



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 30 2019

REPLY TO THE ATTENTION OF

VIA E-MAIL

Rick Manley, Senior Environmental Engineer  
BWAY Corporation  
6 Litho Road  
Trenton, NJ 08638  
Email: rick.manley@mauserpackaging.com

Dear Mr. Manley:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves BWAY Corporation, docket no. CAA-05-2019-0033. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 30, 2019.

Pursuant to paragraph 40 of the CAFO, BWAY Corporation 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 Susan Tennenbaum, Associate Regional Counsel, (312) 886-0273.

Sincerely,

*Natalie M. Fr...*

Nathan Frank, Chief  
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail  
Regional Hearing Clerk/via electronic mail  
Susan Tennenbaum/via electronic mail  
Kent Mohr, Illinois EPA/via electronic mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

BWAY Corporation  
Chicago, Illinois,

Respondent.



Docket No. CAA-05-2019-0033

Proceeding to Assess a Civil Penalty  
Under Section 113(d) of the Clean Air Act,  
42 U.S.C. § 7413(d)

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 BWAY Corporation, 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 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**

#### **National Emission Standards for Hazardous Air Pollutants**

9. Section 112 of the CAA, 42 U.S.C §7412(c), requires EPA to promulgate a list of all categories and subcategories of new and existing “major sources” of hazardous air pollutants (HAP), as defined by 42 U.S.C. § 7412(a)(1), and establish emission standards for the categories and subcategories. These emission standards are known as the National Emission Standards for Hazardous Air Pollutants (NESHAP).

10. “Major source” is defined as “any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.” 42 U.S.C. § 7412(a)(1).

11. “Stationary source” is defined as “any building, structure, facility, or installation, which emits or may emit any air pollutant.” 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).

12. “Hazardous air pollutant” is defined as “any air pollutant listed in or pursuant to” Section 112(b) of the CAA. 42 U.S.C. § 7412(a)(6).

13. Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3), prohibits any person subject to a NESHAP from operating a source in violation of a NESHAP after its effective date.

*See also* 40 C.F.R. §§ 61.05 and 63.4.

14. 40 C.F.R. Part 63, Subpart A, contains the General Provisions for the NESHAP.

15. 40 C.F.R. § 63.6(e)(1)(i) provides that the owner or operator must operate and maintain an affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions at all times.

NESHAP for Surface Coating of Metal Cans

16. Under Section 112 of the CAA, 42 U.S.C. §7412, EPA promulgated the NESHAP for Surface Coating of Metal Cans at 40 C.F.R. §§ 63.3480 through 63.3561 (NESHAP KKKK).

17. 40 C.F.R. § 63.3481(a) provides, among other things, that the source category to which the NESHAP KKKK applies is surface coating of metal cans and ends (including decorative tins) and metal crowns and closures.

18. 40 C.F.R. § 63.3481(b) provides that the NESHAP KKKK applies to owners and operators of a new, reconstructed, or existing affected source, as defined in 40 C.F.R. § 63.3482, that uses 5,700 liters (1,500 gallons (gal)) per year or more of coatings in the source category defined in paragraph (a) of this section and that is a major source, is located at a major source, or is part of a major source of emissions of HAP.

19. 40 C.F.R. § 63.3482 provides that the NESHAP KKKK applies to the following affected sources:

(a) a new, reconstructed, and existing affected source.

(b) the affected sources listed below that are used for surface coating of metal cans and ends (including decorative tins), or metal crowns or closures:

(1) All coating operations as defined in 40 C.F.R. § 63.3561;

(2) All storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) a new affected source if you commenced its construction after January 15, 2003 by installing new coating equipment. New coating equipment is equipment used to perform metal can surface coating at a facility where no metal can surface coating was previously performed and the construction is of a completely new metal can surface coating source where previously no metal can surface coating source had existed.

(d) a reconstructed affected source if you meet the criteria as defined in 40 C.F.R. § 63.2.

(e) an affected existing source if it is not new or reconstructed.

20. 40 C.F.R. § 63.3491 states that a compliance option listed in paragraphs (a) through (d) of this section must be used to determine compliance with emissions limits established for surface coating operations.

21. 40 C.F.R. § 63.3491(d) describes the “[c]ontrol efficiency/outlet concentration option” for demonstrating compliance with emission limits. It states in part:

Demonstrate that, based on the emission reductions achieved by emission capture systems and add-on controls, total HAP emissions measured as total hydrocarbon (THC) are reduced by 95 percent or greater for existing sources, or 97 percent or greater for new or reconstructed sources, or that outlet THC emissions are less than or equal to 20 parts per million by volume, dry basis (ppmvd). If you use this compliance option, you must have a capture device that meets EPA Method 204 of 40 [C.F.R. Part] 51, appendix M criteria for a permanent total enclosure (PTE).

