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

SEP 28 2015

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**
**RETURN RECEIPT REQUESTED**

James P. Hrusovsky
Chief Executive Officer
Alton Steel, Inc.
5 Cut Street
Alton, Illinois 62002

Dear Mr. Hrusovsky:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves the violations alleged against Alton Steel, Inc., docket number **CAA-05-2015-0063**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 28, 2015.

Pursuant to paragraph 43 of the CAFO, Alton Steel, Inc. must pay the civil penalty within 30 days of October 28, 2015. Your check must display the case name and case, docket number **CAA-05-2015-0063**.

Please direct any questions regarding this case to Nicole Wood-Chi, counsel, (312) 886-0664.

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
Nicole Wood/C-14J
Eric Jones/IEPA

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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| **In the Matter of:** | ) | **Docket No.** **CAA-05-2015-0063** |
| **Alton Steel, Inc.,** **Alton, Illinois,** | ) | **Proceeding to Assess a Civil Penalty 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 CAA), 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 Alton Steel, Inc. (Alton), a corporation doing business in Illinois and, therefore, a "person" under the CAA and the Consolidated Rules.

4. EPA provided notice of commencement of this action to the State of Illinois pursuant to Sections 113(a) and (d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a) and (d).

5. 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).

6. 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.

7. 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

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

9. 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.

## Applicable Statutory and Regulatory Background

NESHAP General Provisions

10. Section 112 of the CAA, 42 U.S.C. § 7412(c), requires EPA to promulgate a list of all categories and subcategories of new and existing "major sources" of hazardous air pollutants (HAPs), and establish emissions standards for the categories and subcategories. These emission standards are known as the National Emission Standards for Hazardous Air Pollutants (NESHAP). EPA codified these standards at 40 C.F.R. Parts 61 and 63.

11. 40 C.F.R. Part 63, Subpart A, contains the general provisions for the NESHAP.

12. Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3), prohibits any person subject to a NESHAP from operating a source in violation of a NESHAP after its effective date. *See also* 40 C.F.R. §§ 61.05 and 63.4.

13. 40 C.F.R. § 63.6(h)(2) provides that compliance with opacity and visible emission standards is determined based on the results of the test method specified in an applicable subpart.

14. 40 C.F.R. §63.7(e)(2) provides that performance tests shall be conducted in accordance with the test methods and procedures set forth in the General Provisions, in each relevant standard, and, if required, in applicable appendices of 40 C.F.R. Parts 51, 60, 61, and 63.

NESHAP for Electric Arc Furnace Steelmaking Facilities

15. Pursuant to Section 112 of the CAA, EPA promulgated the NESHAP for Electric Arc Furnace Steelmaking Facilities at 40 C.F.R. Part 63, Subpart YYYYY, 40 C.F.R. §§ 63.10680 - 63.10692, on December 28, 2007. 72 Fed. Reg. 74111.

16. The NESHAP at 40 C.F.R. Part 63, Subpart YYYYY, applies to an owner or operator of an electric arc furnace (EAF) steelmaking facility that is an area source of HAP emissions. 40 C.F.R. § 63.10680(a).

17. 40 C.F.R. § 63.10681(a) provides that the compliance date for an existing affected source is June 30, 2008.

18. 40 C.F.R. § 63.10686(b)(2) provides that an affected source must not discharge or cause the discharge into the atmosphere from an EAF any gases which exit from a melt shop and, due solely to the operations of any affected EAF(s), exhibit 6 percent opacity or greater.

19. 40 C.F.R. § 63.10686(d)(2) provides that an affected source must conduct each opacity test for a melt shop according to the procedures in 40 C.F.R. § 63.6(h) and Method 9 of Appendix A-4 of 40 C.F.R. Part 60.

Title V Requirements

20. Title V of the CAA, 42 U.S.C. § 7661-7661f, established an operating permit program for major sources of air pollution. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to the EPA a permit program meeting the requirements of Title V.

21. Section 503 of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assume compliance with applicable requirements, including those contained in a state implementation plan.

22. Title V permits are federally enforceable and that all terms and conditions in a Title V permit are enforceable by the EPA. 40 C.F.R. § 70.6(b)(1).

23. EPA gave interim approval of Illinois' Title V program on March 7, 1995. 60 Fed. Reg. 12478. EPA fully approved the Illinois Title V program on December 4, 2001. 66 Fed. Reg. 62946. The approved Illinois Title V program is known as the Illinois Clean Air Act Permit Program (CAAPP).

Title V Permit

24. The Illinois Environmental Protection Agency issued a CAAPP Permit, Application No. 96020056 (Title V Permit), to the facility on May 13, 2008.

