UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	Docket No. CAA-05- 2002-0011
	)	
IFCO ICS-Chicago, Inc. Chicago, Illinois	)	Consent Agreement and Final Order
	)	
Respondent.	)	
	)	
	)	

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Consent Agreement and Final Order

I. Statutory Authority and Jurisdiction

1. This is a civil administrative action instituted and settled pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.34 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is IFCO ICS-Chicago, Inc. (IFCO), a corporation doing business in Illinois.

4. Under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to $27,500 per day of violation, up to a total of $220,000, for violations of the Act that

occurred on or after January 31, 1997.

4. Section 114 of the Act, 42 U.S.C. § 7414, provides that the Administrator (or delegated authority) may require that any person who owns or operates an emission source, on a one-time, periodic or continuous basis, provide information which the Administrator may reasonably require to carry out any provision of the Act.

II. Regulatory Background

5. On March 7, 1995, U.S. EPA gave the Illinois Title 5 Clean Air Act Permit Program (CAAPP) interim approval as a 40 C.F.R. Part 70 permit program under the authority of Section 502 of the Act, 42 U.S.C. § 7661(a) (60 Fed. Reg. 12478). On December 4, 2001, U.S. EPA gave the Illinois Title 5 CAAPP final approval as a 40 C.F.R. Part 70 permit program (66 Fed. Reg. 62946). The regulation at 40 C.F.R. § 70.6(b)(1) specifies that all terms and conditions in a permit issued under a Part 70 program are enforceable by U.S. EPA under the Act.

6. On October 21, 1996, U.S. EPA approved 35 Ill. Admin. Code Part 218, Subpart TT (Other Emission Units) and 35 Ill. Admin. Code Part 218, Subpart UU (Recordkeeping and Reporting) as part of the federally enforceable volatile organics material (VOM) state implementation plan (SIP) for Illinois (61 Fed. Reg. 54556). These rules became effective November 20, 1996.

7. On September 9, 1994, U.S. EPA approved 35 Ill. Admin. Code Part 218, Subpart F (Coating Operations) as part of the federally enforceable VOM emissions SIP for Illinois (59 Fed. Reg. 46562). On February 13, 1996, U.S. EPA approved a SIP

revision request to tighten the existing rules for certain surface coating operations at 35 Ill. Admin. Code Part 218, Subpart F (61 Fed. Reg. 5511). These rules became effective April 15, 1996.

8. 35 Ill. Admin. Code § 218.204 (Subpart F) requires that no owner or operator of a coating line shall apply any coating in which the VOM content exceeds the following limitations, as applied:

> miscellaneous metal parts and products coating, extreme performance coatings baked: 3.3 lb VOM/gal of coating (minus water and any compounds which are specifically exempted from the definition of VOM).

9. 35 Ill. Admin. Code § 218.211(a) (Subpart F) requires that the VOM content of each coating shall be determined by the applicable test methods and procedures specified in 35 Ill. Admin. Code § 218.105 (U.S. EPA Reference Methods 24 and 24A of 40 C.F.R. Part 60, Appendix A) to establish the required records.

10. On October 21, 1996, U.S. EPA approved 35 Ill. Admin. Code Part 218, Subpart PP (Miscellaneous Fabricated Product Manufacturing Processes), as part of the federally enforceable VOM SIP for Illinois (61 Fed. Reg. 54556). The rule became effective November 20, 1996.

11. On October 21, 1996, U.S. EPA approved 35 Ill. Admin. Code Part 218, Subpart UU (Recordkeeping and Reporting), as part of the federally enforceable VOM SIP for Illinois (61 Fed. Reg 54556). The rule contains recordkeeping and reporting requirements pertaining to sources subject to 35 Ill. Admin. Code Part 218, Subparts PP and TT. The rule became effective November

20, 1996.

