

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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PROTECTION AGENCY

In the Matter of:) Docket No. CAA-05-2008-0038
)
Wisconsin Veneer and)
Plywood, Inc.) Proceeding to Assess a Civil Penalty
Mattoon, Wisconsin) Under Section 113(d) of the Clean Air
) Act, 42 U.S.C. § 7413(d)
Respondent.)
_____)

**WISCONSIN VENEER AND PLYWOOD, INC.'S ANSWER
TO EPA'S ADMINISTRATIVE COMPLAINT**

1. *This is an administrative action for the assessment of a civil penalty brought pursuant to Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d).*

ANSWER:

The allegations of this paragraph contain a legal conclusion as to which no response is required. To the extent that these allegations require a response, Wisconsin Veneer and Plywood, Inc. ("WV&P") admits that this is an administrative action to assess a civil penalty under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), but denies that WV&P is liable for any civil penalty. WV&P received this Complaint on September 24, 2008.

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

ANSWER:

The allegations of this paragraph contain a legal conclusion as to which no response is required. To the extent that these allegations require a response, WV&P lacks knowledge and information sufficient to form a belief as to the truth of this allegation and therefore denies same.

3. *The Respondent is Wisconsin Veneer and Plywood, Inc., (WV&P, the Facility), a corporation doing business in Mattoon, Wisconsin.*

ANSWER:

WV&P admits this allegation.

Statutory and Regulatory Background

4. *Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.*

ANSWER:

The Act and regulations speak for themselves and no answer is required by WV&P.

5. *EPA granted final interim approval to the Wisconsin Title V operating permit program on March 6, 1995. 60 Fed. Reg. 12128. The program became effective on April 5, 1995. The Wisconsin Title V program was granted final full approval by EPA, effective November 30, 2001. 66 Fed. Reg. 62951. See 40 C.F.R. Part 70, Appendix A.*

ANSWER:

The Act, regulations, and Federal Register speak for themselves and no answer is required by WV&P.

6. *40 C.F.R. § 70.1(b) provides that all sources subject to the regulations at Part 70 shall have a permit to operate that assures compliance by the source with all applicable requirements.*

ANSWER:

The Act and regulations speak for themselves and no answer is required by WV&P.

7. *Wisconsin Department of Natural Resources (WDNR) issued the Air Pollution Operation Permit #459044300-P02 to WV&P on April 29, 2003 (Title V Permit, the Permit). The processes subject to the Permit include a wood fired boiler identified as B08 and associated multi-cyclones identified as C07 and C08 which were installed for the control of particulate matter and opacity emissions.*

ANSWER:

WV&P admits these allegations and affirmatively states that: the Permit stated that it expires on June 17, 2004; on January 30, 2007 WV&P requested revisions to be made during the renewal of its permit #459044300-P10 (original "app. received date" June 11, 2003); and, permit #459044300-P10 was proposed to be renewed on September 10, 2008.

8. *The Permit contains the following requirements applicable to the multi-cyclones mentioned above:*
- i. Part I, Condition A(1)(b)(4) of the Permit states that the pressure drop across the multi-cyclones shall be maintained between 2.5 and 4.5 inches of water column.*
 - ii. Part I, Condition A(1)(c)(4) of the Permit requires that the Facility shall measure and record the pressure drop across the multi-cyclones once for every 8 hours of source operation or once per day, whichever yields the greater number of measurements.*
 - iii. Part I, Condition N (1)(a)(1) of the Permit requires that the results of the monitoring required by the Permit to be submitted to WDNR every six months.*
 - iv. Condition N(1)(a)1)(d) states that all deviations from, and violations of applicable requirements shall be clearly identified in the semi-annual submittal.*
 - v. Part II, Conditions N.1.b.(2) and (3) of the Permit require that the Facility submit compliance certifications to WDNR and EPA and that the certifications include the compliance status of the source with respect to each term or condition identified in the Permit and indicate if compliance was continuous or intermittent.*

ANSWER:

WV&P denies these allegations and affirmatively states that: the Permit stated that it expires on June 17, 2004; prior to its expiration, the Permit contained conditions similar to those set forth in these allegations; on January 30, 2007 WV&P requested revisions to be made during the renewal of its permit #459044300-P10 (original "app. received date" June 11, 2003); and, permit #459044300-P10 was proposed to be renewed on September 10, 2008.

