



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

APR 26 2019

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dennis Rogers, Plant Manager
Owens Corning Insulating Systems, LLC
400 Case Avenue
Newark, Ohio 43055

Dear Mr. Rogers:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Owens Corning Insulating Systems, LLC, docket no. CAA-05-2019-0018. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

April 26, 2019.

Pursuant to paragraph 31 of the CAFO, Owens Corning Insulating Systems, LLC 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 Josh Zaharoff, Associate Attorney, at (312) 886-4460.

Sincerely,

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

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

Enclosure

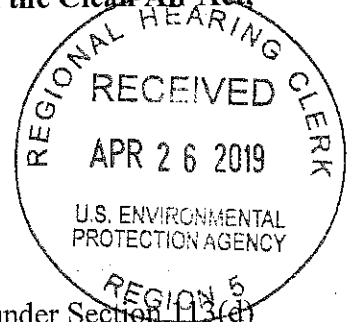
cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Regional Hearing Clerk/via electronic mail
Josh Zaharoff/via electronic mail
Bob Hodanbosi, Chief, OEAP, via electronic mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. CAA-05-2019-0018
)
Owens Corning Insulating Systems, LLC) Proceeding to Assess a Civil Penalty
Newark, 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 Owens Corning Insulating System, LLC, a Limited Liability Company 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. Each state must submit to the Administrator of EPA a State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the CAA, 42 U.S.C. § 7410.

10. Effective March 22, 2013, EPA approved modifications to Ohio Administrative Code (OAC) Rules 3745-31-01, 3745-31-02, and 3745-31-05 as part of the Ohio SIP, which contain requirements for Ohio's permit-to-install (PTI) program. *78 Fed. Reg.* 11748.

11. OAC Rule 3745-31-02(A) prohibits any person from causing, permitting, or allowing any installation or modification of any new source that is, or will be, part of a facility, as defined in OAC Chapter 3745-77, and that is required to obtain a Title V permit under OAC Chapter 3745-77, without first obtaining a permit-to-install (PTI) from the Director of the Ohio Environmental Protection Agency (OEPA).

12. OAC Rule 3745-31-05(A) requires the Director of OEPA to issue a PTI if the director determines that the installation, modification, or operation of the air contaminant source will: (1) not prevent or interfere with the attainment or maintenance of applicable ambient air quality standards; (2) not result in a violation of any applicable laws including, but not limited to, emission standards adopted by OEPA and Federal Standards of Performance for New Sources adopted by EPA pursuant to Section 111 of the CAA and the regulations promulgated

thereunder; and (3) employ best available technology (BAT) in accordance with certain requirements.¹

13. OAC Rule 3745-31-05(D)(1) provides that the Director of OEPA may impose special terms and conditions as are appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of environmental quality. Special terms and conditions necessary to ensure compliance mandated by the CAA, which include synthetic minor emissions unit terms and conditions, shall be federally enforceable. Federally enforceable terms and conditions shall be designated as such through the terms and conditions of, among other things, a final PTI issued under the SIP.

14. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b), provides 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. EPA codifies regulations governing the federal operating permit program at 40 C.F.R. Part 70. Effective October 1, 1995, EPA approved Ohio's Title V operating permit program. *See* 60 Fed. Reg. 42045; 40 C.F.R. Part 70, App. A. Ohio's Title V operating permit regulations are codified at OAC Chapter 3745-77.

15. 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 between December 6, 2013 and November 2, 2015; and \$47,357 per day of violation up to a total of \$378,852 for CAA violations that occurred after

¹ OAC Rule 3745-31-05(A)(3)(a)(ii), which exempts certain air contaminant sources from BAT requirements, has not been approved as part of the Ohio SIP. *See* 78 Fed. Reg. 11748, 11749.

November 2, 2015 for which penalties are assessed on or after January 15, 2019 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

16. 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.

17. 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

18. Owens Corning owns and operates a wool fiberglass manufacturing facility located at 400 Case Avenue, Newark, Ohio (the Facility). Emission sources at the Facility include several wool fiberglass furnaces, forming processes, curing ovens, and cooling and trimming operations for processing fiberglass.

