



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 25 2005

REPLY TO THE ATTENTION OF

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas Grist, General Counsel
M & M Drying, LTD.
1831 East Highland Road
Twinsburg, Ohio 44087

Dear Mr. Grist:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves In the Matter of: M & M Drying, LTD., Docket No. CAA05-2004-0055. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on MAY 25 2005.

Pursuant to paragraph 11 of the CAFO, M & M Drying, LTD. must pay the civil penalty within 30 days of MAY 25 2005. Your check must display the case docket number, CAA-05-2004-0055, and the billing document number, 050305025.

Please direct any questions regarding this case to Michael Berman, Associate Regional Counsel, 312-886-6837.

Sincerely yours,

A handwritten signature in cursive script that reads "William L. MacDowell".

William MacDowell, Chief
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

cc: Judge Charneski, Administrative Law Judge

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. CAA05-2004-0055
)
M & M Drying LTD.) Proceeding to Assess a Civil
Canton, Ohio) Penalty under Section 113(d)
) of the Clean Air Act,
Respondent.) 42 U.S.C. § 7413(d)
_____)

Consent Agreement and Final Order

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On September 30, 2004, U.S. EPA filed the complaint in this action against Respondent M & M Drying, LTD. (Respondent or M & M Drying). The complaint alleges that M & M Drying, LTD. violated Section 112 of the Act, 42 U.S.C. § 7412, and the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production at 40 C.F.R. §§ 63.1500 et seq., at its facility in Canton, Ohio. Since the date of the violations the Respondent has moved its facility to Minerva, Ohio. Specifically, the complaint alleges the following violations:

Count I: Failing to obtain approval of a site- specific test plan for the performance test on its thermal chip dryer, 40 C.F.R. §1511(a).

Count II: Failing to conduct a performance test on its thermal chip dryer, 40 C.F.R. §63.1511(b).

Count III: Failure to submit a notification of compliance status report for its thermal chip dryer, 40 C.F.R. §63.1515(b).

Count IV: Failure to maintain the 3-hour block average operation temperature of each after burner at or above the average temperature established during the performance test, §40 C.F.R. 63.1511(b).

3. M & M Drying filed an answer and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

Stipulations

4. M & M Drying admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint other than those it admitted in its answer.

5. M & M Drying waives any right to contest the allegations in the complaint and its right to appeal this consent agreement and final order (CAFO).

6. M & M Drying certifies that it is complying fully with the secondary aluminum NESHAP regulations found at 40 C.F. R. Part 63 Subpart RRR (§§ 63.1500 *et seq.*).

7. M & M Drying agrees to conduct a performance test on its thermal chip dryer at its Minerva, Ohio facility pursuant to 40 CFR 1511(b) by July 31, 2005.

8. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

9. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

10. In consideration of the size of M & M Drying's business, the economic impact of the penalty on M & M Drying's business, M & M Drying's full compliance history and good faith efforts to comply, the duration of the violations, the economic benefit of noncompliance, the seriousness of the violations, other factors as justice may require, and M & M Drying's agreement to perform a supplemental environmental project, U.S. EPA agrees to mitigate the proposed penalty of \$144,000 to \$25,000.

11. M & M Drying 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.

12. M & M Drying must send the check to:

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

13. A transmittal letter, stating the 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 60604-3511

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 60604-3511

Michael Berman, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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

15. If M & M Drying does not pay timely the civil penalty, or any stipulated penalties due under paragraph 29, 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.

