



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

NOV 09 2016

REPLY TO THE ATTENTION OF:

VIA E-MAIL: azwick@freeborn.com

Dear Ms. Zwick:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Imperial Zinc Corp., docket no. CAA-05-2017-0003. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on November 9, 2016.

Pursuant to paragraph 56 of the CAFO, Imperial Zinc Corp. must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Cathleen Martwick, Office of regional Counsel, 312-886-7166.

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/C-14J
Regional Hearing Clerk/E-19J
Cathleen Martwick/C-14J
Yasmine.Keppner-Bauman/Yasmine.Keppner-Bauman@Illinois.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Imperial Zinc Corp.
Chicago, Illinois

Respondent.



Docket No. CAA-05-2017-0003

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air Act,
42 U.S.C. § 7413(d)

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 Imperial Zinc Corp. (Imperial or Respondent), 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.

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. 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

The National Emission Standards for Hazardous Air Pollutants

9. Section 112(c) of the CAA, 42 U.S.C. § 7412(c), requires EPA to promulgate a list of all categories and subcategories of new and existing “area sources” of hazardous air pollutants (HAP), as defined by 42 U.S.C. § 7412(a)(1), and establish emission standards for the categories and subcategories. These emission standards are known as the National Emission Standards for Hazardous Air Pollutants (NESHAP).

10. 40 C.F.R. Part 63, Subpart A, contains the general provisions for the NESHAPs.

11. 40 C.F.R. § 63.6(e)(1)(i) states in part, “at all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.”

12. Under Section 112 of the CAA, U.S.C. 42 § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources (NESHAP Subpart TTTTTT) at 40 C.F.R. §§ 63.11462 through 63.11474. NESHAP Subpart TTTTTT applies to the owner or operator of a secondary nonferrous metals processing facility as defined in 40 C.F.R. § 63.11472.

13. 40 C.F.R. § 63.11465(b) requires the owner/operator to route the emissions from each new affected source through a fabric filter or baghouse that achieves a particulate matter (PM) control efficiency of at least 99.5 percent or an outlet PM concentration limit of 0.023 g/dscm (0.010 gr/dscf).

14. 40 C.F.R. § 63.11466(a) requires the owner/operator of an existing or new affected source to conduct a performance test for each affected source within 180 days of the compliance date and report the results in a Notification of Compliance Status.

15. 40 C.F.R. § 63.11467(a) requires the owner/operator to demonstrate initial compliance with the applicable standards in 40 C.F.R. § 63.11465 by submitting a Notification of Compliance Status.

16. 40 C.F.R. § 63.11467(b) requires the owner/operator to conduct an initial baghouse inspection specified in 40 C.F.R. § 63.11467(c) and include the results of the inspection in the Notification of Compliance Status.

17. 40 C.F.R. § 63.11469(a) requires the owner/operator to submit an Initial Notification required by 40 C.F.R. § 63.9(b)(2) no later than 120 days after the applicable compliance date specified in 40 C.F.R. § 63.11464. The Initial Notification must include the information specified in 40 C.F.R. § 63.9(b)(2)(i) through (iv).

18. 40 C.F.R. § 63.11469(c) provides that if the owner/operator is required to conduct a performance test under 40 C.F.R. § 63.11466, the owner/operator must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th day following the completion of the performance test.

19. 40 C.F.R. § 63.11468(c) requires the owner/operator to install, operate, and maintain a bag leak detection system (BLDS) for each new affected source.

The Illinois State Implementation Plan and Permits to Install

20. Under Section 110 of the CAA, 42 U.S.C. § 7410, each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards. Upon approval by EPA, the plan becomes part of the applicable State Implementation Plan (SIP) for the state.

21. On May 31, 1972, EPA approved Illinois Pollution Control Board (IPCB) Rule 103(a) and 103(b) as part of the federally enforceable SIP of the State of Illinois. 37 Fed. Reg. 10,862. IPCB Rule 103(a) has been recodified at 35 Ill. Admin. Code § 201.142. IPCB Rule 103(b) has been recodified at 35 Ill. Admin. Code § 201.143.