12. 35 Ill. Admin. Code § 218.991(b) (Subpart UU) requires that IFCO collect and record all of the following information each day for each lid gasket glue line and maintain the information at the source:

i. The name and identification number of each coating as applied on each coating line;

ii. The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line; and

iii. The daily-weighted average VOM content of all coatings as applied on each coating line.

13. On May 31, 1972, U.S. EPA approved Illinois PCB Rules 101 and 102, as part of the Illinois SIP. Due to re-codification, Illinois PCB Rules 101 and 102 are currently set forth at 35 Ill. Admin. Code §§ 201.102 and 201.141, respectively.

14. Illinois PCB Rule 102 (35 Ill. Admin. Code § 201.141) requires that no person 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, or so as to violate air pollution regulations.

15. Illinois PCB Rule 101 (35 Ill. Admin. Code § 201.102) defines air pollution as the presence in the atmosphere of one or more 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.

III. Factual Allegations

16. IFCO owns and operates a drum reconditioning facility at 2300 West 13th Street, Chicago, Illinois (the Facility).

17. Emissions from IFCO's drum furnace operation are subject to 35 Ill. Admin. Code Part 218, Subparts TT and UU in the Illinois SIP.

18. On August 27, 2001, U.S. EPA issued a Request for Information under Section 114 of the Act, 42 U.S.C. § 7414, requiring IFCO to conduct VOM capture and destruction efficiency testing under 35 Ill. Admin. Code §§ 218.988 and 218.991(a)(4) and Section 114 of the Act, 42 U.S.C. § 7414, on the drum furnace operation to determine compliance with 35 Ill. Admin. Code § 218.986.

19. 35 Ill. Admin. Code § 218.988 (Subpart TT) and 35 Ill. Admin. Code § 218.991(a)(4) (Subpart UU) require that when U.S. EPA or Illinois Environmental Protection Agency (IEPA) believes it is necessary to conduct testing to demonstrate compliance with 35 Ill. Admin. Code § 218.986 (Subpart TT), the owner or operator of the VOM emission unit subject to the requirements of Subpart TT shall conduct such tests in accordance with the applicable test methods and procedures.

20. IFCO failed to conduct VOM capture and destruction efficiency testing on the drum furnace operation facility, or install a Permanent Total Enclosure (PTE), when requested under 35 Ill. Admin. Code §§ 218.988 and 218.991(a)(4) and Section 114 of the Act, 42 U.S.C. § 7414, in U.S. EPA's Request for

Information issued on August 27, 2001. This constitutes a violation of 35 Ill. Admin. Code §§ 218.988 and 218.991(a)(4) and Sections 110 and 114 of the Act, 42 U.S.C. §§ 7410, 7414.

21. Per an agreement with the City of Chicago, IFCO is installing a thermal oxidizer designed to control VOM emissions from its painting, spray booth, and curing oven operations. IFCO is also taking steps to optimize its drum furnace operations. These projects are not being implemented due to U.S. EPA's action. These projects will secure significant environmental benefit and public health protection and improvement.

22. On March 23, 2000, Illinois EPA issued IFCO (then known as Palex Container Systems) a Title 5 CAAPP permit under the Illinois Part 70 program for IFCO's Facility.

23. Emissions from IFCO's coating lines are subject to 35 Ill. Admin. Code Part 218, Subpart F in the Illinois SIP and the Title 5 permit issued to IFCO on March 23, 2000.

24. Emissions from IFCO's lid gasket adhesive operation are subject to 35 Ill. Admin. Code Part 218, Subparts PP and UU in the Illinois SIP and the Title 5 permit issued to IFCO on March 23, 2000.

25. IFCO's Title 5 CAAPP permit, Condition 7.3.9 requires that IFCO maintain the following records: monthly and aggregate annual particulate matter (PM) and VOM emissions from the affected furnaces based on the number of drums and lids/pails cleaned and the applicable emission factors, with supporting calculations.

