



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

FEB - 6 2020

REPLY TO THE ATTENTION OF

VIA E-MAIL

David W. Nunn  
Eastman & Smith Ltd.  
One SeaGate, 24<sup>th</sup> Floor  
Toledo, Ohio 43699-0032  
Email: [dwnunn@eastmansmith.com](mailto:dwnunn@eastmansmith.com)

Dear Mr. Nunn:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Heidtman Steel, docket no. CAA-05-2020-0006. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on February 6, 2020.

Pursuant to paragraph 58 of the CAFO, Heidtman Steel must pay the civil penalty within 30 days of the filing date. Your check or electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Louise Gross, Associate Regional Counsel, (312) 886-6844.

Sincerely,

A handwritten signature in cursive script, 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  
Louise Gross/via electronic mail  
Phil Perry/via electronic mail



### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations 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. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), provides that it is unlawful for any person to, among other things, operate a major source subject to Title V of the Act except in compliance with a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act.

10. Pursuant to Section 502(b) of the Act, 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.* 32,295. Those regulations are codified at 40 C.F.R. Part 70.

11. The EPA promulgated final interim approval of the Indiana Title V program on November 14, 1995, *60 Fed. Reg.* 57191, and the program became effective on that date. This includes 326 IAC 2-7.

12. 40 C.F.R. § 70.7(b) provides that no Title V source may operate after the time that it is required to submit a timely and complete application except in compliance with a Title V permit issued under an approved permit program. *See also* 326 IAC 2-7-3.

13. 40 C.F.R. § 70.2 defines “major source,” in part, as any stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any hazardous air pollutant (“HAP”) which has been listed pursuant to section 112(b) of the Act. *See also* 326 IAC 2-7-

1(22)(A)(i)(AA). 40 C.F.R. § 70.2 defines “potential to emit” as the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design.

14. Section 503 of the Act, 42 U.S.C. § 7661b, and 40 C.F.R. § 70.5(a), set forth the requirement to submit a timely, accurate, and complete permit application for a permit, including information required to be submitted with the application. *See also* 326 IAC 2-7-3 and 326 IAC 2-7-4.

15. Section 112(c) of the Act, 42 U.S.C. § 7412(c), requires EPA to promulgate a list of all categories and subcategories of major sources and area sources of HAP and establish emissions standards for the categories and subcategories. These emission standards are known as the National Emission Standards for Hazardous Air Pollutants (“NESHAP”). The purpose of the NESHAP is to ensure that all sources achieve the maximum degree of reduction in emission of HAP that EPA determines is achievable for each sources category.

16. Pursuant to Section 112(b) of the Act, 42 U.S.C. § 7412(b), EPA designates HAPs, which present or may present a threat of adverse effects to human health or the environment. Section 112(b) of the Act, 42 U.S.C. § 7412(b), lists hydrochloric acid (“HCl”) as a HAP.

17. Pursuant to Section 112(c) of the Act, EPA promulgated a list of categories and subcategories of major sources of the air pollutants listed pursuant to Section 112(b) of the Act, 42 U.S.C. § 7412(b).

18. Pursuant to Section 112(d) of the Act, EPA promulgated regulations implementing the NESHAP at 40 C.F.R. Part 63.

19. Section 112(a) of the Act, 42 U.S.C. § 7412(a), and 40 C.F.R. § 63.2 define “major source” 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 tpy or more of any HAP or 25 tpy or more of any combination of HAPs.

20. Section 112(i)(3) of the Act, 42 U.S.C. § 7412(i)(3), and 40 C.F.R. § 63.4, prohibit the owner or operator of any source from operating such source in violation of any NESHAP applicable to such source.

21. The NESHAP, at 40 C.F.R. Part 63, Subpart A, contains general provisions applicable to the owner or operator of any stationary source that contains an affected source subject to the NESHAP at 40 C.F.R. Part 63. These general provisions include definitions at 40 C.F.R. § 63.2.

22. The NESHAP, at 40 C.F.R. § 63.2, defines “affected source” as the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the Act.

23. The NESHAP, at 40 C.F.R. § 63.2, defines “existing source” as any affected source that is not a new source.

24. On June 22, 1999, EPA promulgated the NESHAP for Steel Pickling – HCl Process Facilities and Hydrochloric Acid Regeneration Plants (Pickling NESHAP), codified at 40 C.F.R. Part 63, Subpart CCC. 64 *Fed. Reg.* 33218.

