

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Indiana Harbor Coke Company,
Cokenergy LLC, and Ispat
Inland Inc., formerly known
as Inland Steel Company,

Respondents.

) Docket No.

CAA-05- 2005 - 0057

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

US
ENVIRONMENTAL
PROTECTION
AGENCY
REGION 5

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REGION 5

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) 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 (2004).

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 ("U.S. EPA").

3. Respondents are Indiana Harbor Coke Company ("IHCC"), Cokenergy LLC, and Ispat Inland Inc., formerly known as Inland Steel Company (collectively referred to herein as "Inland"), each a corporation doing business in Indiana.

4. At the time of issuance of the Amended Notice and Finding of Violation ("Amended NOV/FOV") described within paragraph 19 of this Consent Agreement and Final Order ("CAFO"), Cokenergy, Inc. was owned by Primary Energy, Inc. ("PEI"), a subsidiary of NiSource, Inc. On October 15, 2003, PEI caused Cokenergy, Inc. to be converted to a limited liability company,

Cokenergy LLC, and controlled the operations of Cokenergy LLC until October 20, 2003. On October 20, 2003, PEI sold Cokenergy LLC to an unrelated third party, Primary Energy Holdings LLC. Cokenergy LLC, under such new ownership: (i) is currently in control of the operations and business to which the Amended NOV/FOV relates, (ii) will be responsible for all prospective operations of the entity, and (iii) will execute this CAFO on behalf of Cokenergy LLC (formerly known as Cokenergy, Inc.) (collectively referred to herein as “Cokenergy”).

5. 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 CAFO. 40 C.F.R. § 22.13(b) (2004).

6. 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 interests and in the public interest.

7. Respondents consent to entry of this CAFO and the assessment of the specified civil penalty, and agree to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

8. IHCC, Cokenergy, and Inland each admit the jurisdictional allegations in this CAFO and none admit or deny the factual allegations or conclusions of law in this CAFO.

9. IHCC, Cokenergy, and Inland each waive its respective 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 respective right to appeal this CAFO.

Statutory and Regulatory Background

10. On July 21, 1997, U.S. EPA approved 326 Indiana Administrative Code (“IAC”) 2-1, as part of the federally enforceable state implementation plan (“SIP”) for Indiana. 62 Fed. Reg. 38919 [July 21, 1997].

11. 326 IAC 2-1 requires that a construction permit application for a new or modified source be submitted, if that source will have allowable emissions of regulated pollutants above certain threshold amounts contained within IDEM's air regulations.

12. 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 permit 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 (2004).

13. 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 (here, the "initial" NOV/FOV was June 27, 2002), 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.

14. 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

15. On December 30, 1996, the Indiana Department of Environmental Management ("IDEM") issued a minor source construction permit (no. CP 089-6919) to Inland authorizing the construction and operation of a coke production facility (referred to herein as the "Heat Recovery Coal Carbonization" or "HRCC Facility") at Inland's East Chicago, Indiana steel mill.

16. On February 26, 1998, upon application by IHCC, Cokenergy, and Inland, IDEM issued separate permits ("1998 Permits") to each Respondent based on each entity's separate

ownership, responsibilities and obligations related to the HRCC Facility. Specifically, the following portions of the HRCC Facility were constructed by, and were owned and operated by, IHCC and Cokenergy: (1) IHCC owns and operates the coke ovens and associated coal and coke handling systems; and (2) Cokenergy owns and operates the heat recovery boilers, a steam turbine generator, and associated sulfur dioxide and particulate matter control devices. IHCC's, Cokenergy's and Inland's permit obligations were reflected in CP 089-9236, CP 089-9237, and CP 089-9033, respectively.

