

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: ) Docket No. **CAA-5- 2000-0 161**  
)  
Indiana Municipal Power )  
Agency, Carmel, Indiana ) **Proceeding to Assess a**  
at its ) **Civil Penalty under**  
Anderson Combustion Turbine ) **Section 113(d) of the**  
Facility, Anderson, Indiana ) **Clean Air Act,**  
and ) **42 U.S.C. § 7413(d)**  
Richmond Combustion Turbine )  
Facility, Richmond, Indiana, )

**Respondent.**

**Administrative Complaint**

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

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

3. The Respondent is the Indiana Municipal Power Agency (IMPA), a corporation doing business in Indiana. This complaint addresses violations at IMPA's Anderson Combustion Turbine Facility located in Anderson, Indiana and Richmond Combustion Turbine Facility located in Richmond, Indiana.

**Statutory and Regulatory Background**

4. Pursuant to Title IV of the Act, 42 U.S.C. § 7401, et seq., as amended by Public Law 101-549 (November 15, 1990), the Administrator of the U.S. EPA established certain general provisions and operating permit program requirements for affected

sources and affected units under the Acid Rain Program at 40 C.F.R. Part 72.

5. Pursuant to Section 412 and 821 of the Act, 42 U.S.C. §§ 7401-7671q, as amended by Public Law 101-549 (November 15, 1990) the Administrator established requirements for the monitoring, record keeping, and reporting of sulfur dioxide, nitrogen oxide, and carbon dioxide emissions, volumetric flow, and opacity under the Acid Rain Program at 40 C.F.R. Part 75.

6. "Affected source" means a source that includes one or more affected units. 42 U.S.C. § 7651a(1), 40 C.F.R. § 72.2.

7. "Affected unit" means a unit that is subject to emission reduction requirements or limitation under Title IV of the Act and under 40 C.F.R. 72.6. 42 U.S.C. § 7651a(2), 40 C.F.R. § 72.2.

8. "Phase II" means the Acid Rain Program beginning January 1, 2000, and continuing into the future thereafter. 40 C.F.R. § 72.2.

9. "Phase II Unit" means any affected unit that is subject to an Acid Rain emissions reduction requirement or Acid Rain emission limitation during Phase II only. 40 C.F.R. § 72.2.

10. 40 C.F.R. § 72.6(a)(3)(i) defines "new units" as affected units. Any source that includes such an unit shall be an affected source subject to the Acid Rain Program.

11. 40 C.F.R. § 72.30(a) requires any source with an affected unit to submit a complete Acid Rain permit application by the applicable deadline in 40 C.F.R. § 72.30(b), and the owners and operators of such source and any affected unit at the source

shall not operate the source or unit without a permit that states its Acid Rain Program requirements.

12. 40 C.F.R. § 72.30(b)(2)(ii) requires the designated representative to submit a complete permit application governing such unit to the permitting authority at least 24 months before the later of January 1, 2000 or the date on which the unit commenced operation.

13. 40 C.F.R. § 75.2(a) requires the provisions of 40 C.F.R. Part 75 apply to each affected unit subject to the Acid Rain emission limitations or reduction requirements for SO<sub>2</sub> or NO<sub>x</sub>.

14. 40 C.F.R. § 75.4(a) requires that owners or operators of each existing affected unit ensure that all monitoring systems required by 40 C.F.R. Part 75 for monitoring SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, opacity, and volumetric flow be installed and all certification tests be completed by January 1, 1995 and January 1, 1996 as set forth in 40 C.F.R. § 75.4(a)(4).

15. 40 C.F.R. § 75.10 requires the owner or operator of an affected unit to measure opacity, and all SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub> emissions for each affected unit as set forth in the Section.

16. 40 C.F.R. § 75.62 requires the designated representative for an affected unit to submit a monitoring plan to the Administrator no later than 45 days prior to the first scheduled certification test, as set forth in 40 C.F.R. § 75.4(a)(4).

17. 40 C.F.R. § 75.64 requires the designated representative for an affected unit to submit electronic

quarterly reports to the Administrator, beginning with the data from the later of: the last calendar quarter of 1993 or the calendar quarter corresponding to the relevant deadline for certification in 40 C.F.R. § 75.4(a), (b) or (c).

18. The Administrator may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for Acid Rain Program violations that occurred prior to January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collections Improvements Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for Acid Rain Program violations that occurred on or after January 31, 1997. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.

19. 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.

20. 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 complaint.

#### **General Allegations**

21. IMPA operates four combustion turbines; two are located at its Anderson facility located at 6035 Park Road, Anderson,

Indiana and two at its Richmond facility located at 4752 Gates Road, Richmond, Indiana.

22. All four units are peaking units that began commercial operations in 1992.

23. All four units have a rated capacity of approximately 38.7 megawatts per unit, and are primarily fueled by natural gas with No. 2 fuel oil as a backup.

24. All four units are affected units as defined by 42 U.S.C. § 7651a(2) and 40 C.F.R. § 72.2 and as set forth at 40 C.F.R. § 72.6(a)(3)(i).

25. The Anderson and Richmond facilities are affected sources as defined by 42 U.S.C. § 7651a(2) and 40 C.F.R. § 72.2 and are subject to the Acid Rain Program. 42 C.F.R. § 72.6(a)(3)(i).