25. 40 C.F.R § 63.1160(a)(1) provides that the “owner or operator of an affected existing steel pickling facility and/or hydrochloric acid regeneration plant subject to this subpart shall achieve initial compliance with the requirements of this subpart no later than June 22, 2001.”

26. 40 C.F.R. § 63.1155(a)(1) provides that the provisions of the Pickling NESHAP apply to all new and existing steel pickling facilities or plants that are major sources of HAP and

pickle carbon steel using HCl solution that contains 6 percent or more by weight HCl and is at a temperature of 100 degrees Fahrenheit or higher.

27. 40 C.F.R. § 63.1155(b) provides that, for the purposes of implementing the subpart, the affected sources at a facility or plant subject to this subpart include continuous pickling lines and hydrochloric acid storage vessels.

28. 40 C.F.R. § 63.1156 defines “continuous pickling line” as the collection of equipment and tanks configured for pickling metal strip, rod, wire, tube, or pipe that is passed through an acid solution in a continuous or nearly continuous manner and rinsed in another tank or series of tanks to remove residual acid. This definition includes continuous spray towers.

29. 40 C.F.R. § 63.1156 defines “hydrochloric acid storage vessel” as a stationary vessel used for the bulk containment of virgin or regenerated hydrochloric acid.

30. On March 21, 2011, EPA promulgated the NESHAP for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (Boiler NESHAP), codified at 40 C.F.R. Part 63, Subpart DDDDD. 76 *Fed. Reg.* 15664. This subpart applies to new and existing industrial boilers and process heaters located at major stationary sources of HAPs.

31. 40 C.F.R. § 63.7495(b) requires the owner or operator of an existing affected source subject to this subpart achieve initial compliance with the requirements of this subpart no later than January 31, 2016.

32. 40 C.F.R. § 63.7485 provides that the provisions of this subpart apply to owners or operators of an industrial, commercial, or institutional boiler or process heater as defined in 40 C.F.R. § 63.7575 that is located at, or is part of, a major source of HAP, except as specified in 40 C.F.R. § 63.7491.

33. 40 C.F.R. § 63.7490(a)(1) provides that an existing affected source, as defined for this subpart, is the collection at a major source of all existing industrial, commercial, and institutional boilers and process heaters within a subcategory as defined in 40 C.F.R. § 63.7575.

34. 40 C.F.R. § 63.7490(d) defines a boiler or process heater as existing if it is not new or reconstructed.

35. 40 C.F.R. § 63.7490(b) defines a boiler or process heater as new if construction of the units commenced after June 4, 2010 and applicability criteria is met at the time construction commences.

36. 40 C.F.R. § 63.7490(c) defines a boiler or process heater as reconstructed if the criteria defined in 63.2 are met, reconstruction commenced after June 4, 2010, and the applicability criteria have been met at the time reconstruction commenced.

37. 40 C.F.R. § 63.7575 defines an industrial boiler as a boiler used in manufacturing, processing, mining, and refining or any other industry to provide steam, hot water, and/or electricity.

38. 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 \$320,000 for violations that occurred after December 6, 2013 through November 2, 2015, and/or \$47,357 per day of violation up to a total of \$378,852 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.

39. The Administrator may assess a penalty greater than \$362,141 where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action. 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19.

40. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$362,141 is appropriate for an administrative penalty action.

41. 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.

42. 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**

43. For the purpose of this proceeding, Heidtman neither admits nor denies specific factual allegations contained in this CAFO.

44. Heidtman owns and operates a steel pickling facility at 4400 County Road 59, Butler, Indiana ("the Butler facility").

45. Heidtman is a corporation authorized to do business in Indiana.

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

47. At the Butler facility, Heidtman operates one industrial natural gas-fired boiler, installed in 1995 and rated at 10.9 MMBtu/hour.

48. At the Butler facility, Heidtman operates a continuous steel pickling line consisting of four HCl tanks connected in series. Steel strips are uncoiled and push-pulled through the



pickling line. The HCl is applied to steel strips at an average concentration of 13% by weight, and at a temperature between 170 and 185 degrees Fahrenheit. HCl vapors in the pickling process are captured by enclosed hoods and directed to a three-tray wet scrubber-mist eliminator prior to discharging to the atmosphere.

