

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2022-0029
)	
Niagara LaSalle Corporation)	Proceeding to Assess a Civil Penalty
Hammond, Indiana,)	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 Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Niagara LaSalle Corporation (“NLC” or “Respondent”), a corporation doing business in 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 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. The 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. The Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO. NLC neither admits nor denies the factual allegations in the Notices of Violation dated May 7, 2019 and June 30, 2020 (2019 NOV and 2020 NOV, respectively.)

8. The 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. 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 promote public health and welfare and the productive capacity of its population.

10. 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. 46 Fed. Reg. 54943.

11. 326 IAC 1-2-27 defines "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 emission points shall be considered a facility for the purpose of this rule."

12. 326 IAC 1-2-73 defines "source" as "an aggregation of one (1) or more stationary emissions units that are located on one (1) piece of property or on contiguous or adjacent

properties are owned or operated by the same person (or by persons under common control) and belong to a single major industrial grouping.”

13. On March 22, 2006, EPA approved 326 IAC Article 6.8, Particulate Matter Limitations for Lake County, including Rule 10, as part of the federally enforceable SIP for Indiana. 71 Fed. Reg. 14383. Rule 10 sets forth requirements for controlling fugitive particulate matter (PM) emissions in Lake County.

14. On April 30, 2008, EPA approved revisions to 326 IAC Article 6.8, Particulate Matter Limitations for Lake County, including Rule 1, below, as part of the federally enforceable SIP for Indiana. 73 Fed. Reg. 23356.

15. On June 17, 2014, EPA approved further revisions to 326 IAC Article 6.8, Rule 1, Sections 1 and 2 (326 IAC 6.8-1-1 and 326 IAC 6.8-1-2) as part of the federally enforceable SIP for Indiana. 79 Fed. Reg. 34435.

16. 326 IAC 6.8-1-1 states that sources or facilities located in Lake County shall comply with particulate matter (PM) emission limits specified under Article 6.8.

17. 326 IAC 6.8-1-2(a) states that PM emissions from facilities located in Lake County, that are not otherwise limited by 326 IAC 6.8-1-2(b) through (h), shall not exceed 0.03 grain per dry standard cubic foot (gr/dscf).

18. 326 IAC 6.8-1-1 states that sources or facilities located in Lake County shall comply with PM emission limits and meet the requirements specified under Article 6.8, including Rule 10.

19. 326 IAC 6.8-10-1(a) applies to the following “facilities and operations at a source having the potential to emit five (5) tons per year fugitive PM into the atmosphere in Lake

County: (A) Paved roads and parking lots; (B) Unpaved roads and parking lots; ...and (H) Any other facility or operation with a potential to emit fugitive PM and not included in this section.”

20. 326 IAC 6.8-10-2(1) defines “affected facilities” as “the sources of fugitive emissions listed in section 1(a) of this rule.”

21. 326 IAC 6.8-10-2(9) defines “fugitive PM” as “any PM emitted into the atmosphere other than through a stack.”

22. 326 IAC 6.8-10-2(14) defines “paved road” as “an asphalt or concrete surfaced thoroughfare or right-of-way designed or used for vehicular traffic.”

23. 326 IAC 6.8-10-2(21) defines “unpaved road” as “a thoroughfare or right-of-way other than a paved road designed or used for vehicular traffic.”

24. 326 IAC 6.8-10-3(1) states that, “For paved roads and parking lots, the average instantaneous opacity of fugitive particulate emissions from a paved road shall not exceed ten percent (10%). A source shall implement the control measures specified by section 4(3)(F) of this rule within twenty-four (24) hours after notification by the department or the U.S. EPA of violating the average instantaneous opacity limit.”

25. 326 IAC 6.8-10-3(2) states that, “The average instantaneous opacity of fugitive particulate emissions from an unpaved road shall not exceed ten percent (10%). The fugitive particulate emissions from unpaved roads shall be controlled by the implementation of a work program and work practice under the control plan required in section 4 of this rule.”

26. 326 IAC 6.8-10-4(1) states that “a source to which this rule applies shall submit a control plan that, when fully implemented, will achieve compliance with the applicable emission limitations stated in section 3 of this rule.”