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

17. M & M Drying must complete a supplemental environmental project (SEP) designed to protect the environment and public health by December 31, 2006. M & M Drying's SEP consists of buying and remediating a 3.09 acre parcel of property next to its current facility in Minerva, Ohio, known as the Structural Stoneware property (Property) (A map of the Property is attached as Attachment A). M & M Drying must remediate the Property by implementing a corrective measures work plan that is approved by the Ohio Environmental Protection Agency (OEPA), removing debris from the Property, grading the Property for proper drainage,

erecting a fence around the Property, building a building on part of the Property, installing a permanent cap of concrete, eight inches (8") thick on part of the Property, and building a mound covered with topsoil and grass, shrubs, and trees, as a sound barrier, on the south and west boundaries of the Property, that will result in reducing emissions of particulate matter and possibly emissions of hazardous air pollutants. The building and the permanent cap must cover approximately 75% of the Property and any other areas of the Property not covered by the sound barrier mound. This Property was formerly used and allegedly contaminated by another company. The Property contains a waste pile with both fired and unfired clay tile and miscellaneous debris from a tile making facility. There may be lead and cadmium in the debris left on the Property. The state of Ohio has requested that there should be information in the corrective measures work plan for this Property on managing hazardous waste, controlling storm water, and controlling fugitive dust during construction. There should also be information on fencing the area between the site and the neighboring apartment complex, on operation and maintenance of the engineered controls and on an environmental covenant for the Property.

18. At its Minerva, Ohio facility, M & M Drying must complete the SEP as follows:

- a. M & M Drying must buy a 3.09 acre parcel of property located next to its current facility in Minerva, Ohio, known

as the Structural Stoneware property (Property) within sixty (60) days of the effective date of this CAFO. A Map of the Property is attached as Attachment A.

b. M & M Drying must submit a corrective measures work plan to the OEPA for the clean up of the Property that contains information on managing hazardous waste, controlling storm water, controlling fugitive dust during construction, on fencing the area between the site and the neighboring apartment complex, on operation and maintenance of the engineered controls and on an environmental covenant for the Property within 120 days of the effective date of this CAFO.

c. M & M Drying must implement the corrective measures work plan approved by the OEPA, remove debris from the Property, grade the Property for proper drainage, erect a fence around the Property, build a building on part of the Property, install a permanent cap of concrete, eight inches (8") thick on part of the Property, and build a mound covered with topsoil and grass, shrubs, and trees, as a sound barrier, on the south and west boundaries of the Property, within 120 days of approval of the Corrective Measures Work Plan by the OEPA or by December 31, 2006, whichever is sooner (See Attachment A, map of the Property). The building and the permanent cap must cover approximately 75% of the surface of the 3.09 acre Property and any other areas of the Property not covered by the sound barrier mound.

19. M & M Drying must spend at least \$330,000 to remediate the Property as described above.

20. M & M Drying 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. M & M Drying further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

21. U.S. EPA may inspect the facility at any time to monitor M & M Drying's compliance with this CAFO's SEP requirements.

22. M & M Drying must maintain copies of the underlying research and data for all reports submitted to U.S. EPA according to this CAFO. M & M Drying must provide the documentation of any underlying research and data to U.S. EPA within seven days of U.S. EPA's request for the information.

23. Within 120 days of the effective date of this CAFO the first interim report is due and 120 days after the first interim report is due, Respondent must submit the second interim report. If construction of the SEP is not completed by May 1, 2006, a third interim report is due on June 1, 2006 and a fourth interim report is due on October 1, 2006. The Interim SEP Reports must contain the following information:

- a. description of activities completed to date, including the square feet of the remediated Property which has been covered with a building, concrete and a sound barrier in the form of a mound;
- b. description of any problems in the installation of the building, the concrete and the sound barrier in the form of a mound, and the actions taken to correct the problems;

24. M & M Drying must submit a SEP completion report to the U.S. EPA within 60 days of the completion of the SEP in accordance with 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 M & M Drying 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).

25. M & M Drying 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 60604-3511

26. In each report that M & M Drying 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.

27. Following receipt of the SEP completion report described in paragraph 24 above, U.S. EPA must notify M & M Drying 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 M & M Drying 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 29.