17. The HRCC Facility produces metallurgical coke for steel production. Coal is charged into 268 coke ovens at the HRCC Facility, and baked at temperatures in excess of 2,000 degrees Fahrenheit. The hot gaseous exhaust stream from the coke production process is conveyed through 16 heat recovery boilers to recover useful heat by converting water to steam. The steam is supplied directly to Inland for its steel production processes or converted to electricity by the steam turbine generator. The electricity is also used by Inland. The resultant cool gaseous exhaust stream passes through a flue gas desulfurization control device to remove sulfur dioxide and a baghouse to remove particulate matter before the gas stream exits the HRCC Facility's main stack. The HRCC Facility is a unique and "environmentally-conscious" design because it captures previously wasted heat energy and converts that energy to steam and electricity which results in lower fossil fuel consumption and electrical demand from Inland's steel production process and, thereby, less pollution.

18. On November 30, 2001, IDEM issued a modification to IHCC's and Cokenergy's 1998 Permits ("2001 Permits") pursuant to 326 IAC 2-1 and 40 C.F.R. § 52.780. The 2001 Permits contained a sulfur dioxide limitation of 1,656 pounds per hour, as a 24^{hour} average.

19. On August 8, 2002, U.S. EPA issued the Amended NOV/FOV (amending U.S. EPA's June 27, 2002 Notice and Finding of Violation) to Respondents alleging, among other things,

violations of New Source Review (“NSR”) permitting requirements for emissions of sulfur dioxide that exceeded the emission estimate in the permit applications submitted by each of the companies related to the construction of the HRCC Facility.

20. Following issuance of the Amended NOV/FOV, Respondents presented information to show that the HRCC Facility did not exceed the threshold for NSR applicability related to its sulfur dioxide emissions, as alleged in the Amended NOV/FOV. The information indicated that the threshold for NSR applicability was not exceeded either by the operations as originally permitted or by the operations as set forth in the modified 2001 Permits.

21. However, on certain occasions between December 2001 through December 2004, the emissions of sulfur dioxide as averaged over 24 hours were more than the 1,656 pounds per hour limit within the 2001 Permits. With regard to the alleged exceedances, the Respondents worked closely with environmental regulators to identify acceptable solutions to the operational difficulties and to minimize emissions of sulfur dioxide into the atmosphere from the HRCC Facility.

Alleged Violations

22. U.S. EPA alleges violations of the sulfur dioxide limit contained within paragraph 18 of this CAFO and Section 113(d) of the Act, 42 U.S.C. § 7413(d) on the following days: February 23 through February 28, 2002; April 13 through April 16, 2002; May 18, 2002; June 20, 2002; November 15 through November 18, 2002; March 24 through April 4, 2003, April 6 through April 10, 2003, April 18 and April 19, 2003; April 21, 2003; October 7, 2004; and December 9 and December 10, 2004.

Civil Penalty and Supplemental Environmental Project

23. 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 any other factor such as cooperation, prompt return to

compliance, and agreement to perform a supplemental environmental project (“SEP”), U.S. EPA has determined that the civil penalty and SEP set forth herein to settle this action are appropriate.

24. Based on an agreement between the Respondents, Cokenergy must pay \$70,000 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.

25. Cokenergy must send the check to:

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

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

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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 60604-3511

Mary McAuliffe
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd. (C-14J)
Chicago, Illinois 60604-3511

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

28. If Cokenergy does not timely pay the civil penalty arising from its obligations under paragraph 24 of the CAFO, 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.

29. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Cokenergy, arising from its obligations under paragraph 24 of this CAFO, 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.

30. IHCC must complete a SEP designed to protect the public health by providing mercury testing at the HRCC facility in East Chicago, IN, which shall be made available to all interested parties.

31. The SEP consists of three specific mercury test runs, as described in the proposal dated September 8, 2005, from Platt Environmental Services, Inc., to Mr. George Bradley at Indiana Harbor Coke Company, set out as Attachment 1.

- a. The first test run will be conducted in 2005. The entire testing program will be completed within one year from the effective date of this CAFO. A report of the test results will be submitted to EPA within 60 days after each test run.
- b. A completed test report will be submitted to U.S. EPA within fifteen months after the effective date of this CAFO. The test report shall include a discussion of percent reduction of mercury between the FGD inlet and outlet, FGD outlet and baghouse outlet, FGD inlet and baghouse outlet, and between the coal charged to the ovens and baghouse outlet.

Respondents further certify that they have not received, and are not negotiating to receive credit for the SEP in any other enforcement action.

