

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	Docket No. <i>CAA-05-2006-0019</i>
)	
H. Kramer and Company)	Proceeding to Assess a Civil
Chicago, Illinois,)	Penalty 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) 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 (2005).

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

3. Respondent is H. Kramer and Company (H. Kramer), a corporation doing business in Illinois.

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

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issuance of a Consent Agreement and Final Order (CAFO). 40
C.F.R. § 22.13(b) (2005).

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. H. Kramer admits the jurisdictional allegations in this CAFO and admits the facts stipulated in paragraphs 1 through 6, 18 through 20 and 34 of this CAFO. By entering into this CAFO and complying with its terms, H. Kramer does not admit any other particular fact, statement, legal conclusion, liability or past or present violation of any law or regulation, and this CAFO shall not be interpreted as including such admissions.

8. H. Kramer 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. Under Section 111 of the Act, the Administrator of U.S. EPA promulgated the New Source Performance Standards (NSPS), General Provisions at 40 C.F.R. Part 60, Subpart A, §§ 60.1 through 60.19, and the Standards of Performance for Secondary

Brass and Bronze Production Plants at at 40 C.F.R. Part 60, Subpart M, §§ 60.130 through 60.133.

10. Under the NSPS at 40 C.F.R. § 60.2, an "affected facility" means, with reference to a stationary source, any apparatus to which a standard is applicable.

11. 40 C.F.R. Part 60, Subpart M, applies to, among other things, the following affected facilities in secondary brass and bronze production plants: electric furnaces of 1,000 kg (2205 lb) or greater production capacity that commence construction or modification after June 11, 1973.

12. 40 C.F.R. § 60.7(a)(1) requires the owner or operator of an affected facility to furnish written notification to the Administrator of U.S. EPA (the Administrator) of the date of construction of an affected facility postmarked no later than 30 days after such date.

13. 40 C.F.R. § 60.7(a)(3) requires the owner or operator of an affected facility to furnish written notification to the Administrator of the actual date of startup of an affected facility postmarked within 15 days after such date.

14. 40 C.F.R. §§ 60.11(e)(1) and 60.133(b)(2), require the owner or operator of an affected facility to conduct initial Method 9 observations for opacity within 60 days after achieving the maximum production rate at which the affected facility will

be operated but no later than 180 days after the initial startup of the facility.

15. The NSPS at 40 C.F.R. § 60.7(a)(6) requires the owner or operator of an affected facility to furnish written notification to the Administrator of the anticipated date for conducting the opacity observations required by § 60.11(e)(1) postmarked not less than 30 days prior to such date.

16. The Administrator may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for NSPS 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).

17. 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.

18. 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 CAPO.

U.S. EPA's Factual Allegations

19. H. Kramer owns and operates a secondary brass and bronze production plant at 1339-1359 West 21st Street in Chicago, Illinois. Among other things, the plant contains three coreless electric induction furnaces (the electric furnaces).

20. H. Kramer installed the three electric furnaces, each with a capacity of 10,000 pounds, in 2002. H. Kramer conducted initial Method 9 observations for opacity from the three electric furnaces on October 4 and October 12, 2005.

21. The three electric furnaces are "affected facilities" as defined at 40 C.F.R. § 60.2.

22. The three electric furnaces are subject to the requirements of 40 C.F.R. Part 60, Subparts A and M.

U.S. EPA's Alleged Violations

23. H. Kramer failed to furnish written notification to the Administrator of the date of construction of the three electric furnaces postmarked no later than 30 days after such date in violation of 40 C.F.R. § 60.7(a)(1).

24. H. Kramer failed to furnish written notification to the Administrator of the actual date of startup of the three electric furnaces postmarked within 15 days after such date in violation of 40 C.F.R. § 60.7(a)(3).

25. H. Kramer failed to conduct initial Method 9 observations for opacity within 180 days after the initial startup of the electric furnaces in violation of 40 C.F.R. §§ 60.11(e)(1) and 60.133(b)(2).

26. H. Kramer failed to furnish written notification to the Administrator of the anticipated date for conducting the opacity observations required by § 60.11(e)(1) in violation of 40 C.F.R. §§ 60.7(a)(6).

