

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) Docket No. CAA-05-2026-0010
)
ALCO Products, LLC) Proceeding to Assess a Civil Penalty
Detroit, Michigan,) Under Section 113(d) of the Clean Air Act,
) 42 U.S.C. § 7413(d)
Respondent.)
_____)

Consent Agreement and Final Order

A. Preliminary Statement

1. This is an administrative penalty assessment proceeding commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 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. §§ 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3).
2. Complainant is the U.S. Environmental Protection Agency (EPA), Region 5. The EPA Administrator has delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA to the Division Director of the Region 5 Enforcement and Compliance Assurance Division.
3. Respondent is ALCO Products, LLC, a corporation doing business in Michigan. Respondent is a “person,” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
4. The EPA and Respondent agree that settling this action is in the public interest and consent to the entry of this Consent Agreement and Final Order (CAFO) without the adjudication of any issues of law or fact.
5. Respondent agrees to comply with the terms of this CAFO.

B. Jurisdiction

6. The alleged violations in this CAFO are pursuant to Section 113(a)(3)(A) of the CAA.

7. The EPA and the United States Department of Justice have jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

8. On March 1, 2024, the EPA issued to Respondent a Finding of Violation (FOV) and provided a copy of the FOV to Michigan's Department of Environment, Great Lakes and Energy (EGLE), providing notice to Respondent and EGLE that the EPA found Respondent committed the alleged violations described in Section E of this CAFO and providing Respondent an opportunity to confer with the EPA. On April 18, 2024, representatives of Respondent and the EPA conferred regarding the March 1, 2024 FOV.

9. The Regional Judicial Officer of Region 5 is authorized to ratify the consent agreement memorializing the settlement between the EPA and Respondent and to issue the attached Final Order. 40 C.F.R. §§ 22.4(b) and 22.18(b).

C. Statement of Statutory and Regulatory Background

10. The CAA is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its populations. Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1).

11. Section 111(b) of the CAA, 42 U.S.C. § 7411(b), requires EPA to publish a list of categories of stationary sources and, within a year after the inclusion of a category of stationary sources in the list, to publish proposed regulations establishing Federal standards of performance for new sources within the source category.

12. Section 111(f) of the CAA, 42 U.S.C. § 7411(f), requires the promulgation of standards of performance for new stationary sources.

13. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), states that after the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

14. EPA proposed General Provisions to the New Source Performance Standards (NSPS Subpart A) on August 17, 1971. *See* 36 Fed. Reg. 15704. EPA promulgated NSPS Subpart A on December 23, 1971. *See* 36 Fed. Reg. 24877. The subpart has been subsequently amended. NSPS Subpart A is codified at 40 C.F.R. §§ 60.1 – 60.19.

15. The NSPS Subpart A, 40 C.F.R. § 60.1(a), states that except as provided in Subparts B and C, the provisions of this part apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication in this part of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

16. The NSPS Subpart A, 40 C.F.R. § 60.1(c), provides that in addition to complying with the provisions of this part, the owner or operator of an affected facility may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the EPA pursuant to Title V of the CAA as amended November 15, 1990 (42 U.S.C. § 7661).

17. The NSPS Subpart A, 40 C.F.R. § 60.2, defines “affected facility” as, with reference to a stationary source, any apparatus to which a standard is applicable.

18. The NSPS Subpart A, 40 C.F.R. § 60.2, defines “construction” as the fabrication, erection, or installation of an affected facility.

19. The NSPS Subpart A, 40 C.F.R. § 60.7(a)(1), requires that any owner or operator subject to the provisions of this part shall furnish the Administrator written or electronic notification “of the date construction (or reconstruction as defined under § 60.15) of an affected facility is commenced postmarked no later than 30 days after such date.”

20. The NSPS Subpart A, 40 C.F.R. § 60.7(a)(3), requires that any owner or operator subject to the provisions of this part shall furnish the Administrator written or electronic “notification of the actual date of initial startup of an affected facility postmarked within 15 days after such date.”

21. The NSPS Subpart A, 40 C.F.R. § 60.7(a)(4), requires that any owner or operator subject to the provisions of this part shall furnish the Administrator written or electronic “notification of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies, unless that change is specifically exempted under an applicable subpart or in § 60.14(e). This notice shall be postmarked 60 days or as soon as practicable before the change is commenced and shall include information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change.”

