



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

SEP 25 2017

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert Conway, General Manager
Meyer Industrial Container LLC
610 West 81st Street
Chicago, Illinois 60620

Dear Mr. Conway:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Meyer Industrial Container LLC, docket no. CAA-05-2017-0042. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

September 25, 2017.

Pursuant to paragraph 34 of the CAFO, Meyer Industrial Container LLC must pay the civil penalty within 30 days of the filing date. Your check must display the case name and case docket number.

Please direct any questions regarding this case to J. Matthew Moore, Assistant Regional Counsel, 312-353-5624.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Marshall".

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

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
John Moore/C-14J
Yasmine Keppner-Bauman/Yasmine.Keppner-Bauman@Illinois.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) Docket No. CAA-05-2017-0042
)
Meyer Industrial Container LLC) Proceeding to Assess a Civil Penalty
Chicago, Illinois,) 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 Meyer Industrial Container LLC (MIC), 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 and violations alleged by EPA 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. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including major sources, and other sources made subject under Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

10. For the purposes of Title V, Section 501(2)(A) of the CAA, 42 U.S.C. § 7661(2)(A), and 40 C.F.R. § 70.2 define “major source” as, among other things, any stationary source that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant (HAP) or 25 tpy or more of any combination of HAPs.

11. Pursuant to 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. 57 Fed. Reg. 32295 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

12. On March 7, 1995, EPA granted interim approval of Illinois’ Title V operating permit program. EPA granted final approval effective on November 30, 2001. 40 C.F.R. Part 70, Appendix A. The Illinois Title V operating permit program, known as the Clean Air Act Permit Program, is codified at 415 ILCS 5/39.5.

13. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and EPA's implementing regulations at 40 C.F.R. § 70.7(b) have at all relevant times made it unlawful for any person to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V.

14. The Illinois Environmental Protection Agency issued Title V Permit No. 95120062 to MIC on September 7, 2005 (2005 Title V Permit), and reissued the permit on September 20, 2013 (2013 Title V Permit).

15. Section 4.1.2.i.ii.E of MIC's 2013 Title V Permit requires that MIC shall maintain records of the hours of operation of the regenerative thermal oxidizer (RTO) fuel burners in hours per month and hours per year.

16. Section 4.2.2.b.ii.D of MIC's 2013 Title V Permit requires that PM and PM₁₀ emissions from MIC's drum reclaiming furnace be determined according to EPA Reference Methods 5 and Methods 201/201A, respectively. Section 4.3.2.b.ii.A of MIC's 2013 Title V Permit requires that PM and PM₁₀ emissions from MIC's shot blaster be tested according to EPA Reference Methods 5 and Methods 201/201A, respectively.

17. Section 4.2.2.d of MIC's 2013 Title V Permit requires that NO_x emissions from the operation of the furnace and afterburner shall not exceed 0.6 lb./hr., and that MIC test NO_x emissions using Method 7E.

18. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes the Administrator of EPA (the Administrator) to initiate an enforcement action whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of Title V, including any permit issued under Title V.

19. 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 and \$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 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

20. 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.

21. 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.

EPA's Factual Allegations and Alleged Violations

22. MIC owns and operates a steel drum reconditioning facility at 610 West 81st Street, Chicago, Illinois (facility), which contains a RTO, a furnace with afterburner, and a shot blaster.

23. MIC is a "person," as that term is defined at 35 IAC 211.4550 of the federally-enforceable Illinois SIP and Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

24. MIC's facility has the potential to emit 10 tpy or more of any HAP and/or 25 tpy or more of any combination of HAPs, making it a "major source," as that term is defined at Section 501(2)(A) of the CAA, 42 U.S.C. § 7661(2)(A), and 40 C.F.R. § 70.2.

25. On February 27, 2015, EPA inspected the facility for compliance with the CAA, the federally-enforceable Illinois State Implementation Plan (SIP), and its 2005 and 2013 Title V Permits.

26. During the inspection, MIC stated that it does not maintain records of RTO operating hours. MIC subsequently demonstrated that it began recording RTO operating hours in July 2014.

27. Shortly after the inspection, MIC's environmental consultant provided EPA with semiannual reports that are required under the facility's 2005 and 2013 Title V permits and reports for performance tests conducted on the furnace and shot blaster.

28. On December 16, 2014, TRC Environmental Corporation (TRC) conducted a performance test for MIC to determine the emission rate of PM, VOM, and NO_x from the furnace.

29. On December 17, 2014, TRC conducted a performance test for MIC to determine the emission rate of PM from the shot blaster.

