

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-RE
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REGIONAL HEARING
CLERK

In the Matter of:

Philadelphia Furniture, LLC
Salamanca, New York

Respondent

In a proceeding under the Clean Air Act,
42 U.S.C. § 7401, et seq., brought pursuant
to Section 113(d), 42 U.S.C. § 7413(d)

PREHEARING EXCHANGE

CAA-02-2009-1215

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA) submits this Prehearing Hearing Exchange in accordance with the October 7, 2009 "Prehearing Order" and the February 3, 2010 "Order Granting Motion for Extension of Time to File Prehearing Exchange" issued by the Honorable Barbara A. Gunning, Administrative Law Judge.

Pursuant to 42 U.S.C. § 7401, et seq., 42 U.S.C. § 7413(d), Section 113(d), the Clean Air Act (CAA or the Act), Complainant filed an administrative Complaint and Notice of Opportunity to Request a Hearing against Respondent for violations of Philadelphia Furniture, LLC Title V Permit to Operate, issued pursuant to 40 C.F.R. Part 71, the Federal Title V Operating Permit Program, promulgated pursuant to Section 502(b) of the Act. The total amount of the penalty proposed by Complainant is \$241,137. Respondent filed an Answer, Affirmative Defenses and Request for a Hearing dated September 14, 2009.

In the Complaint, EPA alleges that Philadelphia Furniture, LLC (Respondent) violated the Philadelphia Furniture, LLC Title V Permit to Operate, issued pursuant to 40 C.F.R. Part 71, the Federal Title V Operating Permit Program, promulgated pursuant to Section 502(b) of the Act.

II. REQUIREMENTS FOR PREHEARING EXCHANGE

Pursuant to the Prehearing Order each party shall submit:

(A) NAMES OF EXPERT AND OTHER WITNESSES

Complainant intends to call the following witness:

Mozafar Ghaffari: Environmental Engineer and Enforcement Officer, Air Compliance Branch, Division of Environmental Compliance and Assistance, EPA, Region 2.

As a fact witness, Mr. Ghaffari is expected to testify that, in accordance with Section 114 of the Act, he performed an investigation of Philadelphia Furniture, LLC facility (Facility) to determine Respondent's CAA compliance activities. Mr. Ghaffari's investigation focused on Respondent's work practice, recordkeeping, and reporting practices, to determine if these practices conformed with the requirements of Philadelphia Furniture, LLC Title V Permit to Operate. Mr. Ghaffari is also expected to describe his investigation and the documentary evidence obtained during his investigation, discuss what his investigation revealed, and provide a summary of EPA's compliance and enforcement actions with respect to Respondent.

Mr. Ghaffari is also expected to testify as to how the EPA Clean Air Act Stationary Source Penalty Policy was used to arrive at the proposed penalty in this

case. A narrative of his expected testimony in this regard is found in the section of the Prehearing Exchange entitled "Complainant's Statement of how Proposed Penalty was Determined."

As to specific findings of fact alleged in the Complaint not admitted to by Respondent in its September 14, 2009, Answer, Affirmative Defenses and Request for Hearing (Answer), Mr. Ghaffari, relying on the documentary evidence as necessary, is expected to testify as follows:

1. On July 29, 2008, pursuant to Section 114(a) of the Act, the EPA inspector conducted an inspection of Respondent's Facility.
2. During the EPA inspection (Inspection) of the Facility, the EPA inspector met with the Environmental Manager, Plant Manager, Vice President, and Human Resources Manager of Philadelphia Furniture, LLC (together the Facility Representatives).
3. During the Inspection, the EPA inspector reviewed 40 C.F.R. Part 71 Title V Permit to Operate, toured the Facility, and interviewed the Facility Representatives to determine the Facility's compliance status with respect to the Facility's Title V Permit to Operate.
4. During the Inspection, the EPA inspector observed a new molder machine and two new or used wide-belt sanders. The Facility Representatives stated that the molder machine began operating on July 15, 2008 and that the two wide-belt sanders began operating July 16, 2008.
5. At the time of the Inspection, the Facility's Title V Permit to Operate did not include any references to the molder machine or the two wide-belt sanders.

6. During the Inspection, Facility Representatives indicated that the Facility had not sought amendments to the Facility's Title V Permit to Operate to include the molder machine or the wide-belt sanders as emission sources.

7. During the Inspection, the EPA inspector observed that five (5) spray booths (Numbers 38, 40, 41, 45, and 51) were not equipped with the required filters to capture solid and liquid air contaminants during spraying operations.

8. During the Inspection, the EPA inspector requested that the Respondent provide copies of required semi-annual certifications and annual certifications. In response to this request, the Facility Representatives indicated that Respondent did not submit to EPA the required semi-annual certifications or the annual certifications to comply with its Title V Permit to Operate.