9. *Section 113(a) of the Act provides the Administrator of EPA ("Administrator") with the authority to issue compliance and penalty orders against any person who has violated or is in violation of an applicable Implementation Plan or permit. That authority has been delegated to the Director, Air and Radiation Division, Region 5, EPA ("Director").*

ANSWER:

The Act speaks for itself and no answer is required by WV&P. As to whether authority has been delegated to the Director, WV&P lacks knowledge and information sufficient to form a belief as to the truth of this allegation and therefor

denies same. WV&P denies that it has violated or is in violation of an applicable Implementation Plan or permit. WV&P affirmatively states that a compliance and penalty order is not appropriate against WV&P.

10. *The Administrator may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.*

ANSWER:

The Act and regulations speak for themselves and no answer is required by WV&P.

11. *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.*

ANSWER:

The Act speaks for itself and no answer is required by WV&P.

12. *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.*

ANSWER:

WV&P lacks knowledge and information sufficient to form a belief as to the truth of this allegation and therefore denies same. WV&P affirmatively states that an administrative penalty action is not appropriate against WV&P.

General Allegations

13. *Respondent owns and operates a wood veneer, plywood and lumber manufacturing facility located at 610 Railroad Street, in Mattoon, Wisconsin.*

ANSWER:

WV&P admits that it owns and operates the Facility located at 610 Railroad Street, in Mattoon, Wisconsin and affirmatively states that the Facility is a veneer cutting mill/ plywood mill/ sawmill that manufactures hardwood veneer and plywood.

14. *The processes at the Facility include a wood fired boiler identified as B08. The boiler is equipped with two multi-cyclones identified as C07 and C08 for the control of particulate matter and opacity emissions.*

ANSWER:

WV&P admits this allegation.

15. *The Facility is subject to the Title V Permit issued by the State of Wisconsin.*

ANSWER:

WV&P denies this allegation and affirmatively states that: the Permit stated that it expires on June 17, 2004; on January 30, 2007 WV&P requested revisions to be made during the renewal of its permit #459044300-P10 (original "app. received date" June 11, 2003); and, permit #459044300-P10 was proposed to be renewed on September 10, 2008.

16. *Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).*

ANSWER:

The allegation of this paragraph contains a legal conclusion as to which no response is required. To the extent that the allegation requires a response, WV&P admits the allegation.

17. *Respondent is an "owner and/or operator" as defined at Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5).*

ANSWER:

The allegation of this paragraph contains a legal conclusion as to which no response is required. To the extent that the allegation requires a response, WV&P admits the allegation.

18. *Respondent's wood fired boiler emits air pollutants, including particulate matter into the atmosphere.*

ANSWER:

WV&P admits this allegation and affirmatively states that WV&P controls the air emissions from its wood fired boiler in accordance with the requirements of its applicable air pollution control permit(s).

19. *On March 25, 2008, EPA issued a Finding of Violation ("FOV") to the Respondent for violations of the Title V Permit at its facility in Mattoon, Wisconsin.*

ANSWER:

WV&P admits that on March 25, 2008 EPA issued a FOV to WV&P but denies the remaining allegations and denies that WV&P is liable or responsible for the violations alleged by EPA in the FOV and this complaint.

20. *On April 23, 2008, representatives of EPA met with Respondent to discuss the FOV.*

ANSWER:

WV&P admits that it met with EPA representatives on April 23, 2008 to discuss the FOV but denies that WV&P is liable or responsible for the violations alleged by EPA in the FOV and this complaint.

Count I

21. *Complainant incorporates paragraphs 1 through 20 of this complaint, as if set forth in this paragraph.*

ANSWER:

WV&P incorporates by reference its answers to paragraphs 1 through 21, as if set forth in this paragraph.

22. *Records submitted by WV&P indicate that between January 1, 2004, to December 31, 2006, the pressure drop for multi-cyclone C07 was outside of the allowable range during 1,912 readings in violation of Part I, Condition A. (1)(b)(4) of the Permit.*

ANSWER:

WV&P denies this allegation and affirmatively states that: WV&P submitted a permit revision request to the Wisconsin Department of Natural Resources (the "WDNR") to revise the pressure drops limits for the multi-cyclones to more accurately reflect actual operating conditions on Boiler B08, and WV&P hired an individual to focus on environmental compliance.