49. At the Butler facility, the steel pickling line emits or has the potential to emit 10 tpy or more of HCl.

50. Because the Butler facility emits or has the potential to emit 10 tpy or more of HCl, it is a “major source” of HAP, as defined at 40 C.F.R. §§ 63.2 and 70.2.

51. Because the Butler facility emits or has the potential to emit 10 tpy or more of HCl, Heidtman is subject to the requirements of Title V of the Act; 42 U.S.C. §§ 7661 *et seq.*; the Pickling NESHAP, 40 C.F.R. Part 63, Subpart CCC; and the Boiler NESHAP, 40 C.F.R. Part 63, Subpart DDDDD at the Butler facility.

52. On January 22, 2018, EPA issued to Heidtman a Finding of Violation (“FOV”) giving notice of the violations alleged below and offering Heidtman an opportunity to confer with the EPA. On February 28, 2018, representatives of Heidtman and EPA discussed the January 22, 2018 FOV.

53. Heidtman failed to submit a timely Title V permit application for the Butler facility to the State of Indiana, in violation of 40 C.F.R. § 70.5(a) and Section 503 of the CAA. *See also* 326 IAC 2-7-4.

54. By failing to apply for a Title V operating permit, Heidtman has violated and continues to violate the Title V requirements at 40 C.F.R. § 70.7(b) and Section 502 of the CAA. *See also* 326 IAC 2-7-3.

55. Because it emits or has the potential to emit 10 tpy or more of HCl, the Butler facility has been and continues to be a major source of HAP and, since June 22, 2001, Heidtman has been required to comply with the requirements of the Pickling NESHAP at the Butler facility. Heidtman has failed to comply with applicable requirements, which include a complete scrubber operation and maintenance plan, requirements to demonstrate initial and continuous compliance with emission limits, operating limits, work practice standards, and recordkeeping and reporting requirements associated with the facility's pickling line.

56. Because it emits or has the potential to emit 10 tpy or more of HCl, the Butler facility has been and continues to be a major source of HAP and, since January 31, 2016, Heidtman has been required to comply with the requirements of the Boiler NESHAP for existing industrial boilers for its 10.9 MMBtu/hr natural gas-fired industrial boiler. Heidtman has failed to comply with the applicable requirements, which include the completion of a boiler energy assessment, required regular boiler tune-ups and other work practice standards, submission of compliance notifications, and submission of boiler tune-up compliance reports.

#### **Civil Penalty**

57. 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 Heidtman's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$75,820.

58. Within 30 days after the effective date of this CAFO, Respondent must pay a \$75,820 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

59. 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  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Louise Gross (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

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

61. 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.

62. 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 Provision**

63. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following addresses: [gross.louise@epa.gov](mailto:gross.louise@epa.gov) (for Complainant) and [dwnunn@eastmansmith.com](mailto:dwnunn@eastmansmith.com) (for Respondent).

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

65. 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.

66. 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 64, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

67. Respondent has signed an Administrative Consent Order to be issued under Section 113(a) of the CAA, in which it has agreed to take specific actions in order to achieve and maintain compliance with the Indiana Title V regulations at 326 IAC 2-7.

68. 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).

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


70. 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.

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

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


**Heidtman Steel, Respondent**

1-24-2020  
Date

  
\_\_\_\_\_  
Michael Dustmann  
Heidtman Steel Products, Inc.  
Chief Financial Officer and Secretary  
2401 Front Street  
Toledo, Ohio 43605

**United States Environmental Protection Agency, Complainant**

02/04/2020  
Date

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

**Consent Agreement and Final Order**  
**In the Matter of: Heidtman Steel**  
**Docket No. CAA-05-2020-0006**

**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.

2/5/2020  
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: Heidtman Steel  
Docket Number: CAA-05-2020-0006

**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 2020 0006, which was filed on February 6, 2020, in the following manner to the following addressees:

Copy by E-mail to  
Attorney for Complainant:

Louise Gross  
Gross.Louise@epa.gov

Copy by E-mail to  
Attorney for Respondent:

David W. Nunn  
dwnunn@eastmansmith.com

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated:

February 8, 2020



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