



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

MAR 29 2006

REPLY TO THE ATTENTION OF
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jean-Francois Salvi, Site Manager
Daramic LLC
3430 Cline Road, NW
Corydon, IN 47112

Re: Daramic LLC Administrative Consent Order and Consent
Agreement and Final Order

Dear Mr. Salvi:

Enclosed are a file-stamped Consent Agreement and Final Order (CAFO)
and an Administrative Order that resolves the case regarding Daramic
LLC. As indicated by the filing stamp on its first page, we filed the
CAFO with the Regional Hearing Clerk on MAR 30 2006.

Pursuant to paragraph 26 of the CAFO, Daramic must pay the \$68,297
civil penalty within 30 days of receiving this document.

Degussa's check must display the case docket number,
CAA-05-2006-0017 and the billing document
number, 050306019.

Please direct any questions regarding this case to Mark Palermo,
Associate Regional Counsel, (312) 886-6073.

Sincerely yours,

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

William L. MacDowell, Chief
Air Enforcement and Compliance Assurance Section MN/OH

Enclosure

cc: David McIver, Chief
Office of Enforcement Air Section

Raymond Schick, Inspector
Office of Air Quality

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Daramic, LLC,
Corydon, Indiana

Respondent.

) Docket No. CAA-05-2006-0017
)
) Proceeding to Assess a Civil
) Penalty under Section 113(d)
) of the Clean Air Act,
) 42 U.S.C. § 7413(d)
)
)
)

RECEIVED
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SAW

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a) (2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. Respondent is Daramic, LLC, a limited liability corporation doing business in Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative

action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b) (2004).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Daramic, LLC admits the jurisdictional allegations in this CAFO, and neither admits nor denies the factual allegations in this CAFO.

8. Daramic, LLC waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.

10. The regulation at 40 C.F.R. § 70.6(b)(1) specifies that

all terms and conditions in a permit issued under a Title V program are enforceable by U.S. EPA under the CAA.

11. U.S. EPA granted final interim approval to the Indiana Title V program on November 14, 1995 (60 Fed. Reg. 57191), and the program became effective on December 14, 1995. U.S. EPA granted final full approval to the Indiana Title V program on December 4, 2001 (66 Fed. Reg. 62969), which became effective on November 30, 2001.

12. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to initiate an enforcement action whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of Title V of the CAA, or any rule promulgated, issued or approved under Title V of the CAA.

13. 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 Title V permit violations that occurred from January 31, 1997 through 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 after March 15, 2004 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

14. Section 113(d)(1) of the CAA 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.

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 CAFO. Daramic, LLC does not admit any liability, but enters into this CAFO to avoid protracted litigation.

Factual Allegations

16. Daramic, LLC owns and operates a battery separator manufacturing facility at 3430 Cline Road, Corydon, Indiana (Daramic facility).

17. The Indiana Department of Environmental Management (IDEM) issued Title V permit No. T061-5983-00012 to Exide Corporation, the former owner and operator of the Daramic facility on September 7, 1999, pursuant to the Indiana Title V program. On March 16, 2000, the Title V permit was administratively amended to reflect that Daramic, Inc. had become

5

the owner and operator of the Daramic facility. IDEM issued modified Title V permit No. 061-18443-00012 to the Daramic facility on February 20, 2004, pursuant to the Indiana Title V program. On July 30, 2004, the Title V permit was administratively amended to reflect that Daramic, Inc., had been reorganized as Daramic, LLC. (Daramic Title V permit).

18. The Daramic facility has three production lines, Sub-Micro (SM) lines 3,4 and 6.

19. The Facility Description at Section D.1 of the Daramic Title V permit states that SM lines 3 and 4 consist of the following equipment:

(A.) Two (2) oil extraction systems, identified as Unit ID #'s 9.1 and 9.2, each system includes oil extraction pans, a solvent drying oven, a water drying oven, and a distillation unit, utilizing a carbon adsorber to control volatile organic compounds and trichloroethylene, exhausting through one (1) stack, identified as S/V ID #17;

(B.) Two (2) extruders, identified as Unit ID#'s 8.1 and 8.2;

(C.) Two (2) aerosol addition systems, identified as Unit ID #'s 10.1 and 10.2.

20. The Daramic Title V permit at Section D.1 states that SM line 6 consists of the following equipment:

- (A.) One oil extraction system, identified as Unit ID # 9.3, oil extraction pans, a solvent drying oven, a water drying oven, and a distillation unit, utilizing a carbon adsorber to control volatile organic compounds and trichloroethylene, exhausting through one (1) stack, identified as S/V ID #17;
- (B.) One extruder, identified as Unit ID # 8.3;
- (C.) One aerosol addition system, identified as Unit ID # 10.3.

