



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

AUG 7 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Geno Tolari, General Manager
Criterion Catalysts and Technologies, L.P.
1800 East U.S. 12
Michigan City, Indiana 46360

Dear Mr. Tolari:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Criterion Catalysts and Technologies, L.P. docket number CAA-05-2014-0041. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on AUG 7 2014. Pursuant to paragraph 53 of the CAFO, Criterion Catalysts and Technologies, L.P. must pay the civil penalty within 30 days of AUG 7 2014. Your electronic funds transfer must display the case name Criterion Catalysts and Technologies, L.P. and the docket number CAA-05-2014-0041.

Please direct any questions regarding this case to Terence Stanuch, Associate Regional Counsel, (312) 886-8044.

Sincerely,

Nathan A. Frank, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Terry Stanuch/C-14J
Phil Perry

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:) **Docket No.** CAA-05-2014-0041
)
Criterion Catalysts and Technologies, L.P.) **Proceeding to Assess a Civil Penalty**
Michigan City, Indiana,)
) **Under Section 113(d) of the Clean Air Act,**
) **42 U.S.C. § 7413(d).**
Respondent.)
_____)



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 (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) 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.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Criterion Catalysts and Technologies, L.P. (Criterion), a limited partnership doing business in the State of 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).
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 the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. On February 22, 2013, EPA sent Respondent a Finding of Violation (FOV) describing specific alleged violations of the Act. These alleged violations are also described in paragraphs 35 through 50 of this CAFO.

9. Respondent submitted information to EPA in response to the factual allegations listed in the FOV and this CAFO, and neither admits nor denies these factual allegations.

10. Respondent 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

11. 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 the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

12. 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.

A. Title V

13. Section 502(a) of the Act, 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 Act, no source subject to Title V may operate except in compliance with a Title V permit.

14. Section 113(a)(3) of the Act, 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 Act, or any rule promulgated, issued or approved under Title V of the Act.

15. EPA granted interim approval to the Indiana Title V operating permit program on December 14, 1995, and full approval on November 30, 2001.

16. At the time of the inspection, Permit Condition D.1.5(a) of Criterion's Title V permit required a visual emission reading of the exhaust from the stacks for the units designated as "S-C1 and S-C2" (the DCC baghouse), "P-BBL" (stack BB, using baghouses E-160 and E-176), "P-BL" (stack CC, using baghouse E-190), and "P-BLR" (stack GG, using baghouse E-190) once per day when the units are exhausting to the atmosphere.

17. Permit Condition D.1.5(e) of Criterion's Title V permit states that if abnormal emissions are observed during the visual emission reading required in D.1.5(a), Criterion shall take reasonable response steps in accordance with Section C of the Title V permit. Failure to take response steps shall be considered a deviation.

18. At the time of the inspection, Permit Condition D.1.6 of Criterion's Title V permit required Criterion to maintain records of the pressure drop once per day across the baghouses used in conjunction with the processes identified as "S-C1 and S-C2" (DCC baghouse), "P-BBL" (stack BB, baghouses E-160 and E-176), "P-BL" (stack CC, baghouse E-190), and "P-BLR" (stack GG, baghouse E-190) when the process is in operation. When, for any one reading, the pressure drop across the baghouses is outside the normal range of 1.0-6.0 inches of water, Criterion must take reasonable response steps in accordance with Section C of the Title V permit.

19. At the time of the inspection, Permit Condition D.1.6 of Criterion's Title V permit required that the instrument used for determining the pressure as described in Paragraph 14 shall be calibrated at least once every six months.

20. Permit Condition C.14(d) of Criterion's Title V permit states that a failure to take reasonable response steps to permit excursions or exceedances shall be considered a deviation from the permit.

21. Permit Condition C.14(e) of Criterion's Title V permit states that Criterion shall record the reasonable response steps taken when an excursion or exceedance from the permit requirements is detected.

22. Respondent's Title V permit was modified and issued on December 10, 2013.

B. NSPS Subpart UUU

23. On September 28, 1992, EPA promulgated the Standards of Performance for Calciners and Dryers in Mineral Industries. 57 Fed. Reg. 44503 (September 28, 1992). Since then, EPA has amended these standards at 58 Fed. Reg. 40591 (July 29, 1993) and at 65 Fed. Reg. 61778 (October 17, 2000). These standards are codified at 40 C.F.R. Part 60, Subpart UUU (NSPS Subpart UUU).

24. 40 C.F.R. § 60.730 of NSPS Subpart UUU applies to each calciner and dryer at a mineral processing plant. The owner or operator of any affected facility that commences construction, modification, or reconstruction after April 23, 1986, is subject to the requirements of NSPS Subpart UUU.