22. The Illinois SIP at Rule 103(a)(1) [35 Ill. Admin. Code § 201.142] provides that no person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source of air pollution equipment, without first obtaining a construction permit from the Illinois Environmental Protection Agency (IEPA).

23. The Illinois SIP at Rule 103(b)(1) [35 Ill. Admin. Code § 201.143] provides that no person shall cause or allow the operation of any emission source or new air pollution control equipment, for which a construction permit is required, without first obtaining an operating permit from IEPA.

24. 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 through December 6, 2013 and \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through 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.

25. 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.

26. 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

27. Imperial owns and operates a secondary zinc processing plant located at 1031 East 103rd Street, Chicago, Illinois 60628 (the Facility).

28. Imperial operates four pot furnaces (Pot Furnaces #1 - 4) and two rotary furnaces (Rotary Furnace #1 - 2) that process secondary zinc at the Facility ("NESHAP Subpart TTTTTFurnaces").

29. Emissions from NESHAP Subpart TTTTTFurnaces are vented to a baghouse.

30. The baghouse was constructed in November 2010. Pot Furnaces #1 - 4 were constructed in late 2011 to early 2012. Rotary Furnace #1 was constructed in late 2012 and Rotary Furnace #2 was installed in early 2014.

31. NESHAP Subpart TTTTTFurnaces are new affected sources, as defined by NESHAP Subpart TTTTTF.

32. On March 11, 2014, EPA conducted an inspection at the Facility and observed, among other things, that the manometer measuring differential pressure at the baghouse was not operating.

33. EPA followed up the inspection with emails dated March 11, 2014 and April 2, 2014.

34. Imperial provided responses to EPA's emails on March 27, 2014 and on April 9, 2014.

35. The emails indicated that Imperial had not conducted a performance test on the baghouse since it was constructed in November 2010, Imperial had not submitted a Notification of Compliance Status pursuant to 40 C.F.R. § 63.11467(a), Imperial had not installed a bag leak detection system on the baghouse, Imperial had not submitted an application for a construction permit to IEPA for the furnaces and baghouse that were constructed at the Facility between 2010 and 2014, and that Imperial had operated the furnaces and baghouse that were constructed at the Facility between 2010 and 2014 without first obtaining an operating permit from IEPA for the new emission units and new air pollution control equipment.

36. On June 19, 2014, Stack Test Group, Inc. conducted a PM performance test on the NESHAP Subpart TTTTTT Furnaces at the Facility (June 2014 Performance Test). During the June 2014 Performance Test, Imperial operated the NESHAP Subpart TTTTTT Furnaces at maximum capacity which would result in the highest emission levels, although the facility has not and does not expect to operate at max capacity frequently.

37. EPA inspectors attended the June 2014 Performance Test and observed uncaptured emissions at Pot Furnaces #1 – 4 and Rotary Furnace #2 during the performance test.

38. The average emission rate for PM (filterable) during the June 2014 Performance Test was 0.0200 gr/dscf and the baghouse had a control efficiency of 92.3%.

39. In September 2014, Stack Test Group, Inc. conducted a PM performance test on the NESHAP Subpart TTTTTT Furnaces at the Facility (September 2014 Performance Test).

40. The average emission rate for PM (filterable) during the September 2014 Performance Test was 0.0039 gr/dscf.
41. EPA inspectors attended the September 2014 Performance Test and observed uncaptured emissions at Pot Furnaces #1 – 4 during the performance test.
42. In October 2014, Imperial installed and began operating and maintaining a bag leak detection system in accordance with 40 C.F.R. § 63.11468(c).
43. Between September 2014 and December 2015, Imperial made improvements to its PM emissions capture system and baghouse.
44. In December 2015, Stack Test Group, Inc. conducted a PM performance test on the NESHAP Subpart TTTTTT Furnaces at the Facility (December 2015 Performance Test).
45. The average emission rate for PM (filterable) during the December 2015 Performance Test was 0.0020 gr/dscf.
46. In May 2016, Imperial submitted a Notification of Compliance Status pursuant to NESHAP Subpart TTTTTT.