26. IFCO applied the following miscellaneous metal parts

and products coating (extreme performance baked) which has a VOM content exceeding the limitation of 3.3 lb VOM/gal of coating (minus water and any compounds which are specifically exempted from the definition of VOM), in violation of 35 Ill. Admin. Code § 218.204 (Subpart F) and Condition 7.1.3.e. of IFCO's Title 5 CAAPP permit:

Sherwin Williams D & L Water Base (.5880):
3.49 lb/gal

27. IFCO failed to determine the VOM content of the following coatings by the applicable test methods and procedures (i.e., 40 C.F.R. Part 60, Appendix A Method 24 or 24A), in violation of 35 Ill. Admin. Code § 218.211(a) (Subpart F) and Condition 7.1.7 of IFCO's Title 5 CAAPP permit:

Sherwin Williams D & L Water Base (.5880)
Fed-R/F H/S (R1854)
Mor-H/S BR Phenolic (105R35)
Van Strattan D & L Water Base (.6019)

28. IFCO failed to collect and record all of the following information each day for each lid gasket glue line and maintain the information at the source, in violation of 35 Ill. Admin. Code § 218.991(b)(Subpart UU) and Condition 7.2.9 of IFCO's Title 5 CAAPP permit:

i. The name and identifcation number of each coating as applied on each coating line;

ii. The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line; and

iii. The daily-weighted average VOM content of all coatings as applied on each coating line.

29. On March 1, 2001, U.S. EPA inspected the IFCO facility. On March 17, 2001, IFCO submitted to U.S. EPA information

requested by U.S. EPA during the inspection pursuant to Section 114 of the Act, 42 U.S.C. § 7414.

30. During the March 1, 2001 inspection, IFCO did not have the following records: monthly and aggregate annual VOM emissions from the affected furnaces based on the number of drums and lids/pails cleaned and the applicable emission factors, with supporting calculations, in violation of its Title 5 permit, Condition 7.3.9.

31. IFCO allowed the emission of VOM and odors into the environment in sufficient quantities and of such characteristics and duration as to unreasonably interfere with the enjoyment of life or property, in violation of Illinois PCB Rule 102 (35 Ill. Admin. Code § 201.141).

32. On January 28, 2002, U.S. EPA issued a notice of violation to IFCO for the above listed violations of the Illinois SIP regulations and IFCO's Title 5 CAAPP permit conditions.

IV. Terms of Settlement

33. U.S. EPA and IFCO agree that the settlement of this matter is in the public interest, that the entry of this Consent Agreement and Final Order (CAFO) without filing a Complaint or engaging in further litigation is the most appropriate means of resolving this matter, and that the purpose of this CAFO is to ensure compliance with the Illinois SIP, Sections 110 and 114 of the Act, 42 U.S.C. §§ 7410, 7414, and the terms of this CAFO;

NOW, THEREFORE, before the taking of any testimony, upon the alleged violations, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby

ordered and adjudged as follows:

34. This settlement is pursuant to, and in accordance with, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

35. IFCO admits the jurisdictional allegations and neither admits nor denies the factual allegations in this CAFO.

36. IFCO consents to the issuance of this CAFO, and the penalty, as outlined in Section V of this CAFO.

37. IFCO consents to all of the conditions in this CAFO.

38. IFCO waives its right to a hearing as provided at 40 C.F.R. § 22.15(c).

39. IFCO waives any right to contest or appeal any issues related to the Consent Agreement or the Final Order that accompanies this Consent Agreement.

40. IFCO agrees that this CAFO shall apply to and be binding upon IFCO, its assigns and any successor in interest of IFCO's facility.

41. By signing this CAFO, IFCO certifies that it is in compliance with the requirements of its Title V permit, including Conditions 7.1.3.e, 7.1.7,7.2.9, 7.3.9, and Illinois SIP regulations: 35 Ill. Admin. Code § 218.204 (Subpart F), 35 Ill. Admin. Code § 218.211(a) (Subpart F), 35 Ill. Admin. Code § 218.991(b) (Subpart UU), 35 Ill. Admin. Code § 201.141, 35 Ill. Admin. Code § 201.102, 35 Ill. Admin. Code §§ 218.980-218.988 and 218.990-218.991. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Sections 110, 113 and 114 of the Act, 42 U.S.C. §§ 7410, 7413 and 7414, for the violations alleged in Section III of this CAFO.

Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to affect the right of U.S. EPA to pursue any criminal sanctions arising from the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any actions commenced after the Final Order is effective.

42. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

43. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

44. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

45. "Parties" shall mean U.S. EPA and IFCO.

V. Proposed Civil Penalty

46. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to such other factors ~~as~~ justice may require), the size of IFCO's business, the economic impact of the penalty on IFCO's business, IFCO's full compliance history and good faith efforts to comply, the duration of the violations, the economic benefit of noncompliance, and the seriousness of the violations. Based on an analysis of the above factors, including, IFCO's cooperation, prompt return to compliance, and IFCO's agreement with the City of Chicago to install a thermal oxidizer and optimize the drum furnace operation, U.S. EPA has determined that an appropriate civil

penalty to settle this action is twenty-five thousand dollars ($25,000).

47. IFCO must pay the $25,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

IFCO must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

48. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Cynthia A. King, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

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

50. If IFCO does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty

with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(4) of the Act, 42 U.S.C. § 7413(d)(4). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

51. Interest will accrue on any overdue amount from the date payment was due at a rate established under 26 U.S.C. § 6621(a)(2). IFCO will pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. IFCO will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

VI. General Provisions

52. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in Section III, above.

53. Nothing in this CAFO restricts U.S. EPA's authority to seek IFCO's compliance with the Act and other applicable laws and regulations.

54. This CAFO does not affect IFCO's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

55. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine IFCO's "full compliance history"

under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

VII. Signatories

Each undersigned representative of a Party to this Consent Agreement and Final Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to bind legally such Party to this document.

U.S. Environmental Protection Agency, Complainant

Date: 8/27/2002 By: _____

Stephen Rothblatt, Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5 (A-18J)

IFCO ICS-Chicago, Inc., Respondent

Date: 8/5/02 By: _____

Calvin G. Lee, ~~President~~ VP
IFCO ICS-Chicago, Inc.

CAA-05- 2002-0011

In the Matter of IFCO ICS-Chicago, Inc.
Chicago, Illinois

FINAL ORDER

It is so ORDERED, in the case of IFCO ICS-Chicago, Inc., Chicago, Illinois, as agreed to by the parties and as stated in the foregoing Joint Civil Administrative Complaint and Consent Agreement. This Final Order disposes of this matter pursuant to 40 C.F.R. § 22.18. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated: 8/28/02

for Thomas V. Skinner
Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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In the Matter of IFCO ICS-Chicago, Inc.
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CERTIFICATE OF SERVICE

I, Shanee, Rucker, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, docket number [ ] to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Consent Agreement and Consent Order by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent's Counsel, Respondent, and the State and local agencies by placing them in the custody of the United States Postal Service addressed as follows:

Mr. Eric E. Boyd
Legal Counsel for IFCO ICS-Chicago, Inc.
Seyfarth Shaw
55 East Monroe Street, Suite 4200
Chicago, Illinois 60603-5803

Robert Conway, Regional Manager
IFCO ICS-Chicago, Inc.
2300 West 13th Street
Chicago, Illinois 60608

Julie Armitage, Section Manager
Compliance and Systems Management Section
Illinois EPA
1021 North Grand Avenue
Springfield, Illinois 62702

In the Matter of IFCO ICS-Chicago, Inc.-continued
Docket No. CAA-05- 2002-0011.

Harish Narayen, Regional Manager
Region 1-IEPA
9511 Harrison
Des Plaines, Illinois 60016

on the 29th day of August, 2002.

Shanee Rucker

Shanee Rucker, Secretary
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9595 8989

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US ENVIRONMENTAL PROTECTION AGENCY
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REGIONAL HEARING CLERK