UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	**Docket No. CAA-5-2000-008**
	)	
FCI, Inc. Chicago, IL	)	**Proceeding to Assess an Administrative Penalty under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)**
Respondent.	)	

Consent Agreement and Final Order

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d) pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination of Permits at 40 C.F.R Part 22.

2. On May 12, 2000, U.S. EPA filed the complaint in this action against Respondent, FCI, Inc. alleging in one count that Respondent violated Section 113 of the Act, 42 U.S.C. § 7413, and the Illinois State Implementation Plan (SIP) at 35 Ill. Admin. Code 218.214 at its facility in Chicago, Illinois, by using a sealer during May 1999 with volatile organic matter (VOM) content that exceeded the regulatory limit. The complaint is fully incorporated herein by reference.

3. By a letter to the Regional Hearing Clerk dated June 8, 2000, Respondent requested an informal settlement conference.

Stipulations

4. Respondent owns and operates a wood furniture manufacturing facility that includes coating lines, with a potential to emit greater than 25 tons of VOM or more per calendar year. Respondent's facility is located at 1750 N. Lawndale Avenue, Chicago, Illinois 60647.

5. Respondent admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint.

6. Respondent waives its right to contest the allegations in the complaint, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

7. Respondent certifies that it is complying fully with Section 113 of the Act, 42 U.S.C. § 7413, and the Illinois State Implementation Plan (SIP) at 35 Ill. Admin. Code 218.214 at its facility in Chicago, Illinois.

8. The parties consent to the terms of this Consent Agreement and Final Order (CAFO).

9. Representatives of Complainant and Respondent have discussed the violations identified by EPA, and Respondent has provided information showing that it has achieved compliance with the requirements of the Illinois SIP. Accordingly, this CAFO is

intended to fully resolve this matter. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

10. In consideration of the size of Respondent's business, the degree of cooperation by Respondent in remedying the violation by ceasing its use of the non-compliant coating, and Respondent's agreement to perform a supplemental environmental project as described more fully below, U.S. EPA agrees to mitigate the proposed penalty of $45,100 to $9,900.

11. Respondent must pay the $9,900 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

12. Respondent must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

13. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (R-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

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, Illinois 60604-3590

David P. Mucha,(C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

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

15. If Respondent does not pay timely the civil penalty, U.S. 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.

16. Interest will accrue on any overdue amount from the date payment was due at a rate established under 26 U.S.C. § 6621(a)(2). Respondent will pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. Respondent will 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.

Supplemental Environmental Project

17. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health as described more fully below.

18. At its Chicago, Illinois facility, Respondent must complete the SEP as follows:

A. Work Practice Improvement Plan (WPIP): Respondent shall develop and implement a written WPIP in accordance with the requirements of 40 C.F.R. § 63.803 at a cost to Respondent of no less than $7,250. Among other things, the WPIP will establish work practice standards and goals to reduce raw material usage associated with regulated air emissions. In addition to the SEP completion report required by this CAFO, Respondent shall provide a copy of the WPIP to EPA for review and approval within 30 days from the date of filing of this CAFO with the Regional Hearing Clerk.

B. Waste Minimization/Reduction Program (WMP): Respondent shall develop and implement a written WMP at a cost to Respondent of no less than $10,640. Among other things, the WMP will detail practices to minimize the wastes which contribute to regulated air emissions. Respondent shall attain "small quantity generator status" under federal and state hazardous waste laws by January 1, 2002. In addition to the SEP completion report required by this CAFO, Respondent shall provide a copy of the WMP to EPA for review and approval within 30 days from the date of filing of this CAFO with the Regional Hearing Clerk.

C. Operator Training Program (OTP): Respondent shall develop and implement a written OTP at a cost to Respondent of no less than $16,950. Among other things, the OPT will provide employees of Respondent training on the proper use and management of hazardous materials to reduce the quantities

of solvents and other coatings causing regulated air emissions at the facility. In addition to the SEP completion report required by this CAFO, Respondent shall provide a copy of the OTP to EPA for review and approval within 30 days from the date of filing of this CAFO with the Regional Hearing Clerk.

