

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.)	
)	

COMPLAINANT'S INITIAL PREHEARING EXCHANGE

Padmavati Bending, Counsel for Complainant, Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois, in accordance with this Court's Prehearing Order of November 26, 2008 submits the following Initial Prehearing Exchange pursuant to Section 22.19(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits codified at 40 C.F.R. Part 22, § 22.19(a).

Complainant's Prehearing Exchange is set forth in the order outlined by this Court's November 26, 2008 Prehearing Order.

By Complainant and Respondent

1. The names of the expert and other witnesses intended to be called at hearing, identifying each as a fact witness or an expert witness, with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called.

U.S. EPA may call any or all of the following individuals as witnesses in the hearing in this matter:

1. Farro Assadi, Environmental Engineer, Air and Radiation Division, U.S. EPA, Region 5, Chicago, Illinois.

Mr. Assadi's duties include serving as an enforcement officer and a case developer in the investigation of violations under the Clean Air Act (CAA). Mr. Assadi will testify regarding his enforcement of the CAA at the Respondent, Wisconsin Plating Works of Racine, Inc. facility (the Facility), including records he reviewed. Mr. Assadi will testify as to his review of the evidence and the factual basis for his determination that Respondent was in violation of the CAA specifically the provisions governing Title V permits. Mr. Assadi may also testify regarding the potential effects of the alleged violations on the environment. Mr. Assadi will testify as to how the penalty proposed in the Complaint was calculated applying the statutory penalty factors set forth within Section 113(e) of the CAA, 42 U.S.C. 7413(e), and the Clean Air Act Stationary Source Civil Penalty policy, dated October 25, 1991. Mr. Assadi will offer Complainant's assessment of the appropriateness of the penalty proposed in the Complaint. If necessary, Mr. Assadi will provide testimony sufficient to authenticate certain exhibits contained in this prehearing exchange.

Complainant respectfully reserves the right to not call any of the above-listed witnesses at hearing. Complainant further respectfully reserves its right to amend, supplement, and modify its witness list and to call additional witnesses on its behalf. In

addition, Complainant respectfully reserves the right to expand, or otherwise modify the scope, extent, and areas of testimony of any of these witnesses where appropriate.

Should Complainant make any of the modifications described in the preceding paragraph, Complainant shall, by filing an Amendment to this Prehearing Exchange, provide the Presiding Officer and the Respondent a reasonable opportunity to review the new or revised witness list. Such changes may be occasioned by the discovery of new evidence or witnesses, the unavailability of one or more witnesses, prehearing stipulations of fact between the parties, rulings on motions, or for any other legitimate purpose.

2. Copies of all documents and exhibits intended to be introduced into evidence. Included among the documents produced shall be a curriculum vita or resume for each identified expert witness. The documents and exhibits shall be identified as Complainant's or Respondent's exhibit, as appropriate, and numbered with Arabic numerals (e.g, CX 1 or RX 2).

Complainant expects to offer the following documents into evidence:

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| 1. | COMPLAINANT'S EXHIBIT 1 | Wisconsin Department of Natural Resources Air Pollution Operation Permit (WDNR) #459044300-P02 dated April 29, 2003. |
| 2. | COMPLAINANT'S EXHIBIT 2 | Wisconsin Department of Natural Resources Air Pollution Operation Permit #459044300-P10 dated October 27, 2008. |
| 3. | COMPLAINANT'S EXHIBIT 3 | January 25, 2007 letter from Wisconsin Veneer and Plywood, Inc. to WDNR concerning the renewal of Permit #459044300-P02 requesting that the pressure drop across the multi-cyclones C07 and C08 be changed. |