28. If U.S. EPA exercises option b. above, M & M Drying 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 M & M Drying's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give M & M Drying a written decision on its objection. M & M Drying will comply with any requirements that U.S. EPA imposes in its decision. If M & M Drying does not complete the SEP as required by U.S. EPA's decision, M & M Drying will pay stipulated penalties to the United States under paragraph 29 below.

29. If M & M Drying violates any requirement of this CAFO relating to the SEP, M & M Drying must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if M & M Drying did not complete the SEP satisfactorily according to this CAFO, M & M Drying must pay a stipulated penalty of \$195,000.

b. If M & M Drying did not complete the SEP satisfactorily, but U.S. EPA determines that M & M Drying: (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, M & M Drying will not be liable for any stipulated penalty.

c. If M & M Drying satisfactorily completed the SEP, but spent less than 90 percent of the required amount on the SEP, M & M Drying must pay a stipulated penalty of the difference between the amount spent and \$330,000.

d. If M & M Drying failed to submit timely an interim SEP Report required by paragraph 23 above, M & M Drying must pay a stipulated penalty of \$250 for each day after the report was due until it submits the report.

e. If M & M Drying failed to submit timely the SEP completion report required by paragraph 24 above, M & M Drying must pay a stipulated penalty of \$500 for each day after the report was due until it submits the report.

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

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

31. M & M Drying must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. M & M Drying will use the method of payment specified in paragraphs 11-13, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

33. Any public statement that M & M Drying makes referring to the SEP must include the following language, "M & M Drying, LTD. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against M & M Drying, LTD. for violations of the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production and the Clean Air Act."

General Provisions.

33. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the complaint.

34. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

35. This CAFO does not affect M & M Drying's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 33 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

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

37. The terms of this CAFO bind M & M Drying, and its successors, and assigns.

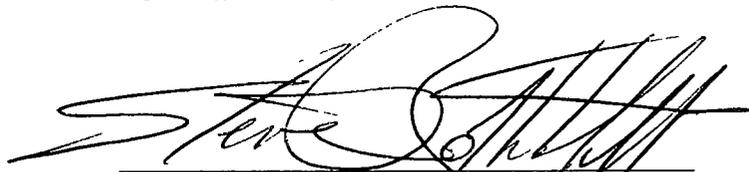
38. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to bear its own costs and attorneys' fees in this action.

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

U.S. Environmental Protection Agency, Complainant

5/20/2005
Date


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

M & M Drying, LTD., Respondent

5/17/05
Date

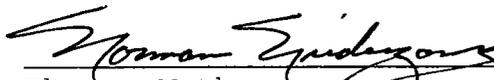

Name: Thomas Grist
Title: General Counsel
M & M Drying, LTD.