22. The NSPS Subpart A, 40 C.F.R. § 60.7(b), requires any owner or operator subject to the provisions of this part shall maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

23. The NSPS Subpart A, 40 C.F.R. § 60.8, requires that except as specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section, within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility, or at such other times specified by this part, and at such other times as may be required by the Administrator under Section 114 of the CAA, the owner or operator of such facility shall conduct performance test(s) and furnish the Administrator a written report of the results of such performance test(s).

24. The NSPS Subpart A, 40 C.F.R. § 60.11(b), states that compliance with opacity standards in this part shall be determined by conducting observations in accordance with Method 9 in appendix A of this part, any alternative method that is approved by the Administrator, or as provided in paragraph (e)(5) of this section. For purposes of determining initial compliance, the minimum total time of observations shall be 3 hours (30 6-minute averages) for the performance test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard).

25. The NSPS Subpart A, 40 C.F.R. § 60.11(c,) provides that the opacity standards set forth in this part shall apply at all times except during periods of startup, shutdown, malfunction, and as otherwise provided in the applicable standard.

26. On August 6, 1982, EPA promulgated the NSPS for Asphalt Processing and Asphalt Roofing Manufacture, codified at 40 C.F.R. Part 60, Subpart UU (NSPS UU). *See* 47 Fed. Reg. 34143.

27. The NSPS UU, 40 C.F.R. § 60.470(a), provides that the affected facilities to which NSPS UU applies are each saturator and each mineral handling and storage facility at asphalt roofing plants.

28. The NSPS UU, 40 C.F.R. § 60.470(b), provides that any saturator or mineral handling and storage facility under 40 C.F.R. § 60.470(a) that commences construction or modification after November 18, 1980, is subject to the requirements of NSPS UU. Any asphalt storage tank that

processes and/or stores asphalt used for roofing only or for roofing and other purposes, and that commences construction or modification after November 18, 1980, is subject to the requirements of this subpart.

29. The NSPS UU, 40 C.F.R. § 60.471, defines “asphalt roofing plant” as a plant which produces asphalt roofing products (shingles, roll roofing, siding, or saturated felt).

30. The NSPS UU, 40 C.F.R. § 60.471, defines an “asphalt storage tank” as any tank used to store asphalt at asphalt roofing plants, petroleum refineries, and asphalt processing plants. Storage tanks containing cutback asphalts (asphalts diluted with solvents to reduce viscosity for low temperature applications) and emulsified asphalts (asphalts dispersed in water with an emulsifying agent) are not subject to this regulation.

31. The NSPS UU, 40 C.F.R. § 60.471, defines a “mineral handling and storage facility” as the areas in asphalt roofing plants in which minerals are unloaded from a carrier, the conveyor transfer points between the carrier and the storage silos, and the storage silos.

32. The NSPS UU, 40 C.F.R. § 60.471, defines “saturator” as the equipment in which asphalt is applied to felt to make asphalt roofing products. The term saturator includes the saturator, wet looper, and coater.

33. The NSPS UU, 40 C.F.R. § 60.472(a)(1), requires on and after the date on which § 60.8(b) requires a performance test to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any saturator: (1) particulate matter in excess of: (i) 0.04 kg/Mg (0.08 lb/ton) of asphalt shingle or mineral-surfaced roll roofing produced, or (ii) 0.4 kg/Mg (0.8 lb/ton) of saturated felt or smooth-surfaced roll roofing produced.

34. The NSPS UU, 40 C.F.R. § 60.472(d), requires that within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days

after initial startup of such facility, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any mineral handling and storage facility emissions with opacity greater than 1 percent.

35. Section 112(c) of the CAA, 42 U.S.C. § 7412(c), requires EPA to promulgate a list of all categories and subcategories of major sources and area sources of hazardous air pollutants (HAPs) and establish emissions standards for the categories and subcategories. These emission standards are known as the NESHAP. The purpose of the NESHAP is to ensure that all subject sources achieve the maximum degree of reduction in emission of HAP that EPA determines is achievable for each sources category.

