

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

CAA-05- 2003 -0 00 5

IN THE MATTER OF:

Formel Industries, Inc.  
Franklin Park, Illinois

Respondent.

) Docket No.  
)  
) CONSENT AGREEMENT AND  
) FINAL ORDER  
)  
)  
)  
)

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REGIONAL HEARING  
APR 21 12:30  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 5 OFFICE

**I. AUTHORITY**

The United States Environmental Protection Agency, Region 5 (U.S. EPA or "the Agency"), and Formel Industries, Inc. ("Respondent" or "Formel") have agreed to a settlement of this action before the filing of a complaint. Therefore, this action is simultaneously commenced and concluded under Rules 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**

1. This is a civil administrative penalty matter that is brought and resolved by U.S. EPA, under the authority vested in the Administrator of U.S. EPA by Section 113(a)(1)(B) of the Clean Air Act, 42 U.S.C. § 7413(a)(1)(B), (the "Act").
2. The Director of the Air and Radiation Division, U.S. EPA, Region 5 has been lawfully delegated authority for this matter under the Act.

3. Respondent is Formel Industries, Inc., an Illinois corporation, doing business in the State of Illinois.
4. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

### **III. STATUTORY AND REGULATORY REQUIREMENTS**

5. Section 109 of the Clean Air Act, 42 U.S.C. § 7409, required the Administrator of U.S. EPA to establish primary and secondary national ambient air quality standards (NAAQS) for the major air pollutants identified under Section 108 of the Act, 42 U.S.C. § 7408, and for which air quality criteria had been promulgated.
6. U.S. EPA promulgated NAAQS for ozone, among other pollutants. 40 C.F.R. § 50.9.
7. Section 107(d) of the Clean Air Act, 42 U.S.C. § 7407(d), required each state to designate those areas within its boundaries in which the air quality is better than the NAAQS, worse than the NAAQS, and/or unclassifiable due to insufficient data. An area that does not meet the NAAQS is known as a "non-attainment" area.
8. The State of Illinois has designated Cook County, where Respondent's Franklin Park facility is located, as a severe non-attainment area for ozone. U.S. EPA approved the State's designation. 40 C.F.R. § 81.314.
9. Section 110 of the Clean Air Act, 42 U.S.C. § 7410, required 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 NAAQS in each air quality control region within such state.
10. The State of Illinois, however, failed to submit an approvable SIP to U.S. EPA, and, subsequently, on June 1990, U.S. EPA promulgated the Chicago Ozone Federal

Implementation Plan (FIP), found at 40 C.F.R. § 52.741(h). The FIP required compliance by July 1, 1991.

11. The FIP applied to all flexographic printing lines that have total maximum theoretical emissions of VOM in excess of 100 tons per calendar year.
12. Subsequently, the State of Illinois developed the Organic Material Emission Standards and Limitations for the Chicago Area for Printing and Publishing, at 35 IAC, Part 218, Subpart H, as part of the federally enforceable SIP for the State of Illinois. *59 Fed. Reg.* 46562.
13. On September 9, 1994, U.S. EPA approved the State of Illinois SIP at 35 IAC Part 218.
14. The SIP at 35 IAC Part 218 became effective on October 11, 1994, and replaced the FIP on that date.
15. The SIP at 35 IAC Section 218.101 provides that nothing in Part 218 shall affect the responsibility of any owner or operator that is now or has been subject to the FIP to comply with its requirements thereunder by the dates specified in the FIP.
16. The FIP, at 40 C.F.R. § 52.741(h), and the SIP, 35 IAC Section 218.401 each provide that no owner or operator of a subject flexographic printing line shall apply at any time any coating or ink with a VOM content that exceeds forty percent (40%) VOM by volume of the coating and ink (minus water and any compounds which are specifically exempted from the definition of VOM), or twenty-five percent (25%) VOM by volume of the volatile content in the coating and ink.
17. In the alternative, the FIP, 40 C.F.R. § 52.741(h)(1)(iii), and the SIP, 35 IAC Section 218.401 provide that a regulated flexographic printing facility can achieve compliance

by demonstrating that its printing lines are equipped with a capture system or control device that meets all of the technical requirements as specified in the FIP and the SIP.

18. 40 C.F.R. § 52.23 provides, among other things, that failure to comply with any provision of 40 C.F.R. Part 52, or with any approved regulatory provision of a SIP, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Act.
19. 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 that occurred on or after January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).
20. 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.
21. 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 complaint. Formel has denied, and continues to deny, liability for an administrative penalty, but stipulates to the entry of this Order in order to avoid the expense and uncertainty of litigation.