19. Owens Corning is a "major source" subject to Title V of the CAA, 42 U.S.C. § 7661 *et seq.*; 42 U.S.C. § 7412(a)(1). Effective January 28, 2004, OEPA issued Owens Corning a Title V permit with an expiration date of February 18, 2009 for the Facility (Facility ID: 01-45-02-0185).

20. Effective June 16, 2005, OEPA issued a significant modification to the Title V permit, No. P0083726 (2005 Title V permit). Owens Corning submitted a timely renewal application prior to February 18, 2009. OEPA issued a Draft OAC Chapter 3745-77 Title V permit on April 26, 2018. Owens Corning is awaiting final issuance and is operating in

accordance with the terms of the Preliminary Proposed Title V Permit pending issuance by OEPA.

21. OEPA issued PTI No. P0108954 on June 12, 2012 to Owens Corning, thereby modifying the applicable federally-enforceable limitations for volatile organic compounds (VOC) emissions that applied to, among other units, emission unit P066 (F-6 Curing Oven).

22. P066 was subject to a VOC emissions limit of 0.5 pounds per ton of binder solids applied when employing non-phenolic binder under Condition 2.(b)(1)(c) of PTI No. P0108954.

23. On April 1, 2013, Owens Corning submitted an administrative modification of PTI No. P0108954 for, among other units, emission unit P066.

24. On September 26, 2013, OEPA issued PTI No. P0113567 and revised the VOC emissions limit for emission unit P066.

25. P066 is subject to a VOC emissions limit of 1.00 pound per ton of binder solids applied when employing non-phenolic binder under Condition 2.(b)(1)(c) of PTI No. P0113567.

26. On September 5, 2014, EPA issued an information request to Owens Corning under Section 114 of the CAA, 42 U.S.C. § 7414 (September 2014 Information Request). On November 18, 2014, and December 18, 2014, Owens Corning submitted responses to the September 2014 Information Request.

27. Owens Corning's response to the September 2014 Information Request included results from stack tests conducted at P066 in January 2013. The results showed VOC emissions of 1.33 pounds per ton of binder solids applied when employing non-phenolic binder, in exceedance of the 0.50 pounds per ton of binder solids limit in P0108954 and the 1.00 pound per ton of binder solids limit in P0113567.

28. On February 9, 2017, EPA issued a second information request to Owens Corning under Section 114 of the CAA, 42 U.S.C. § 7414 (February 2017 Information Request). On April 20, 2017, and May 18, 2017, Owens Corning submitted responses to the February 2017 Information Request.

29. Owens Corning's response to the February 2017 Information Request included results from stack tests it conducted at P066 in March 2018 to demonstrate compliance with PTI No. P0108954 and PTI P0113567. The stack test results showed VOC emissions of 2.37 pounds per ton of binder solids applied when employing non-phenolic binder, in violation of PTI No. P0108954 and No. P0113567.

30. Owens Corning subsequently performed maintenance on P066 and conducted further stack testing at P066 on June 14, 2018. The stack test results showed VOC emissions in compliance with the limit in P0113567.

Civil Penalty

31. 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 other factors such as cooperation, prompt return to compliance, and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$97,865.

32. Within 30 days after the effective date of this CAFO, Respondent must pay a \$97,865 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.

33. 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

Josh Zaharoff, Associate Regional Counsel (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

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

35. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 48, below, 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.

36. 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).

Supplemental Environment Project

37. Respondent must complete the following supplemental environmental project (SEP) designed to protect the environment and public health by voluntarily implementing the energy efficiency project described below.

38. Respondent must complete the SEP as follows:

- a. Energy Star Roofing Material & Blowing Machine SEP – Respondent will replace the roofing shingles with Energy Star rated roofing shingles for renovations planned at two residential properties located at 551 and 557 Ridgefield Road, Newark, Ohio. Respondent will install Energy Star energy efficient light fixtures and appliances at the above listed renovated residential properties and at the planned construction of two new houses in the Newark, Ohio area. These upgrades will reduce electrical consumption and those pollutants generated by electrical generating facilities serving the residential properties, including VOCs.

