



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

**APR 10 2012**

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

REPLY TO THE ATTENTION OF:

Jon Faletto  
Hinshaw & Culbertson, LLP  
416 Main Street  
6<sup>th</sup> Floor  
Peoria, Illinois 61602-3126

Re: In the Matter of: Decorative Panels International, Inc.  
Docket No. CAA-05-2012-0020

Dear Mr. Faletto:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Decorative Panels International, Inc. (DPI), Clean Air Act Docket No. CAA-05-2012-0020. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on APR 10 2012.

Pursuant to paragraph 48 of the CAFO, DPI must pay the civil penalty within 90 days of MAY 10 2012. Your check must display the case name, case docket number CAA-05-2012-0020 and the billing document number 2751203A022.

Please direct any question regarding this case to Cathleen Martwick, Associate Regional Counsel, at 312-886-7166.

Sincerely,

Nathan Frank  
Air Enforcement and Compliance Assurance Branch  
IL/IN

Enclosure

cc: Regional Hearing Clerk/E-19J  
John Breslin, Regional Judicial Officer/C-14J  
Cathleen Martwick/C-14J  
Tom Hess, MDEQ  
Janis Denman, MDEQ

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY APR 10 2012  
REGION 5

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of: )  
)  
Decorative Panels International, Inc. )  
Alpena, Michigan )  
Respondent. )  
\_\_\_\_\_ )

Docket No. CAA-05-2012-0020  
Proceeding to Assess a Civil Penalty  
Under Section 113(d) of the Clean Air Act  
42 U.S.C. § 7413(d)

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 Decorative Panels International, Inc. ("DPI"), a Delaware corporation, doing business in Michigan since May 21, 2004.
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.

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U.S. ENVIRONMENTAL PROTECTION AGENCY

### **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. The parties agree that the signing of this CAFO is for settlement purposes only and does not constitute an admission by Respondent of the alleged violations set forth herein, the alleged violations identified in the Finding of Violation issued March 11, 2011, or that the law has been violated.

8. 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**

9. Under Section 112 of the Act, on July 30, 2004, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Plywood and Composite Wood Products (PCWP) at 40 C.F.R. Part 63, Subpart DDDD (69 Fed. Reg. 45983).

10. The NESHAP for PCWP applies to PCWP manufacturing facilities that manufacture hardboard and that are major sources of Hazardous Air Pollutants (HAP). 40 C.F.R. § 63.2231.

11. A reconstituted wood product press, as that term is defined at 40 C.F.R. § 63.2292, means a press that presses a resinated mat of wood fibers, particles or strands between hot platens or hot rollers to compact and set the mat into a panel by simultaneous application of heat and pressure. Reconstituted wood product presses are used in the manufacture of hardboard. A reconstituted wood product press is a process unit.

12. A hardboard oven, as that term is defined in 40 C.F.R. § 63.2292, means an oven used to heat treat or temper hardboard after hot pressing. A hardboard oven is a process unit.

13. A wood products enclosure, as that term is defined in 40 C.F.R. § 63.2292, means a permanently installed containment that was designed to meet the following physical design criteria:

(1) Any natural draft opening shall be at least four equivalent opening diameters from each HAP-emitting point, except for where board enters and exits the enclosure, unless otherwise specified by the EPA Administrator.

(2) The total area of all natural draft openings shall not exceed 5 percent of the surface area of the enclosure's four walls, floor, and ceiling.

(3) The average facial velocity of air through all natural draft openings shall be at least 3,600 meters per hour (200 feet per minute). The direction of airflow through all natural draft openings shall be into the enclosure.

(4) All access doors and windows whose areas are not included in item 2 of this definition and are not included in the calculation of facial velocity in item 3 of this definition shall be closed during routine operation of the process.

(5) The enclosure is designed and maintained to capture all emissions for discharge through a control device.

14. A capture device, as that term is defined in 40 C.F.R. § 63.2292, means a hood, enclosure, or other means of collecting emissions into a duct so that the emissions can be measured.

15. A control device, as that term is defined in 40 C.F.R. § 63.2292, means any equipment that reduces the quantity of HAP emitted into the air. The device may destroy the HAP or secure the HAP for subsequent recovery.

16. A control system or add-on control system, as that term is defined in 40 C.F.R. § 63.2292, means the combination of capture and control devices used to reduce HAP emissions to the atmosphere.

17. The NESHAP, at 40 C.F.R. § 63.2233, requires the owner and operator of an existing affected PCWP manufacturing facility to comply with compliance options, operating

requirements, and work practice requirements no later than October 1, 2007, unless a request for a compliance extension is submitted pursuant to 40 C.F.R. § 63.6(i)(4)(i)(A) and approved pursuant to 40 C.F.R. § 63.6(i)(8).

18. The NESHAP, at 40 C.F.R. § 63.2240, requires the owner and operator of an existing affected PCWP manufacturing facility to meet compliance options and operating requirements that include the installation of emissions control equipment on subject PCWP manufacturing process units.

19. The NESHAP, at 40 C.F.R. § 63.2240, requires owners of an existing affected PCWP manufacturing facility to use an emission control system and demonstrate that the resulting emissions meet the compliance options and operating requirements in Tables 1A or 1B and 2 to Subpart DDDD.