CONSENT AGREEMENT AND FINAL ORDER
M & M Drying, LTD.
Docket No. CAA05-2004 0055

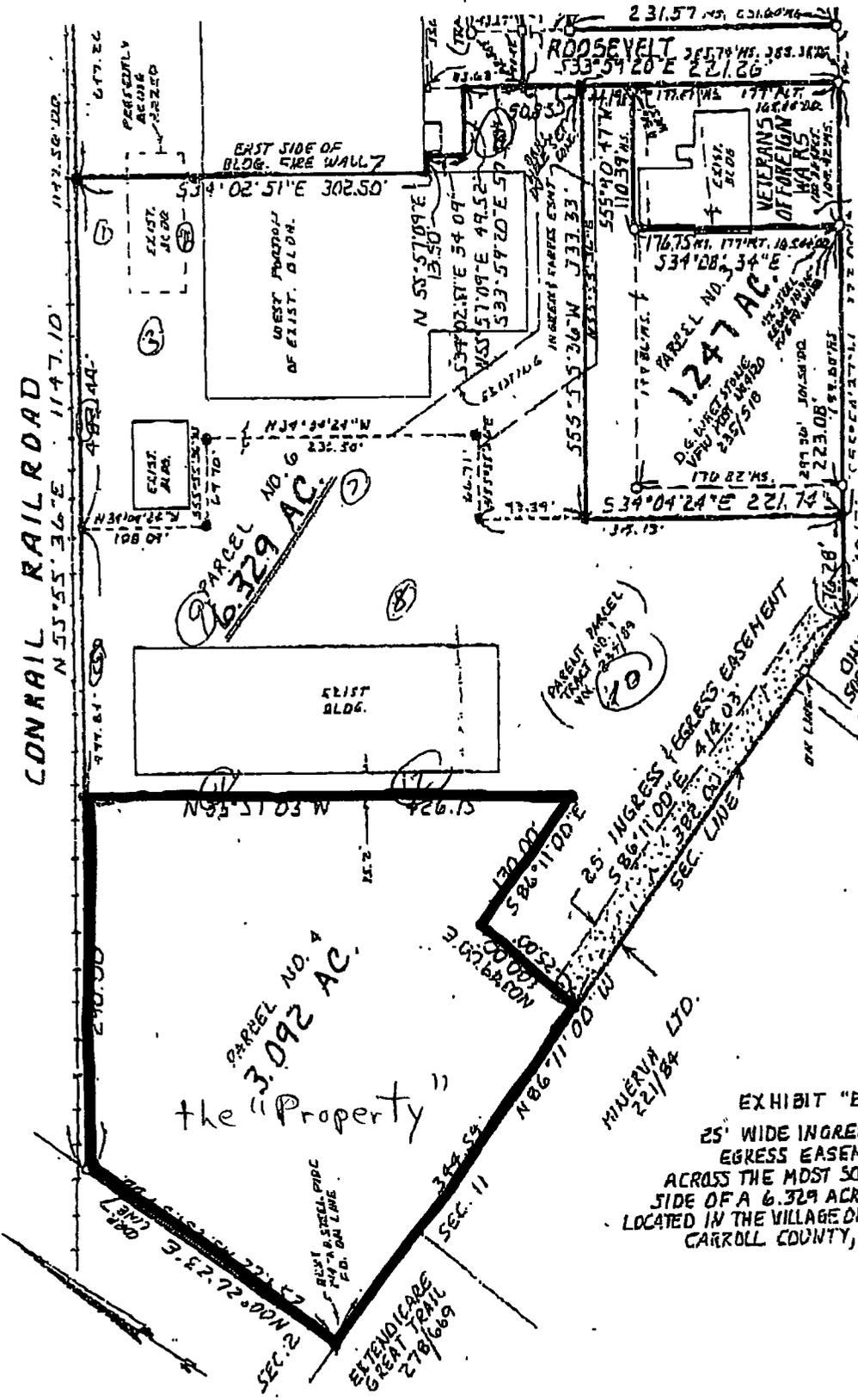
Final Order

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. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

5/23/05
Date


Bharat Mathur
for Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

EX.D Attachment A



CONSENT AGREEMENT AND FINAL ORDER
M & M DRYING, LTD.
DOCKET NO. CAA-05-2004-0055

CERTIFICATE OF SERVICE

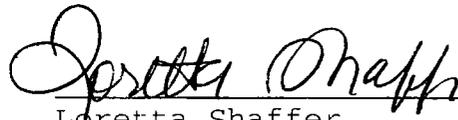
I, Loretta Shaffer, certify that I hand delivered the original of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2004-0055 to be filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to M & M Drying, LTD. and Thomas Grist, General Counsel by placing them in the custody of the United States Postal Service addressed as follows:

M & M Drying, LTD.
Attn: Thomas Grist, General Counsel
217 Roosevelt Street
Minerva, OH 44657

Thomas Grist
General Counsel
M & M Drying, LTD.
1831 East Highland Road
Twinsburg, Ohio 44087

RECEIVED
MAY 25 12:18
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604

on the 25th day of May, 2005.



Loretta Shaffer
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 9025 4800