



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 24 2009

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Greg Meyers, President
Wayne Metals, LLC
400 East Logan Street
Markle, Indiana 46770

Re: In the Matter of Wayne Metals, LLC. CAA-05-2009-0014

Dear Mr. Meyers:

I have enclosed a complaint filed against Wayne Metals, LLC., under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The complaint alleges violations of Section 112 of the Clean Air Act, 42 U.S.C. § 7412, and the regulations at 40 C.F.R. Part 63, Subpart MMMM.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact, Kathleen Schneiders, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 353-8912.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cheryl L. Newton".

Cheryl L. Newton
Director
Air and Radiation Division

Enclosures

cc: Phil Perry, Branch Chief
Office of Air Quality / Compliance Branch
Indiana Department of Environmental Management

Standard bcc's: official file copy w/attachment(s)
originating organization reading file w/attachment(s)

Other bcc's: Kathleen Schnieders C- 14J
Rochelle Marceillars AE-17J

Creation Date:	March 23, 2009
Filename:	APO Letter for Cheryl Wayne Metals 032309
Legend:	ARD:AECAB:AECAS(IL/IN): Shannon Downey

RECEIVED
MAR 25 2009

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGIONAL HEARING CLERK
REGION 5 U.S. ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:)	Docket No. CAA-05-2009-0014
)	
Wayne Metals, LLC)	Proceeding to Assess a Civil Penalty
Markle, Indiana)	Under Section 113 (d) of the Clean Air
)	Act, 42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Complaint

1. This is an administrative action 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 (EPA), Region 5, Chicago, Illinois.
3. The Respondent is Wayne Metals, LLC (Wayne), a corporation doing business in Indiana.

Statutory and Regulatory Background

4. Under Section 112 of the Act, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Surface Coating of Miscellaneous Metal Parts and Products (MACT Subpart M) at 40 C.F.R. §§ 63.3880 through 63.3981, 69 FR 157 (January 2, 2004).
5. MACT Subpart M applies to manufacturers of metal parts for use in the automotive industry.
6. MACT Subpart M, at 40 C.F.R. § 63.3890(b) requires that existing sources must limit organic HAP emissions to the atmosphere from the affected source to the applicable limit of no more than 0.31 kg (2.6 lb) organic HAP per liter (gal) coating solids used during each 12-month compliance period.
7. MACT Subpart M, at 40 C.F.R. § 63.3883 requires affected sources to comply with its requirements three years after January 2, 2004.

8. 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.
9. EPA granted interim approval to the Indiana Title V program on November 14, 1995, with an effective date of December 14, 1995. 60 FR 57188 (November 14, 1995).
10. EPA granted final approval to the Indiana Title V program on November 30, 2001. 66 FR 62969 (December 4, 2001). See 40 C.F.R. Part 70, Appendix A.
11. 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.
12. The Indiana Department of Environmental Management first issued Wayne Metals a Title V permit, No. T 179-15230-00016, on October 6, 2003.
13. Wayne's Title V permit includes the substantive requirements of MACT Subpart MMMM.
14. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations of NESHAP requirements and/or violations of applicable implementation plans and permits that occurred from January 31, 1997, through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for those violations that occurred after March 15, 2004, and before January 11, 2009, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

General Allegations

15. Wayne owns and operates a general use metal coating facility at 400 East Logan Street, Markle, Indiana (the facility).
16. At all times relevant to events alleged in this complaint, Wayne owned and operated an existing affected metal coating source.
17. The Facility is subject to the Title V permit issued by the State of Indiana.
18. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).
19. Respondent is an "owner and/or operator" as defined at Section 111(a)(5) of the Act, 42 U.S.C. §7411(a)(5).

19. Respondent is an "owner and/or operator" as defined at Section 111(a)(5) of the Act, 42 U.S.C. §7411(a)(5).
20. The Facility is an emission source subject to the requirements of the Act, including the MACT Subpart MMMM, at 40 C.F.R. Part 63.
21. On May 2, 2008, EPA issued a Finding of Violation (FOV) to the Respondent for violations of its Title V Permit and MACT Subpart MMMM at the facility.
22. On June 25, 2008, representatives of EPA met with Respondent to discuss the FOV.

