



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

DEC 29 2017

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John J. Hirbar
President
Whemco Ohio Foundry, Inc.
1600 McClain Road
Lima, OH 45804

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Whemco Ohio Foundry, Inc. docket no. CAA-05-2018-0004. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on 12/29/2017. Pursuant to paragraph 23 of the CAFO, Whemco Ohio Foundry, Inc. 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 Mary McAuliffe, Associate Region Counsel, at (312) 886-6237.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Marshall".

Sarah Marshall, Chief
Air Enforcement and Compliance Assurance Branch

Enclosure

cc: Ann Coyle, Regional Judicial Officer/ C-14J
Regional Hearing Clerk/ E-19J
Mary McAuliffe/ C-14J
Robert Hodanbosi/ Ohio Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) **Docket No. CAA-05-2018-0004**
)
WHEMCO-Ohio Foundry Inc.) **Proceeding to Assess a Civil Penalty**
Lima, Ohio,) **Under Section 113(d) of the Clean Air Act,**
) **42 U.S.C. § 7413(d)**
Respondent.)
_____)

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 WHEMCO-Ohio Foundry, Inc., a corporation doing business in Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. On March 5, 2013, EPA issued a Notice of Violation and Finding of Violation to Respondent.

9. For the purpose of this proceeding, 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

10. On March 10, 2003, EPA approved Ohio Administrative Code 3745-31-02(A) as part of the federally enforceable state implementation plan (SIP) for Ohio. *See* 68 Fed. Reg. 2909.

11. OAC 3745-31-02(A) prohibits the installation, modification or operation of a source of air pollution without first obtaining a Permit-to-Install and Operate (PTIO) from the Ohio Environmental Protection Agency (Ohio EPA).

12. Under Section 112 of the CAA, on January 2, 2008, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Iron and Steel Foundries Area Sources at 40 C.F.R. §§ 63.10880 through 63.10906 (Subpart ZZZZZ). *See* 73 Fed. Reg. 252.

13. The owner or operator of an existing affected facility was required to comply with the requirements of 40 C.F.R. §§ 63.10880 through 63.10906 beginning in January 2009 absent an extension of the compliance date.

14. The NESHAP for Iron and Steel Foundries Area Sources (Foundry NESHAP) applies to foundry operations at Respondent's facility and includes five electric induction furnaces (EIFs), a spin caster and a metal inoculation station.

15. The Foundry NESHAP requires a facility to prepare and operate according to written material specifications, procure motor vehicle scrap pursuant to the specified compliance options, operate a capture and collection system for large foundries if necessary to meet emission limits as specified in the Foundry NESHAP, conduct inspections and testing, maintain records, and submit notifications to EPA as required by the Foundry NESHAP.

16. 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.

17. 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

18. Respondent WHEMCO-Ohio Foundry, Inc. owns and operates five EIFs at 1600 McLain Street, Lima, Ohio. The EIFs are identified as EIFs 2, 3, 4, 5 and 6.

19. On May 17, 2017, Respondent completed a performance test demonstrating its EIFs complied with emission limitations applicable to a large foundry under the Foundry NESHAP without a capture and collection system.

20. EPA alleges that from February 1, 2008, through September 28, 2012, Respondent has installed, modified and operated sources of air pollution without first obtaining a PTIO from the Ohio EPA in violation of OAC 3745-31-02(A), and Section 113 of the CAA. This violation has been resolved such that no continuing violation exists.

21. EPA alleges that Respondent violated the Foundry NESHAP, as follows:

- a. From January 2, 2009 through May 18, 2012, Respondent failed to prepare and operate according to written general material acceptance specifications as required by 40 C.F.R. § 63.10885(a);
- b. From January 2, 2009 through May 18, 2012, Respondent failed to maintain records demonstrating compliance with the specifications in 40 C.F.R. § 63.10885(a), as required by 40 C.F.R. § 63.10899(b)(1);
- c. From January 4, 2010 through May 18, 2012, Respondent failed to comply with one of four mercury management practices as required by 40 C.F.R. § 63.10885(b);
- d. From January 4, 2010 through May 18, 2012, Respondent failed to maintain records demonstrating compliance with 40 C.F.R. § 63.10885(b) as required by 40 C.F.R. § 63.10899(b)(2) and/or (3);
- e. From July 1, 2011 through May 17, 2017, Respondent failed to demonstrate compliance with applicable PM and/or metal HAP and opacity emission limits as required by 40 C.F.R. § 63.10898;
- f. From January 1, 2012 through September 1, 2015, Respondent failed to conduct subsequent opacity testing every six months after an initial opacity test as required by 40 C.F.R. § 63.10898(i);
- g. From January 2, 2009 through May 18, 2012, Respondent failed to submit a Notification of Size Classification as required by 40 C.F.R. § 63.10899(d); and
- h. Respondent failed to submit the following notifications required by 40 C.F.R. § 63.10900(b) and Table 4 until May 18, 2012:
 - (1) Initial notification by May 1, 2008;
 - (2) Notification of Compliance – Metallic Scrap Management/Binder Formulation by February 1, 2009; and
 - (3) Notification of Compliance – Mercury Requirements by February 3, 2010.

These violations have been resolved such that no continuing violations exist.

Civil Penalty

22. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e) and the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is \$200,000.

23. Within 30 days after the effective date of this CAFO, Respondent must pay a \$200,000 civil penalty by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the Fedwire message should read:
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

24. 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 (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

Mary McAuliffe (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

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

26. 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.

27. 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 Provisions

28. 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 valid e-mail addresses: mcauliffe.mary@epa.gov (for Complainant), and jhribar@whemco.com with a copy to douglas.mcwilliams@squirepb.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

29. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in EPA's March 5, 2013 Notice of Violation and Finding of Violation and this CAFO.

30. 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.

31. 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 29, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

32. Respondent certifies that it is complying fully with the Ohio SIP permitting requirements and the Foundry NESHAP.

33. 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).

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

35. 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.


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

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

In the Matter of: WHEMCO-Ohio Foundry, Inc.:

WHEMCO-Ohio Foundry, Inc., Respondent

12-12-17
Date

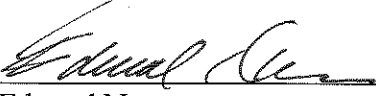


John Hribar, President
WHEMCO-Ohio Foundry, Inc.

In the Matter of: WHEMCO-Ohio Foundry, Inc.:

United States Environmental Protection Agency, Complainant

12/20/17
Date



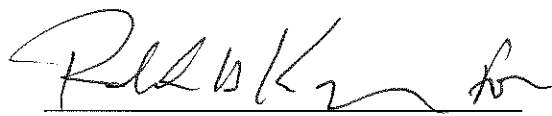
Edward Nam
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: WHEMCO-Ohio Foundry, Inc.
Docket No. CAA-05-2018-0004

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.

12/27/17
Date


Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Whemco Ohio Foundry, Inc. of Lima, Ohio
Docket Number: CAA-05-2018-0004

CERTIFICATE OF SERVICE


I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number [CAA-05-2018-0004], which was filed on [12/29/2017], in the following manner to the following addressees:

Copy by Certified Mail to Respondent: John J. Hirbar
President
Whemco Ohio Foundry, Inc.
1600 McClain Road
Lima, OH 45804

Copy by E-mail to Attorney for Complainant: Mary McAuliffe
mcauliffe.mary@epa.gov

Copy by E-mail to Attorney for Respondent: Douglas McWilliams
douglas.mcwilliams@squirepb.com

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: December 29, 2017 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7009 1680 0000 7662 7160