



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

AUG 22 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Keith McLean, President
HA International, LLC
630 Oakmont Lane
Westmont, Illinois 60559

Re: In the Matter of: HA International, LLC,
Docket No. CAA-05-2013-0037

Dear Mr. McLean:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves *In the Matter of HA International, LLC*, Clean Air Act Docket No. CAA-05-2013-0037. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on August 22, 2013.

Pursuant to paragraph 28 of the CAFO, DPI must pay the civil penalty within 30 days of _____ . Your check must display the case name, case docket number CAA-05-2013-0037 and the billing document number N/A.

Please direct any question regarding this case to Robert Peachey, Associate Regional Counsel, at 312-353-4510.

Sincerely,

Nathan Frank
Air Enforcement and Compliance Assurance Branch
IL/IN

Enclosure: CAFO

cc: Regional Hearing Clerk/E-19J
Ann Coyle, Regional Judicial Officer/C-14J
Robert Peachey/C-14J
Ray Pilapil, IEPA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2013-0037
)	
HA International, LLC)	Proceeding to Assess a Civil Penalty
Oregon, Illinois,)	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 Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is HA International, LLC (HAI), 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.

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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 the legal 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 for purposes of this CAFO and its enforcement, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. On May 31, 1972, EPA approved Illinois Pollution Control Board (IPCB) Rule 102 as part of the federally enforceable state implementation plan (SIP) for the State of Illinois. *See* 37 Fed. Reg. 10,842. IPCB Rule 102 has been recodified at 35 Illinois Administrative Code (Ill. Admin. Code) § 201.141.

10. On February 21, 1980, EPA approved IPCB Rule 205 as part of the federally enforceable SIP for Illinois. *See* 45 Fed. Reg. 11,472. IPCB Rule 205 has been recodified at 35 Ill. Admin. Code Part 215.

11. The Illinois SIP at 35 Ill. Admin. Code § 201.141 provides, in pertinent part, that no person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois.

12. The Illinois SIP at 35 Ill. Admin. Code § 201.102 defines “air pollution” as the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

13. The Illinois SIP at 35 Ill. Admin. Code § 215.301 states that no person shall cause or allow the discharge of more than 3.6 kg/hr (8 lbs/hr) of organic material into the atmosphere from any emission source, except as provided in 35 Ill. Admin. Code §§ 215.302, 215.303, 215.304 and the following exception: If no odor nuisance exists the limitation of this Subpart shall apply only to photochemically reactive material.

14. 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.

Factual Allegations and Alleged Violations

15. HAI owns and operates a resin-coated sand production facility at 1449 Devils Backbone Road, Oregon, Illinois (the Oregon Facility). The Oregon Facility includes three resin-coated sand production lines (Plants 1, 2, and 3).

16. Emissions from each of the three Plants include phenol and formaldehyde, both of which are classified as volatile organic material (VOM) under the Illinois SIP at 35 Ill. Admin. Code § 211.7150, and as organic material under 35 Ill. Admin. Code § 211.4250.

17. Since the formaldehyde, phenol, and other pollutants emitted by the Oregon Facility are classified as organic material, emissions from the Oregon Facility are subject to the organic material limits of no more than 8 lbs/hr from any emission source under 35 Ill. Admin. Code § 215.301.

18. In response to a August 26, 2011 citizen complaint about persistent odor from the Oregon Facility, EPA inspected the Oregon Facility on September 28, 2011.

19. EPA sent a Section 114 Request for Information to HAI on November 28, 2011. The request required HAI to submit information on past permitting actions and capital and maintenance projects, and to conduct stack testing of the Oregon Facility's VOM emissions. HAI submitted a response to the Request for Information on or about February 1, 2012, and conducted the required stack test on April 17 and 18, 2012. HAI provided results of the stack test to EPA on June 1, 2012.

20. On March 15, 2012, another citizen contacted EPA by telephone to complain of persistent odor from the Oregon Facility. This same citizen contacted EPA by telephone to complain of the same odor on June 27, 2012.

21. According to HAI's April 17 and 18, 2012 stack test and information submitted in response to the November 28, 2011 Request for Information, the Oregon Facility emits in excess of 8 lbs/hr of organic material at each of Plants 1, 2 and 3.