27. 326 IAC 6.8-10-4(2) states that “a control plan, upon submittal to the department, shall become part of a source’s operating permit or registration conditions.”

28. 326 IAC 6.8-10-4(3) states that control plans shall include “the following information: ... (A) The name and address of the following: (i) the source and location, if the source is located on another source's property; (ii) if different from that of the source, the owner or operator responsible for the execution of the plan. (B) Identification of the facilities or operations listed in section 1(a)(1) of this rule and those affected by 326 IAC 6.8-2 through 326 IAC 6.8-7 that exist at the source. (C) A map showing the location of all of the following: (i) unpaved roads, (ii) paved roads, (iii) parking lots... (D) A full description of the facilities on the map, including the following information, where applicable: (i) the road lengths and widths, average daily traffic, surface silt loading, classification of vehicle traffic, and other data necessary to estimate PM10 emissions from paved and unpaved roads and parking lots.... (E) The description of the proposed control measures and practices that the source will employ to achieve compliance with the emission limitations and data that prove its effectiveness. (F) A list of the conditions that will prevent control measures and practices from being applied and alternative control practices and measures that will achieve compliance with the emission limitations. (G) A schedule for achieving compliance with the provisions of the control plan.

29. 326 IAC 6.8-10-4(4) states that “the source shall keep the following documentation to show compliance with each of its control measures and control practices: (A) A map or diagram showing the location of all emission sources controlled, including the: (i) location; (ii) identification; (iii) length; and (iv) width of roadways. (B) For each application of water or chemical solution to roadways, the following shall be recorded: (i) the name and location of the roadway controlled; (ii) application rate; (iii) the time of each application; (iv) the

width of each application; (v) the identification of each method of application; (D) A log recording incidents when control measures were not used and a statement of explanation.

30. 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.

31. 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 Background – Violation of the 0.03 gr/dscf PM limit

32. NLC owns and operates a cold-finished steel processing facility ("Facility"), which includes the Wheelabrator No. 1 (East) and the Wheelabrator No. 2 (West) shot blasting operations (Wheelabrators), at 1412 150th Street, Hammond, Indiana in Lake County.

33. The Wheelabrators remove scale from steel bars and use a common cartridge filter system as control and exhaust to stack S-5.

34. The Wheelabrators are a facility as defined in 326 IAC 1-2-27.

35. The Wheelabrators are located in Lake County.

36. Emissions from the Wheelabrators are subject to the PM emissions limitations in the Indiana SIP at 326 IAC 6.8-1-2(a).

37. On December 21, 2017, EPA and the Indiana Department of Environmental Management (IDEM) inspected Niagara LaSalle's Facility.

38. On October 30, 2018, EPA issued a Request for Information under Section 114 of the CAA, which included a request for NLC to conduct an emissions test (Emissions Test) on the Wheelabrators.

39. On November 27, 2018, NLC provided EPA with the final test protocol for the Wheelabrators (Emissions Test).

40. On December 18, 2018, NLC conducted the Emissions Test.

41. On February 4, 2019, Niagara LaSalle provided EPA with a copy of Emissions Test final report. The reported three-run average PM emissions were 0.06 gr/dscf.

42. On May 7, 2019, EPA issued an NOV to NLC alleging violations of the PM emissions limit of the Indiana SIP.

Violation of the 0.03 gr/dscf PM limit

43. NLC's PM emissions from the Emissions Test exceeded the 0.03 gr/dscf emissions limitation specified in 326 IAC 6.8-1-2(a), in violation of the Indiana SIP.

Factual Background – Violation of the Fugitive Dust Control Plan Requirements

44. According to Minor Source Operating Permit (MSOP) Number 089-38175-00220, which IDEM issued to NLC on November 3, 2017, and most recently amended on December 4, 2019, the operations of the NLC Facility (specifically the paved roads) have the potential to emit five tons per year of fugitive emissions into the atmosphere.