9. At the conclusion of the Inspection, the EPA inspector requested the Respondent to correct all the of non-compliance issues discovered during the inspection and then provide EPA with documentary evidence to demonstrate compliance with all applicable to the Facility's Title V Permit to Operate conditions and requirements.

10. After the Inspection, EPA conducted a search of EPA's files pertaining to the Facility and found no annual certifications or semi-annual certifications.

11. After the Inspection, EPA conducted a search of EPA's files pertaining to the Facility and found that Respondent had not submitted a permit modification application that would include the molder machine and the two wide-belt sanders. The three (3) pieces of equipment were operated without an approved permit.

12. Section I.B of Respondent's Title V Permit includes a table that lists the source emission units and identifies the control equipment for each emission unit. According to

the list, the control equipment associated with each of the Facility's paint or spray booths is a filter.

13. Section III.B of Respondent's Title V Permit requires the permittee to submit to EPA all monitoring reports required under the permit every six months. The reports are due on April 1st and October 1st of every year during the permit term.

14. Section IV.D of the Facility Title V Permit requires the permittee to certify compliance with all permit terms and conditions and to provide to EPA compliance certifications on an annual basis.

15. Section IV.F of the Facility Title V Permit requires that permittee submit to EPA, among other things, an annual compliance certification (Annual Compliance Certification).

16. Section IV.I of the Facility Title V Permit requires the permittee to seek amendments or modifications of the Permit by meeting the criteria established and complying with the requirements for permit modifications provided under 40 C.F.R. § 71.7(e)(1).

Umesh Dholakia: Environmental Engineer and Regional Air Toxic Coordinator, Division of Planning and Protection Program, EPA Region 2.

As a fact witness, Mr. Dholakia is expected to testify that, during a review of EPA files pertaining to Philadelphia Furniture, LLC, he did not find the required submittals from Respondent in order for them to be in compliance with the Facility's Title V Permit to Operate.

Based on the documentary evidence, Mr. Dholakia is expected to testify that:

1. During a review of EPA files pertaining to Philadelphia Furniture, LLC, Mr. Dholakia did not find the required submissions of the semi-annual and annual certifications.
2. During a review of EPA files pertaining to Philadelphia Furniture, LLC, Mr. Dholakia did not find a permit modification application to add a molder machine and two wide-belt sanders to the Facility's Title V Permit to Operate.

Other Witnesses: Complainant may call the following:

- a. Any witness called by Respondents.
- b. Any witness needed to authenticate exhibits.
- c. Any witness needed for impeachment.
- d. Any witness needed for rebuttal or to respond to testimony of Respondents' witnesses when such testimony has been disclosed by Respondents.
- e. Any witness whose identity may become known to Complainant after submittal of this witness list.

Except for the above, Complainant does not anticipate, at this time, the need to call any additional witness. However, Complainant respectfully reserves the right to call additional witnesses upon adequate notice to Respondents and this Court.

(B) LISTING OF COMPLAINANT'S EXHIBITS

In addition to the Complaint and Respondents Answer, copies of which have already been filed with the Court and which all parties presently possess, incorporated herein by reference, EPA intends to offer into evidence the following documents, copies of which are annexed:

- Complainant's Exhibit 1: U.S. Department of Justice's grant of EPA Region 2's request for waiver of the one year time limitation in Section 113(d) of the Clean Air Act ("CAA"), dated July 24, 2009.
- Complainant's Exhibit 2: July 29, 2008 Inspection Report from Mozafar Ghaffari, Environmental Engineer, to Ken Eng, Chief, Air Compliance Branch.
- Complainant's Exhibit 3: Affidavit of Mozafar Ghaffari, stating that during the inspection he conducted of Philadelphia Furniture, LLC facility, he met with facility representatives. He requested the facility representative provide copies of the semi-annual and annual certifications. He observed spray booths with five missing filters and three pieces of equipment that were in operation but not included in the Facility's Title V Permit to Operate. Following the inspection, Mr. Ghaffari conducted a search of EPA's files and found no semi-annual certifications, annual certifications, or requests to amend the Title V Permit to Operate to include the three pieces of equipment that were in operation.
- Complainant's Exhibit 4: Affidavit of Umesh Dholokia, stating that during an EPA file review of files pertaining to Philadelphia Furniture, LLC, he found no submissions of semi-annual certifications, annual certifications, or requests to amend the Title V Permit to Operate to include three pieces of equipment.
- Complainant's Exhibit 5: Copy of the initial permit, issued by the U.S. Environmental Protection Agency, Region 2.
- Complainant's Exhibit 6: Copy of final permit, issued by the U.S. Environmental Protection Agency, Region 2.

