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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In re Custom Marble and Onyx, Inc. Modesto, California RESPONDENT,	Docket No. CAA 09-2008- 0040 AMENDED COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

I. AUTHORITY AND PARTIES

1. This Amended Complaint and Notice of Opportunity for Hearing ("Amended Complaint") is a civil administrative action brought under section 113(d) of the Clean Air Act (the "Act"), as amended, 42 U.S.C. § 7413(d) for assessment of a civil administrative penalty against Custom Marble and Onyx, Inc. for violations of the Act. Specifically, this Amended Complaint alleges that Respondent violated section 112 of the Act, which regulates emissions of hazardous air pollutants ("HAPs"), and relevant regulatory provisions set forth in the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Reinforced Plastic Composites Production, 40 C.F.R. Part 63, Subpart WWWW, §§ 63.5780-63.5935. This Amended Complaint also alleges that Respondent violated section 502 of the Act, which requires major stationary sources of air pollution to obtain an operating permit that includes emissions limitations and such other conditions as necessary to assure compliance with applicable requirements of the Act. 42 U.S.C. §§ 7661a-7661f.

2. On September 29, 2008, Complainant filed a complaint against Respondent, Docket No. CAA 09-20008-0040. Pursuant to 40 C.F.R. 22.14(c), Complainant may amend the complaint once as a matter of right at any time before an answer is filed. This Amended Complaint supercedes the Complaint filed on September 29, 2008.

3. Complainant is the Director of the Air Division, United States Environmental Protection Agency ("EPA") Region IX. Pursuant to EPA Delegation Order Number 7-6-A, dated May 4, 1994, the Administrator of EPA has delegated the authority to file this action to the Regional Administrator of EPA Region IX, and pursuant to EPA Regional Order Number R1265.05A, dated August 14, 2003, the Regional Administrator re-delegated that authority to the Complainant, the Director of the Air Division..

4. Respondent owns and operates a reinforced plastic composite manufacturing facility ("Facility") located at 201 Winmoore Way, Modesto, California. Respondent is located in Modesto, California, within the jurisdiction of the San Joaquin Valley Air Pollution Control District ("SJVAPCD" or "District").

B. STATUTORY AND REGULATORY BACKGROUND

MACT Requirements for Reinforced Plastic Composites Production

5. Section 112 of the Act requires EPA to list categories of sources of hazardous air pollutants ("HAPs") and to establish National Emission Standards for Hazardous Air Pollutants ("NESHAP") for the listed categories. 42 U.S.C. § 7412(c)(1). The Act requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. 42 U.S.C. § 7412(d). This level of control is known as maximum available control technology ("MACT").

6. Section 112(a) of the Act defines a "major source" as any stationary source that emits or has the potential to emit . . . 10 tons per year ("tpy") or more any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants. 42 U.S.C. § 7412(a).

7. On July 16, 1992, EPA published a list of source categories that would be regulated under section 112(c). That list included the reinforced plastic composites production source category. 57 Fed. Reg.

31576.

8. On April 21, 2003, EPA published the final MACT standard for HAPs for Reinforced Plastic Composites Production, 40 C.F.R. Part 63, Subpart WWWW, §§ 63.5780-63.5935. 68 Fed. Reg. 19375.

9. The effective date of the standard was April 21, 2003. 40 C.F.R. § 63.5780 and Table 2 to Subpart WWWW specify that the owner or operator of an existing affected source must comply with the requirements in Subpart WWWW by April 21, 2006.

10. In relevant part, 40 C.F.R. § 63.5785 states that the requirements of Subpart WWWW apply to the owner and operator of each reinforced plastic composites production facility that is located at a major source of HAP emissions.

11. In relevant part, 40 C.F.R. § 63.5790 states that Subpart WWWW applies to new or existing affected sources at reinforced plastic production facilities. Section 63.5790 defines an "affected source" as including: equipment used for molding, casting, lamination, pultrusion, sheet molding compound manufacturing, bulk molding compound manufacturing, and mixing. Section 63.5790 also provides that the term "affected source" also includes certain cleaning, storage and repair equipment at reinforced plastic production facilities.

12. Pursuant to 40 C.F.R. §§ 63.5905(a) and 63.9(b)(2), the owner or operator of an existing affected source to submit an initial notification to EPA within 120 days of the effective date of Subpart WWWW, or August 19, 2003.

13. Pursuant to 40 C.F.R. § 63.5910(b), the owner or operator of sources subject to Subpart WWWW must submit compliance reports on a semi-annual basis. Per 40 C.F.R. § 63.5910(b)(4), semi-annual compliance reports must be postmarked or delivered no later than July 31 or January 31. Semi-annual compliance reports must contain the information specified in 40 C.F.R. § 63.5910(c), including any deviations from organic HAP emissions limitations or work practice standards.

Title V Operating Permit Requirements

14. Title V of the Act requires major stationary sources of air pollution to obtain an operating permit

that includes emissions limitations and such other conditions as necessary to assure compliance with applicable requirements of the Act. See 42.U.S.C. §§ 7661a-7661f.