D. Material Reformulation/Alternate Material Research/Usage: Respondent shall institute a program to develop and use reformulated and/or alternative coatings, thinners, and cleanup solvents, by testing non or low-VOM/HAP solvents and coating in order to find replacement of higher VOM/HAP solvents and coating currently in use. However, Respondent shall not use any chemical that is more toxic or hazardous than any eliminated chemical; Respondent must use material data sheets to determine the chemical's toxic and hazardous characteristics.

As part of this program, FCI shall immediately begin the use of a water-based adhesive in the fabric-panel production process and the use of non-VOM solvents for all cleanup processes. FCI shall reduce its "potential to emit" VOM to below major source thresholds by January 1, 2002. The cost to Respondent for completion of this SEP component shall be no less than $9,350. In addition to the SEP completion report required by this CAFO, Respondent shall provide to EPA a status report detailing the steps taken to satisfy the obligations outlined in this subsection, within 6 months from the date of filing of this CAFO with the Regional Hearing Clerk.

E. Environmental Compliance Management Program: Respondent shall conduct a comprehensive environmental audit at its Chicago facility using a third party environmental consultant. Among other things, the audit shall identify Respondent's current compliance with relevant environmental laws, with particular emphasis on Clean Air Act compliance. At minimum, the audit shall include an inspection, record review, identification of any non-compliance, notice to EPA of any non-compliance discovered and prompt correction of any non-compliance. The cost to Respondent for this component of the SEP shall be no less than $10,600.

19. Respondent certifies that it is not required to perform or develop any component of this SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the

date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

20. The costs to Respondent for completing this SEP shall not be deducted as a business expense for purposes of federal taxes.

21. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

22. In the event that Respondent fails to comply with any of the terms or conditions of the SEP provisions of this CAFO as determined by U.S. EPA, Respondent shall be liable to U.S. EPA for the entire penalty as proposed in the complaint ($45,100), minus any penalty money paid by Respondent in compliance with this CAFO.

23. Respondent must maintain copies of the underlying research and data for all reports submitted to U.S. EPA according to this CAFO and make them available to EPA upon request.

24. Respondent must submit a SEP completion report to U.S. EPA for review and approval by February 1, 2002. This report must contain the following information:

a. detailed description of the SEP as completed;

b. description of any operating problems and the actions taken to correct the problems;

c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;

d. Signed certification that Respondent has completed the SEP in compliance with this CAFO; and

e. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

25. Respondent must submit all notices and reports required by this CAFO by first class mail to:

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, Illinois 60604-3590

26. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

> 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.

27. Any public statement that Respondent makes referring to the SEP must include the following language, "FCI, Inc. undertook this project under the settlement of the United States

Environmental Protection Agency's enforcement action against Respondent for violations of the Clean Air Act."

General Provisions

28. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in the complaint.

29. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.

30. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

31. This CAFO constitutes an "enforcement response" as that term is used in "U.S. 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).

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

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

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

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

U.S. Environmental Protection Agency, Complainant

Date: 11/13/00 By: _____
Bharat Mathur, Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5 (A-18J)

FCI, Inc. Respondent

Date: 10-31-00 By: _____
Paul Bartomlomei, Vice President
FCI, Inc.

Consent Agreement and Final Order
FCI, Inc.
Docket No. CAA-5-2000-008

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Date: November 14, 2000 By: David A. Ullrich

for Francis X. Lyons
Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

In the Matter of FCI Industries, Inc.
Docket No: CAA-5-2000-008

CERTIFICATE OF FILING AND MAILING

I, Betty Williams, do hereby certify that the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604 and that correct copies, were mailed first-class, postage prepaid, certified mail, return receipt requested, to the Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Paul Bartolemi, President
FCI Industries, Inc.
1750 North Lawndale Avenue
Chicago, Illinois 60647

I also certify that a copy of the Consent Agreement and Final Order was sent by First Class Mail to:

David Asselmeier, Acting Section Manager
Compliance and Systems Management
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

on the 15th Day of November, 2000.

Betty Williams

Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9591 7917