30. According to reports dated February 4, 2015, for the performance tests referenced in paragraphs 28 and 29, above, TRC used only EPA Methods 5 and 202 to determine the emission rates of PM from the furnace and shot blaster. TRC did not use EPA Methods 201/201A to determine the emission rates of PM₁₀ from the furnace and shot blaster.

31. According to the February 4, 2015 report for the December 16, 2014, performance test of the furnace, the test demonstrated a NO_x emission rate from the furnace of 1.99 lb./hr.

32. MIC has failed to record the operating hours of the RTO, in violation of the recordkeeping requirements in Section 4.1.2.i.ii.E of its 2013 Title V Permit from at least

September 3, 2013, to July 1, 2014. As a result of MIC's failure to meet this recordkeeping requirement, MIC has violated Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and EPA's implementing regulations at 40 C.F.R. § 70.7(b).

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, MIC's prompt return to compliance, and cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$25,226.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a \$25,226 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

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

J. Matthew Moore (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).

Conditions

39. As a condition of settlement, Respondent agrees to the following:

On or before December 20, 2017, or within 30 days after the Effective Date of this Order, whichever is later, MIC will apply to the Illinois Environmental Protection Agency for a Title V permit renewal that includes revisions as follows:

- a. provide EPA Method 202/EPA Method 5 as an acceptable option in lieu of EPA Methods 201/201A for testing of PM₁₀ emissions in stack gases containing water droplets where gas filtration temperature exceeds 30 °C (85 °F);

b. include a 0.012 lb/hr NO_x emission limit for controlled process emissions from the furnace and a requirement that MIC demonstrate compliance with such emission limit using emission factor calculations based on Table 4.8-3, AP-42, Volume I, Fifth Edition, Supplement D, January, 1995; in addition to requesting the 0.012 lb/hr NO_x emission limit, Respondent may request that its Title V permit renewal include the methodology for determining compliance, by also specifying in language substantially as follows:

i. The 0.012 lb/hr limit for nitrogen oxides for controlled process emissions from the furnace is based on the standard emission factor for drum furnaces and a drum throughput of 300 drums per hour. The standard emission factor shall be based on Table 4.8-3, AP-42, Volume I, Fifth Edition, Supplement D, January, 1995, which specifies a NO_x emission factor for controlled process emissions of 0.00004 lbs./drum. As such, compliance with the 0.012 lb/hr NO_x emission limit for controlled process emissions from the furnace shall be determined in accordance with the following formula:

$$\text{NO}_x \text{ Emissions (lb/hr)} = (\text{Number of Drums Cleaned/hr}) \\ \times (0.00004 \text{ lbs./drum});$$

c. include a 2.5 lb/hr NO_x emission limit for process emissions and emissions resulting from the combustion of natural gas from the furnace and after burner, and a requirement that MIC demonstrate compliance with such emission limit using EPA Method 7E.

40. Respondent agrees that the time period from the Effective Date of this Agreement until all of the conditions specified in Paragraph 39 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in this Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

General Provisions

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

42. 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.

43. 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 41, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

44. Respondent certifies that to the best of its knowledge, it is complying fully with its Title V Permit and 40 C.F.R. Part 70.

45. 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).

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

47. 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.

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

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

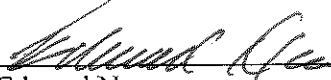
Meyer Industrial Container LLC, Respondent

9-14-17
Date

Robert Conway
Robert Conway
General Manager
Meyer Industrial Container LLC

United States Environmental Protection Agency, Complainant

9/22/12
Date




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

Consent Agreement and Final Order
In the Matter of: Meyer Industrial Container LLC
Docket No. CAA-05-2017-0042

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.

September 22, 2017
Date



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

Consent Agreement and Final Order
In the matter of: Meyer Industrial Container LLC
Docket Number: [__-05-__] CAA-05-2017-0042

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number [CAA-05-2017-0042], which was filed on [9/25/2017], in the following manner to the following addressees:


Copy by Certified Mail to Respondent: Robert Conway
Meyer Industrial Container LLC
610 West 81st Street
Chicago, Illinois 60620

Copy by E-mail to Attorney for Complainant: J. Matthew Moore
moore.johnm@epa.gov

Copy by E-mail to Attorney for Respondent: Andrew Perellis
aperellis@seyfarth.com

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

Dated:

September 25, 2017 

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

CERTIFIED MAIL RECEIPT NUMBER(S): 7009 1680 0000 7662 7009