36. Pursuant to Section 112(b) of the CAA, 42 U.S.C. § 7412(b), EPA designates HAPs, which present or may present a threat of adverse effects to human health. Section 112(b) of the CAA, 42 U.S.C. § 7412(b), lists polycyclic organic matter, which includes polycyclic aromatic hydrocarbons (PAH) as a HAP.

37. Pursuant to Section 112(c) of the CAA, EPA promulgated a list of categories and subcategories of area sources of the air pollutants listed pursuant to Section 112(b) of the CAA, 42 U.S.C. § 7412(b).

38. Pursuant to Section 112(d) of the CAA, EPA promulgated regulations implementing the NESHAP at 40 C.F.R. Part 63.

39. Section 112(a) of the CAA, 42 U.S.C. § 7412(a), and 40 C.F.R. § 63.2 define “major 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 (tpy) or more of any HAP or 25 tpy or more of any combination of HAPs.

40. Section 112(a) of the CAA, 42 U.S.C. § 7412(a), and 40 C.F.R. § 63.2 define “area source” as any stationary source of HAP that is not a major source.

41. Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3), and 40 C.F.R. § 63.4, prohibit the owner or operator of any source from operating such source in violation of any NESHAP applicable to such source.

42. On March 16, 1994, U.S. EPA promulgated the General Provisions to Part 63 at 40 C.F.R. Part 63, Subpart A, §§ 63.1 - 63.16. *See* 59 Fed. Reg. 12408.

43. The NESHAP Subpart A, 40 C.F.R. § 63.2, defines an “affected source” as the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a CAA Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the CAA.

44. The NESHAP Subpart A, 40 C.F.R. § 63.2, defines “new source” as any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this part establishing an emission standard applicable to such source.

45. The NESHAP Subpart A, 40 C.F.R. § 63.2, defines “existing source” as any affected source that is not a new source.

46. On December 2, 2009, EPA promulgated the NESHAP for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing, codified at 40 C.F.R. Part 63, Subpart AAAAAAA (NESHAP 7A). *See* 74 Fed. Reg. 63236.

47. The NESHAP 7A, 40 C.F.R. § 63.11559(a), provides that a facility is subject to NESHAP 7A if you own or operate an asphalt processing operation and/or asphalt roofing manufacturing operation that is an area source of HAP emissions, as defined in § 63.2.

48. The NESHAP 7A, 40 C.F.R. § 63.11559(b), provides that this subpart applies to each new or existing affected source as defined in (b)(2) of this section.

49. The NESHAP 7A, 40 C.F.R. § 63.11559(b)(2), defines the affected source for asphalt roofing manufacturing as the collection of all asphalt coating equipment, as defined in § 63.11566, at an asphalt roofing manufacturing operation.

50. The NESHAP 7A, 40 C.F.R. § 63.11559(d), categorizes an affected source as a new affected source if you commenced construction or reconstruction after July 9, 2009.

51. The NESHAP 7A, 40 C.F.R. § 63.11559(f), categorizes an affected source as an existing source if it is not new or reconstructed.

52. The NESHAP 7A, 40 C.F.R. § 63.11560(a), requires that if you own or operate an existing affected source, you must be in compliance with the applicable provisions in this subpart no later than December 2, 2010. As specified in § 63.11562(f), you must demonstrate initial compliance within 180 calendar days after December 2, 2010.

53. The NESHAP 7A, 40 C.F.R. § 63.11560(b), requires that if you own or operate a new affected source, you must be in compliance with the provisions in this subpart on or before December 2, 2009 or upon startup, whichever date is later. As specified in § 63.11562(g), you must demonstrate initial compliance with the applicable emission limits no later than 180 calendar days after December 2, 2009 or within 180 calendar days after startup of the source, whichever is later.

54. The NESHAP 7A, 40 C.F.R. § 63.11561(b), requires that asphalt roofing manufacturing lines must meet the applicable emission limits specified in Table 2 of this subpart.

55. The NESHAP 7A, 40 C.F.R. § 63.11562(c), requires that asphalt roofing manufacturing lines that do not require a control device to comply with the emission limits in Table 2 of this subpart, must: (1) demonstrate initial compliance by: (i) conducting emission tests using the methods in Table 3

of this subpart, (ii) using the results of previously-conducted emission test as specified in paragraph (d) of this section; or (iii) using process knowledge and engineering calculations as specified in paragraph (e) of this section; (2) establish the value or range of values of the operating parameters specified in Table 4 of this subpart: (i) using the operating parameter data recorded during the compliance emission tests; (ii) using the operating parameter data recorded during a previously-conducted emission test; or (iii) using process knowledge and engineering calculations as specified in paragraph (f) of this section.

