



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 31 2011

REPLY TO THE ATTENTION OF:
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James Dodson
Environmental Administrator
C&D Technologies, Inc.
200 West Main Street
Attica, Indiana 47918

Re: In the matter of C&D Technologies, Inc., Docket No. **CAA-05-2011-0035**

Dear Mr. Dodson:

I have enclosed the Administrative Complaint (Complaint) filed by the U.S. Environmental Protection Agency against C&D Technologies, Inc. (C&D) under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and a copy of 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.

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 (E-19J), U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604 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. If you choose to file an answer, you also must mail a copy of it to Robert S. Guenther, Associate Regional Counsel (C-14J), U.S. EPA, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

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 Mr. Guenther at 312.886.0566.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl L. Newton".

Cheryl L. Newton
Director

Air and Radiation Division

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
MAR 31 2011

IN THE MATTER OF:

C&D TECHNOLOGIES, INC.,
ATTICA, INDIANA,

RESPONDENT.

Docket No.: CAA-05-2011-0035

REGIONAL HEARING CLERK
USEPA
REGION 5

Proceeding to Assess a Civil
Penalty Under Section 113(d) of
the Clean Air Act, 42 U.S.C.
§ 7413(d)

ADMINISTRATIVE 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. 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. Respondent is C&D Technologies, Inc., a Delaware corporation doing business in the State of Indiana.

Statutory and Regulatory Background

4. Under section 112 of the Act, U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Lead Acid Battery Manufacturing Area Sources at 40 C.F.R. §§ 63.11421 through 63.11427, or subpart P of part 63.

5. Subpart P, at 40 C.F.R. § 63.11423(c)(2), requires owners and operators of existing sources of lead emissions without a prior performance test to conduct a performance test using the methods specified in 40 C.F.R. § 60.374 by January 12, 2009.

6. Pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. part 19, the Administrator of U.S. EPA may assess a civil penalty of up to \$37,500 per day of violation to a maximum of \$295,000 for violations of the NESHAP requirements occurring after January 12, 2009.

7. 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.

8. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

9. Respondent, a corporation, is a "person" according to the definition found at section 302(e) of the Act, 42 U.S.C. § 7602(e).

10. Respondent owns and operates a lead acid battery manufacturing facility at 200 West Main Street, Attica, Indiana.

11. Respondent commenced construction of its facility on or before April 4, 2007.

12. Respondent's facility contains area sources of airborne lead emissions, and lead compounds are hazardous air pollutants according to section 112(b)(1) of the Act, 42 U.S.C. § 7412(b)(1).

13. Respondent's facility is not a major source as defined in 40 C.F.R. part 63.

Specific Allegations

14. Between January 12, 2009, and November 25, 2010, Respondent operated five sources of airborne lead emissions at its facility in Attica, Indiana, which had not undergone prior performance testing. These sources are: S113 – Central Vacuum A, S24 – Bone Dry Oven, S246 – LCT 1700 Battery Oven, S129 – Central Vacuum B, S178 – Tank Dry.

15. Between January 12, 2009, and November 25, 2010, Respondent had not conducted performance testing for emission sources subject to part PPPPPP, for these five individual sources at its Attica, Indiana, facility, as required by 40 C.F.R. § 63.11423(c)(2).

16. Respondent's failure to conduct performance testing as required by 40 C.F.R. § 63.11423(c)(2) is a violation of a requirement promulgated pursuant to section 112 of the Act, 42 U.S.C. § 7412.

Proposed Civil Penalty

17. Complainant proposes that the Administrator assess a civil penalty of \$148,711 against Respondent for the violations alleged in this Complaint.

18. 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). A copy of the penalty policy is enclosed with this Complaint.

19. 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

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

Respondent must file with the U.S. 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-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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 Robert S. Guenther, Associate Regional Counsel, to receive any answer and subsequent legal documents Respondent serves in this proceeding. You may telephone Mr. Guenther at (312) 886-0566. Mr. Guenther's address is:

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

Penalty Payment

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

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 Mr. Guenther 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

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.

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.

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

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.

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

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 Mr. Guenther at (312) 886-0566.

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


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.

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MAR 31 2011

**REGIONAL HEARING CLERK
USEPA
REGION 5**

3/31/11
Date


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

In the Matter of:
C&D Technologies, Inc.. Attica Indiana
Docket No. **CAA-05-2011-0035**

CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original and one copy of the Complaint, docket number CAA-05-2011-0035 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed 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 and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Mr. James Dodson
Environmental Administrator
C&D Technologies, Inc.
200 West Main Street
Attica, Indiana 47918

Aria A. Klees
Deputy General Counsel
C&D Technologies, Inc.
P.O. Box 3053
1400 Union Meeting Road
Blue Bell, PA 19422-0838


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And, mailed a copy of the Clean Air Act Administrative Complaint issued to C&D Technologies, to:

Phil Perry, Branch Chief
Office of Air Quality/Compliance Branch
Indiana Department Environmental Management
100 North Senate Avenue, Room 1001
Indianapolis, Indiana 46206-6015

On the 31st day of March, 2011.


Betty Williams
Administrative Program Assistant
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 70091680000076702447