25. Condition 7.1.3(e) of the Title V Permit provides that EAF #7 is subject to the NESHAP, 40 C.F.R. Part 63, Subparts A and YYYYY.

26. Condition 7.1.7(b)(i) of the Title V Permit provides that Alton shall have opacity from the melt shop openings and the capture systems determined by a certified observer in accordance with EPA Method 9 while EAF #7 is operating.

Performance Testing

27. EPA Method 9 is found in Appendix A-4 of 40 C.F.R. Part 60.

28. EPA Method 9 provides the required procedures to visually determine the opacity of emissions, which includes, in part, that the certified observer shall stand at a distance sufficient to provide a clear view of the emissions with the sun oriented in the 140° sector to their back.

Penalty

29. The Administrator of EPA (the 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 from

January 12, 2009 through December 5, 2013 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

30. 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.

31. 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.

**EPA's Factual Allegations and Alleged Violations**

32. Alton Steel owns and operates a steel making facility located at 5 Cut Street in Alton, Illinois (the facility).

33. Alton Steel is a major source of carbon monoxide, sulfur dioxide, particulate matter, and nitrogen oxide emissions. Alton Steel is not a major source of HAPs, but is considered an area source of HAPs and is therefore subject to the requirements of 40 C.F.R. Part 63, Subpart YYYYY.

34. The Title V permit for Alton Steel includes emission units, among others, EAF #7. EAF #7, which is located in the facility's melt shop, receives scrap metal that is melted and refined to make steel products.

35. On January 24 and 25, 2013, EPA inspected the facility.

36. On January 24, 2013, EPA inspectors observed smoke exiting the melt shop. A certified EPA inspector read the opacity of the smoke at the melt shop roof and found that from 4:03 PM to 4:09 PM, the average opacity during the six-minute period was 6.9 percent.

37. On May 7, 2013, EPA sent an information request to Alton under Section 114(a) of the CAA, 42 U.S.C. § 7414(a).

38. In response to the information request, for the period January 1, 2008 to May 7, 2013, Alton reported that the 6-minute average opacity at their melt shop roof was 8.2 percent on February 2, 2012 and 7.3 percent on January 3, 2013. The report of exceedance notes that the emissions observed on January 3, 2013, were due in part to a slag pit cleaning operation.

39. The "Method 9 – Visible Observation" sheets indicated that, on numerous occasions, the sun was oriented outside the "sun location line" angle during the opacity readings, rendering the readings invalid under Method 9.

40. Alton Steel's exceedance of 6 percent opacity on February 2, 2012 , January 3, 2013, and January 24, 2013 constitutes a violation of the opacity limit at 40 C.F.R. § 63.10686(b)(2) and Condition 7.1.3(e) of the Title V Permit.

41. Alton Steel conducting opacity observations not done in accordance with EPA Method 9 constitutes a violation of 40 C.F.R. § 63.7(e)(2) and Condition 7.1.7(b)(i) of the Title V Permit.

**Civil Penalty**

42. 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 cooperation, Complainant has determined that an appropriate civil penalty to settle this action is $59,485.

43. Within 30 days after the effective date of this CAFO, Alton must pay the $59,485 civil penalty. Alton must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

For checks sent by express mail (that is, a non-U.S. Postal Service, which will not deliver mail to P.O. Boxes), send a casher's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Alton's name and docket number of this CAFO.

44. Alton must send a notice of payment that states its name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Nicole Wood-Chi (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

46. If Alton does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

47. Alton must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Alton must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Alton must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. 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. 42 U.S.C. § 7413(d)(5).

**General Provisions**

48. This CAFO resolves only Alton's liability for federal civil penalties for the violations alleged in this CAFO.

49. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

50. This CAFO does not affect Alton's responsibility to comply with the CAA and other applicable federal, state, and local laws. Except as provided in paragraph 50, above,

compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

51. Alton certifies that it is complying fully with provisions of its Title V permit and the NESHAP.

52. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

53. The terms of this CAFO bind Alton, its successors, and assigns.

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

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

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

**Alton Steel, Inc., Respondent**

9-24-2015
Date

James P. Hrusovsky
JAMES P. HRUSOVSKY
CEO
Alton Steel, Inc.

**United States Environmental Protection Agency, Complainant**

9/24/15
Date

George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

## Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

24 September 2015
Date

Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of: **Alton Steel, Inc.**
Docket Number: **CAA-05-2015-0063**

## CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on September 28, 2015, this day in the following manner to the addressees:

Copy by Certified Mail
Return-Receipt Requested:

James P. Hrusovsky
Chief Executive Officer
Alton Steel, Inc.
5 Cut Street
Alton, Illinois 62002

Copy by E-mail to
Complainant:

Nicole Wood
wood.nicole@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: September 28, 2015

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 4512