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

OCT - 1 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark A. Thimke, Esq.
Foley & Lardner LLP
777 East Wisconsin Ave.
Milwaukee, WI 53202-5306

Re: In the Matter of: Miller Compressing Company, Milwaukee, Wisconsin
Docket No. **CAA-05-2016-0001**

Dear Mr. Thimke:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Miller Compressing Company, Docket No. **CAA-05-2016-0001**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on October 1, 2015.

Pursuant to paragraph 39 of the CAFO, Miller Compressing Company must pay the civil penalty within 30 days of October 30, 2015. Your check must display the case name and case Docket No.

Please direct any questions regarding this case to Terrance Stanuch, Office of Regional Counsel, (312) 886-8044.

Sincerely,

Sarah Marshall
Air Enforcement and Compliance Assurance Branch, MI/WI Section

Enclosure

cc: Regional Hearing Clerk/E-19J
Ann Coyle/Regional Judicial Officer/C-14J
Terrance Stanuch/C-14J
Bill Bauman/WDNR

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on 100% Recycled Paper (100% Post-Consumer)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2016-0001**
	)	
Miller Compressing Company	)	**Proceeding to Assess a Civil Penalty**
1640 West Bruce Street	)	**Under Section 113(d) of the Clean Air Act,**
Milwaukee, Wisconsin	)	**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 ("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, United States Environmental Protection Agency, Region 5 ("EPA").

3. Respondent is the Miller Compressing Company, a company doing business in the State of Wisconsin.

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. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, each state must submit to the EPA Administrator a plan, known as a State Implementation Plan ("SIP") for attaining and maintaining the National Ambient Air Quality Standards.

10. Wisconsin Administrative Code ("WAC") s. NR 406.03 became effective as part of the federally enforceable SIP for the State of Wisconsin on June 25, 1986. 40 C.F.R. § 52.2589.

11. WAC s. 406.03 states, in part, that no person may commence construction, reconstruction, replacement, relocation or modification of a stationary source unless the person has a construction permit for that source.

12. WAC s. NR 407 became effective as part of the federally enforceable SIP for the State of Wisconsin on January 1, 1994. 40 C.F.R. § 52.2570(c)(76)(i)(A).

13. WAC s. NR 407.09(4)(a)1 states, in part, that all operating permits shall contain compliance testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.

14. WAC s. NR 407.09(4)(a)3.b. states, in part, that all operating permits shall include the means for assessing or monitoring the compliance of the source with its emissions limitations, standards and work practices.

15. WAC s. NR 415.04 became effective as part of the federally enforceable SIP for the State of Wisconsin on November 1, 2001. 40 C.F.R. § 52.2570(c)(109)(i)(B).

16. WAC s. NR 415.04 states, in part, that no person may cause, allow, or permit any materials to be handled, transported or stored without taking precautions to prevent particulate matter from becoming airborne.

17. WAC s. NR 439 became effective as part of the federally enforceable SIP for the State of Wisconsin on January 1, 1994. 40 C.F.R. § 52.2570(c)(73)(i)(I).

18. WAC s. NR 439.04(1)(d) states, in part, that the owner or operator of an air contaminant source shall maintain any records relating to the emission of air contaminants which may be requested in writing by the government.

19. WAC s. NR 439.055(1)(e) states, in part, that owners or operators of a source may be required to install and operate instrumentation to monitor the operation of the source of or air pollution control equipment ("PCE").

20. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production. 65 Fed. Reg. 15710 (March 23, 2000). Relevant to this CAFO, EPA has since amended these standards at 67 Fed. Reg. 59792 (September 24, 2002), at 67 Fed. Reg. 79816 (December 30, 2002), and at 69 Fed. Reg. 53984 (September 3, 2004). These standards are codified at 40 C.F.R. Part 63, Subpart RRR, 40 C.F.R. § 63.1500.

21. 40 C.F.R. Part 63, Subpart RRR, applies to the owner or operator of each secondary aluminum production facility as defined therein, and each existing affected source was required to comply with the requirements of this subpart by March 24, 2003. *See* 40 C.F.R. § 63.1501(a).

22. 40 C.F.R. §§ 63.1510(g)(1) and (2), and 63.1517(b)(2)(i) require, in part, that the owner or operator must install, calibrate, maintain and operate a device to continuously monitor and record the operating temperature of the afterburner with the requirements for continuous monitoring systems, and to record the temperatures in in 15 minute block averages.

23. The EPA Administrator (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 of the CAA that occur after January 12, 2009, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

24. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(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.

25. 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

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

27. Respondent owns and operates a scrap yard and metal recycling facility at 1640 West Bruce Street in Milwaukee, Wisconsin (the "Facility").