Complainant's Exhibit 7: Penalties Proposed in Accordance with the Clean Air Stationary Source Penalty Policy for Violations of Philadelphia Furniture, LLC Title V Permit to Operate, in the Matter of Philadelphia Furniture, LLC, CAA-02-2009-1215.

Complainant's Exhibit 8: Clean Air Act Stationary Source Penalty Policy

Complainant reserves the right to supplement its exhibit list upon adequate notice to Respondent and to this Court, including, but not limited to, the right to introduce additional or supplementary evidence in response to matters raised or introduced by Respondent in its Prehearing Exchange.

In the event that EPA's continuing review of Respondent's documents, in preparation for this case, reveals additional violations, Complainant respectfully reserves the right, upon adequate notice to Respondent and this Court, to move for Amendment of the Complaint for: (1) presentation of additional testimony substantiating such additional violations; and (2) introduction of additional documentary evidence substantiating such additional violations.

(C) STATEMENT EXPRESSING DESIRED PLACE FOR THE HEARING AND ESTIMATED TIME NEEDED TO PRESENT DIRECT CASE

Pursuant to 40 C.F.R. §§ 22.19(d) and 22.21(d), Complainant respectfully requests that the Hearing be held at Complainant's office located at the U. S. Environmental Protection Agency, 290 Broadway, New York, New York 10007.

Complainant estimates that it will need approximately one (1) full day to present its direct case.

The Prehearing Order further requires that Complainant submit:

(D) COMPLAINANT'S STATEMENT OF HOW PROPOSED PENALTY WAS DETERMINED

Respondent's violations alleged in Counts 1, 2, 3, and 4 of the Complaint result in Respondent being subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act. The Debt Collection Improvement Act of 1996 (DCIA) requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996, February 13, 2004, and December 11, 2008, EPA adopted regulations entitled Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19 (Part 19). The DCIA provides that the maximum civil penalty per day should be adjusted up to \$27,500 for violations that occurred on or after January 30, 1997 through March 14, 2004; up to \$32,500 per day for violations that occurred from March 15, 2004 through January 12, 2009; and up to \$37,500 for violations that occurred after January 12, 2009. Part 19 provides that the maximum civil penalty should be upwardly adjusted 10% for violations that occurred on or after January 31, 1997; further adjusted 17.23% for violations that occurred on or after March 15, 2004 through January 12, 2009 for a total of 28.95%; and further adjusted 9.83% for violations that occurred after January 12, 2009, for a total of 41.63%.

In determining the amount of penalty to be assessed, Section 113(e) of the Act requires that the Administrator consider the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence,

the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and other factors as justice may require.

In order to implement the statutory requirements while ensuring their consistent application, EPA, on October 25, 1991, issued the Clean Air Act Stationary Source Civil Penalty Policy (CAA Penalty Policy) based on the considerations listed in the CAA. The CAA Penalty Policy categorized the statutory factors into broad categories including: (1) the Gravity of the violations and (2) the Economic Benefit to the violator.

The proposed penalty of \$ 241,137 was prepared in accordance with the criteria in Section 113(e) of the Act, and in accordance with the guidelines set forth in CAA Penalty Policy.

Below are short narratives explaining the reasoning behind the penalties proposed for each allegation in this Complaint, and the reasoning behind various general penalty factors and adjustments that were used in the calculation of the total penalty amount.

Gravity Based Penalty

Count 1: Violations of Section I.B of Facility's Title V Permit to Operate: Failure to install filters on spray booths numbers 38, 40, 41, 45, and 51.

The CAA Penalty Policy directs that a penalty of \$15,000 be proposed for an emission control equipment violation. In addition, the CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. The emission control equipment violation persisted over a period of one month and ceased in August

2008 when the Facility submitted documentation demonstrating installation of filters. The CAA Penalty Policy directs that a penalty of \$5,000 be proposed for a one month period of non-compliance. Therefore, EPA proposes \$20,000 as the unaggravated and unadjusted gravity component of the penalty for the emission control equipment violation alleged in this Count.

Count 2: Violation of Section IV.I of Facility's Title V Permit to Operate: Failure to seek amendment of the Facility's Title V Operating Permit to include three new machines.

The CAA Penalty Policy directs that a penalty of \$15,000 be proposed for failure to obtain a modification of the Facility's title V Operating Permit to list three new machines as emission sources. The CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. This violation began on July 15, 2008 when the Facility began operation of the new machines. The violation persisted for five (5) months, ceasing on December 18, 2008, the date when the Respondent submitted to EPA an application to amend the Permit. The CAA Penalty Policy directs that a penalty of \$12,000 be proposed for a violation that has persisted between four (4) and six (6) months. Therefore, EPA proposes \$27,000 as the unaggravated and unadjusted gravity component of the penalty for the violation alleged in this Count.

