

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF

Steel Dynamics, Inc.
Columbia City, Indiana

Respondent.

) Docket No. CAA-05-2003-0001
)
) *DBW*
) CONSENT AGREEMENT AND
) FINAL ORDER
)
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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

I. AUTHORITY

The United States Environmental Protection Agency, Region 5 (U.S. EPA), and Steel Dynamics, Inc. (Respondent) 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 action issued under the authority vested in the Administrator of U.S. EPA by the Clean Air Act.
2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, U.S. EPA.
3. Respondent is Steel Dynamics, Inc., doing business in the State of Indiana.

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. On June 19, 1978, U.S. EPA promulgated the prevention of significant deterioration of air quality standards pursuant to Subtitle I, Part C of the Act. These regulations are codified at 40 C.F.R. § 52.21 (43 Fed. Reg. 26403). These regulations apply to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under the Act.

6. On August 7, 1980, U.S. EPA incorporated the provisions of 40 C.F.R. § 52.21(b) through (w) into the Indiana SIP. 45 Fed. Reg. 52741, as amended at 53 Fed. Reg. 18985, codified at 40 C.F.R. § 52.793.

7. 40 C.F.R. § 52.23 states, 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, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, 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.

8. 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 PSD violations that occurred on or after January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

9. 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.

10. 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 Notice of Violation No. EPA-5-01-05-IN (NOV).

IV. GENERAL ALLEGATIONS

11. Respondent has applied for and received an effective PSD permit to construct a structural steel mill located at or about 2601 County Road 700 East, Columbia City, Whitley County, Indiana (Columbia City steel mill), from the Indiana Department of Environmental Management.

12. The area where Respondent's Columbia City steel mill is located has been designated an attainment and/or unclassifiable area, or an area to which the standard is not applicable, or an area that has not been designated pursuant to Section 107 of the Act.

13. Respondent's Columbia City steel mill is a major stationary source, which has the potential to emit 250 tons per year or more of any pollutant subject to regulation under the Act.

14. On September 18, 2000, and February 12, 2001, representatives from U.S. EPA inspected the site where Respondent was proposing to construct its Columbia City steel mill. On these dates, U.S. EPA observed certain activities which indicated that Respondent had begun actual construction of the Columbia City steel mill prior to obtaining an effective PSD permit. These activities included, but were not limited to: (a) excavation of retention ponds and ditches; and (b) a monetary investment in the Columbia City facility's site work and equipment of over \$100,000,000 as of March 2001.

15. U.S. EPA alleges that these activities set forth in paragraph 14, above, constitute the commencement of actual construction of the Columbia City steel mill prior to Respondent's receipt of an effective PSD permit.

V. TERMS OF SETTLEMENT**A. Stipulations**

16. To avoid protracted litigation, and for the purposes of this proceeding only, Respondent admits the jurisdictional allegations in this Consent Agreement and Final Order (CAFO) and neither admits nor denies the factual allegations and legal conclusions in paragraphs 11 through 15, above. Nothing in this CAFO shall be construed as an admission of liability by Respondent. SDI and U.S. EPA simultaneously enter into this CAFO and Administrative Consent Order No. EPA-5-02-113(a)-06-IN involving SDI's Butler steel mill.

17. Respondent waives its right to contest the allegations in paragraphs 1 through 15, above, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d). 40 C.F.R. § 22.18.

18. To the best of its knowledge, Respondent certifies that it is complying fully with 40 C.F.R. § 52.21 and the Indiana SIP.

19. The parties consent to the terms of CAFO.

20. 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

21. Respondent shall pay a \$50,000 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 agreement to perform a supplemental environmental project and such other matters as justice may require.

Respondent must send the check to:

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

22. Respondent shall accompany the payment with a transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document (BD) number, which is provided in the cover letter for this CAFO. Respondent must write the case docket number and the BD 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

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

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

24. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 36, below, 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.

25. 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). 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.

Supplemental Environmental Project

26. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and/or public health. The SEP will provide certain lead poisoning prevention and care for children in and around Ft. Wayne, Indiana. A description of the SEP is included in Attachments A and B, which are incorporated into and are an enforceable part of this CAFO.

