



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

APR 03 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steve Edris, President
Thermafiber, Inc.
3711 Mill Street
Wabash, Indiana 46992

Re: In the Matter of: Thermafiber, Inc.
Docket No.: CAA-05-2013-0017

Dear Mr. Edris:

Enclosed is a file-stamped Consent Agreement and accompanying Final Order which resolves *In the matter of Thermafiber, Inc.*, CAA Docket No. CAA-05-2013-0017. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

~~APR 03 2013~~

Pursuant to Paragraph 40 of the Consent Agreement, Thermafiber must pay the first installment of the civil penalty within 30 days of May 3, 2013. Your check must display the case name and case docket number CAA-05-2013-0017.

Please direct any questions regarding this case to Mr. Michael Berman, Associate Regional Counsel, (312) 886-6837.

Sincerely,

Sara J. Breneman
Chief
Air Enforcement and Compliance Assurance Branch

Enclosure

cc: Regional Hearing Clerk/E-19J
Ann Coyle, Regional Judicial Officer/C-14J
Michael Berman/C-14J
Phil Perry, Indiana Department of Environmental Management
Richard A. Sherman, Edwards Wildman Palmer LLP

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No.	CAA-05-2013-0017
)		
Thermafiber, Inc.)		
Wabash, Indiana)		
)	42 U.S.C. § 7413(d)	
Respondent.)		
_____)		

RECEIVED
REGIONAL HEARING CLERK
U.S. EPA-REGION 5
2013 APR -3 PM 3:10

Consent Agreement

I. 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 Thermafiber, Inc., a corporation doing business in the state of Indiana.

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 accompanying final order. 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.

II. Statutory and Regulatory Background

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

7. On May 20, 2004, EPA provided final approval for Indiana's Prevention of Significant Deterioration (PSD) program as part of the federally enforceable Indiana State Implementation Plan (SIP). 69 Fed. Reg. 29071 (effective July 19, 2004). On June 18, 2007, EPA partially approved revisions to 326 Indiana Administrative Code (IAC) 2-2 related to EPA's New Source Review (NSR) Reform regulations. 72 Fed. Reg. 33395 (effective July 18, 2007).

8. The Indiana PSD program requires, among other things, that owners or operators of a major stationary source that implements a major modification obtain a PSD permit and apply the best available control technology (BACT) for each regulated NSR pollutant for which the modification would result in a significant net emissions increase at the source to control emissions from the modified unit. Sections 165(a) and 169(2)(C) of the CAA, 42 U.S.C. §§ 7475(a) and 7479(2)(C), 40 C.F.R. § 52.21, and 326 IAC 2-2.

9. A major modification is defined as any physical change or change in the method of operation of a major stationary source that would result in a significant emissions increase and a significant net emission increase of a regulated NSR pollutant from the major stationary source. 42 U.S.C. §§ 7475(a) and 7479(2)(C), and 40 C.F.R. § 52.21, and 326 IAC 2-2-1(dd).

10. The Indiana SIP defines a "regulated NSR pollutant" as any pollutant for which a national ambient air quality standard has been promulgated, and therefore includes sulfur dioxide (SO₂). 326 IAC 2-2-1(dd) and 326 IAC 2-2-1(ss)(1)(A).

11. In reference to SO₂, the Indiana SIP defines "significant" with regard to a net

emissions increase as a rate of emissions that would equal or exceed 40 tons per year.

326 IAC 2-2-1(ww)(1)(C).

12. In Sections 502 and 503 of the CAA, 40 U.S.C. § 7661(a) requires that a major source operate under a Title V permit, and 40 U.S.C. § 7661(b) requires that sources submit timely, accurate and complete applications for a permit.

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

14. 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.

15. 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 Consent Agreement.

III. Factual Allegations and Alleged Violations

16. Thermafiber owns and operates a mineral wool production facility at 3711 Mill Street, Wabash, Indiana ("Wabash Plant").

17. Thermafiber is a corporation authorized to do business in Indiana.

18. Thermafiber is a "person," as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e) and in Section 13-11-2-158 of the Indiana Code (IC).

19. At all times relevant to this Consent Agreement, Thermafiber owned and operated emission units at the Wabash Plant.

20. Thermafiber is a “major stationary source” as that term is defined in the Indiana SIP at 326 IAC 2-2-1(ff)(1), in that it emits more than 100 tons per year of SO₂, a pollutant regulated under PSD.

21. Thermafiber is subject to the PSD requirements of the Indiana SIP at 326 IAC 2-2.

22. The Indiana Department of Environmental Management issued Thermafiber a Title V Operating Permit, Number 169-21103-00009 on December 17, 2007.

