

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2023-0031
)	
Pactiv Evergreen Inc.)	Proceeding to Assess a Civil Penalty
Kalamazoo, Michigan)	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 Pactiv Evergreen Inc. (Evergreen), a corporation doing business in Michigan.

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. Under Section 110 of the CAA, 42 U.S.C. § 7410, each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards.

10. On May 6, 1980, EPA approved Mich. Adm. Code Rule (R) 336.1201 as part of the federally enforceable Michigan State Implementation Plan (SIP). 45 FR 29790.

11. R 336.1201(1) states, “[...] a person shall not install, construct, reconstruct, relocate, or modify any process or process equipment, including control equipment pertaining thereto, which may emit any of the following, unless a permit to install (PTI) that authorizes such action is issued by the department: (a) Any air pollutant regulated by title I of the CAA and its associated rules, including 40 C.F.R. §51.165 and §51.166, adopted by reference in R 336.1902. (b) Any air contaminant. A person who plans to install, construct, reconstruct, relocate, or modify any such process or process equipment shall apply to the department for a PTI on an application form approved by the department [...]”

12. R 336.1201(3) states, “A PTI may be approved subject to any condition, specified in writing, that is reasonably necessary to assure compliance with all applicable requirements.”

13. On May 31, 2019, EPA approved R 336.1205 as part of the federally approved Michigan SIP. 84 FR 25180.

14. R 336.1205(3) states, “The department may approve a PTI that includes limitations which restrict the potential to emit of a stationary source, process, or process equipment to a quantity below that which would constitute a major source or major modification under any part of these rules without meeting the requirement of subrule (1)(b) of this rule if the emission limitations restrict the potential to emit of the stationary source, process, or process equipment to less than 90% of the quantity referenced in the applicable requirement.”

15. On June 1, 2006, EPA approved R 336.2040 as part of the federally approved Michigan SIP. 71 FR 31093.

16. R 336.2040 establishes the method for the determination of volatile organic compound (VOC) emissions from coating lines and graphic arts lines. R 336.2040(1) states, “The methods described in this rule shall be used for the determination of volatile organic compound emissions from coating lines and graphic arts lines for the purpose of determining compliance, during the specified averaging period, with an emission limit contained in any of the following: (a) These rules. (b) A Permit to install [...].”

17. R 336.2040(5) states, “The volatile organic compound content of an ink or coating, minus water, as applied, "P," shall be determined using any of the following methods: [...] (a)(i)(A) For a coating used on a coating line or a coating used on a graphic arts line, the volatile organic compound content, minus water, as applied, shall be determined using federal reference method 24 or federal reference method 24a, as applicable to the coating, as described in R 336.2004, or an alternate method approved by the department. (B) For an ink that is used on a graphic arts line, the volatile organic compound content, minus water, as applied, shall be determined using federal reference method 24a, as described in R 336.2004 [...] (b) Upon written approval by the department, the volatile organic compound content of an ink or coating may be

determined from formulation data, which includes batch composition information from the ink or coating manufacturer and the amount of VOC dilution solvent added to the ink or coating before application [...].”

18. 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.

19. 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.

20. 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

21. Evergreen owns and operates a paper converting and flexographic printing facility (the Facility) at 2315 Miller Road, Kalamazoo, Michigan 49001.

22. Evergreen is a corporation authorized to do business in Michigan.

23. Evergreen is a "person," as that term is defined in Section 302(e) of the CAA, 42 U.S.C. §7602(e).

24. On October 21, 2016, the Michigan Department of Environment Great Lakes and Energy (EGLE) issued PTI #102-07B, pursuant to R 336.1201(1), to the Facility to operate eight

flexographic printing presses (Flexographic Printing Presses) with emission unit IDs “EUPRESS-A,” “EUPRESS-B,” “EUPRESS-D,” “EUPRESS-F,” “EUPRESS-G,” “EUPRESS-H,” “EUPRESS-L,” and “EUPRESS-M.”

25. Pursuant to R 336.1201(3), to demonstrate compliance with the VOC limit in Paragraph 19, Evergreen is required to complete all required calculations by the 15th day of each calendar month, for the previous calendar month, and to keep a separate written record of the following for each Flexographic Printing Press, on a calendar month averaging period, in accordance with PTI #102-07B, R 336.1205(3), and R 336.1702(d): “(a) The type of each material used for each emission unit; (b) Chemical composition of each material, including weight percent of each component; (c) The VOC content of each material, without water and exempt solvents, (in percent by weight or pounds per gallon), as received and as applied; (d) The usage rate (in pounds or gallons) of each material as applied for each emission unit; (e) The amount (in pounds or gallons) of material reclaimed for each emission unit; (f) VOC emission calculations determining the annual emission rate in tons per 12-month rolling time period as determined at the end of each calendar month for each emission unit [...]