27. Respondent must spend at least \$100,000 for this SEP within sixty days after the effective date of this CAFO.

28. Respondent must complete the SEP by ensuring that \$43,500 is spent as follows, and as set forth in Attachment A:

a. Perform window abatement at a cost of approximately \$1,500 to \$2,000 per house. The window abatement work involves removing all paint from the sash of the window and cleaning the area thoroughly with a vacuum cleaner equipped with a HEPA filter. The jambs are then wet-scraped and double-jamb liners are installed. Interior sills are stripped with a heat gun and repainted and the troughs are enclosed with vinyl or aluminum and must be smooth and cleanable after treatment; and

b. Train certified abatement contractors to perform the lead abatement work set forth in subparagraph a, above, which is required because there are no known certified lead abatement contractors in Allen or Whitley counties. The abatement contractors will be trained and certified in compliance with 326 Indiana Administrative Code 23 et seq.

29. Respondent must complete the SEP by ensuring that \$56,500 is spent to fund a Nurse Lead Poisoning Case Manager position in the Allen County Department of Public Health to focus on children impacted by lead poisoning. The Nurse Lead Poisoning

Case Manager position job description is set forth in Attachment B.

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

31. Respondent must submit a SEP completion report to U.S. EPA within eighteen months after the effective date of this CAFO. 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 Respondent 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).

32. Respondent 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

Mary McAuliffe (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

33. In each report that Respondent 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.

34. Following receipt of the SEP completion report described in paragraph 31, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 36, below.

35. If U.S. EPA exercises option b. in paragraph 34, above, Respondent 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 Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 36, below.

36. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to this CAFO, Respondent must pay a stipulated penalty of \$100,000.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent: (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, Respondent will not be liable for any stipulated penalty.
- c. If Respondent satisfactorily completed the SEP, but spent less than 90 percent of the required amount on the SEP, Respondent must pay a stipulated penalty of \$20,000.
- d. If Respondent failed to submit timely the SEP completion report required by paragraph 31, above,

Respondent must pay a stipulated penalty of \$200 for each day after the report was due until it submits the report.

37. U.S. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind Respondent.

38. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 22, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

39. Any public statement that Respondent makes referring to the SEP must include the following or substantially equivalent language, "Steel Dynamics, Inc., undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Steel Dynamics, Inc., for alleged violations of the Clean Air Act."

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

a. Respondent 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), Steel Dynamics Inc.'s past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Respondent 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 Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

d. Respondent 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.

C. General Provisions

41. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged above and in the NOV. Full payment of the penalty identified in paragraph 21, and completion of the SEP as described in paragraphs 26 through 40 shall resolve Respondent's liability for these alleged violations and facts. 40 C.F.R. § 22.18(c).

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

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

44. 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).

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

46. 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.

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

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

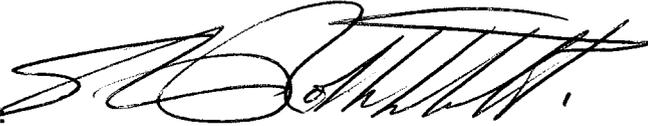
CONSENT AGREEMENT AND FINAL ORDER
Steel Dynamics, Inc.
Docket No.

U.S. Environmental Protection Agency,
Complainant

Date:

10/8/02

By:



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

Steel Dynamics, Inc., Respondent

Date:

9-30-02

By:



Mark Millett, Vice President
Steel Dynamics, Inc.

CAA-05-2003-0001



CONSENT AGREEMENT AND FINAL ORDER
Steel Dynamics, Inc.
Docket No.

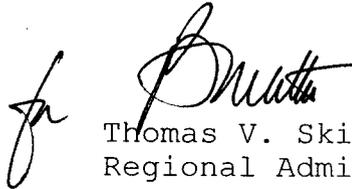
CAA-05-2003-0001

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: 10/09/02



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

In the Matter of Steel Dynamics, Inc.
Docket No.

BBW CAA-05-2003-0001

CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2003-0001 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Steel Dynamics, Inc., and Steel Dynamics, Inc.'s Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Richard P. Teets, Jr.
Steel Dynamics, Inc.
2601 County Road 700 East
Columbia City, Indiana 46725

David L. Hatchett, Esquire
Baker & Daniels
300 North Meridian Street, Suite 2700
Indianapolis, Indiana 46204

REGIONAL HEARING CLERK
REGION 5
OCT 11 PM 12:01
U.S. POSTAL SERVICE

I also certify that a copy of the Consent Agreement and Final Order was sent by First Class Mail to:

David McIver, Chief
Office of Enforcement Air Section
Indiana Department of Environmental Management
100 North Senate Avenue, Room 1001
Indianapolis, Indiana 46206-6015

on the 11th day of October, 2002.

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

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 01784162 - Richard P. Teets, Jr.
7001 0320 0006 01784643 - David L. Hatchett, Esq.