

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Tower Industries
Massillon, Ohio,

Respondent.

) Docket No. CAA-05-2004 0056
)

) CONSENT AGREEMENT AND
)

) FINAL ORDER
)

US ENVIRONMENTAL
PROTECTION AGENCY
REGION V

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REGIONAL HEARINGS
CLERK

I. AUTHORITY

1. The United States Environmental Protection Agency, Region 5 ("U.S. EPA" or "the Agency"), and Tower Industries, LLC, ("Tower" or "Respondent"), Massillon, Ohio, agree to resolve this matter before the filing of a Complaint. Therefore, this civil administrative action is simultaneously commenced and concluded pursuant to Sections 22.13(b) and 22.18(b) 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), 40 C.F.R. §§ 22.13(b) and 22.18(b).

II. JURISDICTION

2. Pursuant to Section 113(d) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(d) and 40 C.F.R. Part 22, U.S. EPA has the authority to seek a civil administrative penalty from

Respondent for its alleged violations of the Act, as described herein.

3. The Director of the Air and Radiation Division, U.S. EPA, Region 5, has been lawfully delegated authority for this matter under the Act.
4. The Respondent is Tower Industries, LLC, a limited liability company that was formed in the State of Ohio on March 1, 1995.
5. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

III. STATUTORY AND REGULATORY BACKGROUND

6. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to develop, and submit to U.S. EPA for approval, a State Implementation Plan ("SIP") for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards ("NAAQS") in each air quality control region within such state.
7. Section 110(a)(2) of the Act, 42 U.S.C. § 7410(a)(2), provides that each SIP must include a permit program to regulate the modification, construction and operation of any stationary source of air pollution. Pursuant to Section 113(a) and (b) of the Act, 42 U.S.C. § 7410(a) and (b), upon U.S. EPA approval, SIP requirements are federally enforceable by U.S. EPA.

8. The State of Ohio promulgated OAC Rule 3745-31-02(A) that provides that no person shall cause, permit, or allow the installation of a new source of air pollutants, or the modification of an air contaminant source, without first obtaining a Permit to Install from the director.
9. The State of Ohio also promulgated OAC Rule 3745-31-05 that provides that the director may impose such special terms and conditions as are appropriate or necessary to ensure compliance with the applicable laws and designate such terms and conditions in the Permit to Install.
10. On October 31, 1980, U.S. EPA approved OAC 3745-31 as part of the federally enforceable Ohio SIP. See 45 Fed. Reg. 72119.
11. Sections 113(a) and (d) of the Act, 42 U.S.C. § 7413(a) and (d), provide that U.S. EPA may issue an administrative penalty order against any person when U.S. EPA finds that such person has violated any requirement or prohibition of a SIP or has violated any requirement or prohibition of a permit approved under the Act.
12. 40 C.F.R. § 52.23 provides, among other things, that failure to comply with any approved regulatory provision of a SIP, or with any limitation or condition contained within a permit issued under an EPA-approved program that is incorporated into the SIP, shall render the person so

failing to comply in violation of a requirement of the SIP and subject to an enforcement action under Section 113 of the Act, 42 U.S.C. § 7413.

13. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. § 19.4, provide that 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 a SIP that occurred between January 31, 1997 and March 15, 2004.
14. Section 113(d)(1) limits the Administrator's authority to bring civil administrative penalty actions 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.
15. 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 Consent Agreement Final Order ("CAFO").

IV. GENERAL ALLEGATIONS

16. Tower operated a facility at 655 Third Street NW, Massillon, Ohio (the "Third Street facility").
17. Tower is in the business of manufacturing solid surface kitchen and bathroom fixtures using surface gel coat spraying and casting processes.
18. On September 13, 1995, the Ohio Environmental Protection Agency issued a Permit to Install ("PTI") to Tower, for its manufacturing operations at the Third Street facility.
19. Tower commenced operations in 1995 at the Third Street facility, after receiving its PTI from the State, and ceased operations there during November 2003, after it reportedly lost its lease on the building that housed the facility.
20. Tower subsequently purchased a building and, on December 8, 2003, relocated its manufacturing operations to this building, located at 2101 S. Ninth Street SW, Massillon, Ohio (the "Ninth Street facility").
21. On December 8, 2003, U.S. EPA conducted an inspection of Respondent's Ninth Street facility and determined that, from the day it commenced operations at the Third Street facility through the day it ceased operations there, Tower had not maintained daily records for operations at the Third Street facility, as required by its PTI.

22. U.S. EPA further determined during the December 8, 2003 inspection of Respondent's Ninth Street facility that, from the day it commenced operations at the Third Street facility through the day it ceased operations at that facility, Tower had not submitted any annual reports to the Canton City Health Department for its Third Street facility, as required by its PTI.
23. On May 27, 2004, U.S. EPA issued a Notice of Violation ("NOV") to Tower, indicating, among other things, that Tower had violated its PTI and the Ohio SIP, by failing to maintain daily records and failing to submit annual reports to the Canton City Health Department, for the Third Street facility.