56. The NESHAP 7A, 40 C.F.R. § 63.11562(d), provides that if you are using a previously-conducted emission test to demonstrate compliance with the emission limitations in this subpart for existing sources, as specified in paragraph (c)(1)(ii) of this section, the following conditions must be met: (1) the emission test was conducted within the last 5 years; (2) no changes have been made to the process since the time of the emission test; (3) the operating conditions and test methods used for the previous test conform to the requirements of this subpart; and (4) The data used to establish the value or range of values of the operating parameters, as specified in paragraph (c)(2)(ii) of this section, were recorded during the emission test.

57. The NESHAP 7A, 40 C.F.R. § 63.11562(g), provides that for existing sources, you must demonstrate initial compliance no later than 180 calendar days after December 2, 2010.

58. The NESHAP 7A, 40 C.F.R. § 63.11562(h), provides that for new sources, you must demonstrate initial compliance no later than 180 calendar days after December 2, 2009 or within 180 calendar days after startup of the source, whichever is later.

59. The NESHAP 7A, 40 C.F.R. § 63.11562(i), for emission tests conducted to demonstrate initial compliance with the emission limits specified in Tables 1 and 2 of this subpart, you must follow the requirements specified in paragraphs (i)(1) through (i)(4) of this section.

60. The NESHAP 7A 40 C.F.R. § 63.11563(a), requires that you must maintain the operating parameters established under § 63.11562(c)(2) as specified in Table 4 of this subpart.

61. The NESHAP 7A, 40 C.F.R. § 63.11563(g), provides that if you are not using a control device to comply with the emission limits specified in Tables 1 and 2 of this subpart, you must develop and make available for inspection by the delegated authority, upon request, a site-specific monitoring plan. The plan must specify the process parameters established during the initial compliance assessment and how they are being monitored and maintained to demonstrate continuous compliance.

62. The NESHAP 7A, 40 C.F.R. § 63.11564(a), requires that you must submit the notifications specified in paragraphs (a)(1) through (a)(6) of this section: (1) you must submit all of the notifications in 63.5(b), 63.7(b); 63.8(e) and (f); 63.9(b) through (e); and 63.9(g) and (h) that apply to you by the dates specified in those sections; (2) as specified in 63.9(b)(2), an existing affected source must submit an initial notification no later than 120 calendar days after December 2, 2009, or no later than 120 days after the source becomes subject to this subpart, whichever is later; (3) as specified in 63.9(b)(4) and (5), if you have a new affected source, you must submit an initial notification not later than 120 calendar days after you become subject to this subpart; (4) You must submit a notification of intent to conduct a compliance test at least 60 calendar days before the test, as required by 63.7(b)(1); (5) you must submit a notification of compliance status according to 63.9(h)(2)(ii). Must be submitted before the close of business on the 60th calendar day following the completion of the test according to 63.10(d)(2); (6) if you are using data from a previously-conducted emission test to serve as documentation of compliance with the emission standards and operating limits of this subpart, you must submit the test data in lieu of the initial compliance test results with the Notification of Compliance Status required under paragraph (a)(5) of this section.

63. The NESHAP 7A, 40 C.F.R. § 63.11564(b)(1), requires that, when you are using a control device to comply with the emission limits, the compliance report must identify the controlled units (*e.g.*, blowing stills, saturators, coating mixers, coaters). If you are not using a control device to comply with the emission limits, the compliance report must identify the site-specific process operating parameters monitored to determine compliance with the emission limits.

64. The NESHAP 7A, 40 C.F.R. § 63.11564(b)(2), requires you to submit a compliance report during periods for which there are no deviations from any emission limitations (emission limit or operating limit) that apply to you, the compliance report must contain the following information: (i) company name and address; (ii) statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report; (iii) date of report and beginning and ending dates of the reporting period; (iv) a statement that there were no deviations from the emission limitations during the reporting period.