23. On September 29, 2011, EPA issued to Thermafiber a Notice of Violation (NOV) giving notice of the violations alleged below, and offering the Respondent an opportunity to confer with the EPA. On November 3, 2011, representatives of Thermafiber and EPA discussed the September 29, 2011 NOV.

24. In 2009, Thermafiber began using crushed anodes as a substitute fuel in place of coke, thereby implementing a change in the fuel used at its Wabash Plant.

25. The change described in Paragraph 24 was a change in the method of operation and constituted a “major modification,” as defined in 326 IAC 2-2-1(dd).

26. The change in the method of operation described in Paragraph 24 has the potential to cause a significant emissions increase of SO₂ in excess of 40 tons per year as defined in 326 IAC 2-2-1(ww)(1)(C).

27. Thermafiber failed to apply for and/or obtain a PSD permit, and failed to install and operate BACT for SO₂, prior to beginning the alternative fuel use described in Paragraph 24.

28. Therefore, Thermafiber violated the PSD requirements found at Section 165 of

the CAA, 42 U.S.C. § 7475, and the applicable Indiana SIP regulations at 326 IAC 2-2.

29. In addition, Thermafiber failed to obtain a valid Title V permit by failing to obtain a PSD permit for the change in method of operation. This resulted in Thermafiber failing to submit a timely, accurate and complete Title V permit application containing limitations from the PSD permit. This is a violation of the Title V permitting requirements at Section 502 of the CAA, 40 U.S.C. § 7661(b) and the applicable regulations at 40 C.F.R. Part 70 and 326 IAC 2-7.

IV. Terms of Agreement

30. For the purpose of this Proceeding, Respondent:

- a. admits that the EPA has jurisdiction over this matter as stated above;
- b. admits to the stipulated facts in Paragraphs 16 through 24 stated above but neither admits nor denies the remaining factual allegations in Section III above;
- c. neither admits nor denies the alleged violations of law stated above;
- d. consents to the assessment of a civil penalty as stated below;
- e. consents to the conditions specified in this Consent Agreement;
- f. waives any right to contest the alleged violations of law;
- g. waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c); and
- h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

A. Compliance Program

31. Within 30 days after the effective date of this Consent Agreement, Thermafiber must begin a program of continuous emissions testing for SO₂ using EPA Method 6C, 40 C.F.R. Part 60, Appendix A. The testing must continue for at least 30 consecutive calendar days and include at least 24 days of actual operations. During the testing, Thermafiber shall use temporarily installed CEMs in existing ports and record the hourly melt rate for each cupola, the

hourly caustic injection rate, and the caustic material used. Within 60 days from the completion of the testing, Thermafiber must provide EPA with a complete copy of the testing report, including relevant operating parameters, calibrations, measurements and calculations.

32. Within 60 days from the completion of the testing program specified in Paragraph 31, using the data collected during the testing, Thermafiber must establish new emissions factors for SO₂ (as pounds of SO₂ emitted per ton of melt). These new emissions factors must be used whenever Thermafiber calculates or reports actual or potential SO₂ emissions, until or unless they are superseded by emissions factors established in more recent tests.

33. After the completion of the testing program specified in Paragraph 31, Thermafiber agrees to use EPA Method 6C continuously for at least 30 consecutive calendar days (including at least 24 days of actual operations) to establish new SO₂ emissions factors for any new fuel it proposes to use, or for any change in the type of caustic material used in the caustic injection system.

34. At any time after the completion of the testing program specified in Paragraph 31, if Thermafiber wishes to either decrease the caustic injection rate or increase the alternate fuel blend above the blend of fuels used in the most recent stack test at the facility, Thermafiber will use EPA Method 6C for three one-hour tests to establish new emissions factors.

35. Beginning on the effective date of this Consent Agreement, Thermafiber agrees to continuously operate its dry sorbent injection system on each cupola during production consistent with the technological limitations, manufacturer's specifications, and good engineering and maintenance practices for such equipment.

36. Nothing in this order changes Thermafiber's current annual emissions limit of 620 tons of SO₂ per year at the Wabash Plant.

37. Thermafiber shall apply for modification of its federally-enforceable construction and/or operating permits to incorporate the requirements specified in Paragraphs 32-35. It is the intent of the parties that the requirements under Paragraphs 32-35 endure beyond the termination of this Consent Agreement and are deemed "applicable requirements" under Title V of the Clean Air Act and state and local operating permit programs that implement the requirements of Title V.