26. Each Flexographic Printing Press is subject to the testing requirements of R 336.2040(5).

27. On March 16 and 18, 2021, EPA conducted a CAA inspection of the Facility (March 2021 Inspection).

28. On March 12 and March 18, 2021, in conjunction with the March 2021 Inspection, EPA requested, among other information, the records required by PTI #102-07B, R 336.1205(3), and R 336.1702(d) for the period from at least January 1, 2018, to the date of the

CAA inspection, including, but not limited to, monthly and annual VOC emission calculations and supporting documentation.

29. Between March 16 and 18, 2021, and on April 8, 2021, Evergreen provided its initial responses to EPA's March 12 and 18, 2021 requests (Initial Responses). Evergreen's Initial Responses included, among other documents, a spreadsheet with its monthly and annual VOC emission calculations from January 2015 through February 2021.

30. Upon reviewing Evergreen's Initial Responses, EPA observed that Evergreen operated ink jet printers (Ink Jet Printers) on each Flexographic Printing Press and that Evergreen did not include the Ink Jet Printers' ink and solvent usage in Evergreen's monthly and annual VOC emission calculations required by PTI #102-07B and R 336.1201(3) to demonstrate compliance with R 336.1205(3) and R 336.1702(d).

31. On March 31, 2022, EPA issued a Notice of Violation to Evergreen in which it alleged, among others, the violations identified in paragraphs 34 - 36, below.

32. On May 20, 2022, EPA received communication from Evergreen which stated that, based on the internal evaluation conducted by the Evergreen team, the Facility discovered an inconsistency between the calculation methodology discussed with Michigan EGLE and the Permit requirements.

33. On May 20, 2022, EPA received communication from Evergreen which stated that the Flexographic Printing Press L portion of the Permit appeared to have inadvertently omitted the "Calendar Day Averaging Period" option and that Evergreen would be submitting a revised permit application to correct this apparent oversight. EPA received evidence that a revised permit, dated January 12, 2023, was issued by EGLE to Evergreen to include the "Calendar Day Averaging Period" option.

34. EPA alleges that Evergreen violated R 336.2040(5) by not determining the VOC content of its materials, as received, and as applied, using federal reference test Method 24 or 24A, pursuant to Rule 336.2040(5)(a), and Evergreen had not received written approval by Michigan EGLE allowing Evergreen to use manufacturer's formulation data to determine the VOC content, pursuant to Rule 336.2040(5)(b).

35. EPA alleges that Evergreen violated R 336.1702(d) by failing to correctly calculate VOC emissions from its cleaning chemicals and include its usage of the Inkjet Printer ink and solvent in its records and VOC emission calculations specified in PTI #102-07B, from at least January 2018 through February 2021.

36. EPA alleges that Evergreen violated R 336.1602(1)(a) by failing to include its usage of the IPA with adhesive on the Flexographic Printing Presses in its records and VOC emission calculations specified in PTI #102-07B since December of 2019 through February 2021.

37. On April 25, 2022, and in subsequent teleconferences and information exchanges, representatives of Evergreen and EPA discussed the March 31, 2022 Notice of Violation and resolution of the alleged violations, including the correction of its VOC calculations and the requirement to perform Method 24 or Method 24A testing.

38. Concurrently with this CAFO, EPA and Evergreen are entering into an Administrative Consent Order (ACO) which will require, among other things, the completion of Method 24A testing and the correct calculation of VOC emissions.

Civil Penalty

39. 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 the facts of this case, Respondent's cooperation, and

prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$126,329.

40. Penalty Payment. Respondent agrees to:

- a. Pay the civil penalty of a \$126,329 within 30 days of 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	US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.
Wire transfers made through Fedwire	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 In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.
Payments made through Pay.gov Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.	<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
Cashier’s or certified check payable to “Treasurer, United States of America.” Please notate the CAFO docket number on the check	For standard delivery : U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979078 St. Louis, Missouri 63197-9000 For signed receipt confirmation (FedEx, UPS, Certified Mail, etc): U.S. Environmental Protection Agency

	Government Lockbox 979078 U.S. EPA Fines and Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, Missouri 63101
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41. Within 24 hours of the payment, of 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:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Louise Gross
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
Gross.louise@epa.gov

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

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

43. 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.

44. 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 attorney's 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

45. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: gross.louise@epa.gov (for Complainant), and fern.paterson@pactivevergreen.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

47. 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.

48. 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 46, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

49. Respondent certifies that it is complying fully with the Michigan SIP and the enforceable permit, PTI #102-07B.

50. 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).

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

52. 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.
53. Each party agrees to bear its own costs and attorney's fees in this action.
54. This CAFO constitutes the entire agreement between the parties.

Pactiv Evergreen Inc., Respondent

Michael A. Finnamore

08/31/2023

Michael Finnamore
Vice President Environmental Health and Safety
Pactiv Evergreen Inc.

Date

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: Pactiv Evergreen Inc
Docket No. CAA-05-2023-0031**

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