34. U.S. EPA may inspect the HRCC Facility at any time to monitor IHCC's compliance with this CAFO's SEP requirements.

35. IHCC must maintain copies of all data and information related to the SEP for a period of five years. IHCC must provide any information regarding the SEP to U.S. EPA within seven days of U.S. EPA's request for the information.

36. Within eighteen months after the effective date of this CAFO, IHCC must submit a SEP completion report to U.S. EPA, which shall 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 cancelled checks that specifically identify and itemize the individual costs of the goods and services; and
- d. certification that IHCC has completed the SEP in compliance with this CAFO.

37. IHCC 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 60604-3511

38. In each report that IHCC 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

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 60604-3511

38. In each report that IHCC 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.

39. Following receipt of the SEP completion report described in paragraph 36 above, U.S. EPA must notify IHCC in writing that:

- a. IHCC has satisfactorily completed the SEP and the SEP report; or
- b. There are deficiencies in the SEP as completed or in the SEP completion report, and U.S. EPA will give IHCC 30 days to correct the deficiencies; or
- c. IHCC has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 41 below.

40. If U.S. EPA's notification includes reference to subparagraph 39.b., above, IHCC may object in writing to the deficiency within 10 days of receiving the notice. The U.S. EPA and IHCC will have 30 days from U.S. EPA's receipt of IHCC's objection to reach an agreement. If the U.S. EPA and IHCC cannot reach an agreement, U.S. EPA will give IHCC a written decision on its objection. IHCC will comply with any requirements that U.S. EPA imposes in its decision. If IHCC does not complete the SEP as required by U.S. EPA's decision, IHCC will pay stipulated penalties to the United States under paragraph 41 below.

41. If IHCC violates any requirement of this CAFO relating to the SEP, IHCC must pay stipulated penalties to the United States as follows:

- a. If IHCC spent less on the SEP than the amount set forth in paragraph 32 above, IHCC must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 32.
- b. If IHCC has completed the SEP but the SEP is not satisfactory, IHCC must pay \$15,000 in addition to any penalty required under subparagraph 41.a. above.
- c. If IHCC halts or abandons work on the SEP, IHCC must pay a stipulated penalty of \$15,000 in addition to any penalty required under subparagraph 41.a. above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If IHCC fails to comply with the schedule in paragraph 31 above, for implementing the SEP, or fails to submit timely the SEP completion report required by paragraph 36, above, IHCC must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$750	1 st through 14 th day
\$1,500	15 th through 30 th day
\$3,000	31 st day and beyond

These penalties will accrue from the date IHCC was required to meet each milestone until IHCC achieves compliance with the milestone.

42. U.S. EPA's determinations of whether IHCC satisfactorily completed the SEP and whether they made good faith, timely efforts to complete the SEP will bind IHCC.

43. IHCC must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. IHCC will use the method of payment specified in paragraphs 24 through 26 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

44. Any public statement that IHCC makes referring to the SEP must include the following language, "IHCC undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against IHCC for alleged violations of the Clean Air Act."

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

- a. IHCC must notify U.S. EPA in writing within 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), IHCC's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. IHCC must take all reasonable actions to avoid or minimize any delay. If IHCC fails to notify U.S. EPA according to this paragraph, IHCC will not receive an extension of time to complete the SEP. If the U.S. EPA and IHCC agree that circumstances beyond the control of IHCC caused or may cause a delay in completing the SEP, the U.S. EPA and IHCC will stipulate to an extension of time no longer than the period of delay.
- b. If U.S. EPA does not agree that circumstances beyond the control of IHCC caused or may cause a delay in completing the SEP, U.S. EPA will notify IHCC in writing of its decision and any delays in completing the SEP will not be excused.
- c. IHCC has the burden of proving that circumstances beyond their control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under paragraph 45.a. above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

Final Statement

46. This CAFO resolves Respondents' liability for federal civil penalties for the facts and violations alleged in the Amended NOV/FOV, the Factual Allegations, and the Alleged Violations Sections of this CAFO and any other permit exceedances that U.S. EPA has knowledge of that could have been raised by U.S. EPA as alleged violations from September 2000 through December 2004 to the extent U.S. EPA determines that these permit exceedances are malfunctions.