Count I

23. Complainant incorporates paragraphs 1 through 22 of this Complaint, as if set forth in this paragraph.
24. MACT Subpart MMMM, at 40 C.F.R. § 63.3883, requires affected sources to comply with its requirements three years after January 2, 2004.
25. MACT Subpart MMMM, at 40 C.F.R. § 63.3890(b)(1), requires that existing sources limit organic HAP emissions to no more than 0.31 kg (2.6 lb) organic HAP per liter (gal) coating solids used during each 12-month compliance period.
26. On February 26, 2008, Wayne submitted a Notification of Compliance Status report pursuant to MACT Subpart MMMM that indicated that the facility had emissions from its coating operations in excess of the emission limit of 2.6 pounds HAPs/gallons coating solids used, during the initial 12-month compliance period.
27. By exceeding the emission limit of 2.6 pounds HAPs/gallons coating solids used in its coating operations, Wayne is in violation of MACT Subpart MMMM, at 40 C.F.R. § 63.3890(b)(1).

Count II

28. Complainant incorporates paragraphs 1 through 22 of this Complaint, as if set forth in this paragraph.
29. On February 26, 2008, Wayne submitted a Notification of Compliance Status report pursuant to MACT Subpart MMMM that indicated that the facility had emissions from its coating operations in excess of the emission limit of 2.6 pounds HAPs/gallons coating solids used, during the initial 12-month compliance period.

30. By exceeding the emission limit of 2.6 pounds HAPs/gallons coating solids used in its coating operations, Wayne violated Section D.1.11 of its Title V permit.

Proposed Civil Penalty

31. Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint of \$54,000.
32. 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 U.S. EPA's *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991 (Penalty Policy). Enclosed with this Complaint is a copy of the Penalty Policy.
33. 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.

Rules Governing This Proceeding

34. 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 the Complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

35. 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

36. 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 Kathleen Schnieders to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Schnieders at (312) 353-8912; her address is:

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

Penalty Payment

37. 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

38. 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 Kathleen Schnieders 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 and Opportunity to Request a Hearing

39. 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.
40. 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.
41. To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address given above.
42. 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. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

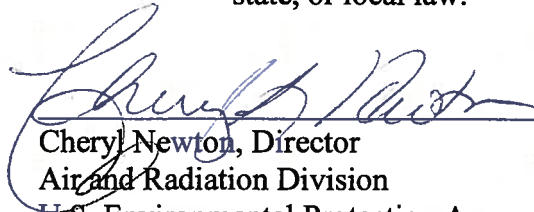
- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
 - b. the facts that Respondent disputes;
 - c. the basis for opposing the proposed penalty; and
 - d. whether Respondent requests a hearing.
43. If Respondent does not file a written Answer within 30 calendar 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.

Settlement Conference

44. 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 Kathleen Schnieders at (312) 353-8912.
45. 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.

Continuing Obligation to Comply

46. 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.



Cheryl Newton, Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

3/24/09
Date

In the Matter of:
Wayne Metals
Docket No. **CAA-05-2009-0014**

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MAR 25 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE


I, Betty Williams, certify that I hand delivered the original and one copy of the Complaint, docket number **CAA-05-2009-0014** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* at 40 C.F.R. Part 22, and copies of the penalty policy described in the Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent by placing them in the custody of the United States Postal Service addressed as follows:

Greg Meyers, President
Wayne Metals, LLC
400 East Logan Street
Markle, Indiana 46770

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

Phil Perry, Branch Chief
Office of Air Quality / Compliance Branch
Indiana Department of Environmental Management
100 North Senate Avenue / Room IGCN 1003
Indianapolis, Indiana 46204-2251

on the 25th day of March, 2009.


Betty Williams
Administrative Program Assistant
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8915 9884