

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) Docket No. CAA-05-2026-0022
)
Timber Products Michigan)
Limited Partnership)
Munising, Michigan) Proceeding to Assess a Civil Penalty
) Under Section 113(d) of the Clean Air Act,
Respondent.) 42 U.S.C. § 7413(d)
_____)

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) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.1(a)(2), 22.13(b) and 22.18(b).

2. Complainant is the U.S. Environmental Protection Agency (EPA). 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 Timber Products Michigan Limited Partnership, 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) pursuant to 40 C.F.R. § 22.18(b)(2) and (3) 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)(1)(B) 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. In satisfaction of the notice requirements of Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), on September 26, 2022, the EPA issued to Timber Products Company¹ a Notice of Violation/Finding of Violation (NOV/FOV) provided a copy of the NOV/FOV to Michigan 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 November 21, 2022, representatives of Respondent and the EPA conferred regarding the NOV/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).

¹ Timber Products Company is an informal assumed name of Respondent.

C. Statutory and Regulatory Background

10. The Clean Air Act, 42 U.S.C. §§ 7401, et seq., and the regulations promulgated thereunder, establish a statutory and regulatory scheme 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 population.

Michigan State Implementation Plan

11. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan that provides for the implementation, maintenance, and enforcement of primary and secondary National Ambient Air Quality Standards (NAAQS) in the state. Upon approval by EPA, the plan becomes a part of the applicable state implementation plan (SIP) for the state.

12. On March 8, 1994, EPA approved and promulgated Michigan Administrative Code (Mich. Admin. Code) r. 336.202 as part of the federally enforceable SIP for Michigan. 59 Fed. Reg. 10752.

13. Mich. Admin. Code r. 336.202 requires that sources of emissions of an air contaminant submit an annual report of emissions if, in the judgement of the department, information on the quantity and composition of an air contaminant emitted from the source is considered necessary for the proper management of air resources.

14. On November 25, 1996, EGLE issued "AQD-013 Criteria Pollutant Threshold Levels for the Point Source Emissions Inventory" (AQD-013). AQD-013 was most recently revised on February 7, 2024.

15. AQD-013 provides the actual emission thresholds above which sources or facilities are required to report emissions annually. For PM_{2.5} (particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers), the threshold is 10 tons per year. AQD-013 also lists emission thresholds for particulate matter (PM), PM₁₀ (PM with an aerodynamic diameter less

than or equal to a nominal 10 micrometers), carbon monoxide, nitrogen oxides, sulfur dioxide, volatile organic compounds, and lead.

16. AQD-013 states that “[o]nce a source triggers the need to report for any pollutant, that source must report for all pollutants listed above.”

17. On December 16, 2013, EPA approved Michigan’s most recent revisions to Mich. Admin. Code r. 336.1105 as part of the federally enforceable SIP for Michigan. 78 Fed. Reg. 76064.

18. Mich. Admin. Code r. 336.1105 defines “emission unit” as “any part of a stationary source that emits or has the potential to emit an air contaminant.”

19. On March 12, 2019, EPA approved Michigan’s most recent revisions to Mich. Admin. Code r. 336.1101 as part of the federally enforceable SIP for Michigan. 84 Fed. Reg. 8809.

20. Mich. Admin. Code r. 336.1101 defines “air contaminant” as “a dust, fume, gas, mist, odor, smoke, vapor, or any combination thereof.”

EGLE Permit to Install

21. Under 40 C.F.R. § 52.23, any permit limitation or condition contained within a permit issued under an EPA-approved program that is incorporated into a SIP is federally enforceable under CAA Section 113, 42 U.S.C. § 7413.

22. EPA approved Mich. Admin. Code r. 336.1201, “Permits to install” (the PTI rules), as part of the federally enforceable SIP for Michigan on August 31, 2018. 83 Fed. Reg. 44485. Since then, EPA has approved several revisions to the PTI rules.

23. On January 3, 1997, EGLE issued Permit to Install No. 292-96 (1997 Permit) to Respondent at Highway M-28 East in Munising, Michigan (the Facility).

24. Respondent’s 1997 Permit includes the following emission units: wood-fired boilers #1, #2, #3, #4, sawmill, veneer mill, planer, and hydraulic ladder.

25. Condition 17 of the 1997 Permit states that “[t]he particulate emission from wood-fired Boiler #4 shall not exceed 0.50 pounds per 1000 pounds of exhaust gases, corrected to 50% excess air.”

D. Stipulated Facts

26. Respondent owns and operates a lumber processing and veneer manufacturing facility at Highway M-28 East, Munising, Michigan 49862.

27. On October 27, 2021, EPA conducted an inspection of the Facility to evaluate compliance with the CAA (the Inspection).

28. Following the Inspection, Respondent provided several documents to EPA, including a performance test report documenting the results of testing conducted at Boilers Nos. 2, 3, and 4 in 1995 (1995 Performance Test).