#### **IV. GENERAL ALLEGATIONS**

22. Respondent owns and operates a flexographic printing plant, located at 2355 N. 25<sup>th</sup> Avenue, Franklin Park, Cook County, Illinois.
23. At all times relevant to this administrative action, Respondent operated three flexographic printing presses at its Franklin Park, Illinois facility that print images on cellophane or polypropylene films that are used in the food packaging industry.
24. Respondent's three printing presses exhaust VOM emissions to the ambient air, and eventually to the outside atmosphere via roof stacks.
25. Respondent has emitted more than 25 tons of VOM per year, since at least 1991, and has had the potential to emit 100 tons of VOM per year, and, thus, is subject to regulation under the Act.
26. On May 11, 1999, U.S. EPA representatives inspected Respondent's Franklin Park, Illinois facility. U.S. EPA discovered during the inspection that Respondent used inks in its printing process that had a VOM content that exceeded forty percent (40%) VOM by volume of the coating and ink (minus water and any compounds which are specifically exempted from the definition of VOM), or twenty-five percent (25%) VOM by volume of the volatile content in the coating and ink when calculated using the weighted average, by volume, of the VOM content of all coatings and inks as applied each day on the subject printing line. U.S. EPA representatives also observed during the inspection that Respondent did not have capture or control equipment on its printing press lines.
27. On August 3, 1999, U.S. EPA issued a Notice of Violation to Respondent, finding that from at least July 1, 1991 through August 3, 1999, Respondent had violated the Illinois

SIP at 35 IAC Section 218.402(a), (b), and (c), and the FIP at § 52.741(h). Formel denied U.S. EPA's allegations described in the Notice of Violation.

28. In or around 1999, Formel petitioned the Illinois Pollution Control Board for an Adjusted Standard, based on Formel's position that the Flexographic Printing Rule was not Reasonably Achievable Control Technology (RACT) for Formel's operations, and that Formel was unable to comply with the Flexographic Printing Rule as promulgated (for technical reasons, and not due to unlawful refusal).
29. On January 18, 2001, the Illinois Pollution Control Board granted Formel's Petition for an Adjusted Standard in Cause No. 00-013, finding, *inter alia*, that the Flexographic Printing Rule promulgated at 35 IAC, Section 218.401 was not Reasonably Achievable Control Technology for Formel and created an undue hardship on Formel, and ordered that Formel continue to investigate and report on alternative inks and methods.

## **V. TERMS OF SETTLEMENT**

### **A. Stipulations**

30. To avoid protracted litigation, and for the purposes of this proceeding only, Formel stipulates to the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in paragraphs 22 through 29, above.
31. Formel waives its right to contest the allegations in paragraphs 22 through 29, above, and waives its right to appeal these general allegations under Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. § 22.18.
32. Formel certifies that it has received an enforceable Adjusted Standard/Site Specific SIP revision from the Illinois Pollution Control Board on January 18, 2001, and that the

Adjusted Standard provides Formel with an alternative compliance method to comply with 40 C.F.R. § 52.741(h), and 35 IAC Section 218.401, and that U.S. EPA has formally approved the Adjusted Standard.

33. The parties consent to the terms of this consent agreement and final order (CAFO).
34. The parties desire to settle and compromise this action without a hearing or an adjudication of any fact or law. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

**B. Civil Penalty**

35. Respondent shall pay a \$14,643.75 civil administrative 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. This settlement amount is based on consideration of the circumstances of these violations, including Respondent's cooperation with U.S. EPA and willingness to perform a supplemental environmental project. Formel must send the check to:

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

Respondent shall accompany the payment with a transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number.

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

36. This civil penalty (\$14,643.75) is not deductible for federal tax purposes.
37. If Formel does not pay timely the civil penalty due under paragraph 35, above, and/or any stipulated penalties due under paragraph 50, below, U.S. EPA may bring an action to collect any unpaid portion of the penalties 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 any such collection action.
38. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 C.F.R. § 901.9(b). Formel will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Formel 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.

**C. Supplemental Environmental Project**

39. Formel must complete a supplemental environmental project (SEP), designed to reduce pollution through source reduction, by installing, maintaining, and operating a thermal oxidizer.
40. Formel must complete its SEP at its Franklin Park, Illinois facility, as follows:
  - a. Within ninety (90) days of the effective date of this CAFO, Formel must install, maintain and operate a thermal oxidizer at all times when its printing lines are operating.
  - b. The thermal oxidizer must have a destruction efficiency of 90% by weight with an overall capture and control efficiency of 60%.
41. Formel has already incurred \$344,000 of expense on the purchase and installation of the thermal oxidizer and will spend another \$10,000 per year to operate the oxidizer.
42. For so long as Formel (or any successor-in-interest with the same ownership) continues in business as a flexographic printer as herein above described, Formel must continuously use or operate the thermal oxidizer that is installed as the SEP for fifteen (15) years following its installation unless Formel elects to use compliant inks that are found to work with Formel's operations. Nothing herein shall be construed to imply that Formel may not comply with the alternative methods of compliance as identified in the Flexographic Printing as promulgated now or amended later.
43. Formel certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this

CAFO. Formel further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

44. U.S. EPA may inspect the facility at any reasonable time to monitor Formel's compliance with this CAFO's SEP requirements, and to the extent otherwise provided by law.
45. Formel must submit a SEP completion report to U.S. EPA within thirty (30) days of the completion of the SEP as specified in paragraph 40 above. This report must contain the following information:
  - a. detailed description of the SEP as completed;
  - b. description of any operating problems and the actions taken to correct the problems;
  - c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
  - d. certification that Formel has completed the SEP in compliance with this CAFO; and
  - e. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).
46. Formel must submit all notices and reports required by this CAFO by first class mail to:

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

47. In each report that Formel submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

48. Following receipt of the SEP completion report described in paragraph 45 above, U.S. EPA must notify Formel in writing that:

- a. Formel has satisfactorily completed the SEP and the SEP report; or
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Formel 15 days to correct the deficiencies; or
- c. Formel has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 50; provided, however, that U.S. EPA has provided Formel with notice of the specific deficiency pursuant to subparagraph b. of this paragraph.

