

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARINGS CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF) Docket No. CAA-07-2011-0013
)
DAVIS PAINT COMPANY.)
)
)
NORTH KANSAS CITY, MISSOURI) COMPLAINT, NOTICE OF
) PROPOSED PENALTY AND
) NOTICE OF OPPORTUNITY FOR
) HEARING
)
Respondent)
)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d).

2. This Complaint serves as notice that the U.S. Environmental Protection Agency, Region 7 (EPA) has reason to believe that Respondents have violated the National Emission Standards for Hazardous Air Pollutants (NESHAPs), 40 C.F.R. Part 63, Subpart HHHHH, promulgated pursuant to Section 112 of the Act, 42 U.S.C. § 7412, and that Respondents are therefore in violation of Section 112 of the Act, 42 U.S.C. § 7412. Furthermore, this Complaint serves as notice pursuant to Section 113(d)(2)(A), 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for such violation.

Parties

3. The Complainant, by delegation from the Administrator of EPA, and The Regional Administrator of EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. Respondent Davis Paint Company (Davis Paint) is incorporated under the laws of Missouri and registered to do business in Missouri.

Statutory and Regulatory Background

5. Section 112 of the Act, 42 U.S.C. § 7412, grants the Administrator of EPA authority to regulate hazardous air pollutants which may have an adverse effect on health or the environment.

6. Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), defines “major stationary source” as any stationary 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, ten tons per year or more of any hazardous air pollutant (HAP) or twenty-five tons per year or more of any combination of HAPs.

7. Section 112(f)(4) of the CAA, 42 U.S.C. § 7412(f)(4), prohibits the emission of any air pollutant to which a standard under Section 112 applies from any stationary source in violation of such standard, except in compliance with the regulations promulgated by EPA.

8. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, the Administrator established National Emissions Standards for Hazardous Air Pollutants (NESHAPs), 40 C.F.R. Part 63. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more HAPs listed in Part 63. Special provisions are set forth in the Subparts to Part 63.

9. Subpart HHHHHH sets forth the NESHAP for miscellaneous coating manufacturing. Subpart HHHHHH sets forth emissions limits for sources of HAPs. Subpart HHHHHH also contains work practice, reporting, and monitoring requirements. Subpart HHHHHH applies to an owner or operator of miscellaneous coating manufacturing operations that are located at or are part of a major source of hazardous air pollutant emissions, as defined in Section 112(a) of the CAA, manufacture coatings, process use or produce HAP, and are not part of an affected source under another subpart of 40 C.F.R. Part 63. 40 C.F.R. § 65.7895(a)(1), (2), (3), and (b).

10. Miscellaneous coating manufacturing operations include the facility-wide collection of equipment including process vessels, storage tanks for feedstocks and products, components of such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors and instrumentation systems, and wastewater tank transfer racks that are used to manufacture coatings. Miscellaneous coating manufacturing operations also include cleaning operations. 40 C.F.R. § 63.7985(b).

11. Coating means a material such as paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives, where the material is produced by a manufacturing operation where materials are blended, mixed, diluted or otherwise formulated. 40 C.F.R. § 63.8105(g).

12. 40 C.F.R. § 63.7995 requires existing sources to comply with the Subpart HHHHHH no later than December 11, 2006.

13. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Section 112 of the Act, 42 U.S.C. § 7412. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule, 40 C.F.R. Part 19, EPA may assess penalties of no more than \$27,500 per day for each violation occurring between January 30, 1997 and March 14, 2004; no more than \$32,500 per day for each violation occurring between March 15, 2004, and January 12, 2009; and no more than \$37,500 per day for each violation occurring after January 12, 2009.

Factual Background

14. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

15. Davis Paint manufactures both solvent and water-based paint at its facility located at 1345 Iron Street, North Kansas City, Missouri 64116.

16. Respondent has the potential to emit more than 10 tons per year of each of the hazardous air pollutants xylene, ethyl-benzene, and toluene. All three are listed as HAPs. 42 U.S.C. § 7412(b)(1). Respondent also has the potential to emit more than 25 tons per year of combined total HAPs as stated in Missouri Construction Permit 082003-013. Therefore, Respondents’ facilities are a major stationary source as defined by Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1) and 40 C.F.R. § 63.7985 (a)(1).

17. Respondent is subject to 40 C.F.R. Part 63, Subpart HHHHH, as owners and operators of miscellaneous coating manufacturing operations that is a major stationary source of HAPs as defined by Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1) and 40 C.F.R. § 63.7985 (a)(1).

18. On or about April 21, 2010, EPA representatives performed an Air Compliance Inspection at Respondent’s facility in North Kansas City, Missouri.