38. Thermafiber must send all reports required by this Consent Agreement to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

B. 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 and the cooperation of Respondent, Complainant has determined that an appropriate civil penalty to settle this action is \$93,000.

40. Respondent must pay the \$93,000 civil penalty in four installments with interest as shown in the chart below:

<u>Installment</u>	<u>Due By</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest (1%)</u>
Payment #1	Within 30 days of effective date of Final Order	\$23,327.50	\$23,250	\$77.50
Payment #2	Within 120 days of effective date of Final Order	\$23,424.38	\$23,250	\$174.38
Payment #3	Within 210 days of effective date of Final Order	\$23,366.25	\$23,250	\$116.25
Payment #4	Within 300 days of effective date of Final Order	\$23,308.13	\$23,250	\$58.13

Respondent must pay the installments 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, the docket number of this Final Order and the billing document number.

To send by express mail (non-U.S. Postal Service which won't deliver to P.O. Boxes) mail to:

U.S. Bank
 Government Lockbox 979077
 U.S. EPA Fines and Penalties
 1005 Convention Plaza
 Mail Station SL-MO-C2-GL
 St. Louis, Missouri 63101

Respondent must send a notice of payment that states Respondent's name, the docket number of this Final Order and the billing document number to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Michael Berman (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

41. This civil penalty is not deductible for federal tax purposes.
42. Respondent shall have the right to prepay the penalty in whole or in part at any time subject only to the payment of any interest at the rate of one percent (1%) per annum then due and owing. If Respondent does not pay timely any installment payment as set forth in Paragraph 40, above, the entire unpaid balance of the civil penalty shall become due and owing upon written notice by EPA to Respondent of the delinquency. 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.
43. Respondent must pay the following on any amount overdue under this Consent Agreement. 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).

V. Effect of Consent Agreement and Accompanying Final Order

44. This Consent Agreement and accompanying Final Order resolves only Respondent's liability for federal civil penalties for the violations alleged in this Consent Agreement and accompanying Final Order.

45. Complainant covenants not to sue Respondent for injunctive relief for the violations alleged in this Consent Agreement on the condition that Respondent timely completes the compliance program specified in Paragraphs 31-38.

46. The Consent Agreement and accompanying Final Order 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.

47. This Consent Agreement and accompanying Final Order does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in Paragraphs 44 and 45, above, compliance with this Consent Agreement and accompanying Final Order will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

48. If Respondent fails to comply with any provision contained in this Consent Agreement, the EPA may take, and Respondent waives any rights it may possess to challenge the authority of the EPA to take, any civil action available in law or equity to enforce the requirements of the Clean Air Act, including to compel compliance with this Consent Agreement and accompanying Final Order or to seek an additional penalty for such noncompliance.

49. This Consent Agreement 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).

50. The terms of this Consent Agreement and accompanying Final Order bind Respondent, its successors and assigns. Respondent must give notice of this Consent Agreement and accompanying Final Order to any successors in interest prior to transferring ownership of the Wabash Plant and must simultaneously verify to EPA, at the above address, that it has given the notice.

51. 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.

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

53. This Consent Agreement constitutes the entire agreement between the parties.

Thermafiber, Inc., Respondent

March 26, 2013
Date

Steve Edris
Steve Edris
President and Chief Executive Officer
Thermafiber, Inc.

United States Environmental Protection Agency, Complainant

3/22/13
Date

George T. Czerniak Jr.
George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of: Thermafiber, Inc.
Docket No.**

CAA-05-2013-0017

Final Order

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order and is hereby ratified. The Consent Agreement shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

4-1-13

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

**Consent Agreement and Final Order
In the Matter of: Thermafiber, Inc.
Docket No. CAA-05-2013-0017**

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and accompanying Final Order, docket number CAA 05 2013 0017 with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois, and that I mailed a second original copy by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Steve Edris, President
Thermafiber, Inc.
3711 Mill Street
Wabash, Indiana 46992

I certify that I mailed copies of the Consent Agreement and accompanying Final Order by first-class mail, addressed as follows:

Richard A. Sherman
Edwards Wildman Palmer LLP
2800 Financial Plaza
Providence, RI 02903

Phil Perry, Chief
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 43206-2251

RECEIVED
REGIONAL HEARING CLERK
U.S. EPA-REGION 5
2013 APR -3 PM 3:10

I also certify that I delivered a copy of the Consent Agreement and accompanying Final Order by intra-office mail, addressed as follows:

Ann Coyle
Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

On the 3 day of April 2013.



AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

70091680 0000 7674 1422