



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

JUL 14 2010

REPLY TO THE ATTENTION OF:

(AE-17J)

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

Timothy P. Clark, VP Operations/CFO  
Decorative Panels International, Inc.  
416 Ford Avenue  
Alpena, Michigan 49707

Dear Mr. Clark:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Decorative Panels International Inc.  
CAA Docket No. CAA-05-2010-0044. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on 7-15-2010.

Pursuant to paragraph 36 of the CAFO, Decorative Panels International Inc. must pay the \$85,000 civil penalty within 30 days of the date the CAFO was filed, \_\_\_\_\_.  
The check must display the case docket number, CAA-05-2010-0044, and the billing document number, 2751003A044.

Please direct any questions regarding this case to Cathleen Martwick, Associate Regional Counsel, (312) 886-7166.

Sincerely yours,

Brent Marable, Chief  
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

Cc: Tom Hess, Enforcement Unit Supervisor  
Janis Denman, Supervisor  
Michigan Department of Natural Resources and Environment

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

JUL 15 2010

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of:	)	Docket No. CAA-05-2010-0044
	)	
Decorative Panels International, Inc.	)	Proceeding to Assess a Civil Penalty
Alpena, Michigan	)	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 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 (U.S. 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 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. The parties agree that the signing of this CAFO is for settlement purposes only and does not constitute an admission by the Respondent of the alleged violations set forth herein, the alleged violations identified in a Notice of Violation/Finding of Violation issued on September 11, 2006, 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. On May 6, 1980, U.S. EPA approved R336.1201 as part of the federally enforceable state implementation plan (SIP) for Michigan. 45 Fed. Reg. 29790.

10. R336.1201 prohibits the construction, reconstruction or installation of any process which may be a source of air contaminant, until a permit to install is issued by the commission.

11. On June 11, 1992, U.S. EPA approved R336.1301 as part of the federally enforceable SIP for Michigan. 57 Fed. Reg. 24752.

12. R336.1301 provides standards for the density of emissions and prohibits a person from causing or permitting the discharge into the outer air from a process or process equipment a visible emission of a density greater than the most stringent of the following:

- a. A 6-minute average of 20% opacity, except for one 6 minute average per hour of not more than 27% opacity (R336.1301(1)(a));

b. A limit specified as a condition of a permit to install or permit to operate (R336.1301(1)(c)).

13. Section 502(a) of the Act, 42 U.S.C. § 7661(a), provides that it is unlawful for any person to violate any requirement of a permit issued under this subchapter (Title V) or to operate a major source except in compliance with a permit issued pursuant to an approved 40 C.F.R. Part 70 (Title V) operating permit program.

14. Title V of the Act, 42 U.S.C. § 7661 et seq., established an operating permit program for major sources of air pollution. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), provides that each state must submit to the Administrator of U.S. EPA a permit program meeting the requirements of Title V.

15. Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), the Administrator promulgated regulations, subsequently codified at 40 C.F.R. Part 70, providing for the establishment of Title V permitting programs.

16. The regulations at 40 C.F.R. § 70.7(b) prohibit a source, which is subject to 40 C.F.R. Part 70, from operating except in compliance with a permit issued under a 40 C.F.R. Part 70 program.

17. U.S. EPA granted full approval to the Michigan Title V operating permit program on December 4, 2001. 66 Fed. Reg. 62949.

18. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide 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 except in compliance with a Title V permit.

19. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for SIP violations that occurred from

January 31, 1997, through March 15, 2004, and 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, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

20. 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.

21. 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**

22. At all times relevant to this CAFO, DPI was and is the owner and operator of three industrial boilers at 416 Ford Avenue in Alpena, Michigan 49707.

23. DPI's facility is a "major source" as defined in Section 501 of the Act, 42 U.S.C. § 7661.

24. The industrial boilers located at DPI's Alpena facility are known as Boiler No. 1, Boiler No. 2, and Boiler No. 3.

25. At all times relevant to this CAFO, the exhaust from Boilers No. 1 and No. 2 were discharged into the outer air through a common stack while the exhaust from Boiler No. 3 was discharged to the outer air from a separate stack. After installation of the electrostatic precipitator, Trona injection system, and related requirement authorized by Permit to Install No.

274-07, the exhaust gases from all three boilers are discharged into the outer air through a single common stack.

26. The Michigan Department of Environmental Quality ("MDEQ") issued Renewable Operating Permit (Original Title V Permit) No. MI-ROP-199600007 for sources of air pollutant emissions located at DPI's Alpena Hardboard Mill with an effective date of December 1, 2003, with revisions on May 27, 2005, June 8, 2005, June 19, 2006 and April 1, 2008. On December 17, 2009, the MDEQ approved Respondent's application for renewal of the Title V Permit and issued Title V Permit No. MI-ROP-B1476-2009 ("Renewal Title V Permit").

27. Paragraph 2(a) of the General Conditions of the Original Title V Permit states that visible emissions from the boilers shall not exceed a 6-minute average of 20 percent opacity, except for one 6-minute average per hour of not more than 27 percent opacity.