65. The NESHAP 7A, 40 C.F.R. § 63.11564(b)(4), provides that unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report specified in paragraph (b) of this section according to the following dates: (i) the first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.11560 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.11560; (ii) the first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.11560; (iii) each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31; (iv) each subsequent compliance report must be postmarked or

delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

66. The NESHAP 7A, 40 C.F.R. § 63.11564(c), requires that you maintain the following records: (1) a copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv); (2) copies of emission tests used to demonstrate compliance and performance evaluations as required in § 63.10(b)(2)(viii); (3) documentation that shows that the following conditions are true if you use a previously-conducted emission test to demonstrate initial compliance as specified in § 63.11562(a)(1)(ii), (b)(1)(3), and (c)(1)(2): (i) the test was conducted within the last 5 years; (ii) no changes have been made to the process since the time of the emission test; (iii) the operating conditions and test methods used for the previous test conform to the requirements of this subpart; and (iv) the data used to establish the value or range of values of the operating parameters, as specified in § 63.11562(c)(2)(ii), were recorded during the emission test; (4) documentation that identifies the operating parameters and values specified in Table 4 of this subpart and that contains the data used to establish the parameter values as specified in § 63.11562(c)(2); (5) copies of the written manufacturers performance specifications used to establish operating parameter values as specified in § 63.11562(b)(3)(iii); (6) documentation of the process knowledge and engineering calculations used to demonstrate initial compliance as specified in § 63.11562(e); (7) documentation of the process knowledge and engineering calculations used to establish the value or range of values of operating parameters as specified in § 63.11562(f); (8) a copy of the site-specific monitoring plan required under § 63.11563(g); (9) a copy of the approved alternative monitoring plan required under § 63.11563(h), if applicable; (10) records of the operating

parameter values required in Table 4 of this subpart to show continuous compliance with each operating limit that applies to you.

67. The NESHAP 7A, 40 C.F.R. § 63.11565, requires that you comply with the requirements of the General Provisions (40 C.F.R. Part 63, Subpart A) according to Table 5 of NESHAP 7A.

D. Findings of Facts

68. ALCO owns and operates an asphalt roofing materials manufacturing facility at 580 Old St. Jean Street, Detroit, Michigan (the Facility).

69. At the Facility, ALCO operates, among other emission units, two asphalt coating lines; Line 1, constructed in 2016/2017 and Line 2 constructed in 1999/2000; a sand storage silo, and a black mag storage silo. Both sand and black mag are used at Line 1.

70. Neither the Line 1 nor Line 2 asphalt coating lines use an air pollution control device.

71. On August 16, 2022, EPA conducted a CAA compliance inspection at the Facility.

72. On October 26, 2022, EPA issued a Section 114 information request to ALCO. Among other information, EPA requested that the Facility conduct PM and PAH performance testing at the Facility's asphalt coating lines (Line 1 and Line 2) and opacity readings at the Facility's sand silo and black mag silo.

73. On April 10 and 11, 2023, ALCO conducted EPA Method 5A for PM and EPA Other Test Method 46 (OTM-46) for PAH, at Line 1 exhaust.

74. On April 17 and 18, 2023, ALCO conducted EPA Method 5A for PM and OTM-46 for PAH, at Line 2 exhaust.

75. On May 4, 2023, ALCO conducted EPA Method 9 testing at the sand silo.

76. On June 23, 2023, ALCO conducted EPA Method 9 testing at the black mag silo.

77. On August 2, 2023, ALCO submitted a test report, dated July 27, 2023, that contained the results of the Line 1 and Line 2 PM and PAH emissions testing, and black mag and sand silo opacity testing.

78. ALCO's Line 1 and Line 2 asphalt coaters are NSPS UU affected facilities as defined at 40 C.F.R. § 60.470(a) and 40 C.F.R. § 60.471.

79. ALCO's sand silo and black mag silo are NSPS UU affected facilities as defined at 40 C.F.R. § 60.470(a) and 40 C.F.R. § 60.471.

80. NSPS UU, 40 C.F.R. § 60.8, requires that ALCO conduct performance tests at its NSPS UU affected facilities within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility and furnish the Administrator a written report of the results of such performance tests.

81. Since the year 1999, ALCO has been required to comply with the requirements of NSPS UU at Line 2.

82. Since the year 2016, ALCO has been required to comply with the requirements of NSPS UU at Line 1, the sand silo, and the black mag silo.