28. For purposes of this CAFO, Respondent is subject to the provisions of 40 C.F.R. Part 63, Subpart RRR and the Wisconsin SIP. Respondent no longer operates the United furnace that was subject to 40 C.F.R. Part 63, Subpart RRR and the Wisconsin SIP.

29. The Wisconsin Department of Natural Resources issued a federally enforceable Construction Permit, No. 08-DJH-083 (the "Permit") to the Facility on September 3, 2008, which authorized Respondent to construct and initially operate a sorting system at their Facility.

30. EPA conducted an inspection at the Facility from July 26-28, 2010 ("July 2010 Inspection"), to determine Respondent's compliance with the CAA.

31. Parts 1.B.3.c.(3) and (4) of the Permit required, in part, that Respondent operate the Facility's United hearth furnace afterburner temperature recording device and that the afterburner temperature be recorded in 15 minute block averages. These permit conditions were adopted from 40 C.F.R. Part 63, Subpart RRR, 40 C.F.R. §§ 63.1510(g)(1) and (2), and 63.1517(b)(2)(i). At the time of the July 2010 Inspection, EPA determined that Respondent had not recorded the United hearth furnace afterburner temperatures in 15 minute block averages, on various dates.

32. Part 1.B.3.b.(4) of the Permit required, in part, that Respondent operate the United hearth furnace afterburner at a minimum temperature equal to the temperature at which the afterburner was operated during the most recent emissions test which demonstrated compliance. This permit condition was adopted from the Wisconsin SIP, as codified at WAC s. NR 407.09(4)(a)3.b. At the time of the July 2010 Inspection, EPA determined that Respondent had not operated the United hearth furnace afterburner at a minimum temperature equal to the

temperature at which the afterburner was operated during the most recent emissions test which demonstrated compliance, on various dates.

33. Part 1.C.1.b.(6) of the Permit required, in part, that minimum amperage readings be maintained for PCE associated with the Facility's 7,000 horsepower (hp) Shredder. PCE for the 7,000 hp Shredder includes a high efficiency air filter, a Bivitek cyclone, and a Venturi scrubber. This permit condition was adopted from the Wisconsin SIP, as codified at WAC ss. NR 407.09(4)(a)1 and 439.055(1)(e). At the time of the July 2010 Inspection, EPA determined that Respondent had not maintained minimum amperage readings for PCE associated with the Facility's 7,000 horsepower (hp) Shredder, on various dates.

34. Part I.C.1.c.(5) of the Permit required, in part, that amperage readings be recorded for each piece of PCE associated with the 7,000 hp Shredder and the Bivitek cyclone. This permit condition was adopted from the Wisconsin SIP, as codified at WAC ss. NR 407.09(4)(a)1 and 439.04(1)(d). At the time of the July 2010 Inspection, EPA determined that Respondent had not recorded amperage readings for each piece of PCE associated with the 7,000 hp Shredder and the Bivitek cyclone, on various dates.

35. Part I.D.1.a.(1) of the Permit required, in part, the mitigation of particulate matter emissions from material handling. This includes emissions from loading, unloading and wind erosion from storage piles at the Facility. This permit condition was adopted from the Wisconsin SIP, as codified at WAC s. NR 415.04. At the time of the July 2010 Inspection, EPA determined that Respondent had excessive fugitive dust emissions, on various dates.

36. EPA issued a Notice and Finding of Violation (NOV/FOV) to Respondent on October 3, 2011, which alleged these potential violations.

37. Subsequent to the NOV/FOV, EPA and Respondent have had several discussions, and Respondent has submitted documentation to demonstrate that it has addressed these alleged violations, modified the air permit and is now in compliance with these Permit requirements.

Civil Penalty

38. Based on consideration of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation to settle this matter, and Respondent's agreement to perform the Supplemental Environmental Project ("SEP") described herein, Complainant has determined that an appropriate civil penalty to settle this action is $25,000.

39. Respondent agrees to pay the $25,000 civil penalty within 30 days after the effective date of this CAFO, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note Respondent's name and the docket number of this CAFO. Respondent agrees to also 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 civil penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Terence Stanuch (C-14J)
Office of Regional Counsel
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Regional Hearing Clerk (E-19J)
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

41. If Respondent does not timely pay the entire civil payment as set forth above, the entire unpaid balance of the civil penalty shall become due and owing upon written notice by EPA to Respondent of the delinquency. 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.

42. 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 ten (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).

Supplemental Environmental Project

43. Respondent agrees to complete a SEP designed to further protect the environment and public health by reducing emissions of related air pollutants to the environment. In particular, the SEP will reduce greenhouse gas emissions and other air pollutants from diesel-fired bus engines.

44. Respondent agrees to provide $75,000 in funding toward the purchase of a school bus and will work in cooperation with the Wisconsin Department of Natural Resources to accomplish this requirement. The new school bus will replace a school bus that is (i) transporting students on a regular basis, (ii) operating on diesel fuel, and (iii) be from the 1991-2003 model year. The new school bus must be certified to model year 2013 or newer engine standards and equipped with a particulate filter (or equipped with a catalyst if powered by compressed natural gas).

