



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUL 01 2010

REPLY TO THE ATTENTION OF:

AE-17J

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

Joe Michaud, Vice President  
The Newark Group, Inc.  
1514 East Thomas Avenue  
Milwaukee, Wisconsin 53211

Linda Benfield  
Foley & Lardner  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

Dear Ms. Benfield and Mr. Michaud:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves \_\_\_\_\_ . As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

JUL 01 2010

Pursuant to paragraph 32 of the CAFO, The Newark Group must pay the civil penalty within 30 days of JUL 01 2010 . Your check must display the case name, the docket number CAA-05-2010-0034 , and the billing document number 2751003A034 .

Please direct any questions regarding this case to Luis Oviedo, Attorney in the Office of Regional Counsel, (312) 353-9538.

Sincerely yours,

Bonnie Bush  
Air Enforcement and Compliance Assurance  
Branch, MI/WI Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )

The Newark Group, Inc. )

Respondent. )

) Docket No. CAA-05-2010-0034

) Proceeding to Assess a Civil Penalty  
) Under Section 113(d) of the Clean Air  
) Act, 42 U.S.C. § 7413(d)

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JUL 01 2010

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

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, United States Environmental Protection Agency, Region 5.

3. Respondent is the Newark Group, Inc., a New Jersey corporation, which does business in Wisconsin as Wisconsin Paperboard Corporation.

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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the 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 the 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 December 4, 2002, in accordance with section 112(d) of the Act, EPA promulgated the National Emission Standards for Hazardous Air Pollutants from Paper and Other Web Coating at 40 C.F.R. Part 63, Subpart JJJJ, §§ 63.3280-63.3420 (Subpart JJJJ).

10. Subpart JJJJ applies to each new and existing facility that is a major source of HAP, as defined in §63.2, at which web coating lines are operated.

11. A “major source” of HAP emissions is, as defined by 40 C.F.R. § 63.2 (referenced by § 63.3290), as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

12. Pursuant to 40 C.F.R. § 63.3330(a), the owner or operator of an existing affected source (as described at 40 C.F.R. § 63.3310) that commenced construction or reconstruction before September 13, 2000, and that has not undergone reconstruction as

defined in §63.2, must achieve compliance with the provisions of Subpart JJJJ on or before December 5, 2005.

13. Subpart JJJJ includes 40 C.F.R. § 63.3400(a) and (b), which state that the owner or operator of an affected source must submit notices to the Administrator in accordance with the applicable notification requirements in 40 C.F.R. § 63.9(b).

14. 40 C.F.R. § 63.9(b)(2), which is specified in Table 2 of Subpart JJJJ, requires that the owner or operator of an affected source that has an initial start-up before the effective date of a relevant standard notify the Administrator in writing that the source is subject to such standard, and provide in that initial notification the information required by § 63.9(b)(2). 40 C.F.R. § 63.3400(b)(1) states that initial notification for existing affected sources must be submitted no later than 1 year before the compliance date specified in §63.3330(a).

15. 40 C.F.R. § 63.3400(c) requires that an affected source must submit semiannual compliance reports for the period beginning on the compliance date that is specified for the affected source in §63.3330, and for every semiannual period thereafter.

16. Pursuant to 40 C.F.R. § 63.9(h), (which is specified by 40 C.F.R. § 63.3400(e)), when an affected source becomes subject to a relevant standard, the owner or operator shall submit to the Administrator a notification of compliance status providing the information required by § 63.9(h)(2)(i). This notification shall be sent before the close of business on the 60<sup>th</sup> day following completion of the relevant compliance demonstration activity specified in the relevant standard.

17. Section 113(a) of the Act provides the Administrator of EPA ("Administrator") with the authority to issue compliance and penalty orders against any person that has violated or is in violation of an applicable Implementation Plan, permit, or other requirements of the Act. That authority has been delegated to the Director, Air and Radiation Division, Region 5, U.S. EPA ("Director").

18. The Administrator may assess a civil penalty of \$25,000 (prior to January 31, 1997), \$27,500 (after January 31, 1997), \$32,500 (after March 15, 2004) and up to \$37,500 per day, per violation, up to a total of \$295,000, for violations that have occurred on or after January 12, 2009, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

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

20. 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 complaint.