Findings of Violation

Count I

19. Paragraphs 1-18 are incorporated by reference as if fully set forth herein.

20. 40 C.F.R. § 63.8075(d) requires a facility subject to 40 C.F.R. Part 63, Subpart HHHHH to submit a notification of compliance status report according to a schedule set forth in the regulation. The notification of compliance status report must be submitted no later than 150 days after the applicable compliance date set forth in 40 C.F.R. § 63.7995. 40 C.F.R. § 63.7995 requires existing sources to comply with the 5H MACT no later than December 11, 2006.

21. Respondent failed to submit a notification of compliance status and therefore have failed to comply with 40 C.F.R. § 63.8075(d).

22. Respondent's failure to comply with 40 C.F.R. Part 63, Subpart HHHHHH is a violation of Section 112 of the Act, 42 U.S.C. § 7412.

Count II

23. Paragraphs 1-18 are incorporated by reference as if fully set forth herein.

24. 40 C.F.R. §63.8075(e) requires a facility to submit a compliance report that contains the information specified in the regulation. The compliance reports must be submitted semi-annually.

25. Respondent has never submitted compliance reports, and, therefore, has failed to comply with 40 C.F.R. § 63.8075(e).

26. Respondent's failure to comply with 40 C.F.R. Part 63, Subpart HHHHHH, as set forth above is a violation of Section 112 of the Clean Air Act. 42 U.S.C. § 7412.

Relief

27. Section 113(d) of the Act, 42 U.S.C. § 7413(d), as amended by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Parts 19 and 27, authorizes a civil penalty of no more than \$25,000 per day for each violation occurring before January 30, 1997; no more than \$27,500 per day for each violation occurring between January 30, 1997 and March 14, 2004; no more than \$32,500 per day for each violation occurring between March 15, 2004, and January 12, 2009; and no more than \$37,500 per day for each violation occurring after January 12, 2009.

PROPOSED PENALTY

28. For the violations stated herein, it is proposed that a penalty of One Hundred Fifteen Thousand, Six Hundred and Seventy Five Dollars and No Cents (\$115,675.00) be assessed. The proposed penalty was determined by calculation, in accordance with the enclosed Clean Air Act Stationary Source Civil Penalty Policy, by combining the factors in the policy, including the appropriate penalty for each Count set forth herein, the size of the Respondent's businesses, the economic benefit of noncompliance and any willfulness of the Respondent.

29. Payment of the total penalty, \$115,675.00, may be made by certified cashier's check payable to the Treasurer, United States of America, referencing Docket Number CAA-07-2011-0013, and remitted to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

with a copy to:

Sara S. Hertz Wu
Assistant Regional Counsel
United States Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

30. Respondent may request a hearing to contest any material fact contained in the Complaint above or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, ("Consolidated Rules") a copy of which is enclosed herein.

31. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to hearing, Respondents must file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing ("Complaint"). The answer shall clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondent dispute; (c) the basis for opposing any proposed relief; and (d) whether a hearing is requested. Said answer shall be filed with the following:

Kathy Robinson
Environmental Protection Specialist
Office of Regional Counsel
901 N. 5th Street
Kansas City, Kansas 66101.

32. Failure to admit, deny, or explain any material factual allegation in this Complaint constitutes an admission of the allegation.

33. A hearing upon the issues raised by this Complaint and the answer may be held if requested by Respondent in the answer. If Respondent does not request a hearing, the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

34. If Respondent fails to file a written answer within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, Respondent may be found in default. Such default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondents' rights to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed herein shall become due and payable unless the record clearly demonstrates that the requested relief is inconsistent with the CAA.

Informal Settlement Conference

35. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

Sara Hertz Wu
Assistant Regional Counsel
United States Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101
Telephone: 913-551-7316.

36. Please note that a request for informal settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted.

37. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of informal conference. Any settlement which may be reached as a result of such conference shall be embodied in a written Consent Agreement and Final Order ("CA/FO") issued by the Regional Judicial Officer, EPA, Region 7. The issuance of such a CA/FO shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.

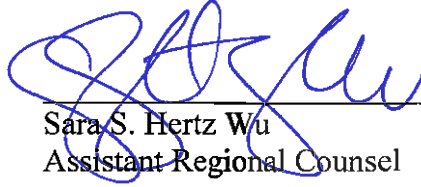
38. If Respondents have not filed an answer within the thirty (30) day time period allowed by this Notice, the penalties proposed above may be assessed by the entry of a Default Order.

JUN 16 2011

Date



Rebecca A. Weber
Director
Air and Waste Management Division



Sara S. Hertz Wu
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Complaint to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 N. 5th Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

Mr. Bill Claibourn
Plant Manager
Davis Paint Company
1345 Iron Street
Kansas City, Missouri 64116; and

Mr. Lindsay Wood, Esq.
P.O. Box 2512
Lee's Summit, Missouri 64063.

JUN 16 2011

Date

A handwritten signature in black ink, appearing to read "Kimberly", written over a horizontal line.