

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**FILED**

**Feb 04, 2025**

**8:25 am**

**U.S. EPA REGION 5  
HEARING CLERK**

In the Matter of:	)	Docket No. CAA-05-2025-0029
	)	
Phoenix Global Burns Harbor, LLC	)	Proceeding to Assess a Civil Penalty
Burns Harbor, Indiana	)	Under Section 113(d) of the Clean Air Act,
	)	42 U.S.C. § 7413(d)
Respondent.	)	
_____	)	

**Consent Agreement and Final Order**

**A. 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. §§ 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3).

2. Complainant is the U.S. Environmental Protection Agency (EPA). The EPA Administrator has delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA to the Division Director of the Region 5 Enforcement and Compliance Assurance Division.

3. Respondent is Phoenix Global Burns Harbor, LLC, a corporation doing business in Indiana. Respondent is a “person,” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

4. The EPA and Respondent 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.

5. Respondent agrees to comply with the terms of this CAFO.

**B. Jurisdiction**

6. The alleged violations in this CAFO are pursuant to Section 113(a)(1)(B) and Section 113(a)(3)(A) of the CAA.

7. The EPA and the United States Department of Justice have jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

8. In satisfaction of the notice requirements of Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), EPA issued three notice of violation and finding of violation (NOV/FOV) letters to Phoenix on September 28, 2021, August 2, 2022, and February 16, 2023, and provided a copy of the three NOV/FOVs to the Indiana Department of Environmental Management (IDEM), providing notice to Respondent and IDEM that the EPA found Respondent committed the alleged violations described in Section E of this CAFO and providing Respondent an opportunity to confer with the EPA. On November 2, 2021, representatives of Phoenix and EPA met to discuss the September 28, 2021, NOV/FOV. On August 16, 2022, representatives of Phoenix and EPA met to discuss the August 2, 2022, NOV/FOV. On March 21, 2023, representatives of Phoenix and EPA met to discuss the February 16, 2023, NOV/FOV.

9. The Regional Judicial Officer of Region 5 is authorized to ratify the consent agreement memorializing the settlement between the EPA and Respondent and to issue the attached Final Order. 40 C.F.R. §§ 22.4(b) and 22.18(b).

### **C. Statutory and Regulatory Background**

#### **Indiana SIP**

10. The CAA, 42 U.S.C §§ 7401, et seq., and the regulations promulgated thereunder, establish a statutory and regulatory scheme designed to protect and enhance the quality of the nation's air so as to protect public health and welfare and the productive capacity of its population.

11. On November 5, 1981, EPA approved 325 Indiana Administrative Code (IAC) 1.1-1-27 (recodified to 326 IAC 1-2-27) as part of the federally enforceable SIP for Indiana. See 46 Fed. Reg. 54943.

12. 326 IAC 1-2-27 defined “facility” as “any one (1) structure, piece of equipment, installation or operation which emits or has the potential to emit any air contaminant. Single pieces of equipment or installations with multiple emissions points shall be considered a facility for the purposes of this rule.”

13. On July 16, 2002, EPA approved 326 IAC 5-1-2 for opacity limitations as part of the federally enforceable SIP for Indiana. See 67 Fed. Reg. 46589.

14. 326 IAC 5-1-2 states that opacity from a source or facility shall not exceed an average of forty percent (40%) in any one (1) six (6) minute averaging period as determined by 326 IAC 5-1-4.

15. 326 IAC 5-1-4 outlines how determinations of visible emissions from sources or facilities to which this rule applies shall be made.

#### **Title V Permit Program**

16. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for major sources of air pollution.

17. In accordance with 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. See 57 Fed. Reg. 32250 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.

18. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to EPA a permit program meeting the requirements of Title V.

19. On December 4, 2001, EPA granted full approval of Indiana's Title V operating permit program, set forth at 326 Indiana Administrative Code (IAC) 2-7. *See* 66 Fed. Reg. 62969.

20. On January 14, 2021, the Indiana Department of Environmental Management issued Air Emission Permit No. T 127-43266-00026 (the 2021 Title V Permit) to Phoenix which expires on January 14, 2026 and supersedes the 2020 Title V Permit.