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

21. Respondent owns and operates a recycled paperboard manufacturing facility at 1514 E. Thomas Avenue in Milwaukee, Wisconsin. The facility operates under the Title V permit number 241023640-P10 issued by the Wisconsin Department of Natural Resources.

22. The Respondent's Facility is a major source of hazardous air pollutant emissions, as the term "major source" is defined by 40 C.F.R. § 63.2.

23. The processes at the Facility include a converting operation where adhesive is applied to paperboard by a laminator. Respondent's facility is a major source of HAP, and therefore this process is subject to the NESHAP at 40 C.F.R. Part 63, Subpart A, General Provisions and Subpart JJJJ, standards for Paper and Other Web Coating processes at, §§ 63.3280 - 63.3420.

24. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

25. Respondent is an "owner and/or operator" as defined at Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5).

26. Respondent violated the regulations set forth at 40 C.F.R. §§ 63.9(b)(2) and 63.3400(b)(1) because Respondent failed, on or before December 5, 2004, to submit to the Administrator an initial notification report identifying the affected sources at the Wisconsin Paperboard Corp. ("WPC") plant site which were subject to the Subpart JJJJ regulations. WPC submitted this notification on September 30, 2008.

27. Respondent violated the regulations set forth at 40 C.F.R. § 63.3400(c) because WPC failed to timely submit the semiannual summary reports required by those regulations. WPC failed to submit a semiannual summary report by July 31, 2006, January 31, 2007, July 31, 2007, January 31, 2008 and July 31, 2008. The reports were submitted on September 30, 2008.

28. Respondent violated the regulations set forth at 40 C.F.R. §§ 63.9(h) and 63.3400(e) because WPC failed to timely submit to the Administrator a notification of

compliance status for the affected sources at the WPC plant site within 180 days after the compliance date of December 5, 2005. The notification of compliance status was submitted on September 30, 2008.

29. On July 31, 2009, EPA issued a Finding of Violation ("FOV") to the Respondent for violations of the NESHAP at 40 C.F.R. Part 63, Subpart A and Subpart JJJJ, at its facility in Milwaukee, Wisconsin.

30. On August 24, 2009, representatives of EPA met with Respondent to discuss the FOV.

#### Civil Penalty

31. 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 prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$57,000.00.

32. Within 30 days after the effective date of this CAFO, Respondent must pay a \$57,000.00 civil penalty by sending a cashier's or certified check payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

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

[for checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O.Boxes)]

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

St. Louis, MO 63101

The check must note the case name, docket number of this CAFO and the billing document number. If payment is by electronic funds transfer, it must be made payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the case name, the docket number of this CAFO and the billing document number.

33. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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 Blvd.  
Chicago, IL 60604

Luis Oviedo, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

35. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, 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.

36. Pursuant to 31 C.F.R. § 901.9, 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. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

#### **General Provisions**

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

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

39. 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

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

40. Respondent certifies that it is complying fully with regulations at issue.

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

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

43. 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.

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

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

**The Newark Group, Inc., Respondent**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Joe Michaud, Vice President  
The Newark Group, Inc.

**United States Environmental Protection Agency, Complainant**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cheryl Newton, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

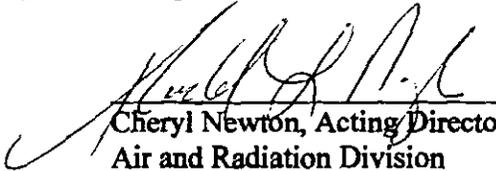
**The Newark Group, Inc., Respondent**

June 8, 2010  
Date

  
Joe Michaud, Vice President  
The Newark Group, Inc.

**United States Environmental Protection Agency, Complainant**

June 29, 2010  
Date

  
Cheryl Newton, Acting Director for CLW  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

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**CONSENT AGREEMENT AND FINAL ORDER**

**In the Matter of:**

**The Newark Group, Inc.**

**Docket No. CAA-05-2010-0034**

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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.