20. The NESHAP, at 40 C.F.R. Part 63, Subpart DDDD, Table 1B(1) - (6), requires, among other things, that for each process unit with an add-on control system the owner or operator must reduce emissions of total HAP, as measured as Total Hydrocarbon (as carbon), by 90 percent or limit Total Hydrocarbon emissions to 20 ppmvd; reduce methanol emissions by 90 percent or limit methanol emissions to 1 ppmvd (if uncontrolled methanol emissions entering the control device are greater or equal to 10 ppmvd); or reduce formaldehyde emissions by 90 percent or limit formaldehyde emissions to 1 ppmvd (if uncontrolled formaldehyde emissions entering the control device are greater or equal to 10 ppmvd).

21. The NESHAP, at 40 C.F.R. Part 63, Subpart DDDD, Table 4(9) requires that for each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in Table 1B, the owner or operator must meet the design specifications included in the definition of wood

products enclosure in 40 C.F.R. § 63.2292; or determine the percent capture efficiency of the enclosure directing emissions to an add-on control device.

22. The NESHAP, at 40 C.F.R. § 63.2267, requires the owner or operator of an existing affected PCWP manufacturing facility to either use a wood products enclosure as defined in 40 C.F.R. § 63.2292 or measure the capture efficiency of the capture device for the press or board cooler using Methods 204 and 204A through 204F of 40 CFR Part 51, appendix M (as appropriate) and requires the owner or operator to submit documentation that the wood products enclosure meets the press enclosure design criteria in §63.2292 or the results of the capture efficiency verification with the Notification of Compliance Status.

23. The NESHAP, at 40 C.F.R. § 63.2260(a) requires the owner or operator of an existing affected PCWP manufacturing facility to demonstrate initial compliance with the compliance options and operating requirements by conducting performance tests and establishing each site-specific operating requirement in Table 2 according to the requirements in 40 C.F.R. § 63.2262 and Table 4.

24. The NESHAP, at 40 C.F.R. § 63.2261(a), requires the owner or operator of an existing affected PCWP manufacturing facility to conduct a performance test no later than 180 days after the compliance date that is specified in 40 C.F.R. § 63.2233.

25. The NESHAP, at 40 C.F.R. Part 63, Subpart DDDD, Table 4(6) requires the owner or operator of a process unit subject to a compliance option in table 1A to measure emissions of total HAP (as defined in 40 C.F.R. § 63.2292) using Method 320 in appendix A to 40 CFR part 63; OR the NCASI Method IM/CAN/WP-99.02 (IBR, see §63.14(f)); OR the NCASI Method ISS/FP-A105.01 (IBR, see § 63.14(f)); OR ASTM D6348-03 (IBR, see §

63.14(b)) provided that percent R as determined in Annex A5 of ASTM D6348–03 is equal or greater than 70 percent and less than or equal to 130 percent.

26. The NESHAP, at 40 C.F.R. § 63.2260(c) requires the owner or operator of an existing affected PCWP manufacturing facility to submit a Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements of 40 C.F.R. § 63.2280(d).

27. The NESHAP, at 40 C.F.R. § 63.2280(d)(2), requires the owner or operator of an existing affected PCWP manufacturing facility to submit a Notification of Compliance Status within 60 days of the date by which a compliance demonstration was required.

28. The Administrator of EPA (the Administrator) 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 through January 12, 2009, and 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.

29. 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.

30. 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.

### **Factual Allegations and Alleged Violations**

31. At all times relevant to this CAFO, DPI owned and operated a composite wood products manufacturing facility at 416 Ford Avenue, Alpena, Michigan.
32. DPI's manufacturing facility is an emission source subject to the requirements of the Act, including 40 C.F.R. Part 63, Subpart DDDD.
33. DPI's manufacturing facility is located at a major source of HAP emissions as set forth at 40 C.F.R. § 63.2231.
34. At all times relevant to this CAFO, DPI manufactured hardboard at the manufacturing facility.
35. At all times relevant to this CAFO, DPI owned and operated two reconstituted wood product presses, known as the No. 1 Press and the No. 3 Press at the manufacturing facility.
36. DPI completed installation of a wood products enclosure as defined in 40 C.F.R. § 63.2292 at its No. 1 Press by April 30, 2010.
37. DPI completed installation of a wood products enclosure as defined in 40 C.F.R. § 63.2292 at its No. 3 Press by October 31, 2010.
38. At all times relevant to this CAFO, DPI owned and operated a hardboard oven, known as the No. 1 Bake Oven at the manufacturing facility.
39. DPI completed the permanent shutdown of the No. 1 Bake Oven from the manufacturing facility on October 30, 2010.
40. In letters dated October 1, 2007, and January 16, 2008, DPI submitted to the Michigan Department of Environmental Quality (MDEQ) Air Quality Division (AQD) a request for a one-year extension for DPI to comply with the NESHAP for PWCP manufacturing

facilities. The MDEQ-AQD approved this request on March 3, 2008, thereby setting a new date of October 1, 2008, as the date of DPI's required compliance with the NESHAP.