V. VIOLATIONS

24. Complainant incorporates paragraphs 1 through 23 of this CAFO, as if set forth in this paragraph.
25. Parts 7 and 13 of Tower's PTI for the Third Street facility required, among other things, that Tower maintain daily records for the operations at the Third Street facility.
26. Parts 8 and 14 of Tower's PTI for the Third Street facility required, among other things, that Tower submit annual reports to the Canton City Health Department for the Third Street facility.

27. From approximately September 13, 1995 through mid-November 2003, Tower failed to maintain daily records for the Third Street facility.
28. Tower's failure to maintain daily records for the Third Street facility, constitutes violations of the requirements of its PTI, and the Ohio SIP at OAC 3745-31-05.
29. For an eight year period from 1995 through 2003, Tower failed to submit annual reports to the Canton City Health Department for the Third Street facility.
30. Tower's failure to submit annual reports to the Canton City Health Department for the Third Street facility, constitutes violations of the requirements of Tower's PTI, and the Ohio SIP at OAC 3745-31-05.

VI. TERMS OF SETTLEMENT

A. Stipulations

31. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations described herein.
32. Respondent waives its right to a hearing, waives any right to contest any issue of fact or law in this CAFO, waives any and all rights to judicial review of this agreement, and waives any and all rights to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. § 22.18.

33. Respondent certifies that it is complying fully with the Ohio SIP with regard to operations at its Ninth Street facility.
34. Respondent and U.S. EPA (jointly referred to as "the parties"), consent to the terms of this CAFO.
35. The parties desire to settle and compromise this action without a hearing or an adjudication of any fact or law and agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

B. Civil Penalty

36. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).
37. The Administrator has evaluated the facts and circumstances of this case, as alleged in this CAFO, and the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e). In particular, the Administrator has carefully considered Respondent's cooperation, good faith efforts to comply, as well as Respondent's documented financial inability to pay the initial calculated penalty of \$105,500, in determining that assessment of a \$1,500 civil administrative penalty in this matter is a fair and appropriate penalty amount to resolve this matter without litigation.

38. Respondent consents to the issuance of this CAFO and consents, for the purposes of settlement, to the payment of a \$1,500 civil penalty, as discussed in the foregoing paragraph.

39. Respondent must pay the \$1,500 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.

40. Respondent must send the check to:

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

41. 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, (R-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 Kawakami, (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

42. Respondent shall not deduct any penalty payment made pursuant to the provisions of this CAFO under any local, state or Federal tax law.
43. If Respondent does not pay timely 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)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
44. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Respondent 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.

VII. GENERAL PROVISIONS

45. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to the Act for the violations alleged herein.
46. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent.
47. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
48. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.
49. 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 Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).
50. The terms of this CAFO bind Respondent, its officers, directors, servants, employees, agents, successors and

assigns, including but not limited to, subsequent purchasers.

- 51. Each person signing this CAFO 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.
- 52. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CAFO.
- 53. This CAFO constitutes the entire agreement between the parties.
- 54. This CAFO is effective on the date of signature by the Acting Regional Administrator. This Order will expire one year from the effective date, if Tower has complied with all of its terms.

**U.S. Environmental Protection Agency,
Complainant**

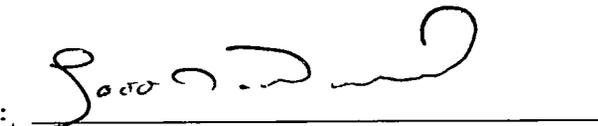
Date: 9/28/2004

By: 

Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5

Tower Industries, Respondent

Date: 9-22-2004

By: 

Todd D. Werstler,
Owner, Tower Industries LLC

CAA-05-2004 0056

CONSENT AGREEMENT AND FINAL ORDER

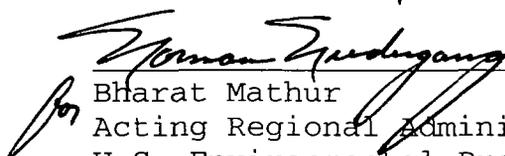
Tower Industries

Docket No. CAA-05-2004 0056

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Date: 9/28/04


Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2004 0056 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a correct copy by first-class, postage prepaid, certified mail, return receipt requested, to Todd Werstler by placing it in the custody of the United States Postal Service addressed as follows:

on the 30th day of September, 2004.

Loretta Shaffer
Loretta Shaffer
AECAS (MN/OH)

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REGIONAL HEARING
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SEP 30 12:06
US ENVIRONMENTAL
PROTECTION AGENCY
REGION 5
CERTIFIED MAIL RECEIPT NUMBER: 70010320000615585304