26. As affected sources, the Anderson and Richmond facilities are subject to 40 C.F.R. Part 75.

27. IMPA is a "person" as defined at 42 U.S.C. § 7602.

#### **Count I**

28. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

29. 40 C.F.R. § 72.30 requires IMPA to submit a complete Acid Rain permit application to its permitting authority at least 24 months before January 1, 2000 for its Anderson and Richmond facilities.

30. From January 1, 1998 to April, 2000, IMPA failed to submit a complete Acid Rain permit application as required by 40 C.F.R. § 72.30.

31. IMPA's failure to submit a complete Acid Rain permit application by January 1, 1998 constitutes a violation of 40 C.F.R. § 72.30.

32. IMPA's violation of 40 C.F.R. § 72.30 subjects IMPA to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

### **Count II**

33. Complainant incorporates paragraphs 1 through 32 of this Complaint, as if set forth in this paragraph.

34. 40 C.F.R. § 75.10 requires that IMPA measure all SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub> emissions for each affected unit as detailed in 40 C.F.R. § 75.10(a).

35. Until July 2000, IMPA failed to comply with the monitoring provisions set forth at 40 C.F.R. § 75.10.

36. IMPA's failure to comply with such monitoring provisions constitutes a violation of 40 C.F.R. § 75.10.

37. IMPA's violation of 40 C.F.R. § 75.10 subjects IMPA to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

### **COUNT III**

38. Complainant incorporates paragraphs 1 through 37 of this Complaint, as if set forth in this paragraph.

39. 40 C.F.R. § 75.10 requires that IMPA submit a monitoring plan to the Administrator no later than 45 days prior to January 1, 1996 for NO<sub>x</sub> and no later than 45 days prior to

January 1, 1995 for SO<sub>2</sub>.

40. Until July 2000, IMPA failed to submit the required monitoring plans for NO<sub>x</sub> and SO<sub>2</sub> as required by 40 C.F.R. § 75.62.

41. IMPA's failure to submit such monitoring plans constitutes a violation of 40 C.F.R. § 75.62.

42. IMPA's violation of 40 C.F.R. § 75.62 subjects IMPA to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

#### **COUNT IV**

43. Complainant incorporates paragraphs 1 through 42 of this Complaint, as if set forth in this paragraph.

44. 40 C.F.R. § 75.64 requires that IMPA submit quarterly reports to the Administrator by January 1, 1995.

45. Until August 2000, IMPA failed to submit the quarterly reports as required by 40 C.F.R. § 75.64.

46. IMPA's failure to submit such quarterly reports constitutes a violation of 40 C.F.R. § 75.64.

47. IMPA's violation of 40 C.F.R. § 75.64 subjects IMPA to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

#### **Proposed Civil Penalty**

48. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

49. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$74,289.00, which represents the economic benefit gained by IMPA for its failure to comply with the provisions of the Acid Rain Program. The gravity portion of the penalty was mitigated by 100% due to IMPA's voluntary written and timely self-disclosure of its violations through letters dated February 10, 2000, February 14, 2000 and April 14, 2000 in accordance with the procedures set forth in the February 22, 1995 "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" policy. (60 F.R. 66706). Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy).

50. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

#### **Rules Governing This Proceeding**

51. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22) govern this proceeding to assess a civil penalty. Enclosed with



the complaint served on Respondent is a copy of the Consolidated Rules.

**Filing and Service of Documents**

52. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

53. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Nidhi K. O'Meara to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. O'Meara at 312/886-0568. Ms. O'Meara's address is:

Nidhi K. O'Meara (C-14J)  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Penalty Payment**

54. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

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

Respondent must include the case name and docket number on

the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Ms. O'Meara and to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Opportunity to Request a Hearing**

55. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 56 through 61, below.

**Answer**

56. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 52, above, and must serve copies of the written answer on the other parties.

57. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of

receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

58. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

59. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

60. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 55 above.

61. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order

becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

**Settlement Conference**

62. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Nidhi K. O'Meara at the address or phone number specified in paragraph 53, above.

63. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

64. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9-29-00

Date



Bharat Mathur, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

CAA-5- 2000 -0 16

In the Matter of  
Docket No: CAA-5- 2000-0 16

SEP 29 10:15

CERTIFICATE OF FILING AND MAILING

I, Betty Williams, do hereby certify that I hand delivered the original and one copy of the Administrative Complaint, docket **CAA-5- 2000-0 16** number \_\_\_\_\_ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies, along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22), and copies of the Penalty Policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Rajeshwar Rao, President  
Indiana Municipal Power Agency  
11610 North College Avenue  
Carmel, Indiana 46032

Mr. Anthony Sullivan  
Barnes and Thornburg  
11 South Meridian Street  
Indianapolis, Indiana 46204

I also certify that a copy of the Administrative Complaint  
was sent by First Class Mail to:

David McIver, Chief  
Air Section  
Office of Enforcement  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, Indiana 62072

on the 29<sup>th</sup> Day of September 2000.

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

CERTIFIED MAIL RECEIPT NUMBER: P140895519

CAA-5- 2000-016