6/30/10

Date

*Walter W. Kovalick*  
for

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

In the Matter of:  
The Newark Group  
Docket No. CAA-05-2010-0034

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-13J), United States Environmental Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that mailed by Certified Mail, Receipt No. \_\_\_\_\_, the second original to Respondent, addressed as follows:

The Newark Group, Inc. c/o counsel  
Linda Benfield  
Foley & Lardner  
777 E. Wisconsin Ave.  
Milwaukee, Wisconsin 53202

and that I delivered a correct copy by intra-office mail, addressed as follows:

Marcy Toney, Regional Judicial Officer (C-14J)  
United States Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

On this 1 day of July, 2010.

  
Tracy Jamison  
Office Automation Clerk  
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7009 11680 0000 7667 4195

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PROTECTION AGENCY

*Wisconsin Paperboard*  
**CAFO Checklist: Procedure & Necessary Approvals/Forms  
 for Administrative Settlements<sup>1</sup>**

Action Items:

Completed?

Action Items:	Completed?
<b>I. AGREEMENT IN PRINCIPLE</b>	
1. Get written acceptance of the agreement in principle from client (e-mail message from program counterpart is sufficient; cc. section chief in this correspondence).	✓
2. Notify ALJ that agreement in principle reached, if appropriate.	
3. Move (often jointly) to amend ALJ scheduling order, if applicable.	
4. Comply with ALJ scheduling order: meet all deadlines in applicable ALJ order or amended order (e.g., file pre-hearing exchange if due under order's terms).	
<b>II. NEGOTIATION OF DRAFT CAFO</b>	
5. Get written SEP approval by ORC branch chief, if applicable, by sending e-mail attaching checklist for branch chief approval of SEP, and retaining BC approval e-mail in the case file. cc. section chief in this correspondence	NA
6. If CAFO presents NSI or if civil penalty is equal to or greater than \$500,000, then get OECA concurrence or Opting Out memo, through e-mail. CC Section Chief, Associate Branch Chief or Branch Chief, Deputy Regional Counsel and Regional Counsel on this correspondence.	NA
7. For CWA and UIC cases <i>in which a complaint has been filed</i> , get copy of public notice (a statutory and regulatory requirement) and any comments from Regional Hearing Clerk file.	NA
<b>III. SIGN OFF OF CAFO</b>	
8. Put final draft CAFO into sign-off in ORC through the Regional Counsel in accordance with the "Instructions for ORC Approval of CAFOs," with this CAFO checklist attached. Once the CAFO sign-off package has been approved by the Regional Counsel, send CAFO to the Respondent for signature.	✓
9. After receipt of the signed CAFO from the Respondent, put the CAFO signed by the Respondent in ORC sign-off only through Section Chief, then route to Program and (if applicable) RA. Obtain draft CCDS from Program. If more than minor typographical revisions are made to the final CAFO after the Regional Counsel approves the sign-off package under item 8 above, you must re-submit the revised CAFO to the Regional Counsel in accordance with the Instructions.	
10. For CWA and UIC cases <i>in which settlement occurs pre-filing of a complaint</i> , include the draft public notice in the package to comply with the statutory and regulatory requirements. Indicate the date the order becomes final and effective. CWA sections 309(g)(4) and (5), 311(b)(6)(C) and (D); SDWA section 1423(c)(3)(B), (C) and (D); and 40 C.F.R. section 22.45.	
<b>IV. FILED CAFO</b>	
11. When CAFO is issued and program has filed and distributed it, timely submit final WAR to Cheryl (no exceptions!).	
12. If case had been scheduled for hearing, amend ORC administrative docket log to reflect settlement.	
13. Check to ensure program submits Case Conclusion Data Sheet (CCDS) to "conclude" case. [If CAFO is MM, then ORC submits CCDS.]	
14. Check to ensure program is monitoring compliance with CAFO terms.	

<sup>1</sup>This checklist is a rough "to do" guide for practitioners. It does not change applicable law or regulations (e.g., Part 22) or EPA guidance or policy. It does not create any rights in third parties. It is created merely as a convenient format and reminder for practitioners and is subject to change.