49. If U.S. EPA exercises option b. above, Formel may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Formel's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Formel a written decision on its objection. Formel will comply with any requirements that U.S. EPA imposes in its decision. If Formel does not complete the SEP as required by U.S. EPA's decision, Formel will pay stipulated penalties to the United States under paragraph 50 below.

**D. Stipulated Penalties**

50. If Formel violates paragraph 35, 39, 40, 42, 45, 46, or 47 of this CAFO relating to the requirements under the CAFO, Formel must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if Formel does not complete the SEP satisfactorily according to this CAFO, Formel must pay a stipulated penalty of \$44,000.

b. If Formel does not complete the SEP satisfactorily, but U.S. EPA, in good faith, determines that Formel: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, Formel will not be liable for any stipulated penalty.

c. If Formel satisfactorily completes the SEP, but spent less than 90 percent of the required amount on the SEP, Formel must pay a stipulated penalty of \$4,400.

d. If Formel fails to submit timely the SEP completion report required by paragraph 48 above, Formel must pay a stipulated penalty of \$100 for each day after the report was due until it submits the report.

51. U.S. EPA's determinations of whether Formel satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will be final.

52. Formel must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Formel will use the method of payment specified in paragraph 35 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

53. Any public statement that Formel makes referring to the SEP must include the following language, "Formel Industries, Inc. undertook this project pursuant to a settlement under the Clean Air Act, 42 U.S.C. §7413 and 40 C.F.R. Part 22, with the United States Environmental Protection Agency."

**E. Force Majeure**

54. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Formel must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Formel's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Formel must take all reasonable actions to avoid or minimize any delay. If Formel fails to notify U.S. EPA according to this paragraph, Formel will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Formel caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of Formel caused or may cause a delay in completing the SEP, U.S. EPA will notify Formel in writing of its decision and any delays in completing the SEP will not be excused. U.S. EPA's Notice thereon shall be final.

d. Formel has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

**VI. GENERAL PROVISIONS**

55. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged above.

Full payment of the penalty identified in paragraph 35 shall resolve Respondent's liability for these violations and facts. 40 C.F.R. § 22.18(c).

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

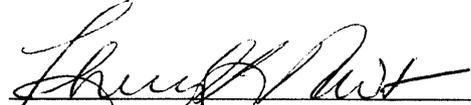
57. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

58. 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 Formel’s “full compliance history” under Section 113(e) of the Act, 42 U.S.C. § 7413(e).
59. The terms of this CAFO bind Formel and its agents, successors, authorized representatives and assigns.
60. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.
61. Each party agrees to bear its own costs and fees in this action.
62. This CAFO constitutes the entire agreement between the parties.

**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of Formel Industries, Inc.**  
**Docket No.**

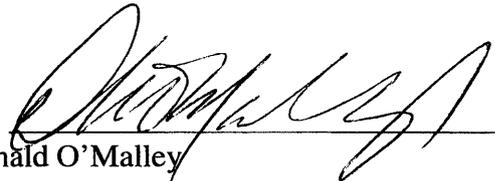
**U.S. Environmental Protection  
Agency, Complainant**

Date: 4/17/03

By:   
Cheryl L. Newton, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

Formel Industries, Inc., Respondent

Date: 3/25/03

By:   
Donald O'Malley  
President  
Formel Industries, Inc.

CAA-05- 2003-0005

**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of Formel Industries, Inc.**  
**Docket No.**

**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:

4.17.03



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

CAA-05- 2003-0 005

In the Matter of Formel Industries, Inc.  
Docket No:

CAA-05- 2003-0 005

CERTIFICATE OF FILING AND MAILING

I, Betty Williams, do hereby certify that the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604 and that correct copies, were mailed first-class, postage prepaid, certified mail, return receipt requested, to the Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

William J. Anaya, Esq.  
Arnstein & Lehr  
120 South Riverside Plaza  
Suite 1200  
Chicago, Illinois 60606-3910

I also certify that copies of the CAFO were sent by First Class Mail to:

Julie Armitage, Acting Manager  
Compliance and Enforcement Section  
Illinois Environmental Protection agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702

on the 21st Day of April 2003.

*Betty Williams*  
Betty Williams, Secretary  
AECAS (IL/IN)

US ENVIRONMENTAL  
PROTECTION AGENCY  
REGION V

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CLERK

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 01783554