28. The State of Michigan issued Supplement to Permit No. 440-93 on November 9, 1993, with revisions on February 6, 1996, to the previous owners and operators of the Alpena Hardboard Mill. Supplement to Permit No. 440-93 incorporated all the conditions from Permit to Install No. 224-70A issued for Boiler No. 3 and from Permit to Install No. 344-90 issued for Boilers No. 1 and No. 2. Paragraph 13 under Special Conditions of the Supplement to Permit No. 440-93 states that visible emissions from Boilers No. 1, No. 2, and No. 3 shall not exceed a 6-minute average of 20% opacity, except as specified in Rule 301(1)(a).

29. The MDEQ issued Permit to Install Permit No. 274-07 on September 27, 2007, authorizing installation of an electrostatic precipitator, a Trona injection system, and related equipment to control emissions from Boilers No. 1, No. 2 and No. 3. General Condition 11 prohibits discharge of visible emissions to the outer air from a process or process equipment that

exceed a 6-minute average of 20% opacity, except for one six-minute average per hour of not more than 27% opacity.

30. The visible emission limitations in R336.1301 of the Michigan SIP, the Original Title V Permit, Supplement to Permit No. 440-93, and Permit to Install No. 274-07 apply to visible emissions from Boilers No.1, No. 2 and No. 3.

31. DPI reported a total of 13,820 minutes of excess opacity emissions in its quarterly excess emissions reports for 2004 and 2005 for Boilers No. 1 and No. 2.

32. DPI reported a total of 10,650 minutes of excess opacity emissions in its quarterly reports for 2004 and 2005 for Boiler No. 3.

33. Based on Respondent's quarterly reports for 2004 and 2005, U.S. EPA alleges that the opacity of the exhaust gases from Boilers No.1, No. 2 and No. 3 exceeded the applicable opacity standards of the Michigan SIP R336.1301 and conditions of the Original Title V permit and Supplement to Permit No. 440-93.

34. On September 11, 2006, U.S. EPA issued to Respondent a Notice of Violation/Finding of Violation ("NOV/FOV") alleging that DPI failed to maintain continuous compliance with the applicable opacity limits at Boilers No. 1, No. 2 and No. 3 during calendar years 2004 and 2005 in violation of Title V; Section 502(a) of the Act, and applicable regulations at 40 C.F.R. § 70.7(b); the Original Title V Permit; R336.1301(1)(a) and (c) of the Michigan SIP; and Supplement to Permit No. 440-93, Paragraph 13.

#### **Civil Penalty**

35. 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 \$85,000.00.

36. Within 30 days after the effective date of this CAFO, Respondent must pay the \$85,000 civil penalty by sending, via express mail or overnight delivery service, a cashier's or certified check payable to the "Treasurer, United States of America," to the following address:

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 Docket Number of this CAFO and the Billing Document number. The Docket Number and Billing Document Number will be provided with a copy of the final CAFO following its filing with the Regional Hearing Clerk.

37. With Respondent's payment of the civil penalty, Respondent shall also separately and simultaneously send a transmittal letter stating Respondent's name, complete address, the case Docket Number, and the Billing Document Number. 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

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

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

39. 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.

40. 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

41. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO and the NOV/FOV issued on September 11, 2006.

42. The CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violation of law not resolved under this CAFO.

43. 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 41, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

44. Respondent certifies that it is complying fully with Title V, Section 502(a) of the Act, and applicable regulations at 40 C.F.R. § 70.7(b); the Renewal Title V Permit, R336.1301(1)(a) and (c) of the Michigan SIP, and the September 27, 2007, Permit to Install No. 274-07.

45. 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).

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

47. 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.

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

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

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U.S. ENVIRONMENTAL  
PROTECTION AGENCY

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

July 8, 2010  
Date

Timothy P. Clark  
Timothy P. Clark, VP Operations/CFO  
Decorative Panels International, Inc.

**United States Environmental Protection Agency, Complainant**

7/12/10  
Date

Cheryl L. Newton  
Cheryl L. Newton  
Director 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:**

**Decorative Panels International, Inc.**

**Docket No. CAA-05-2010-0044**

**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.

7/14/15  
Date

Walter W. Kavalich  
Susan Hedman  
Regional Administrator for  
U.S. Environmental Protection  
Agency, Region 5

U.S. ENVIRONMENTAL  
PROTECTION AGENCY

JUL 14 2015

OFFICE OF REGIONAL  
HEARINGS

In the matter of: **Decorative Panels International, Inc.**  
Docket No: **CAA-05-2010-0044**

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PROTECTION AGENCY

CERTIFICATE OF MAILING

I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2010-0044 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Decorative Panels International, Inc. and to Decorative Panels International, Inc. Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Timothy P. Clark, VP Operations/CFO  
Decorative Panels International, Inc.  
416 Ford Avenue  
Alpena, Michigan 49707

Jon S. Faletto  
Hinshaw & Culbertson LLP  
416 Main Street  
6<sup>th</sup> Floor  
Peoria, IL 61602

I also certify that a copy of the CAFO was sent by first-class mail to:

Tom Hess  
Enforcement Unit Supervisor  
Michigan Department of Natural Resources and Environment  
Air Quality Division  
525 West Allegan  
P.O. Box 30260  
Lansing, Michigan 48909

Janis Denman  
Supervisor  
Michigan Department of Natural Resources and Environment  
2100 West M-32  
Gaylord, Michigan 49735

on the 15<sup>th</sup> day of July 2010.

  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7666 5858