41. U.S. EPA alleges that from October 1, 2008 through October 31, 2010, DPI failed at its No. 3 Press to either use a wood products enclosure as defined in 40 C.F.R. § 63.2292 or measure the capture efficiency of the capture device for the press or board cooler using Methods 204 and 204A through 204F of 40 CFR part 51, appendix M (as appropriate) as required by 40 C.F.R. § 63.2267 and Table 4(9) of 40 C.F.R. part 63, Subpart DDDD.

42. U.S. EPA alleges that from October 1, 2008 through October 31, 2010, DPI failed at its No. 3 Press to demonstrate that the resulting emissions from DPI's emission control system met the compliance options and operating requirements in Tables 1B and 2 to Subpart DDDD as required by 40 C.F.R. § 63.2240.

43. U.S. EPA alleges that from October 1, 2008 through April 30, 2010, DPI failed at its No. 1 Press to either use a wood products enclosure as defined in 40 C.F.R. § 63.2292 or measure the capture efficiency of the capture device for the press or board cooler using Methods 204 and 204A through 204F of 40 CFR part 51, appendix M (as appropriate) as required by 40 C.F.R. § 63.2267 and Table 4(9) of 40 C.F.R. part 63, Subpart DDDD.

44. U.S. EPA alleges that from October 1, 2008 through April 30, 2010, DPI failed at its No. 1 Press to demonstrate that the resulting emissions from DPI's emission control system met the compliance options and operating requirements in Tables 1B and 2 to Subpart DDDD as required by 40 C.F.R. § 63.2240.

45. U.S. EPA alleges that DPI failed to timely demonstrate compliance at the No. 1 Bake Oven by failing to conduct a performance test within 180 days of the compliance date specified in § 63.2233 as required by § 63.2261(a).

46. On March 11, 2011, U.S. EPA issued to Respondent a Finding of Violation (“FOV”) alleging that DPI failed to use an emission control system and demonstrate that the resulting emissions met the compliance options and operating requirements at its No. 1 and No. 3 Presses and at its No. 1 Bake Oven in violation of 40 C.F.R. § 63.2240(b).

**Civil Penalty**

47. Based on 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, Complainant has determined that an appropriate civil penalty to settle this action is \$128,305.00.

48. Within 90 days after the effective date of this CAFO, Respondent must pay a \$128,305.00 civil penalty by sending, via express mail or overnight delivery service, a cashier’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 Respondent’s name, docket number of this CAFO and the billing document number.

49. Respondent must send a notice of payment that states Respondent’s name, the docket number of this CAFO and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Cathleen Martwick 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

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

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

51. If Respondent 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 Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

52. Respondent 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). Respondent 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, Respondent 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**

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

54. 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.

55. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws. Except as provided in paragraph 53, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

56. Respondent certifies that it is complying fully with 40 CFR Part 63 Subpart DDDD.

57. 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 Act, 42 U.S.C. § 7413(e).

58. The terms of this CAFO bind Respondent, its successors and assigns.

59. 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.

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

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

**Decorative Panels International, Inc., Respondent**

March 30, 2012  
Date

  
\_\_\_\_\_  
Timothy P. Clark,  
President & CEO *etc*  
Decorative Panels International, Inc.

**Consent Agreement and Final Order**  
**In the Matter of: Decorative Panels International**  
**Docket No. CAA-05-2012-0020**

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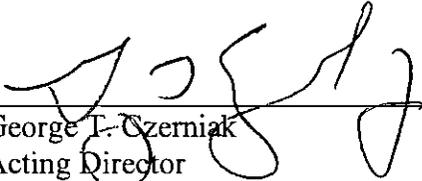
APR 10 2012

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY,

**United States Environmental Protection Agency, Complainant**

*4/9/12*

Date

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

**Consent Agreement and Final Order**  
**In the Matter of: Decorative Panels International**  
**Docket No. CAA-05-2012-0020**

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PROTECTION AGENCY

**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.

4-9-12

Date



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

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PROTECTION AGENCY

Consent Agreement and Final Order  
In the Matter of: Decorative Panels International, Inc.  
Docket No. CAA-05-2012-0020

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number \_\_\_\_\_ with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed a second original copy by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Jon Faletto  
Hinshaw & Culbertson, LLP  
416 Main Street  
6<sup>th</sup> Floor  
Peoria, Illinois 61602-3126

I certify that I mailed copies of the CAFO by first-class mail, addressed as follows:

Tom Hess  
MDEQ  
P.O. Box 30260  
Lansing, Michigan 48909

Janis Denman  
MDEQ  
2100 West M-32  
Gaylord, Michigan 49735-9282

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U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGIONAL HEARING CLERK  
77 W. JACKSON BOULEVARD  
CHICAGO, ILLINOIS 60604

I also certify that I delivered a copy of the CAFO by intra-office mail, addressed as follows:

John Breslin, Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard/Mail Code C-14J  
Chicago, Illinois 60604

On the 10 day of APRIL 2012.

  
Tracy Jamison  
Administrative Program Assistant  
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7673 9566