15. EPA's implementing regulations for Title V define a major stationary source as including sources that emits or has the potential to emit more than 10 tpy of any hazardous air pollutant ("HAP") listed under section 112(b) of the Act. 40 C.F.R. §70.2.

16. Styrene is a listed HAP under Section 112(b) of the Act. See 42 U.S.C. 7412(b).

17. Section 502(a) of the Act provides that, after the effective date of a Title V permit program, operation of a major stationary source without a Title V operating permit is a violation of the Act. 42 U.S.C. §7661a(a).

18. EPA's regulations, at 40 CFR §70.5(a), provide that the owner or operator of a title V source must submit a timely and complete permit application. Section 70.5(a)(1) further provides that a timely and complete application is one submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.

19. The District adopted regulations to implement its Title V program on June 15, 1995. EPA granted interim approval effective on May 24, 1996 and granted full approval to the District's Title V program effective November 30, 2001. See 40 CFR Part 70, Appendix A; 66 Fed. Reg. 63503 (December 7, 2001).

20. The District's requirements for sources to submit timely permit applications are substantially similar to EPA's part 70 regulations and require major sources to submit Title V permit applications within 12 months after the source becomes subject to the permit program. See SJVAPCD Rule 2520, section 5.1.

C. GENERAL ALLEGATIONS

21. Respondent is a corporation incorporated in the State of California.

22. At all times relevant to this proceeding, Respondent was a "person" as that term is defined in section 302(e) of the Act, 42 U.S.C. § 7602(e).

23. Pursuant to its authority under section 114 of the Act, EPA sent a letter dated August 13, 2007 to Respondent requesting information regarding the Facility's compliance with the Act.

24. On or about October 12, 2007, Respondent submitted its response to EPA's section 114 information request ("Response to EPA's Information Request").

25. Respondent's Response to EPA's Information Request stated that the Facility's emissions of styrene for calendar years 2002 – 2006 were as follows:

a) 2002 33, 206 pounds

b) 2003 31,767 pounds

c) 2004 29, 891 pounds

d) 2005 23,770 pounds

e) 2006 15,825 pounds

26. Respondent's Response to EPA's Information Request included a Notification of Compliance Status, dated July 11, 2006, submitted by the company regarding the Facility's compliance status with respect to Subpart WWWW.

27. Respondent's Response to EPA's Information Request included an initial notification of applicability of Subpart WWWW, dated July 11, 2006.

28. Respondent's Response to EPA's Information Request included an admission that it has not submitted semi-annual compliance reports to EPA or to the District.

29. Respondent's Response to EPA's Information Request revealed that Respondent did not apply for a Title V permit until March 30, 2007.

D. ALLEGED VIOLATIONS

COUNT I:
FAILURE TO NOTIFY EPA OF SUBPART WWWW APPLICABILITY

30. Paragraphs 1 through 28 are re-alleged and incorporated herein by reference.

31. Since at least 2002, emissions of styrene from the Facility have exceeded 10 tpy. Therefore, the Facility is a major source of HAPs emissions and is subject to the MACT standard for Reinforced Plastic Composites Production, 40 C.F.R. Part 63, Subpart WWWW §§ 63.5780-63.5935.

32. The effective date of Subpart WWWW was April 21, 2003; therefore, Respondent was required to submit an initial notification to EPA by August 19, 2003. 40 C.F.R. §§ 63.5905(a) and 63.9(b)(2).

33. Respondent did not submit its initial notification until on or about July 11, 2006.

34. Respondent violated section 112 of the Act and 40 C.F.R. §§ 63.5905(a) and 63.9(b)(2) by failing to timely submit this notification.

COUNT 2:
FAILURE TO SUBMIT SEMI-ANNUAL COMPLIANCE REPORTS

35. Paragraphs 1 through 28 are re-alleged and incorporated herein by reference.

36. Since at least 2002, emissions of styrene from the Facility have exceeded 10 tpy. Therefore, it is a major source of HAP emissions and is subject to the MACT standard for Reinforced Plastic Composites Production. 40 C.F.R. Part 63 Subpart WWWW §§ 63.5780-63.5935.

37. The deadline for the Facility to comply with Subpart WWWW was April 21, 2006; therefore, the Facility was required to submit semi-annual compliance reports to EPA, pursuant to 40 C.F.R. §63.5910, by January 31, 2007, July 31, 2007, and January 31, 2008.

38. Respondent violated section 112 of the Act and 40 C.F.R. §63.5910 each time Custom Marble failed to submit a semi-annual compliance report.

COUNT 3:
FAILURE TO SUBMIT A TIMELY TITLE V PERMIT APPLICATION

39. Paragraphs 1 through 28 are re-alleged and incorporated herein by reference.

40. The Facility is a major source of air pollution, as that term is defined at 40 C.F.R. §70.2, because it emits more than 10 tpy of styrene, a HAP listed under section 112(b).