Civil Penalty

27. 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 H. Kramer's cooperation, prompt return to compliance, and agreement to perform a supplemental environmental project, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$10,000.

28. H. Kramer must pay the \$10,000 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.

29. H. Kramer must send the check to:

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

30. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing

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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, (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

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

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

32. If H. Kramer does not pay timely the civil penalty, or any stipulated penalties due under paragraph 46. below, 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.

33. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. H. Kramer will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. H. Kramer 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

34. H. Kramer must complete a supplemental environmental project (SEP) designed to reduce fugitive emissions from two rotary furnaces at its plant no later than nine (9) months after the receipt of all required permits. Currently, the fugitive emission lines from the two rotary furnaces converge and are directed to the Number One Baghouse which operates at 36,000 cfm. The Number Five Baghouse which operates at 30,000 cfm serves as a backup to handle the combined emissions if the Number One Baghouse is temporarily inactive due to maintenance activities or fails. As part of the SEP, H. Kramer shall connect each rotary furnace hood to one of the baghouses by installing a separate flue line from each furnace to one of the baghouses. Rotary I Furnace Hood shall be connected to the Number Five Baghouse.

Rotary II Furnace Hood shall be connected to the Number One Baghouse. H. Kramer shall also relocate the collection point for emissions from the side to the top center of each hood to improve capture efficiency.

35. H. Kramer must complete the SEP as follows:

a. apply for all permits required by federal, state or local law no later than one (1) month after the issuance of this CAFO;

b. fabricate a new flue line from Rotary I Furnace Hood and connect it to the Number Five Baghouse no later than seven (7) months after the receipt of all required permits;

c. fabricate a new flue line from Rotary II Furnace Hood and connect it to the Number One Baghouse no later than seven (7) months after the receipt of all required permits;

d. complete all electrical work required to connect the Rotary I Furnace Hood to Number Five Baghouse and the Rotary II Furnace Hood to Number One Baghouse no later than seven (7) months after the receipt of all required permits;

e. relocate the collection point for emissions from the side to the top center of Rotary I Furnace Hood and Rotary II Furnace Hood no later than eight (8) months after the receipt of all required permits; and

f. begin operating the Number Five Baghouse to control emissions from the Rotary I Furnace and Number One Baghouse to control emissions from the Rotary II Furnace no later than nine (9) months after the receipt of all required permits.

36. H. Kramer must spend at least \$500,000 to complete the SEP described in paragraphs 34 and 35, above.

37. H. Kramer must continuously use or operate the Number Five Baghouse to control emissions from the Rotary I Furnace and

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the Number One Baghouse to control emissions from the Rotary II Furnace for not less than five (5) years following completion of the SEP, provided H. Kramer continues to operate the Rotary I Furnace and the Rotary II Furnace or H. Kramer has not replaced the Number One Baghouse and the Number Five Baghouse.

38. H. Kramer certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. H. Kramer further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

39. U.S. EPA may inspect the facility at any reasonable time to monitor H. Kramer's compliance with this CAFO's SEP requirements.

40. Beginning on the effective date of this CAFO and continuing thereafter until the SEP is completed, H. Kramer must submit quarterly progress reports describing the work performed and any problems encountered during the preceding period, work to be performed during the next reporting period, anticipated problems, and planned resolutions of past or anticipated problems. H. Kramer shall provide progress reports within thirty (30) days following the end of each calendar-year quarter (i.,e., April 30, July 31, October 31, January 31).

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41. H. Kramer must submit a SEP completion report to U.S. EPA no later than ten (10) months after the receipt of all required permits. 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 cancelled checks that specifically identify and itemize the individual costs of the goods and services;
- d. certification that H. Kramer 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).

42. H. Kramer 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

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

U.S. EPA must submit all communications and notices regarding this CAFO by first class mail to:

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Randall K. Weil
H. Kramer and Company
1345 West 21st Street
Chicago, Illinois 60608

With a copy to:

Todd Wiener
McDermott Will & Emery LLP
227 W. Monroe Street
Chicago, Illinois 60606

43. In each report that H. Kramer 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 am aware that there are significant penalties for submitting false information.