21. The 2021 Title V Permit at Section A.1 states that the "permittee owns and operates a stationary slag finishing operation," and is a Major Source under Section 112 of the CAA.

22. The 2021 Title V Permit at Section C.2(a) states that "opacity shall not exceed an average of forty percent (40%) in any one (1) six (6) minute averaging period as determined in 326 IAC 5-1-4."

#### **D. Stipulated Facts**

23. Phoenix operates an iron and steel slag processing and handling facility (the Facility) at 250 U.S. Highway 12, Burns Harbor, Indiana. Phoenix is an onsite contractor for Cleveland-Cliffs Burns Harbor, LLC.

24. Visible emissions from Phoenix's slag processing operations are subject to the opacity limitation of 40% over a 6-minute average in the Indiana SIP at 326 IAC 5-1-2 and its Title V permit.

#### **E. Alleged Violations**

25. On June 16, 2020, EPA conducted offsite visible emission observations in accordance with EPA Alternative Method 082 on the slag processing and handling operations at Phoenix's Facility at the Mezzanine. (See Appendix A.) Visible emissions during EPA's observation on June 16, 2020 were analyzed in accordance with EPA Alternative Method 082. The opacity measured was 66% (6-minute average).

26. On July 20, 2021, EPA conducted offsite visible emission observations in accordance with EPA Alternative Method 082 on the slag processing and handling operations at Phoenix's Facility at the Mezzanine. Visible emissions during EPA's observation on July 20, 2021 were reanalyzed in accordance with EPA Alternative Method 082. The opacity measured was 54% and 43% (6-minute average).

27. On July 22, 2021, EPA conducted offsite visible emission observations in accordance with EPA Alternative Method 082 on the slag processing and handling operations at Phoenix's Facility at the Mezzanine. Visible emissions during EPA's observation on July 22, 2021 were analyzed in accordance with EPA Alternative Method 082. The opacity measured was 67% (6-minute average).

28. On May 12, 2022, EPA conducted offsite visible emission observations in accordance with EPA Alternative Method 082 on the slag processing and handling operations occurring at the Cleveland Cliffs Burns Harbor D-Furnace pit. Visible emissions during EPA's observation on May 12, 2022, were analyzed in accordance with EPA Alternative Method 082. The opacity measured was 41% (6-minute average).

29. On September 28, 2022, EPA conducted offsite visible emission observations in accordance with EPA Alternative Method 082 on the slag processing and handling operations at Phoenix's Facility. Specifically, EPA observed several dump trucks dumping slag on to a storage pile at an area identified as C-Pile. Visible emissions during EPA's observation on September 28, 2022, were analyzed in accordance with EPA Alternative Method 082. The opacity measured was 42% and 52% (two separate 6-minute averages).

30. As noted above, EPA issued three NOV/FOV letters to Phoenix on September 28, 2021, August 2, 2022, and February 16, 2023, respectively.

31. In subsequent teleconferences and information exchanges, representatives of Phoenix and EPA discussed the NOV/FOVs and resolution of the alleged violations, including the installation of air pollution control equipment with documented design components and changes to the Fugitive Dust Plan.

32. EPA approved a Moisture Content Study proposal on September 9, 2023. Phoenix completed the study on January 25, 2024 and the results were used as the basis of a compliance plan for handling Blast Furnace and Basic Oxygen Furnace slag, while Phoenix utilized the new wet suppression units and metrological station to improve moisture content of its materials.

33. EPA alleges that Phoenix violated 326 IAC 5-1-2 and its 2021 Title V Permit by emitting visible emissions with opacity greater than 40% over a 6-minute average from Phoenix's slag processing and handling operations, as follows:

Violation Designation	Start Date	End Date	Number of Days
Excess Opacity – 1 count	June 16, 2021	June 16, 2021	1
Excess Opacity – 2 counts	July 20, 2021	July 20, 2021	1
Excess Opacity – 1 count	July 22, 2021	July 22, 2021	1
Excess Opacity – 1 count	May 12, 2022	May 12, 2022	1
Excess Opacity – 2 Counts	September 28 2022	September 28 2022	1
Excess Opacity - 1 count	August 1, 2023	August 1, 2023	1

#### **F. Terms of Consent Agreement**

34. For the purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits to the jurisdictional allegations in this CAFO;
- b. admits to the stipulated facts stated above and neither admits nor denies the alleged violations of law stated above;

- c. consents to the assessment of a civil penalty as stated below;
- d. consents to any conditions specified in this CAFO;
- e. waives any right to contest the alleged violations of law set forth in Section E of this CAFO; and
- f. waives its right to appeal this CAFO.

