

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. ~~CA-05-2004~~ 0040
)
M.C. Aluminum America, Inc.) Consent Agreement and Final
6875 South Inwood Drive) Order
Columbus, Indiana 47201)
)
Respondent.)
)

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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTIONAL AUTHORITY

1. This is a civil administrative action instituted 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," 40 C.F.R. Part 22 (the Consolidated Rules).

2. Section 22.13(b) of the Consolidated Rules provides that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO).

3. Complainant is, by lawful delegation, the Director of the Air and Radiation Division, U.S. EPA, Region 5.

4. Respondent is M.C. Aluminum America, Inc. (M.C. Aluminum), which is and was at all times relevant to this CAFO, a company operating under the laws of the State of Indiana and with a place of business at 6875 South Inwood Drive, Columbus, Indiana 47201.

II. REGULATORY BACKGROUND

5. Pursuant to 40 C.F.R. § 63.1500, the National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements at Subpart RRR apply to the owner or operator of each secondary aluminum production facility (Subpart RRR NESHAP).

6. Pursuant to 40 C.F.R. § 63.1501 (a), the owner or operator of an existing affected source must comply with the applicable requirements of Subpart RRR by March 24, 2003.

7. Pursuant to 40 C.F.R. § 63.1505 (c)(2), on and after the date the initial performance test is conducted or required to be conducted, the owner or operator of a thermal chip dryer must not discharge or cause to be discharged to the atmosphere emissions in excess of 2.50 micrograms of [dioxins and furans] D/F per Mg of feed/charge.

8. Pursuant to 40 C.F.R. § 63.1506(a)(1), on and after the date on which the initial performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator must operate all new and existing affected sources and



control equipment according to the applicable requirements in this section.

9. Section 113(d)(1) limits the Administrator's of U.S. EPA (the Administrator) 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 this complaint.

11. 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 between January 31, 1997 and March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred on and after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 13, 2004).



III. STIPULATED FACTS

12. M.C. Aluminum is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

13. M.C. Aluminum owns and operates a secondary aluminum facility at 6875 South Inwood Drive, Columbus, Indiana (the Facility).

14. At the Facility, M.C. Aluminum owns and operates a thermal chip dryer which was installed in 1994.

15. The Facility is an emission source subject to the requirements of the Act, including, 40 C.F.R. Part 63, Subpart RRR, and any applicable requirements of the federally-approved Indiana State Implementation Plan (SIP).

16. On February 12, 2003, M.C. Aluminum conducted performance emissions testing for D/F on the thermal chip dryer.

17. The results of the testing show the thermal chip dryer was discharging an average of 14.455 micrograms of D/F per Mg of feed/charge allegedly in violation of 40 C.F.R. § 63.1505(c)(2).

18. On May 7 and May 10, 2004, M.C. Aluminum conducted compliance tests on its thermal chip dryer. The test results demonstrated that M.C. Aluminum was in compliance with the D/F emission limit set forth at 40 C.F.R. § 63.1505(c)(2).

19. On January 28, 2004, U.S. EPA issued an Amended Finding of Violation (FOV) for M.C. Aluminum's alleged violation of the



Subpart RRR NESHAP. This FOV corrected a typographical error in a FOV originally issued on December 17, 2003.

IV. TERMS OF SETTLEMENT

20. The parties agree that settling this action is in the public interest, that the entry of this CAFO without the filing of 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 Act, Sections 112 and 113 of the Act, 42 U.S.C. §§ 7412 and 7413, 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:

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

22. M.C. Aluminum admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations.

23. M.C. Aluminum consents to the issuance of this CAFO and the assessment of a civil penalty.

24. M.C. Aluminum consents to all of the conditions in this CAFO.

25. M.C. Aluminum waives its right to a hearing as provided at 40 C.F.R. § 22.15(c).

26. M.C. Aluminum waives its right to contest the allegations in this CAFO, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

27. To the best of its knowledge, M.C. Aluminum certifies that it is complying fully with the Subpart RRR NESHAP.

28. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Sections 112 and 113 of the Act, 42 U.S.C. §§ 7412 and 7413, for the violations alleged in the Amended FOV and Section III of this CAFO. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of M.C. Aluminum arising from the violations alleged in this CAFO or liability related to violations of the Act. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by U.S. EPA, and it is the responsibility of M.C. Aluminum to comply with such laws and regulations.

29. 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.

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

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

32. "Parties" shall mean U.S. EPA and M.C. Aluminum.

V. CIVIL PENALTY

33. 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 M.C. Aluminum's business, the economic impact of the penalty on M.C. Aluminum's business, M.C. Aluminum'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, M.C. Aluminum's cooperation, U.S. EPA has determined that an appropriate civil penalty to settle this action is Ninety Thousand Dollars (\$90,000).

34. M.C. Aluminum must pay the \$90,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America."

35. M.C. Aluminum must send the check to:

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

36. 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

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

37. If M.C. Aluminum 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.

38. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. M.C. Aluminum will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. M.C. Aluminum 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

39. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in the Amended FOV and Section III of this CAFO. Full payment of the penalty identified in Paragraph 33 shall resolve M.C. Aluminum's liability for these alleged violations.

40. Nothing in this CAFO restricts U.S. EPA's authority to seek M.C. Aluminum's compliance with the Act and other applicable laws and regulations.

41. This CAFO does not affect M.C. Aluminum's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

42. 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 M.C. Aluminum's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

43. The terms of this CAFO bind the parties, and their successors, and assigns.

44. The penalty is due within 30 days of M.C. Aluminum's receipt of the fully executed CAFO.

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

U.S. Environmental Protection Agency, Complainant

Date: 9/22/04

Mary P. Tyson
for _____
Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

M.C. Aluminum America, Inc., Respondent

Date: Sep 7, 2004

By: *Koichi Kajii*
for _____
Koichi Kajii, President
M.C. Aluminum America, Inc.



CONSENT AGREEMENT AND FINAL ORDER

M.C. Aluminum America, Inc.

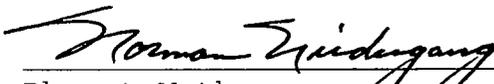
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CAA-05-2004 0040

Final Order

It is ordered as agreed to by the parties and as stated in the Consent Agreement, effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk.

Dated: 9/23/04


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



In the Matter of M.C. Aluminum America, Inc.
Docket No:

~~CAA-05-~~ 2004 0040

CERTIFICATE OF FILING AND MAILING

I, Betty Williams, do hereby certify that the original of the foregoing Consent Agreement and Final Order (CAFO), was sent to M.C. Aluminum America, Inc. was filed with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and that a second original of the CAFO was sent Certified Mail, Return Receipt Requested, to:

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Scott Larrison, Manager
M.C. Aluminum America, Inc.
6875 South Inwood Drive
Columbus, Indiana 47201

David L. Hatchett, Esq.
Hatchett & Hauck L.L.P.
10 West Market Street
Suite 1025
Indianapolis, Indiana 46204

I also certify that a copy of the CAFO 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 24th Day of September 2004.

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

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 00060295 3383
7001 0320 00060295 3222 - David Hatchett, Esq.