83. ALCO is an asphalt roofing manufacturing operation that is considered an area source, as defined at 40 C.F.R. § 63.2, as HAP emissions from the Facility are less than 10 tpy of any single HAP and 25 tpy of any combination of HAP.

84. ALCO's Line 1 and Line 2 asphalt coaters are NESHAP 7A affected facilities as defined by 40 C.F.R. § 63.11559(b)(2).

85. ALCO's Line 1 is considered a new affected source, as defined at the NESHAP 7A, 40 C.F.R. § 63.11559(d), as construction of the unit commenced after the cut-off date of July 9, 2009.

86. ALCO's Line 2 is considered an existing affected source, as defined at the NESHAP 7A, 40 C.F.R. § 63.11559(f), as the unit is not a new as defined at NESHAP 7A, 40 C.F.R. § 63.11559(d).

87. Since July 9, 2009, Line 2 has been required to comply with the applicable existing affected source requirements of NESHAP 7A.

88. Since 2016, Line 1 has been required to comply with the applicable new affected source requirements of NESHAP 7A.

89. On March 1, 2024, EPA issued to ALCO a FOV alleging that it violated requirements of NSPS Subpart UU and NESHAP Subpart 7A.

90. On April 18, 2024, representatives of ALCO and EPA discussed the March 1, 2024 FOV.

E. Alleged Violations of Law

91. In violation of the NSPS Subpart UU, 40 C.F.R. § 60.8, ALCO has failed to conduct performance tests and to furnish the Administrator with a written report of the results of the performance tests at its NSPS UU affected facilities Line 1, Line 2, the sand silo, and the black mag silo, within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility.

92. In violation of the NSPS Subpart UU, 40 C.F.R. § 60.472(d), ALCO generated opacity emissions greater than 1% from their black mag silo. A maximum EPA Method 9 opacity observation of 5.4%, taken during a June 23, 2023 loading event, was reported in ALCO's July 27, 2023 test report.

93. In violation of the NSPS SUBPART UU, 40 C.F.R. § 60.472(d), ALCO generated opacity emissions greater than 1% from their sand silo. A maximum EPA Method 9 opacity observation of 12.3%, taken during a May 3, 2023 loading event, was reported in ALCO's July 27, 2023 test report.

94. In violation of NSPS Subpart UU, 40 C.F.R. § 63.11560(a), ALCO's Line 2 was not in compliance with the applicable provisions of NESHAP 7A by December 2, 2010.

95. In violation of the NESHAP 7A, 40 C.F.R. § 63.11560(b), ALCO's Line 1 was not in compliance with the applicable provisions of NESHAP 7A upon startup in 2017.

96. In violation of the NESHAP 7A, 40 C.F.R. § 63.11562(c)(2), ALCO failed to establish the value or range of values of operating parameters for Line 2 as specified in Table 4 of NESHAP 7A.

97. In violation of the NESHAP 7A, 40 C.F.R. § 63.11562(g), ALCO's Line 2 initial compliance was not demonstrated within 180 calendar days after December 2, 2010.

98. In violation of the NESHAP 7A, 40 C.F.R. § 63.11562(h), ALCO's Line 1 initial compliance was not demonstrated within 180 calendar days after startup.

99. In violation of the NESHAP 7A, 40 C.F.R. § 63.11563(a), ALCO failed to maintain the operating parameters for Line 1 as established under § 63.11562(c)(2) as specified in Table 4 of NESHAP 7A.

100. In violation of the NESHAP 7A, 40 C.F.R. § 63.11563(a), ALCO failed to maintain the operating parameters for Line 2 as established under § 63.11562(c)(2) as specified in Table 4 of NESHAP 7A.

101. In violation of the NESHAP 7A, 40 C.F.R. § 63.11563(g), ALCO failed to develop and make available for inspection by the delegated authority, a site-specific monitoring plan for Line 1, that specifies the process parameters established during the initial compliance assessment and how they are being monitored and maintained to demonstrate continuous compliance.

102. In violation of the NESHAP 7A, 40 C.F.R. § 63.11563(g), ALCO failed to develop and make available for inspection by the delegated authority, a site-specific monitoring plan for Line 2, that specifies the process parameters established during the initial compliance assessment and how they are being monitored and maintained to demonstrate continuous compliance.