Alleged Violations

47. By failing to conduct a performance test for each affected source, Imperial violated the testing requirements at 40 C.F.R. § 63.11466(a) from December 2011 through June 2014.
48. By failing to submit a Notification of Compliance Status demonstrating compliance with the PM emission limit at 40 C.F.R. § 63.11465(b), Imperial violated initial compliance demonstration requirements at 40 C.F.R. § 63.11467(a) from September 2012 through May 2016.

49. By failing to install, operate, and maintain a bag leak detection system on the baghouse, Imperial violated the monitoring requirements at 40 C.F.R. § 63.11468(c) from April 2011 through October 2014.

50. By failing to operate the manometer measuring differential pressure at the baghouse, Imperial violated the requirement to operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with good air pollution control practices at 40 C.F.R. § 63.6(e)(1)(i) from March 2014 through December 2015.

51. By failing to obtain a construction permit for the new emission sources and new air pollution control equipment installed between 2010 and 2014, Imperial violated the permitting requirements at 35 Ill. Admin. Code § 201.142 from April 2011.

52. By operating furnaces and baghouse constructed at the Facility between 2010 and 2014 without first obtaining an operating permit from IEPA for the new emission units and new air pollution control equipment, Imperial violated the permitting requirements at 35 Ill. Admin. Code § 201.143 from April 2011.

53. By failing to achieve either the 0.010 gr/dscf concentration limit or a PM control efficiency of at least 99.5 percent during the June 2014 Performance Test on the baghouse controlling emissions from the NESHAP Subpart TTTTTT Furnaces, Imperial violated the emission standards at 40 C.F.R. § 63.11465(b) from June 2014 to September 2014.

54. By failing to route emissions from melting operations at Pot Furnaces #1 – 4 and Rotary Furnace #2 through a baghouse, as demonstrated by visible emissions escaping hoods during the June 2014 Performance Test, Imperial violated the emission standards at 40 C.F.R. § 63.11465(b) from June 2014 to December 2015.

Civil Penalty

55. 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, cooperation, and inability to pay, Complainant has determined that an appropriate civil penalty to settle this action is \$25,000.

56. Within 30 days after the effective date of this CAFO, Respondent must pay a \$25,000 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 Respondent's name and the docket number of this CAFO.

57. 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

Cathleen Marwick (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

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

59. 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.

60. 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

61. 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 e-mail addresses: Martwick.cathleen@epa.gov (for Complainant), and azwick@freeborn.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

63. 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.

64. 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 62, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

65. Respondent certifies that it is complying fully with the Subpart TTTTTT.

66. 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).

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

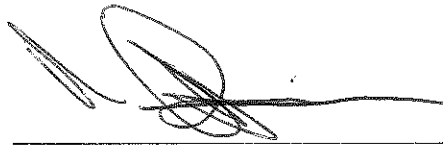
68. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

Imperial Zinc Corp., Respondent

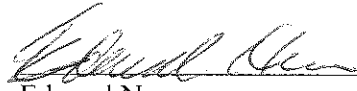
10/26/16
Date



David Kozin, President
Imperial Zinc Corp.

United States Environmental Protection Agency, Complainant

11/7/16
Date




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

Consent Agreement and Final Order
In the Matter of: Imperial Zinc Corp.
Docket No. CAA-05-2017-0003

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.

November 8, 2016
Date



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

Consent Agreement and Final Order
In the matter of: Imperial Zinc Corp.
Docket Number: **CAA-05-2017-0003**


CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2017-0003, which was filed on November 9, 2016, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant: Cathleen Martwick
martwick.cathleen@epa.gov

Copy by E-mail to
Attorney for Respondent: Ann Zwick
azwick@freeborn.com

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

Dated: November 9, 2016 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5