35. For the purposes of this proceeding, Respondent:

- a. agrees this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges this proceeding constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1); and
- d. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for noncompliance, and agrees that federal law shall govern in any such civil action.

36. 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, EPA has determined that an appropriate civil penalty to settle this action is \$190,860.

37. Respondent agrees to pay a civil penalty in the amount of \$190,860 ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

38. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:

<https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

39. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, CAA-05-2025-0029; and
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency, Region 5  
[R5airenforcement@epa.gov](mailto:R5airenforcement@epa.gov)

Mary McAuliffe  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
[mcauliffe.mary@epa.gov](mailto:mcauliffe.mary@epa.gov)

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

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
Via electronic mail to:  
[CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov)

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

40. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, the EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full.



Per 42 U.S.C. § 7413(d)(5) interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.

- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts.
- c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

41. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

42. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

43. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

44. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at [wise.milton@epa.gov](mailto:wise.milton@epa.gov), within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of a TIN issued by the IRS.

45. By signing this CAFO, Respondent consents to the release of any information in this CAFO to the public and agrees this CAFO does not contain business information that is entitled to confidential treatment under 40 C.F.R. Part 2.

46. By signing this CAFO, the undersigned representative of the EPA and the undersigned representative of Respondent each certify that they are fully authorized to execute and enter into the terms and conditions of this CAFO and have the legal capacity to bind the party they represent to this CAFO.

47. By signing this consent agreement, respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

48. By signing this CAFO, Respondent certifies the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that, under 18 U.S.C. § 1001, there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information.

49. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding, except in the case of a civil action brought by the Attorney General of the United States to recover unpaid penalties as described above.

**G. Effect of Consent Agreement and Attached Final Order**

50. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [mcauliffe.mary@epa.gov](mailto:mcauliffe.mary@epa.gov) (for Complainant), and [ted.barry@phoenixglobal.com](mailto:ted.barry@phoenixglobal.com) and [MMiller@wiggin.com](mailto:MMiller@wiggin.com) (for Respondent).

51. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged in this CAFO.

52. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to this matter with the exception of the administrative compliance order, docket number EPA-5-24-113(a)-IN-2 issued concurrently.

53. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties and approval of the Regional Judicial Officer.

54. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties of up to \$121,275 per day per violation, or both, as provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

55. Nothing in this CAFO relieves Respondent of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, nor does it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor is it a ruling on, or determination of, any issue related to any federal, state, or local permit.

56. Nothing in this CAFO limits the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

57. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and to assess and collect any civil penalties permitted by statute for any violation described herein. The EPA will give Respondent written notice of its intent to revoke this CAFO, which will not be effective until received by Respondent.

#### **H. Effective Date**

58. This CAFO will be effective after the Regional Judicial Officer executes the attached Final Order, on the date of filing with the Regional Hearing Clerk. Upon filing, the EPA will transmit a copy of the filed CAFO to Respondent.

**Phoenix Global Burns Harbor, LLC, Respondent**

12/27/24

Date

A handwritten signature in black ink, appearing to read 'Mark Porto', written over a horizontal line.

Mark Porto, Chief Executive Officer  
Phoenix Global Burns Harbor, LLC

**United States Environmental Protection Agency, Complainant**

**MICHAEL**  
**HARRIS**

Digitally signed by  
MICHAEL HARRIS  
Date: 2025.01.22  
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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: Phoenix Global Burns Harbor, LLC**  
**Docket No. CAA-05-2025-0029**

**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