29. The 1995 Performance Test included PM emission data collected using EPA Reference Method 5B and provides the following average emission factor:

| Emission Unit | PM Emission Factor (lb/1000 lb corrected to 50% excess air) | PM Emission Factor (lbs/hr) |
|----------------------|--|--|
| Boiler No. 4 | 0.590 | 17.52 |

30. On February 16, 2022, EPA issued an information request to the Respondent under Section 114 of the CAA, 42 U.S.C. § 7414 (2022 Information Request). Among other things, the 2022 Information Request asked Respondent to “provide a list of all emissions tests conducted at the Facility for any reason, from February 1, 2012 to the present.”

31. On April 13, 2022 and May 16, 2022, Respondent provided responses to the Information Request (2022 Information Request Responses).

32. The Information Request Responses stated that no emissions testing had been performed at the Facility since February 1, 2012.

33. In an email dated June 9, 2022, Respondent representatives stated that, "...no performance test, or emissions test of any kind, was performed at Boilers #2, 3, and 4, between the 1995 [Performance T]est and February 2012."

Emissions Calculations

34. In the Information Request Response, Respondent provided Michigan Air Emissions Reporting System (MAERS) reports for 2017 through 2021.

35. The MAERS data indicates Respondent has reported PM_{2.5} emissions exceeding the reporting threshold since at least 2017.

36. The MAERS Report submitted for reporting year 2021 did not include emission data for the kilns at the Facility.

37. On September 26, 2022, EPA issued to Timber Products Company a notice of violation and finding of violation (NOV/FOV).

38. On November 21, 2022, Respondent and EPA discussed the NOV/FOV.

39. On March 8, 2023, EPA issued an information request to Respondent under Section 114 of the CAA, 42 U.S.C. § 7414 (2023 Information Request). Among other things, the 2023 Information Request required performance testing at Boiler No. 4 to determine compliance with the PM emission limit established in the 1997 Permit.

40. In response to the NOV/FOV and 2023 Information Request, Respondent submitted supplemental information regarding emissions from the Facility.

41. Performance testing conducted in August of 2023 identified an emission factor at Boiler No. 4 of 0.677 lbs PM/1000 lb of exhaust gases, corrected to 50% excess air.

42. Respondent applied for and was issued a new PTI by EGLE, dated April 28, 2025 (2025 PTI). The 2025 PTI incorporates all required onsite emission units and includes appropriate emission limits. The 2025 PTI also requires the Respondent to conduct performance testing for PM at Boiler No. 4 following the installation of a new multi-cyclone dust collector.

E. Allegations

43. By emitting more than 0.5 lb PM/1000 lb, corrected to 50% excess air, from Boiler No. 4, Respondent has violated Condition 17 of the 1997 Permit.

44. By failing to provide emission data for the kilns at the Facility in its annual MAERS Report from 2021, Respondent violated the requirements of Mich. Admin. Code r. 336.202.

F. Terms of Consent Agreement

45. 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 allegations stated in Section E of this CAFO;
- 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 allegations set forth in Section E of this CAFO;
and
- f. waives its right to appeal this CAFO.

46. 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 Clean Air Act, 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.

47. 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 Respondent's cooperation, the EPA has determined that an appropriate civil penalty to settle this action is \$112,297.

48. Respondent agrees to pay a civil penalty in the amount of \$112,297 ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Consent Agreement is filed with the Regional Hearing Clerk ("Filing Date").

49. 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>.

50. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this CAFO, **CAA-05-2026-0022**,

- 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

Sophie Grueterich
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
grueterich.sophie@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.

51. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7413(d)(5), 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 CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately owing, and the EPA is authorized to recover 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. Per 42 U.S.C. § 7413(d)(5), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is, the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.

- b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of handing collection.
- c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

52. 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 CAFO, 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. Request that the Attorney General bring a civil action in the appropriate district court to enforce the Final Order and recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the Assessed Penalty and Final Order shall not be subject to review.

53. 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.

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

55. 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 Consent 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.

56. 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.

57. 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 authority to bind the party they represent to this CAFO.

58. 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.

59. 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 Final Order

60. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: grueterich.sophie@epa.gov (for the EPA), and geoffrey.tichenor@stoel.com (for Respondent).

61. 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 specifically alleged in this CAFO.

62. 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.

63. 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.

64. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, authorized representatives, successors, and assigns.

65. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties of up to \$124,426 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.

66. 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.

67. 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.

68. 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

69. This CAFO will be effective on the date of filing with the Regional Hearing Clerk. Upon filing, the EPA will transmit a copy of the filed CAFO to Respondent.

Timber Products Michigan Limited Partnership, Respondent

4-2-2026

Date



Mark Avery
Chief Executive Officer
Timber Products Michigan Limited Partnership

Consent Agreement in the Matter of Timber Products Michigan Limited Partnership, Docket
No. CAA-05-2026-0022

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: Timber Products Michigan Limited Partnership
Docket No. CAA-05-2026-0022

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