22. “Capture system” is defined as “one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings, both at the point of application and at subsequent points where emissions from coatings occur, such as flash-off, drying, or curing.” 40 C.F.R. § 63.3561.

23. “Capture device” is defined as “a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on air pollution control device.” 40 C.F.R. § 63.3561.

24. “Coating operation” is defined in part as “equipment used to apply coating to a metal can or end (including decorative tins), or metal crown or closure, and to dry or cure the coating after application. A coating operation always includes at least the point at which a coating is applied and all subsequent points in the affected source where organic HAP emissions from that coating occur.” 40 C.F.R. § 63.3561.

25. 40 C.F.R. § 63.3554 states, “[t]he capture efficiency of your emission capture system must be 100 percent to use the control efficiency/outlet concentration option. You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a) and (b) of this section are met.”

26. 40 C.F.R. § 63.3554(a) states, “[t]he capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.”

27. 40 C.F.R. § 63.3554(b) states in part, “All coatings and thinners used in the coating operation are applied within the capture system, and coating solvent flash-off, curing, and drying occurs within the capture system.”

28. Appendix M to 40 C.F.R. Part 51 includes the following criterion for a PTE: “All VOC emissions must be captured and contained for discharge through a control device.”

29. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$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.

30. 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.

31. 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**

32. BWAY owns and operates a steel can manufacturing facility located at 3200 S. Kilbourn, Chicago, Illinois (the Facility).

33. The Facility emits more than 10 tons per year of a single HAP, toluene.

34. The Facility's operations include can coating line “Litho Line #4.”

35. The Facility’s can-coating line Litho Line #4 uses 5,700 liters (1,500 gallons) per year, or more, of coatings.

36. BWAY’s Litho Line #4 is a coating operation as defined at 40 C.F.R. § 63.3561.

37. BWAY’s Facility is subject to the NESHAP KKKK.

38. On September 26, 2017, the Facility informed EPA, via email, that for purposes of demonstrating compliance with the emission limits of NESHAP KKKK, “the plant uses the fourth compliance method-control device efficiency/outlet concentration.”

39. On July 21, 2017, the EPA conducted an inspection at the Facility. Using an infrared camera, EPA recorded footage of uncaptured VOC emissions escaping a capture device at Litho Line #4.

40. On December 22, 2017, EPA issued to BWAY a finding of violation alleging that it violated the NESHAP General Provisions and the NESHAP for Surface Coating of Metal Cans by failing to capture all VOC emissions at Litho Line #4.

**Civil Penalty**

41. 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 cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$140,000.

42. Within 30 days after the effective date of this CAFO, Respondent must pay a \$140,000 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

The check must note Respondent’s name and the docket number of this CAFO.

43. 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

Susan Tennenbaum (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

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

45. 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.

46. 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

47. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: tennenbaum.susan@epa.gov (for Complainant), and rick.manley@mauserpackaging.com (for Respondent).

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

49. 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.

50. 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 48, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

51. Respondent certifies that it is complying fully with NESHAP General Provisions the NESHAP for Surface Coating of Cans.

52. 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).

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

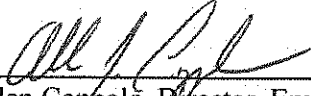
54. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

**BWAY Corporation, Respondent**

Sept. 17, 2019  
Date

  
\_\_\_\_\_  
Allen Coppolo, Director, Environment Health & Safety  
BWAY Corporation

**United States Environmental Protection Agency, Complainant**

9/20/2019  
Date

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

**Consent Agreement and Final Order**  
**In the Matter of: BWAY Corporation**  
**Docket No. CAA-05-2019-0033**

**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.

9/26/19  
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: BWAY Corporation  
Docket Number: CAA-05-2019-0033

**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 20190033, which was filed on 9/30/2019, in the following manner to the following addressees:


Copy by E-mail to Respondent: Rick Manley  
rick.manley@mauserpackaging.com

Copy by E-mail to Attorney for Complainant: Susan Tennenbaum  
tennenbaum.susan@epa.gov

Copy by E-mail to Attorney for Respondent: Granta Nakayama  
gnakayama@kslaw.com

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

Dated:

September 30, 2019 

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