44. Following receipt of the SEP completion report described in paragraph 41. above, U.S. EPA must notify H. Kramer in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give H. Kramer 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 46. The determinations of whether the SEP and SEP report have been satisfactorily completed shall be in the discretion of U.S. EPA, which discretion shall be exercised in a reasonable manner

based on the description of the SEP contained in this CAFO.

45. If U.S. EPA exercises option b. above, H. Kramer may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of H. Kramer's objection to reach an agreement. If the parties cannot reach an agreement on any issue, U.S. EPA will give H. Kramer a written decision on the adequacy of the completion of the SEP. H. Kramer will comply with any requirements that U.S. EPA imposes in its decision. If H. Kramer does not complete the SEP as required by U.S. EPA's decision, H. Kramer will pay stipulated penalties to the United States under paragraph 46, below.

46. If H. Kramer violates any requirement of this CAFO relating to the SEP, H. Kramer shall be liable for stipulated penalties to the United States as follows:

- a. If Respondent has satisfactorily completed the SEP but spent less on the SEP than \$450,000 (90 percent of \$500,000), Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and \$450,000.
- b. If Respondent has not satisfactorily completed the SEP, Respondent must pay (i) \$60,000; and (ii) the difference between the amount it spent on the SEP and \$450,000 if the amount Respondent spent on the SEP is less than \$450,000.
- c. If Respondent fails to comply with the schedule in paragraph 35, above, for implementing the SEP, fails to submit a timely and complete SEP completion report as required by paragraph 41, above, or fails to submit timely and complete progress reports as required by

paragraph 40, above, Respondent 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>
\$100	1 st through 14 th day
\$200	15 th through 30 th day
\$400	31 st day and beyond

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

47. U.S. EPA's determinations of whether H. Kramer satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind H. Kramer.

48. H. Kramer must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. H. Kramer will use the method of payment specified in paragraphs 29, 30 and 33, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

49. Any public statement that H. Kramer makes referring to the SEP must include the following language, "H. Kramer undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against H. Kramer for alleged violations of the Standards of Performance for Secondary Brass and Bronze Production Plants at 40 C.F.R. Part 60, Subpart M."

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

a. H. Kramer 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), H. Kramer's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. H. Kramer must take all reasonable actions to avoid or minimize any delay. If H. Kramer fails to notify U.S. EPA according to this paragraph, H. Kramer will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of H. Kramer 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 U.S. EPA does not agree that circumstances beyond the control of H. Kramer caused or may cause a delay in completing the SEP, U.S. EPA will notify H. Kramer in writing of its decision and any delays in completing the SEP will not be excused.

d. H. Kramer has the burden of proving that circumstances beyond its 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 subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

Final Statement

51. H. Kramer's performance of its obligations under this CAFO shall resolve all civil claims for the violations alleged in the violations section of this CAFO. U.S. EPA reserves the right to assert claims based on H. Kramer's failure to satisfy the requirements of this CAFO.

52. Except as set forth in paragraph 51, above, 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.

53. This CAFO does not affect H. Kramer's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 51, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA.

54. H. Kramer certifies that it is complying fully with the Standards of Performance for Secondary Brass and Bronze Production Plants at 40 C.F.R. Part 60, Subpart M.

55. 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 H. Kramer's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

56. The terms of this CAFO bind H. Kramer, and its successors, and assigns.

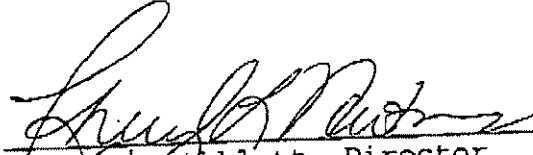
57. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

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

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

U.S. Environmental Protection Agency, Complainant


3/28/06
Date



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

H. Kramer and Company, Respondent

3/24/06
Date



Randall K. Weil,
Executive Vice President
H. Kramer and Company

CAA-05-2006-0019

CONSENT AGREEMENT AND FINAL ORDER

H. Kramer and Company

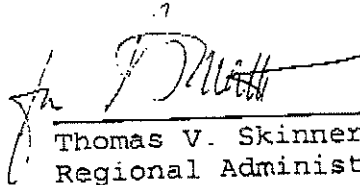
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Final Order

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.

3-30-06



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