25. 40 C.F.R. § 60.732(a) of NSPS Subpart UUU states that no emissions shall be discharged from any affected facility that contains particulate matter (PM) in excess of 0.057 g/dscm for dryers.

26. 40 C.F.R. § 60.734(a) states that an owner using a dry control device to comply with the standard at § 60.732 must use a continuous monitoring system (COM) to measure and record the opacity discharged from the control device.

27. 40 C.F.R. § 60.734(d) requires an owner or operator who uses a wet scrubber control device to comply with the standard at § 60.732 to install, calibrate, maintain, and operate monitoring devices that continuously measure and record the pressure loss of the gas stream through the scrubber and the scrubbing liquid flow rate to the scrubber.

28. 40 C.F.R. § 60.735(b) states that the owner or operator using a wet scrubber to comply with § 60.732 must also determine and record once each day, from the recordings of the monitoring devices, an arithmetic average over a 2-hour period of both the change in pressure of the gas stream across the scrubber and the flowrate of the scrubbing liquid. An exceedance is defined in § 60.735(c)(2) and (3) as any daily 2-hour average of the wet scrubber pressure drop that is less than 90% of the average value recorded during the most recent performance test or each daily wet scrubber liquid flow rate recorded that is less than 80% or greater than 120% of the average value recorded in the most recent performance test (Method 5) that demonstrated compliance with the particulate matter standard.

29. 40 C.F.R. § 60.735(c) requires that each owner or operator to submit written reports semiannually of exceedances of control device operating parameters required to be monitored in 40 C.F.R. § 60.734.

C. Alternative Monitoring Plan

30. In a letter dated September 6, 2007 from EPA to Criterion, EPA determined that, rather than using the gas phase pressure drop as the continuous monitoring parameter as required in 40 C.F.R. §§ 60.734(d) and 60.735(b) of NSPS Subpart UUU, the ratio of scrubbing liquid to

flue gas treated (liquid-to-gas ratio, a/k/a “L/G ratio”) is a more appropriate monitoring parameter for a wet scrubber that does not use a Venturi design for PM control. EPA required Criterion to conduct a performance test of the spray dryer and determined that Criterion shall continuously monitor and record the L/G ratio of the scrubber to be compared to the results of the test as an Alternative Monitoring Plan (AMP) to the requirements of 40 C.F.R. §§ 60.734(d) and 60.735(b) of NSPS Subpart UUU.

31. In a letter dated November 5, 2008 from EPA to Criterion, EPA approved an additional AMP for the baghouse system at the facility. The baghouse system AMP consists of continuous monitoring of the opacity of exhaust gases in the ductwork between the baghouse system and scrubber as an alternative to monitoring the opacity at the outlet of the scrubber. Per the November 5, 2008 AMP approved by EPA, Criterion must monitor both the opacity exiting the baghouses and the ratio of scrubbing liquid to flue gas treated in the scrubber in order to comply with NSPS Subpart UUU PM standards at § 60.732(a).

32. The November 5, 2008 AMP approved by EPA states that “exceedances of the L/G operating parameter would be defined as any 2-hour period when the average L/G ratio is less than 80 percent of the average L/G ratio from all measurements of the test runs in the most recent performance test that demonstrates compliance, or in this case, 0.004778.”

33. In a December 18, 2009 letter from EPA to Criterion, EPA states that any scrubber operating parameter exceedances shall be reported as part of the facility’s NSPS semi-annual report.

34. The EPA Administrator may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

Allegations as per Finding of Violation dated February 22, 2013

35. Criterion is a “person,” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
36. Criterion currently owns and operates the facility located at 1800 East U.S. Route 12, Michigan City, Indiana (“the facility”).
37. Criterion operates a spray dryer system at the facility. The spray dryer system is equipped with three baghouses followed by a non-Venturi-type wet scrubber. Additional equipment at the facility includes fabric filters for PM control on each storage silo.
38. The dryer at the facility is an “affected facility” as defined in 40 C.F.R. §§ 60.730 and 60.731. It is subject to the PM emission standard of 0.057 g/dscm at 40 C.F.R. § 60.732(a).
39. The Indiana Department of Environmental Management issued Title V permit No. 091-21619-00053 to Criterion on June 9, 2010.
40. Unit P-BBL (bulk bag loading process) utilizes both baghouses E-160 and E-176 which vent through a single stack designated as “Stack BB.”
41. During a facility inspection on May 8-10, 2012, EPA observed that white powder accumulated around the base of the baghouse associated with Unit P-BBL (Stack BB) identified as baghouse “E-160.”
42. During the inspection on May 8-10, 2012, Criterion stated that the instruments monitoring baghouse pressure have never been calibrated.
43. During the inspection on May 8-10, 2012, Criterion stated that only the pressure reading from Baghouse E-176 has been recorded for Unit P-BBL. From March 2008 to April 2012, Criterion had not recorded the pressure readings on the E-160 baghouse, associated with unit P-BBL and Stack BB.