45. During the December 21, 2017 inspection referenced above, while a semi-truck was exiting the plant through a bay door on the north side of the NLC Facility and traversing a paved road that intersects 150th Street (North Exit), an EPA inspector observed fugitive PM from

the North Exit. The EPA inspector communicated this observation to Facility personnel during the closing conference.

46. On June 6, 2019, representatives from EPA and NLC met to discuss a Notice of Violation that EPA had issued to NLC on May 7, 2019. During this conference, EPA requested that NLC provide copies of any records maintained pursuant to 326 IAC 6.8-10-4(4) for the period January 2018 through June 2019.

47. NLC indicated in its response received by EPA on July 8, 2019 (Response) that it did not apply water, chemical solution, or other material to roadways at the NLC Facility from January 2018 through June 2019, and that it did not have any records to provide pursuant to 326 IAC 6.8-10-4(4)(B) or (C).

Violations of the Fugitive Dust Plan Requirements of the Indiana SIP

48. NLC failed to identify in its Fugitive Dust Control Plan (FDCP) all the facilities or operations listed in 326 IAC 6.8-10-1(a) and those affected by 326 IAC 6.8-2 through 326 IAC 6.8-7 that exist at the NLC Facility, in violation of 326 IAC 6.8-10-4(3)(B). Specifically, the FDCP identified only paved roads, whereas unpaved roads and parking lots also exist at the NLC Facility.

49. NLC failed to include a map in the FDCP that shows the location of all unpaved roads, paved roads, and parking lots, in violation of 326 IAC 6.8-10-4(3)(C). Additionally, the map that Niagara LaSalle provided to EPA in its Response failed to show the location of all emission sources controlled, including the: (i) location; (ii) identification; (iii) length; and (iv) width of roadways, in violation of 326 IAC 6.8-104(4)(A).

50. NLC failed to include in the FDCP a full description of the paved and unpaved roads and parking lots, in violation of 326 IAC 6.8-10-4(3)(D).

51. NLC failed to include in the FDCP a description of the proposed control measures and practices, for unpaved roads and parking lots, that the NLC will employ to achieve compliance with the emission limitations and data that prove its effectiveness, failed to specify the methods of dust control listed in the FDCP, and used the undefined term, “as needed” for water application, which is too vague to be meaningful, to describe the ‘frequency or quantity of application necessary to minimize visible PM emissions, in violation of 326 IAC 6.8-10-4(3).

52. NLC failed to include in the FDCP a list of the conditions that will prevent control measures and practices from being applied and alternative control practices and measures that will achieve compliance with the emission limitations, in violation of 326 IAC 6.8-10-4(3)(F).

53. NLC failed to maintain a log recording incidents when control measures were not used and a statement of explanation, in violation of 326 IAC 6.8-10-4(4)(D).

Civil Penalty

54. 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 \$ 96,730.02.

55. Within 30 days after the effective date of this CAFO, Respondent must pay a total \$ 96,730.02 civil penalty by ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

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

56. Respondent must send a notice of payment that states each Respondent's name and the docket number of this CAFO to EPA at the following addresses when Respondents pay the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Susan Tennenbaum
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
tennenbaum.susan@epa.gov

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

58. 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.

59. 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 attorney's 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

60. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: tennenbaum.susan@epa.gov (for Complainant), and Cynthia.Faur@quarles.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

62. 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.

63. This CAFO does not affect each Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 61, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

64. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine the Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

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

66. 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.

67. Each party agrees to bear its own costs and attorney's fees in this action.

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

**Consent Agreement and Final Order
In the Matter of: Niagara LaSalle Corporation**

Niagara LaSalle Corporation, Respondent

September 15, 2022

Date

Michael Salamon

Michael Salamon
President
Niagara LaSalle Corporation

**Consent Agreement and Final Order
In the Matter of: Niagara LaSalle Corporation**

United States Environmental Protection Agency, Complainant

Date

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2022.09.29
10:27:38 -05'00'

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: Niagara LaSalle Corporation
Docket No. CAA-05-2022-0029

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 COYLE Digitally signed by ANN
COYLE
Date: 2022.09.29
15:20:20 -05'00'

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