23. *Records submitted by WV&P indicate that between January 1, 2004, to December 31, 2006, the pressure drop for multi-cyclone C08 was outside of the allowable range during 1,861 readings, in violation of Part I, Condition A(1)(b)(4) of the permit.*

ANSWER:

WV&P denies this allegation and affirmatively states that: WV&P submitted a permit revision request to the WDNR to revise the pressure drop limits for the multi-cyclones to more accurately reflect actual operating conditions on Boiler B08, and WV&P hired an individual to focus on environmental compliance.

24. *The number of the out of range pressure drop readings mentioned above constitute a minimum of 637 days during which Part I, Condition A(1)(b)(4) was violated.*

ANSWER:

WV&P denies this allegation.

Count II

25. *Complainant incorporates paragraphs 1 through 24 of this complaint, as if set forth in this paragraph.*

ANSWER:

WV&P incorporates by reference its answers to paragraphs 1 through 24, as if set forth in this paragraph.

26. *Despite the out of range readings that were recorded, semi-annual monitoring reports and compliance certifications submitted by WV&P for calendar years 2004 and 2005 certified continuous compliance with all the terms and conditions of the Permit, in violation of Part 1, Condition N(1)(a)(1)(d) and Part II, Conditions N.1.b.(2) and (3) of the Permit.*

ANSWER:

WV&P denies this allegation and affirmatively states that it submitted revised compliance certifications.

27. *WV&P submitted corrected semi-annual reports for the above period in February of 2007. Therefore, WV&P violated Part 1, Conditions N(1)(a)(1)(d) and Part II, Conditions N.1.b.(2) and (3) of its Permit from July 2004 through January 2007.*

ANSWER:

WV&P admits that it submitted corrected semi-annual reports in February of 2007 and denies the remainder of the allegations.

Proposed Civil Penalty

28. Complainant proposes that the Administrator assess a civil penalty of \$96,041 against Respondent for the violations alleged in this Complaint.

ANSWER:

WV&P admits that Complainant is proposing a \$96,041 civil penalty against WV&P for the violations alleged in the Complaint but denies that WV&P is liable or responsible for the violations alleged by EPA. WV&P affirmatively states that the \$96,041 civil penalty sought by Complainant is inappropriate based on the facts of this case.

29. *Complainant determined the proposed civil penalty according to the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e). Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991 (Penalty Policy), and the memorandum "Clarifications to the October 25, 1991, Clean Air Act Stationary Source Civil Penalty Policy," dated January 17, 1992. The calculated penalty was adjusted for inflation in accordance to the instructions provided by the EPA memorandum, "Modification to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule" dated September 21, 2004.*

ANSWER:

WV&P lacks knowledge and information sufficient to form a belief as to the truth of this allegation and therefore denies same. WV&P affirmatively states that the civil penalty sought by Complainant in the amount of \$96,041 is not in conformity with the documents referenced in this allegation and is inappropriate based upon the facts alleged in this case.

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

ANSWER:

WV&P lacks knowledge and information sufficient to form a belief as to the truth of this allegation and therefore denies same. WV&P affirmatively states that the Complainant should adjust the proposed penalty downward appropriately and recognize the applicability of downward adjustment factors, including, but not limited to: WV&P's size, high degree of cooperation, minimal history of noncompliance, lack of environmental damage, inability to pay, and agreement to perform a supplemental environmental project ("SEP").

Rules Governing This Proceeding

31. *The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the Consolidated Rules), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with this Complaint served on Respondent is a copy of the Consolidated Rules.*

ANSWER:

The allegations of this paragraph contain a legal conclusion as to which no response is required. To the extent that these allegations require a response, WV&P admits that *The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules), at 40 C.F.R. Part 22, govern administrative assessment of civil penalties but denies that WV&P is liable or responsible for the violations alleged by EPA. WV&P affirmatively states that the \$96,041 civil penalty sought by Complainant is inappropriate based on the facts of this case. WV&P further affirmatively states that the Complainant failed to attached a copy of the Consolidated Rules to the Complaint that was served on WV&P as alleged in the last sentence of Paragraph 31.

Filing and Service of Documents

32. *Respondent must file with the EPA 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, (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604*

ANSWER:

No response is required by WV&P.