41. The Facility's annual emissions of styrene have exceeded the Title V major source threshold since at least 2002.

42. The Facility was required to have submitted a Title V permit application no later than 12 months after becoming subject to the program.

43. Based on information currently available to EPA, the Facility should have submitted a Title V permit application no later than December 31, 2003. EPA may determine that the Title V permit application deadline was earlier, if there are records demonstrating annual emissions exceeded the major source threshold in any year prior to 2002.

44. The Facility's Title V permit application dated March 30, 2007 was not timely.

45. The Facility was in violation of section 502 of the Act and 40 C.F.R. §70.5(a) from at least December 31, 2003 continuing up to March 30, 2007.

V. PROPOSED CIVIL PENALTY

Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes a civil administrative penalty of up to $25,000 per day for each violation of the Act, provided that the total amount of penalty assessed does not exceed $200,000. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Debt Collection Improvement Act of 1996, these maximum amounts have been adjusted to $32,500 per day, not to exceed a total penalty of $270,000, for each violation that occurred on or after March 15, 2004.

For purposes of determining the amount of the civil penalty to be assessed, section 113(e) of the Act, 42 U.S.C. § 7413(e), requires the Administrator to consider the size of the business, the economic impact of the penalty on the business, the violator's compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. Accordingly, after consideration of these statutory assessment factors, EPA requests the assessment of a civil administrative penalty of up to TWENTY-SEVEN THOUSAND EIGHTY DOLLARS ($27,080) against Respondent for the violations of the Act set forth above.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

You have the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

You must file a written Answer within twenty (20) days of receiving this Amended Complaint to avoid being found in default, which constitutes an admission of all facts alleged in the Amended Complaint and a waiver of the right to a hearing, and to avoid having a penalty assessed without further proceedings. If you choose to file an Answer, you are required by the Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual allegations contained in this Amended Complaint to which you have any knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny any of the allegations in this Amended Complaint will constitute an admission of the undenied allegation.

The Answer shall also state the circumstances and arguments, if any, which are alleged to constitute the grounds of defense, and shall specifically request an administrative hearing, if desired. If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing. The Answer must be filed with:

Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

In addition, please send a copy of the Answer and all other documents that you file in this action to:

Kara Christenson
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX

75 Hawthorne Street
San Francisco, CA 94105

You are further informed that the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of any action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

VII. INFORMAL SETTLEMENT CONFERENCE

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with EPA through Ms. Christenson, the EPA attorney assigned to this case, regarding the facts of this case, the amount of the proposed penalty, and the possibility of settlement. **An informal settlement conference does not, however, affect your obligation to file an Answer to this Amended Complaint**.

VIII. ALTERNATIVE DISPUTE RESOLUTION

The parties also may engage in any process within the scope of the Alternative Dispute Resolution Act, 5 U.S.C. § 581 *et seq.*, which may facilitate voluntary settlement efforts. Dispute resolution using alternative means of dispute resolution does not divest the Presiding Officer of jurisdiction nor does it automatically stay the proceeding.

IX. QUICK RESOLUTION

Instead of requesting an informal settlement conference or filing an Answer requesting a hearing, you may choose to resolve the proceeding by paying the specific penalty proposed in the Amended Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk within thirty (30) days after receiving the Amended Complaint. If you wish to resolve the proceeding in this manner instead of filing an answer but need additional time to pay the penalty, you may file a written statement stating that you agree to pay the proposed penalty in accordance with 40 C.F.R § 22.18(a)(1) with the Regional Hearing Clerk within 30 days after receiving the Complaint. The written statement need not contain any response to, or admission of, the allegations in the Amended Complaint. Within

sixty (60) days after receiving the Amended Complaint, the full amount of the proposed penalty must be paid. Failure to make such payment within this sixty-day period may subject you to default. Upon receipt of payment in full, the Regional Judicial Officer will issue a Final Order. Payment by a respondent shall constitute a waiver of the respondent's rights to contest the allegations and to appeal the Final Order. In addition, full payment of the proposed penalty shall only resolve Respondent's liability for Federal civil penalties for violations and facts alleged in the Amended Complaint and does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

X. CONSENT AGREEMENT AND FINAL ORDER

EPA has the authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference or through alternative dispute resolution. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties would be binding as to all terms and conditions specified therein when the Regional Judicial Officer signs the Final Order.

Dated at San Francisco, California on this 24th day of October 2008.

DEBORAH JORDAN
Director, Air Division
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I hereby certify that on 10/24/08 the original copy of the foregoing AMENDED COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was filed with the Regional Hearing Clerk, Region IX and that a copy was sent via U.S. Mail to:

Daryl Schenewark
Custom Marble and Onyx Corporation
P.O. Box 581710
Modesto, CA 95358

Robert P. Soran, Esq.
Downey Brand, LLP
555 Capitol Mall, 10th Floor
Sacramento, CA 95814

Date: 10/24/08 Kingsley Adedun

U.S. EPA, Region IX