44. According to Criterion's Visible Emissions Logs from March 2008 to April 2012, Criterion operated outside of the normal range of 1.0-6.0 inches of water on the baghouses associated with the Units S-C1, S-C2, P-BL, P-BBL, and P-PBL for the following dates:

| Unit/Stack | Year | Total Days < 1.0" | Total Days > 6.0" |
|---|------|-------------------|-------------------|
| Baghouses E-160/E-176 Stack BB Unit P-BBL | 2010 | 22 | |
| Baghouse E-190 Stack CC Unit P-BL | 2008 | 32 | |
| | 2009 | 50 | |
| Baghouse E-190 Stack GG Unit P-BLR | 2008 | | 51 |
| | 2009 | 67 | |
| DCC Baghouse Units S-C1 and S-C2 | 2008 | 19 | |
| | 2009 | 36 | |
| | 2010 | 84 | |
| | 2011 | 74 | |

45. According to Criterion's Visible Emissions Logs, Criterion failed to monitor baghouse pressure, as required by Title V permit Condition D.1.6 for the following extended days from January 1, 2008 to April 30, 2012 as indicated below:

| Unit/Stack | Year | Days |
|---|------|------|
| Baghouses E-160/E-176 Stack BB Unit P-BBL | 2010 | 119 |
| | 2011 | 22 |
| Baghouse E-190 Stack CC Unit P-BL | 2008 | 11 |
| | 2010 | 119 |
| | 2011 | 21 |
| Baghouse E-190 Stack GG Unit P-BLR | 2008 | 10 |
| | 2010 | 119 |
| DCC Baghouse Units S-C1 and S-C2 | 2010 | 90 |
| | 2011 | 22 |

46. Criterion's scrubber ratio data indicate that Criterion operated below the required minimum L/G ratio of 0.004778, for extended periods of time from January 1, 2010 to April 30, 2012, as indicated below:

| Year | Number of Days L/G Ratio < 80% of Minimum |
|----------------|---|
| 2010 | 24 |
| 2011 | 105 |
| Jan-April 2012 | 46 |

47. From at least 2010 to 2012, Criterion failed to report exceedances of the facility's scrubber ratios, as required by the approved AMPs.

48. EPA alleges that Criterion failed to calibrate the pressure instruments monitoring baghouse pressure in violation of the Title V permit Condition D.1.6.

49. EPA alleges that Criterion failed to monitor baghouse pressure, and operated outside of the required range of 1.0-6.0 inches of water, for extended days on the baghouses identified as Units E-160, E-176, E-190, and the DCC baghouse in violation of Title V Permit Condition D.1.6.

50. EPA further alleges that Criterion operated below the required minimum L/G ratio for extended periods of time from January 1, 2010 to April 30, 2012, in violation of EPA approved AMPs dated September 6, 2007, November 5, 2008, and December 18, 2009, and failed to report these exceedances, in violation of NSPS Subpart UUU at 40 C.F.R. § 60.735(b).

51. On March 26, 2013, Criterion verified calibration of the pressure gauge instruments for the baghouses associated with the Units S-C1, S-C2, P-BL, P-BBL, and P-PBL. On March 11, 2013 and April 27, 2013, Criterion began monitoring the pressure of all of the required baghouses and the visible emissions of all of the required baghouses, respectively. On

March 26, 2013, Criterion stated that they corrected the scrubber L/G ratio monitoring system and agreed to report any future exceedances.

Civil Penalty

52. Based upon an analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and Respondent's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$135,000.

53. Within 30 days after the effective date of this CAFO, Respondent must pay a \$135,000 civil penalty by an Automated Clearinghouse (ACH) (also known as REX or remittance express) electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account No.: 310006, Environmental Protection Agency
CCD+ Format Transaction Code 22 - checking

Note: In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

54. Respondent must send a notice of the payment that states "In the matter of Criterion Catalysts and Technologies, L.P.," and the docket number of this CAFO, to the following addresses:

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 Boulevard
Chicago, Illinois 60604