Respondent will donate an Energy Star Pro Attic Blowing Wool Machine to allow upgrades to wall insulation of renovated housing that will reduce electrical consumption and those pollutants generated by electrical generating facilities serving the residential properties, including VOCs.

- b. Respondent has selected the Habitat for Humanity Organization serving Newark, Ohio to receive and implement this SEP. Respondent may select a different entity to assist with implementation of the SEP, but must provide EPA with notice of the change and a description of the new entity's qualifications in advance. EPA has the right to disapprove a SEP

implementer and/or recipient if it does not have substantial experience in residential housing renovation and construction work.

39. For the SEP described in paragraph 38, Respondent must also meet the following deadlines and requirements:

- a. Within 90 calendar days of the effective date of this CAFO, Respondent must place a firm order for the blowing machine for the SEP. Respondent shall submit copies of all final purchasing/ordering documents within 7 days of order.
- b. Within 30 calendar days of the effective date of this CAFO, Respondent must provide the funds required for the necessary materials and items described in paragraph 38, except for the blowing machine.
- c. Within 365 calendar days of the effective date of this CAFO, Respondent must complete implementation of the SEPs.

40. Respondent must spend at least \$58,000 to implement the two SEPs.

41. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$58,000;
- b. That, as of the date of executing this Decree, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;
- d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;

- g. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP; and
- h. Respondent certifies that it has inquired of the SEP recipient (and implementor if applicable) whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the recipient that it is not a party to such a transaction.

42. EPA may request records at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

43. Respondent must submit a SEP completion report to EPA by no later than 60 days after the completion of the SEP. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

44. Respondent must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 33, above.

45. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the

information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

46. Following receipt of the SEP completion report described in paragraph 43, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 48.

47. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 48, below.

48. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 39, Respondent must pay a penalty of \$70,000.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 40, Respondent will not be liable for any stipulated penalty under subparagraph a, above.

- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 40, Respondent must pay a penalty of \$23,000.
- d. If Respondent did not submit timely the SEP completion report or any other report required by paragraph 43, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

| <u>Penalty per violation per day</u> | <u>Period of violation</u> |
|--------------------------------------|---|
| \$100 | 1 st through 14 th day |
| \$200 | 15 th through 30 th day |
| \$400 | 31 st day and beyond |

49. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

50. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 32, above, and will pay interest and nonpayment penalties on any overdue amounts.

51. Any public statement that Respondent makes referring to the SEP must include the following language: "Owens Corning undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Owens Corning for violations of the CAA."

52. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

53. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

54. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: Zaharoff.Josh@epa.gov (for Complainant), and Mindy.Kairis@owenscorning.com (for Respondent).

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

56. 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.

57. 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 55, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

58. Respondent certifies that it is complying fully with the Ohio SIP and the CAA.

59. 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).

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


61. 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.

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

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

Owens Corning Insulating Systems, LLC, Respondent

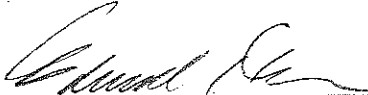
4/8/19
Date



Joe Blair, Manager
Owens Corning Insulating Systems, LLC

United States Environmental Protection Agency, Complainant

4/12/19
Date



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

Consent Agreement and Final Order

In the Matter of: Owens Corning Insulating Systems, LLC

Docket No. CAA-05-2019-0018

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.

4/23/19
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: Owens Corning Insulating Systems, LLC
Docket Number: CAA-05-2019-0018

CERTIFICATE OF SERVICE


I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2019-0018, which was filed on April 26, 2019, in the following manner to the following addressees:

Copy by Certified Mail to Respondent: Dennis Rogers, Plant Manager
Owens Corning Insulating Systems, LLC
400 Case Avenue
Newark, Ohio 43055

Copy by E-mail to Attorney for Complainant: Josh Zaharoff
Zaharoff.josh@epa.gov

Copy by E-mail to Attorney for Respondent: Mindy Kairis, Esq
Mindy.Kairis@owenscorning.com

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

Dated: April 26, 2019

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

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2643 7732