissions to meet the engineering standards for minimum exhaust rates as contained in the ACGIH [American Conference of Governmental Industrial Hygienists] Guidelines (incorporated by reference, see § 63.14).”

15. Pursuant to 40 C.F.R. § 63.1506(f)(1), the owner or operator of a thermal chip dryer with emissions controlled by an afterburner must “[m]aintain the 3-hour block average operating temperature of each afterburner at or above the average temperature established during the performance test.”

16. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator of EPA (the Administrator) may issue an order requiring compliance to any person who has violated or is violating the NESHAP regulations. The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

17. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, 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 and \$47,357 per day of violation up to a total of \$378,852 for violations that occurred after November 2, 2015 and the penalties are assessed on or after February 6, 2019.

18. 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.

19. 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**

20. Nikkei owns and operates a secondary aluminum production facility at 6875 South Inwood Drive, Columbus, Indiana 47201 (the facility).

21. Nikkei conducts furnace operations and occasionally separates dross from aluminum at the facility for shipment to a dross processor.

22. Nikkei operates three group 1 furnaces—now referred to as A, B and C—at the facility (the “Group 1 Furnaces”).

23. Each Group 1 Furnace is vented with a capture collection system and controlled by a baghouse.

24. The capture and collection system for the Group 1 Furnaces did not achieve the ACGIH guidelines for industrial ventilation, leading to fugitive emissions.

25. Nikkei owns and operates two thermal chip dryers with emissions controlled by afterburners.

26. On September 23, 2016, Nikkei reported that it fell below the 3-hour block average operating temperature of the afterburners for both its chip dryers for a total of 85.8 days.

27. The facility is an area source of hazardous air pollutants.

28. Nikkei is subject to the NESHAP for Secondary Aluminum Production at 40 C.F.R. § 63.1506(c)(1).

29. On June 16, 2016, the EPA issued to Nikkei a Finding of Violation alleging that Nikkei violated the NESHAP for Secondary Aluminum Production.

30. On August 11, 2016, representatives of Nikkei and the EPA met and discussed the June 16, 2016 Finding of Violation.

31. At the August 11, 2016 meeting, Nikkei informed EPA that Nikkei made hardware and software upgrades that, among other things, rectified the problems with the average operating temperature of the afterburners.

32. In 2018 Nikkei installed smoke hood doors and completed a damper automation project for the Group 1 Furnaces.

33. On December 11, 2018, the EPA conducted an inspection (the December 2018 Inspection) of Nikkei and observed a capture demonstration of regular operation at the facility.

34. During the December 2018 Inspection the EPA observed complete capture of emissions from the aluminum molten surface of the furnaces to the fume hoods of the Group 1 Furnaces.

#### **Civil Penalty**

35. 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 return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$192,164.

36. Within 30 days after the effective date of this CAFO, Respondent must pay a \$192,164 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 the Respondent's name and the docket number of this CAFO.

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

Mark Koller (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

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

39. 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.

40. 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**

41. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: koller.mark@epa.gov (for Complainant), and ann.prouty@faegrebd.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

43. 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.

44. 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 42, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

45. Respondent certifies that it is complying fully with at the NESHAP for Secondary Aluminum at 40 C.F.R. Part 63, Subpart RRR.

46. Respondent agrees to the terms of this Order. Respondent neither admits nor denies the factual allegations in this Order.



47. 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).

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

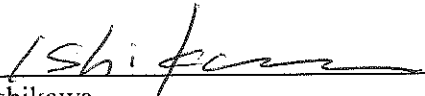
49. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

**Nikkei MC Aluminum America Inc., Respondent**

2/10/2020  
Date

  
Yuki Ishikawa  
President  
Nikkei MC Aluminum America Inc.

**United States Environmental Protection Agency, Complainant**

2-27-200  
Date

*Sara Brunema*  
\_\_\_\_\_  
for 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: Nikkei MC Aluminum America Inc.**  
**Docket No. CAA-05-2020-0009**

**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.

2/28/2020  
Date

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

Consent Agreement and Final Order  
In the matter of: Nikkei MC Aluminum America Inc.  
Docket Number: **CAA-05-2020-0009**

**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 2020 0009, which was filed on February 28, 2020 in the following manner to the following addressees:

Copy by E-mail to Respondent: Van Anthony  
vana@nmaluminum.net

Copy by E-mail to Attorney for Respondent: Ann Prouty  
ann.prouty@faegrebd.com

Copy by E-mail to Attorney for Complainant: Mark Koller  
koller.mark@epa.gov

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

Dated: February 28, 2020

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