45. Respondent shall complete this SEP within 180 days of the effective date of this CAFO.

46. Respondent's total expenditure for this SEP is $75,000. No funds counted toward completion of the SEP shall be deductible for federal tax purposes. Respondent hereby certifies as follows:

> I certify that the Miller Compressing Company is not required to perform or develop this SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that the Miller Compressing Company has not received, and is not negotiating to receive, credit for this SEP in any other enforcement action.
>
> I certify that the Miller Compressing Company is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as this SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as this SEP, nor has the same activity been described in an

unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

47. Respondent agrees to submit a SEP Completion Report to EPA within 60 days of completion of the SEP. This Completion Report must contain the following information:

(a) detailed description of the SEP as completed;

(b) description of any problems executing the SEP and the actions taken to correct the problems;

(c) certification from the recipients that the funds were spent in conformity with the SEP;

(d) certification or documentation demonstrating that the replaced school bus was destroyed or disassembled such that it will no longer be operated; and

(e) certification that Respondent has completed the SEP in compliance with this CAFO.

48. Respondent agrees to submit the SEP Completion Report required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3511

49. Respondent agrees that the SEP Completion Report will certify that the report is true and complete by including the following statement signed by a responsible corporate official or an authorized designee:

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.

50. Following receipt of the SEP Completion Report, EPA will notify Respondent in writing within 30 days of receipt of each report that:

(a) it has satisfactorily completed the SEP and the SEP Completion Report;

(b) there are deficiencies in the SEP as completed or in the SEP Completion Report and EPA will give Respondent 30 days to correct the deficiencies; or

(c) it has not satisfactorily completed the SEP or the SEP Completion Report and EPA will seek stipulated penalties as described below.

51. If EPA disapproves of the SEP Completion Report, Respondent may object in writing within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States as specified below.

52. Respondent agrees that failure to submit a SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become subject to stipulated penalties specified below.

53. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay the following stipulated penalties to the United States:

(a) If Respondent does not complete the SEP satisfactorily according to the requirements of this CAFO, including the requirement to complete the SEP within 180 days of the effective date of this CAFO, Respondent must pay a penalty of $75,000.

(b) If Respondent does not submit a timely SEP Completion Report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

Penalty Per Violation Per Day	Period of Violation
$100	1st through 14th day
$200	15th through 30th day
$500	31st day and beyond

54. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

55. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified above for payment of the civil penalty, and will pay interest and nonpayment penalties on any overdue amounts.

56. Any public statement that Respondent makes referring to the SEP must include the following language: "The Miller Compressing Company undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against the Miller Compressing Company for alleged violations of the Clean Air Act."

57. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

(a) Respondent must notify EPA in writing within ten (10) days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

(b) If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

(c) If EPA does not agree that circumstances beyond the control of Respondent caused or may a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

(d) Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

General Provisions

58. Consistent with the "Standing Order Authorizing E-Mail Service of Order 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 valid e-mail addresses: ckennedy@thompsoncoburn.com (for Respondent), and stanuch.terry@epa.gov (for Complainant). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

59. Respondent neither admits nor denies the allegations of the non-compliance set forth in this CAFO but acknowledges that the terms and conditions of this CAFO are enforceable against it.

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

61. 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.

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

63. Respondent certifies that it has corrected the violations alleged herein and that, to the best of its knowledge, it is currently complying with the CAA.

64. 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).

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

66. Each person signing this CAFO 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.

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

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

Miller Compressing Company
Respondent

9-25-15
Date

Jon Spigel V.P.
NAME
TITLE

United States Environmental Protection Agency
Complainant

9/25/15
Date

George T. Czerniak
Director
Air and Radiation Division
United States Environmental Protection Agency
Region 5

Miller Compressing Company
Respondent

9-25-15
Date

Jon Spigel V.P.
NAME
TITLE

United States Environmental Protection Agency
Complainant

Date

George T. Czerniak
Director
Air and Radiation Division
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Miller Compressing Company, Milwaukee, Wisconsin
Docket No. CAA-05-2016-0001

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, United States Environmental Protection Agency, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. **IT IS SO ORDERED.**

30 September 2015
Date

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

In the Matter of: Miller Compressing Company
Docket Number: CAA-05-2016-0001

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 October 1, 2015, this day in the following manner to the addresses:

Copy by certified mail return-receipt requested:	Mark A. Thimke, Esq. Foley & Lardner LLP 777 East Wisconsin Ave. Milwaukee, WI 53202-5306
Copy by email to Complainant:	Terence Stanuch stanuch.terry@epa.gov
Copy by email to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

Dated: October 1, 2015

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

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 4291