Count 3: Violation of Section IV.D of Facility's Title V Permit to Operate: Failure to submit Annual Title V Compliance Certification.

The CAA Penalty Policy directs that a penalty of \$15,000 be proposed for failure to submit required Annual Title V Compliance Certifications. The CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation.

Within the statute of limitation period, the failure to submit the required Annual Title V Compliance Certification persisted from October 2004 until October 2008, when the Respondent submitted an Annual Title V Compliance Certification. Within the statute of limitation, the violation persisted for a period of forty-eight (48) months. The CAA Penalty Policy directs that a penalty of \$45,000 be proposed for a violation that persisted between forty-three (43) and forty-eight (48) months. Therefore, EPA proposes \$60,000 for the unaggravated and unadjusted gravity component of the penalty for the compliance certification violations alleged in this Count.

Count 4: Violation of Section III.B of Facility's Title V Permit to Operate: Failure to submit semi-annual monitoring reports.

The CAA Penalty Policy directs that a penalty of \$15,000 be proposed for failure to submit the required semi-annual monitoring reports. The CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. Within the statute of limitation period, the failure to submit semi-annual monitoring reports persisted from October 2004 until September 2008. The Facility began submitting semi-annual reports in September 2008. Within the statute of limitation, the violation persisted for a period of forty-seven (47) months. The CAA Penalty Policy directs that a penalty of \$45,000 be proposed for a violation that persisted between forty-three (43) and forty-eight (48) months. Therefore, EPA proposes \$60,000 for the unaggravated and unadjusted gravity component of the penalty for the semi-annual reporting violations alleged in this Count.

Size of Violator

The CAA Penalty Policy directs that a penalty be proposed that takes into account the size of violator determined by the violator's net worth for corporations or net current assets for partnerships. EPA estimates the combined net worth of the Respondent to be between 5 and 20 million dollars. In such circumstances, the CAA Penalty Policy directs that EPA propose a penalty for the size of violator of \$20,000. The size of violator component of the penalty may be adjusted should information be discovered that indicates the Respondent's net worth is less or more than estimated.

Economic Benefit

In addition to the Gravity component of the proposed penalties, the CAA Penalty Policy directs that EPA determine the economic benefit derived from non-compliance. The policy explains that the economic benefit component of the penalty should be derived by calculating the amount the violator benefited from delayed and/or avoided costs. The CAA Penalty Policy provides EPA the discretion for not seeking economic benefit where the benefit derived is less than \$5,000. In this instance, EPA is using its discretion and will not seek penalties for the economic benefit because it has determined that such economic benefit is de minimus.

Inflation Adjustment

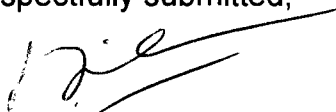
Pursuant to the Debt Collection Improvement Act (DCIA), 31 U.S.C. §§ 3701 *et seq.*, and 40 C.F.R. Part 19, promulgated pursuant to the DCIA, the CAA Penalty Policy "preliminary deterrence" amount should be adjusted 10% for inflation for all

violations occurring prior to March 15, 2004 further adjusted an additional 17.23% for all violations occurring on March 15, 2004 through January 12, 2009, for a total adjustment of 28.95% and further upwardly adjusted 9.83% for violations that occurred after January 12, 2009 for a total of 41.63%. Within the statute of limitations, Respondent's violations began, as early as, August 2004 and continued through September 2008. Calculated in accordance with the DCIA requirements, the violations were upwardly adjusted by 28.95% which results in the proposed inflation adjustment totaling \$54,137.

(E) **STATEMENT REGARDING THE PAPERWORK
REDUCTION ACT**

Information collection requirements associated with 40 C.F.R. Part 71 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. § 3501 *et seq.* Section 3512 of the PPA does not apply to this case because there have been no lapses of OMB approval during any time relevant to this proceeding. In addition, the relevant OMB control numbers appeared in the Code of Federal Regulations, 40 C.F.R. Part 9, for the entire relevant period of time. The OMB control number for 40 C.F.R. Part 71 is 2060-0336.

Respectfully submitted,



Denise Leong
Office of Regional Counsel

04/09/10

In the Matter of Philadelphia Furniture, LLC.
Docket No. CAA-02-2009-1215

CERTIFICATE OF SERVICE

I certify that the foregoing Complainant's Prehearing Exchange was sent this day
in the following manner to the respective addressees listed below:

Original and Copy by
Hand Delivery:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Copy by
UPS Overnight:

The Honorable Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, N.W.
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Dated: 4/9/10
New York, New York


Katherine Zuckerman