33. *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 Ms. Padmavati Bending to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Padmavati Bending at (312) 353-8917. Ms. Bending's address is:*

*Padmavati Bending, (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604*

ANSWER:

No response is required by WV&P. However, pursuant to this paragraph and paragraph 38 (requiring Respondent to file the original written Answer and one copy with the Regional Hearing Clerk), WV&P is filing its original written Answer and one copy with the Regional Hearing Clerk and is serving Complainant's copy on Ms. Bending.

Penalty Payment

34. *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. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000*

ANSWER:

No response is required by WV&P.

35. *Respondent must include the case name, docket number and billing document number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to the Regional Hearing Clerk and Ms. Bending at the addresses given above, 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, IL 60604*

ANSWER:

No response is required by WV&P.

Answer and Opportunity to Request a Hearing

36. *If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.*

ANSWER:

WV&P hereby requests a hearing before the Administrative Law Judge on the following matters, which are included in this Answer to Complaint as defenses, affirmative or otherwise:

- a. the material facts alleged in the Complaint;
- b. the Complainant's interpretation of the Clean Air Act, regulations, Federal Register, and Permit as set forth in the Complaint;
- c. the application of the Clean Air Act, regulations, Federal Register, and Permit to WV&P;
- d. the interpretation of the Clean Air Act, regulations, Federal Register, and Permit by Region V of the EPA, and the Complainant's application of these to WV&P, is arbitrary and capricious and violates WV&P's due process and equal protection rights under the United States Constitution.
- e. the appropriateness of the proposed penalty set forth by the Complainant in paragraph 28 of this Complaint under the Penalty Policy, the January 17, 1992 memorandum referenced in paragraph 29 of this Complaint (the "Memo"), and applicable law based on how the Penalty Policy, the Memo, and applicable law have been interpreted and applied by courts of competent jurisdiction and the Complainant;
- f. whether the penalty proposed by the Complainant exceeds what justice requires in this case; and,
- g. whether the alleged violations asserted in the Complaint are de minimis.

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

ANSWER:

No response is required by WV&P.

38. *To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address given above.*

ANSWER:

No response is required by WV&P. However, pursuant to this paragraph and paragraph 33 (authorizing Ms. Bending to receive any answer and subsequent legal document that Respondent serves in this Proceeding), WV&P is filing its original written Answer and one copy with the Regional Hearing Clerk and is serving Complainant's copy on Ms. Bending.

39. *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 the Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.*

ANSWER:

No response is required by WV&P.

40. *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.*

ANSWER:

No response is required by WV&P.

41. *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 EPA under Section 22.27(c) of the Consolidated Rules.*

ANSWER:

No response is required by WV&P.

Settlement Conference

42. *Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts alleged in the Complaint and to discuss a settlement. To request an informal settlement conference, Respondent may contact Padmavati Bending at (312) 353-8917.*

ANSWER:

WV&P hereby requests an additional informal settlement conference in this matter to discuss the facts alleged in the Complaint and to discuss a settlement.

43. *Respondent's request for an informal settlement conference does not extend the 30-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.*

ANSWER:

No response is required by WV&P.

Continuing Obligation to Comply



44. *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.*

ANSWER:

No response is required by WV&P.

Dated this 17 day of October, 2008.

Reinhart Boerner Van Deuren, s.c.
N16 W23250 Stone Ridge Drive
P.O. Box 2265
Waukesha, WI 53187-2265
262-951-4500

Donald P. Gallo
WI State Bar ID No. 1001278
Carolyn A. Sullivan
WI State Bar ID No. 1017769
Attorneys for Wisconsin Veneer and
Plywood, Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2008-0029
)	
Wisconsin Veneer and)	Proceeding to Assess a Civil Penalty
Plywood, Inc.)	Under Section 113(d) of the Clean Air
Mattoon, Wisconsin)	Act, 42 U.S.C. § 7413(d)
)	
Respondent.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that Respondent Wisconsin Veneer and Plywood, Inc.'s
Answer to EPA'S Administrative Complaint was sent this day by Federal Express
overnight delivery service to the addressees indicated below:

Original and two copies to:

Regional Hearing Clerk, (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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One copy to:

Padmavati Bending, Esq. (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Dated this 17th day of October, 2008.

Reinhart Boerner Van Deuren, s.c.
N16 W23250 Stone Ridge Drive
P.O. Box 2265
Waukesha, WI 53187-2265
262-951-4500


Theresa M. Skrove