103. In violation of the NESHAP 7A, 40 C.F.R. § 63.11564(a)(1) through (a)(6), ALCO failed to submit its required notifications.

104. In violation of the NESHAP 7A, 40 C.F.R. § 63.11564(b), ALCO failed to submit compliance reports.

105. In violation of the NESHAP 7A, 40 C.F.R. § 63.11564(c), ALCO failed to maintain records.

106. In violation of the NESHAP 7A, 40 C.F.R. § 63.11565, ALCO failed to comply with the applicable requirements of the General Provisions (40 C.F.R. Part 63, Subpart A) according to Table 5 of NESHAP 7A.

F. Terms of Consent Agreement

107. For the purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits to the jurisdictional allegations in this CAFO;
- b. neither admits nor denies the alleged violations of law stated above;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to any conditions specified in this CAFO;
- e. waives any right to contest the alleged violations of law set forth in Section E of this CAFO; and
- f. waives its right to appeal this CAFO.

108. For the purposes of this proceeding, Respondent:

- a. agrees this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges this proceeding constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1);

- d. waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c);
- e. waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement; and
- f. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for noncompliance, and agrees that federal law shall govern in any such civil action.

109. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C.

§ 7413(e), the facts of this case, and any other factor such as Respondent's cooperation, the EPA has determined that an appropriate civil penalty to settle this action is \$150,000.

110. Respondent agrees to pay a civil penalty in the amount of \$150,000 (Assessed Penalty) within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (Filing Date).

111. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:

<https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

112. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, CAA-05-2026-0010,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

James Bonar-Bridges
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
bonarbridges.james@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

113. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, the EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS large corporate underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA’s costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, the EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

114. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

115. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

116. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

117. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (IRS) annually, a completed IRS Form 1098-F (Fines, Penalties, and Other Amounts) with respect to any court order or settlement agreement (including administrative

settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (TIN), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (Request for Taxpayer Identification Number and Certification), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

118. By signing this CAFO, Respondent consents to the release of any information in this CAFO to the public and agrees this CAFO does not contain business information that is entitled to confidential treatment under 40 C.F.R. Part 2. By signing this CAFO, the undersigned representative of the EPA and the undersigned representative of Respondent each certify that they are fully authorized

to execute and enter into the terms and conditions of this CAFO and have the legal capacity to bind the party they represent to this CAFO.

119. By signing this consent agreement, respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

120. By signing this CAFO, Respondent certifies the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that, under 18 U.S.C. § 1001, there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information.

121. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding, except in the case of a civil action brought by the Attorney General of the United States to recover unpaid penalties as described above.

G. Effect of Consent Agreement and Attached Final Order

122. The parties consent to service of this CAFO by email at the following email addresses: bonarbridges.james@epa.gov (for the EPA), and Dmartin@alco-products.com (for Respondent).

123. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged in this CAFO.

124. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with

respect to this matter with the exception of the administrative compliance order, docket number EPA-5-26-113(a)-MI-1 issued concurrently.

125. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties and approval of the Regional Judicial Officer.

126. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties of up to \$121,275 per day per violation, or both, as provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

127. Nothing in this CAFO relieves Respondent of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, nor does it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor is it a ruling on, or determination of, any issue related to any federal, state, or local permit.

128. Nothing in this CAFO limits the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

129. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and to assess and collect any civil penalties permitted by statute for any violation described herein. The EPA will give Respondent written notice of its intent to revoke this CAFO, which will not be effective until received by Respondent.

H. Effective Date

130. This CAFO will be effective after the Regional Judicial Officer executes the attached Final Order, on the date of filing with the Regional Hearing Clerk. Upon filing, the EPA will transmit a copy of the filed CAFO to Respondent.

ALCO Products, LLC, Respondent

2/21/26
Date

Lee Vandermyde
Lee Vandermyde
President

Consent Agreement in the Matter of ALCO Products, LLC, Docket No. CAA-05-2026-0010

For United States Environmental Protection Agency, Complainant

Carolyn Persoon
Division Director
Enforcement and Compliance Assurance Division
U. S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of: ALCO Products, LLC
Docket No. CAA-05-2026-0010**

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.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5