21. Daramic's Title V permit at Condition D.1.1 (BACT Analysis) [326 IAC 8-1-6] states the following:

Pursuant to CP-061-1935-00012, issued on December 21, 1990, a carbon adsorption unit with 95% control efficiency has been determined by OAM to be the Best Available Control Technology for SM-3, SM-4, and SM-6. The control system shall be operated at all times that extruders for SM-3, SM-4, and SM-6; oil extraction systems for SM-3, SM-4, and SM-6; aerosol addition systems for SM-3, SM-4, and SM-6 and tanks (ID#'s 11.1 through 11.6) are used. For the purpose of determining compliance, the overall control efficiency of the control system shall be considered 95% provided the carbon adsorption unit is operating in compliance with the monitoring provisions specified in Condition D.1.5.

Daramic asserts that the reference in this paragraph to Condition D.1.5. is a typographical error in the permit, and that the paragraph should refer to D.1.6., consistent with the technical support document for this permit.

22. Daramic's Title V permit at Condition D.1.6 (Carbon Adsorbers) states the following:

At all times that the control system for the extruders for SM-3, SM-4, and SM-6; aerosol addition systems for SM-3, SM-4, and SM-6; and tanks (ID#s 11.1 through 11.6 are in operation and being utilized to demonstrate compliance with the limitations set forth in Condition D.1.1., the carbon beds shall be regenerated twice per month, or on a schedule based on the manufacturer's recommendations and in-situ efficiency testing performed by the permittee.

Violations

23. For the period from September 7, 1999 through December 2004, U.S. EPA alleges that Daramic failed to consistently apply BACT and control VOC emissions from SM lines 3, 4 and 6 to 95% control efficiency as required by its Title V permit.

24. Daramic, LLC's operation in violation of its Title V permit constitutes a violation of section 502 of the CAA and of 40 C.F.R. § 70.7(b).

25. Daramic, LLC's violation of section 502 of the CAA and of 40 C.F.R. § 70.7(b) subjects Daramic, LLC to civil penalties under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3)

Civil Penalty

26. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, and Daramic, LLC's cooperation, good-faith efforts to come into compliance, and its agreement to perform a supplemental

environmental project, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$68,297.

27. Daramic, LLC must pay the \$68,297 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.

28. Daramic, LLC must send the check to:

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

29. 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 60604-3511

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

Mark Palermo, (C-14J)
Office of Regional Counsel

U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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

31. If Daramic, LLC does not pay timely the civil penalty, or any stipulated penalties due under paragraph 44, 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.

32. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Daramic, LLC will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Daramic, LLC will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the CAA, 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

33. Daramic, LLC must complete a supplemental environmental project (SEP) designed to protect the environment and public health by installing equipment that will reduce trichloroethylene releases to the atmosphere.

34. At its Corydon, Indiana facility, Daramic, LLC must complete the SEP as follows:

a. Design, install and utilize five density measurement devices and associated equipment at the line 3 extractor, line 4 extractor, line 6 extractor, lines 3 & 4 tank farm, and line 6 tank farm to measure the density of the oil and trichloroethylene mixture. The SEP may include one backup density measurement device. These instruments shall be sealed so as to eliminate the possibility of trichloroethylene loss at the instruments' locations.

Daramic shall use these instruments rather than manual sampling practices to determine the mixture's density. The density instruments shall be installed and in operation within six months of execution of this CAFO; and

b. Daramic shall install a sealed filter arrangement on lines 3 & 4 storage tank recirculation loop, line 6 storage tank recirculation loop, lines 3 & 4 evaporator inlet feed, and line 6 evaporator inlet feed. These sealed filters

shall replace existing cartridge-type filters that allow trichloroethylene to escape to the environment during the filter replacement activity. The installation of these filters shall be completed within six months of execution of this CAFO.

35. Daramic, LLC must spend at least \$193,530 to complete the SEP stated in paragraph 34 above.

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

37. U.S. EPA may inspect the facility at any time to monitor Daramic, LLC's compliance with this CAFO's SEP requirements.

38. Daramic, LLC must maintain copies of the underlying research and data for all reports submitted to U.S. EPA according to this CAFO. Daramic, LLC 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.