47. The effect of the settlement described in paragraph 46 above, is conditioned upon the accuracy of the Respondents' representations to U.S. EPA, as memorialized in paragraph 20 of this CAFO.

48. This 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 violation of law.

49. This CAFO does not affect IHCC's, Cokenergy's, and Inland's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 46 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

50. 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 IHCC's, Cokenergy's, and Inland's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

51. IHCC, Cokenergy, and Inland each certify that they are complying fully with their respective permits upon which this action is based.

52. The terms of this CAFO bind IHCC, Cokenergy and Inland, and their respective successors, and assigns.

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

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

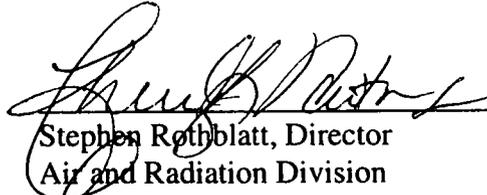
55. The obligations under this CAFO shall terminate with respect to each Respondent upon completion of each Respondent's respective obligations contained herein.

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

CONSENT AGREEMENT AND FINAL ORDER
Indiana Harbor Coke Company, Cokenergy LLC, and Ispat Inland Inc.

**U.S. Environmental Protection Agency,
Complainant**

9/28/05
Date



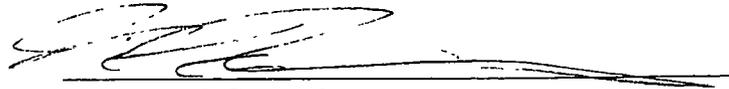
Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection Agency,
Region 5 (A-18J)

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CONSENT AGREEMENT AND FINAL ORDER
Indiana Harbor Coke Company, Cokenergy LLC, and Ispat Inland Inc.

Indiana Harbor Coke Company, Respondent

9/27/05
Date



Mark D. McCormick,
Secretary
Indiana Harbor Coke Company

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CONSENT AGREEMENT AND FINAL ORDER
Indiana Harbor Coke Company, Cokenergy LLC, and Ispat Inland Inc.

Cokenergy LLC, Respondent



September 27, 2005

Date

Mark Hall, Vice President
Cokenergy LLC

CAA-05-2005-0057



CONSENT AGREEMENT AND FINAL ORDER
Indiana Harbor Coke Company, Cokenergy LLC, and Ispat Inland Inc.

Ispat Inland Inc., Respondent

September 28, 2005
Date

Steven J. M... ..

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[Handwritten initials]

CONSENT AGREEMENT AND FINAL ORDER
Indiana Harbor Coke Company, Cokenergy LLC, and Ispat Inland Inc.

Docket No. CAA-05-2005-0057
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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. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

9-29-05
Date

[Handwritten signature]

Thomas V. Skinner
Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

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[Handwritten signature]

In the Matter of Indiana Harbor Coke Company, Cokenergy LLC, and Ispat Inland Inc., East Chicago, Indiana
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CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05- 2005 0057 *SW* 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 Indiana Harbor Coke Company's, Cokenergy LLC's, and Ispat Inland Inc.'s respective Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Anthony C. Sullivan, Esquire
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, IN 46204-3535

Thor W. Ketzback, Esquire
Bell, Boyd & Lloyd, LLC
70 West Madison St.
Suite 3100
Chicago, IL 60602-4207

Steven J. Murawski, Esquire
Gardner Carton & Douglas LLP
191 N. Wacker Drive
Suite 3700
Chicago, IL 60606

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I also certify that a copy of the CAFO was sent by

First Class Mail to:

David McIver, Chief
Office of Enforcement Air Section
Indiana Department of Environmental Management
100 North Senate Avenue, Room 1001
Indianapolis, Indiana 46206-6015

on the 29th day of September, 2005.

Betty Williams
Betty Williams, APA
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8909 7841 Anthony Sullivan
7001 0320 0005 8909 7674 Troy Ketzback
7001 0320 0005 8909 7681 Steve Murawski

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION V

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