22. On December 6, 2012, two EPA inspectors observed the odors from the Oregon Facility.

23. Between January and July 2013, EPA recorded additional odor complaints from citizens about the Oregon Facility.

24. Organic material emissions from each of HAI's Plants 1, 2 and 3 are in excess of 8 lbs/hr, in violation of 35 Ill. Admin. Code § 215.301. These organic material emissions do not meet the criteria for exception under 35 Ill. Admin. Code § 215.301.

25. HAI caused or allowed the emission of VOM into the environment so as, either alone or in combination with the contaminants from other sources, to cause air pollution in Illinois, in violation of the Illinois SIP at 35 Ill. Admin. Code § 201.141.

Compliance

26. Respondent represents and certifies that it is on a schedule to achieve compliance with the requirements that formed the basis of the allegations of this CAFO no later than August 23, 2014. In order to achieve and maintain compliance, Respondent has agreed to the terms of an administrative compliance order under Section 113(a) of the CAA signed by Respondent (Order) at the same time as this CAFO.

Civil Penalty

27. 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 agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$100,000.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$100,000 civil penalty by ACH electronic funds transfer, payable to “Treasurer, United States of America,” by using the following information:

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, Respondent will state Respondent’s name, the docket number of this CAFO and the billing document number.

29. Respondent must send a notice of payment that states Respondent’s name, the docket number of this CAFO 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
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

77 W. Jackson Boulevard
Chicago, Illinois 60604

Robert Peachey (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

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

31. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 43, below, 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.

32. 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. *See* 42 U.S.C. § 7413(d)(5).

Supplemental Environment Project

33. Respondent must complete supplemental environmental projects (SEPs) designed to protect public health by improving ambient and indoor air quality and by reducing environmental asthma triggers and adverse respiratory health conditions.

34. Respondent must complete the SEPs as follows:

- a. By January 1, 2014, Respondent will donate \$40,000 to Oregon High School in Oregon, Illinois, pursuant to a written agreement that Oregon High School will use the funds to purchase energy efficient lighting, install energy efficient windows, air conditioning, and other energy upgrades in the administrative offices of the Oregon High School building in Oregon, Illinois. This project will improve the building's indoor air quality, reduce environmental asthma triggers and allergens, and improve the building's energy efficiency.
- b. By January 1, 2014, Respondent will donate \$10,000 to Creston School in Creston, Illinois, pursuant to a written agreement that Creston School will use the funds to support funding for new windows, upgraded air conditioning and heating systems. This project will help the school meet state safety standards, significantly improve indoor air quality, reduce environmental asthma triggers that impact children, and improve the energy efficiency of the school.
- c. Respondent will install a DSH Systems, Ltd. dust suppression hopper for 1 truck station at the Oregon Facility. This project is anticipated to reduce emissions of particulate matter from truck loading at the facility by at least 50%. Respondent will use its best efforts to complete the SEP by January 1, 2014, and in no event later than August 23, 2014.
- d. Respondent will install higher efficiency bags on the dust collectors for Plants 2 and 3. This project is anticipated to reduce emissions of particulate matter from the Oregon Facility by an additional 90%. Respondent will use its best efforts to complete the SEP by January 1, 2014, and in no event later than August 23, 2014.

35. Respondent must spend at least \$100,000 to fund the projects identified in paragraph 34. However, if Respondent does not complete the projects described in paragraph 34, items c and d, by January 1, 2014, Respondent must spend at least \$101,600 to fund the projects identified in paragraph 34.

36. Respondent certifies as follows:

I certify that HA International, LLC is not required to perform or develop the SEPs by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that HA International, LLC has not received, and is not negotiating to receive, credit for the SEPs in any other enforcement action.

I certify that HA International, LLC is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEPs. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEPs, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

37. Within 15 days of the date that the final SEP is completed, but in no event later than August 23, 2014, Respondent must submit a SEP completion report to EPA. This report must contain a separate section for each SEP, and within each section, the report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems executing the SEP and the actions taken to correct the problems;
- c. For the SEPs described in paragraph 34, items c and d, an itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. For the SEPs described in paragraph 34, items a and b, Respondent must provide certification from the recipients that the funds were spent in conformity with the SEPs as described or, if a recipient school has not yet completed the project, certification from the recipient school that any unused funds are being held in an account earmarked for the specified purposes;

- e. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- f. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

38. Respondent must submit the SEP completion report from paragraph 37 by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 29, above.

