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

AUG - 2 2016

REPLY TO THE ATTENTION OF

VIA E-MAIL: VJWright@vjwrightlaw.com

Thomas Bennett, President
Hydraulic Press Brick Company
3600 Woodview Trace
Indianapolis, IN 46268

Dear Mr. Bennett:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Hydraulic Press Brick Company, docket no. **CAA-05-2016-0033**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on August 2, 2016.

Pursuant to paragraph 35 of the CAFO, Hydraulic Press Brick Company must pay the civil penalty within 30 days of September 1, 2016. Your check must display the case name and case docket number.

Please direct any questions regarding this case to Louise Gross, Associate Regional Council, (312) 886-6844.

Sincerely,

Sarah Marshall, Chief
Air Enforcement and Compliance Assurance (MI/WI Section)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Louise Gross/C-14J
Phil Perry/IDEM

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REGION 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2016-0033**
	)	
Hydraulic Press Brick Company	)	**Proceeding to Assess a Civil Penalty**
Brooklyn, 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 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 Hydraulic Press Brick Company ("HPBC"), a corporation 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. 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. On March 12, 1982, EPA approved 326 Indiana Administrative Code ("IAC") Article 7-1, governing sulfur dioxide ("SO_2") emissions in Indiana as part of the Indiana State Implementation Plan ("SIP") (47 FR 10813). The EPA has approved various codifications and revisions to tis rule. *See, e.g.,* 70 Fed. Reg. 56129 (October 26, 2005).

10. 326 IAC 7-1.1-1 states that all emissions units with a potential to emit twenty-five (25) tons per year (tpy) or ten (10) pounds per hour of SO_2 shall comply with the limitations in Section 2 of this rule (326 IAC 7-1.1-2).

11. 326 IAC 7-1.1-2(a)(1) states that SO_2 emissions from fuel combustion emissions units shall be limited to six and zero-tenths (6.0) pounds per million British thermal units ("lbs/MMBtu") for coal combustion.

12. Title V of the CAA, 42 U.S.C. §§ 7661a-7661f, establishes an operating permit program for certain sources, including "major sources."

13. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides 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 the source except in compliance with its Title V permit.

14. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), on July 21, 1992, EPA promulgated regulations establishing the minimum elements of a permit program to be

administered by any air pollution control agency (57 *Fed. Reg.* 32295). These regulations are codified at 40 C.F.R. Part 70.

15. The federal regulations, at 40 C.F.R. § 70.2, define "major source," in part, as any stationary source belonging to a single major industrial grouping and that directly emits or has the potential to emit 100 tpy of any air pollutant, as defined under Section 302 of the CAA, 42 U.S.C. § 7602.

16. The federal regulations, at 40 C.F.R. § 70.7(b), provide that no source subject to Title V may operate the source except in compliance with a Title V permit.

17. The EPA promulgated final interim approval of the Indiana Title V program on November 14, 1995, 60 Fed. Reg. 57191, and the program became effective on that date. This includes 326 IAC 2-7.

18. Indiana regulation 326 IAC 2-7-5(1) provides that Title V permits shall incorporate emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of a Part 70 permit issuance.

19. 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, and up to $37,500 per day of violation, up to a total of $320,000 for violations that occurred on or after December 6, 2013 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

20. The Administrator may assess a penalty greater than $320,000 where the Administrator and the Attorney General of the United States jointly determine that a matter

involving a larger penalty is appropriate for an administrative penalty action. 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19.

21. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than $320,000 is appropriate for an administrative penalty action.

22. 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.

23. 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

24. HPBC owns and operates a lightweight aggregate manufacturing facility at 6618 North Tidewater Road, Brooklyn, Indiana ("Brooklyn Plant").

25. HPBC is a corporation authorized to do business in Indiana.

26. HPBC is a "person," as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

27. Kilns 4 and 5 at the Brooklyn Plant are "fuel combustion emissions units" under the Indiana SIP.

28. Kiln 4 and Kiln 5 at the Brooklyn Plant each have the potential to emit 25 tpy or more of SO_2.

29. The Indiana Department of Environmental Management issued Title V Operating Permit No. T109-26822-00007 to HPBC, with an effective date of July 23, 2014.

30. Condition D.2.3(a) of HPBC's Title V operating permit states that the sulfur dioxide emissions from each of the three rotary kilns (Kilns 3, 4, and 5) when burning coal, shall not exceed 6 lbs/MMBtu of coal combustion.

31. On February 5, 2014, EPA issued to HPBC a Notice of Violation and Finding of Violation ("NOV/FOV") giving notice of the violations alleged below, and offering the Respondent an opportunity to confer with the EPA. On March 27, 2014, representatives of HPBC and EPA discussed the February 5, 2014 NOV/FOV.

32. EPA alleges that SO_2 emissions from HPBC's Kiln 4 and Kiln 5 each exceed the 6 lbs/MMBtu Indiana SIP SO_2 limitation established at 326 IAC 7-1.1-2(a)(1) for fuel combustion emission units combusting coal.

33. In addition, EPA alleges that SO_2 emissions from HPBC's Kiln 4 and Kiln 5 each exceed the 6 lbs/MMBtu Title V permit limitation established at Condition D.2.3(a).

Civil Penalty

34. 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 HPBC's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is $325,000.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a $325,000 civil 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

36. Respondent must send a notice of payment that states Respondent's 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

Louise Gross (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

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

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

39. 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

40. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following addresses: gross.louise@epa.gov (for Complainant) and VJWright@vjwrightlaw.com (for Respondent).

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

42. 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.

43. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph ~~40~~ 41, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

44. Respondent has signed an Administrative Consent Order to be issued under Section 113(a) of the CAA, in which it has agreed to take specific actions in order to achieve and maintain compliance with 326 IAC 7-1.1-2(a)(1).

45. 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).

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

47. 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.

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

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

Hydraulic Press Brick Company, Respondent

June 28, 2016
Date

Thomas Bennett
President
Hydraulic Press Brick Company

United States Environmental Protection Agency, Complainant

7/21/16
Date

Edward Nam
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Hydraulic Press Brick Company
Docket No. CAA-05-2016-0033

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.

7/29/16
Date

Robert A. Kaplan
Robert Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Hydraulic Press Brick Company
Docket Number: **CAA-05-2016-0033**

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 August 2, 2016 this day in the following manner to the addressees:

Copy by e-mail to
Complainant:

Louise Gross
gross.louise@epa.gov

Copy by e-mail to
Attorney for Respondent:

Vicki Wright
VJWright@vjwrightlaw.com

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: August 2, 2016

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