39. Daramic, LLC must submit a SEP completion report to U.S. EPA within eight months of execution 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 cancelled checks that specifically identify and itemize the individual costs of the goods and services;
- d. certification that Daramic, LLC 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).

40. Daramic, LLC 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

41. In each report that Daramic, LLC 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.

42. Within 90 days of receipt of the SEP completion report described in paragraph 39 above, U.S. EPA must notify Daramic, LLC in writing that:

- a. It has satisfactorily completed the SEP and the SEP report and that it has completed all other obligations under this CAFO;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Daramic, LLC 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 44.

43. If U.S. EPA exercises option b. above, Daramic, LLC 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 Daramic, LLC's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Daramic, LLC a written decision on its objection. Daramic, LLC will comply with any requirements that U.S. EPA imposes in its decision. If Daramic, LLC does not complete the SEP as required by U.S. EPA's decision, Daramic, LLC will pay stipulated penalties to the United States under paragraph 44 below.

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

a. If Respondent spent less on the SEP than the amount set forth in paragraph 35, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 35.

b. If Respondent has completed the SEP but the SEP is not satisfactory, Respondent must pay \$25,000 in addition to any penalty required under subparagraph [44.a], above.

c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$25,000 in addition to any penalty required under subparagraph [44.a], above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.

d. If Respondent fails to comply with the schedule in paragraph 34, above, for implementing the SEP, fails to submit timely the SEP completion report required by paragraph 39, above, or fails to submit timely any other report required by paragraph 39, above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$ 100	1 st through 14 th day
\$ 300	15 th through 30 th day
\$ 400	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone, up until the stipulated penalty reaches \$25,000, at which point the SEP is automatically deemed not satisfactorily completed. When the SEP is deemed not satisfactorily completed under this sub-paragraph, Respondent must pay the \$25,000 in

stipulated penalties accrued under this subparagraph, and any penalty required under subparagraph [44.a], above.

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

46. Daramic, LLC must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Daramic, LLC will use the method of payment specified in paragraphs 27-29, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

47. Any public statement that Daramic, LLC makes referring to the SEP must include the following language, "Daramic, LLC undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Daramic, LLC under the Clean Air Act."

48. Force Majure.

a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify Complainant in writing not more than 10 days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondent to

prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this Agreement based on such incident.

b. If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

c. In the event that the EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement and Order has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.

d. The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondent shall

rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

Final Statement

49. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.

50. 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.

51. This CAFO does not affect Daramic, LLC's responsibility to comply with the CAA and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 47 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

52. Daramic, LLC certifies that it is complying fully with Condition D.1.1 of its Title V permit.

53. 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 Daramic, LLC's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

54. The terms of this CAFO bind Daramic, LLC, and its successors, and assigns.

55. 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.

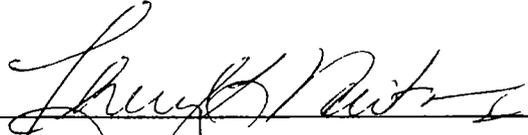
56. Each party agrees to bear its own costs and attorneys' fees in this action.

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

U.S. Environmental Protection Agency, Complainant

3/28/06

Date

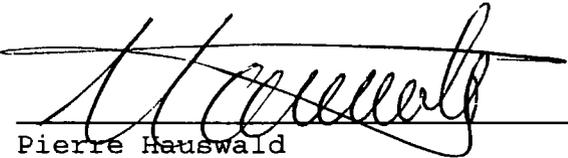


Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

Daramic, LLC, Respondent

March 21st, 2006

Date



Pierre Hauswald
Vice President and General Manager

CAA-05-2006-0017


CONSENT AGREEMENT AND FINAL ORDER

Daramic, LLC
Docket No.

CAA-05-2006-0017

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.

3-29-06

Thomas V. Skinner
Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, docket number CAA05-2006-0017 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 Daramic by placing them in the custody of the United States Postal Service addressed as follows:

Jean-Francois Salvi, Site Manager
Daramic LLC
3430 Cline Road, NW
Corydon, IN 47112

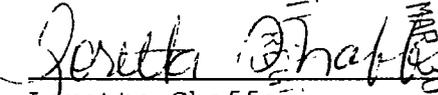
and S. Andrew Bowman, Esq.
Bingham McHale LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204

and Raymond Schick, Inspector
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue, Room 1001
Indianapolis, Indiana 46206-6015

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

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on the 30th day of March, 2006 .



 Loretta Shaffer
 AECAS (MN/OH)

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CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 1447 9024 ~ Salvi
7001 0320 0005 9025 6314 ~ Bolzman