39. Respondent must maintain copies of research, data and other supporting documentation for the SEP completion report, and Respondent must provide the such materials to EPA within 7 days of EPA's request for the materials.

40. In the SEP completion report, Respondent must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

41. Following receipt of the SEP completion report described in paragraph 37, above, EPA must notify Respondent in writing that

- a. It has satisfactorily completed the SEPs and the SEP report;
- b. There are deficiencies in the SEPs as completed or in the SEP report, and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEPs or the SEP report, and EPA will seek stipulated penalties under paragraph 43.

42. If EPA exercises option b in paragraph 41 above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent

will comply with any reasonable requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 43, below.

43. If Respondent violates any requirement of this CAFO relating to the SEPs, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEPs satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$125,000 (in addition to the civil penalty at paragraph 27);
- b. If Respondent did not complete one or more of the SEPs satisfactorily (including but not limited to if Respondent spent less than the applicable amount set forth in paragraph 35), but EPA determines that Respondent made good faith and timely efforts to complete the SEPs, Respondent must pay an additional amount to Creston School, Creston, Illinois under paragraph 34, item b. This additional amount is the difference between the amount set forth in paragraph 35 and the amount that Respondent certified it spent for the SEPs (demonstrated by supporting documentation);
- c. If Respondent completed the SEPs satisfactorily, but spent less than the applicable amount set forth in paragraph 35, Respondent must pay an additional amount to Creston School, Creston, Illinois under paragraph 34, item b. This additional amount is the difference between the amount set forth in paragraph 35 and the amount that Respondent certified it spent for the SEPs (demonstrated by supporting documentation);
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$200	1 st through 14 th day
\$400	15 th through 30 th day
\$600	31 st day and beyond

44. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

45. Respondent must pay any stipulated penalties under paragraph 43 within 15 days of receiving EPA's written demand for the penalties. Except for the amounts in paragraph 43, items b and c, Respondent will use the method of payment specified in paragraph 28, above, and will pay interest and nonpayment penalties on any overdue amounts.

46. Any public statement that Respondent makes referring to the SEP must include the following language: "HA International, LLC undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against HA International for alleged violations of the Clean Air Act."

47. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

48. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

50. 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.

51. 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 49, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

52. Respondent certifies that it is on a schedule to comply fully with the CAA and the Illinois SIP under the terms of the Order referenced in paragraph 26.

53. 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).

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

55. 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.

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

57. This CAFO and the Order constitute the entire agreement between the parties.

HA International, LLC, Respondent

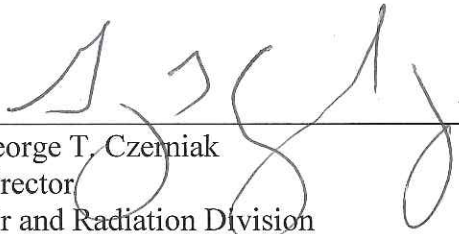
8-15-13
Date



Keith McLean
President
HA International, LLC

United States Environmental Protection Agency, Complainant

8/19/13
Date



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

Consent Agreement and Final Order
In the Matter of: HA International, LLC
Docket No. CAA-05-2013-0037

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.

8-20-13

Date



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

Consent Agreement and Final Order
In the Matter of: HA International, LLC
Docket No. CAA-05-2013-0037

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2013-0037 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent 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:

Keith McLean, President
HA International, LLC
630 Oakmont Lane
Westmont, Illinois 60559

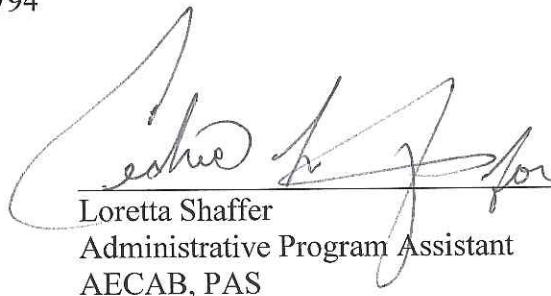
I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

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

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Ray Pilapil, Manager
Bureau of Air
Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794

On the 28ND day of August 2013.


Loretta Shaffer
Administrative Program Assistant
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

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