4. COMPLAINANT'S EXHIBIT 4 March 31, 2008 letter from WDNR to Wisconsin Veneer and Plywood, Inc. concerning the January 25, 2007 request for permit revision.
5. COMPLAINANT'S EXHIBIT 5 February 14, 2005 Compliance Certification, Permit # 459044300-P01, 01/01/2004 – 12/31/2004 from Wisconsin Veneer and Plywood, Inc. to WDNR
6. COMPLAINANT'S EXHIBIT 6 February 14, 2005 Summary Certification, Permit # 459044300-P01, 07/01/2004 – 12/31/2004 from Wisconsin Veneer and Plywood, Inc. to WDNR.
7. COMPLAINANT'S EXHIBIT 7 July 26, 2004 Summary Certification, Permit # 459044300-P01, 01/01/2004 – 06/30/2004 from Wisconsin Veneer and Plywood, Inc. to WDNR.
8. COMPLAINANT'S EXHIBIT 8 July 18, 2005 Summary Certification, Permit # 459044300-P01, 01/01/2005 – 6/30/2005 from Wisconsin Veneer and Plywood, Inc. to WDNR.
9. COMPLAINANT'S EXHIBIT 9 February 14, 2006 Compliance Certification, Permit # 459044300-P01, 01/01/2005 – 12/31/2005 from Wisconsin Veneer and Plywood, Inc. to WDNR.
10. COMPLAINANT'S EXHIBIT 10 February 14, 2006 Compliance Certification, Permit # 459044300-P01, 01/01/2005 – 12/31/2005 from Wisconsin Veneer and Plywood, Inc. to WDNR.
11. COMPLAINANT'S EXHIBIT 11 August 3, 2006 Summary Certification, Permit # 459044300-P01, 01/01/2006 – 6/30/2006 from Wisconsin Veneer and Plywood, Inc. to WDNR.

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| 12. COMPLAINTANT'S EXHIBIT 12 | February 18, 2007 Summary Certification, Permit # 459044300-P01, 07/01/2006 – 12/31/2006 from Wisconsin Veneer and Plywood, Inc. to WDNR. |
| 13. COMPLAINTANT'S EXHIBIT 13 | February 16, 2007 Corrected Compliance Certification, Permit # 459044300-P01, 01/01/2004 – 12/31/2004 from Wisconsin Veneer and Plywood, Inc. to WDNR. |
| 14. COMPLAINTANT'S EXHIBIT 14 | February 16, 2007 Corrected Compliance Certification, Permit # 459044300-P01, 01/01/2005 – 12/31/2005 from Wisconsin Veneer and Plywood, Inc. to WDNR. |
| 15. COMPLAINTANT'S EXHIBIT 15 | 2004 records of pressure drop readings for multi-cyclone C07 and multi-cyclone C08. |
| 16. COMPLAINTANT'S EXHIBIT 16 | 2005 records of pressure drop readings for multi-cyclone C07 and multi-cyclone C08. |
| 17. COMPLAINTANT'S EXHIBIT 17 | 2006 records of pressure drop readings for multi-cyclone C07 and multi-cyclone C08. |
| 18. COMPLAINTANT'S EXHIBIT 18 | March 25, 2008 Finding of Violation from U.S. EPA, Region 5 to Wisconsin Veneer and Plywood, Inc. |
| 19. COMPLAINTANT'S EXHIBIT 19 | June 3, 2008 letter from Pamela J. Mazakas, acting for Adam M. Kushner, Director, Air Enforcement Division, U.S. EPA, Headquarters to Ronald J. Tenpas, Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice. RE: Section 113(d) of the Clean Air Act waiver request of the twelve-month limitation on EPA's authority to |

- initiate an administrative case
(Region 5, Wisconsin Veneer and
Plywood, Inc., Mattoon, Wisconsin)
20. COMPLAINANT'S EXHIBIT 20 July 7, 2008 letter from William D. Brighton, Assistant Chief, Environmental Enforcement Section, U.S. Department of Justice to Cheryl L. Newton, Acting Director, Air and Radiation Division, U.S. EPA Region 5. RE: Request to Waive Clean Air Act Section 113(d) Limitation of EPA's Authority to Initiate Administrative Case Against Wisconsin Veneer and Plywood, Inc., Mattoon, Wisconsin
21. COMPLAINANT'S EXHIBIT 21 U.S. EPA Policy, dated October 25, 1991, "Clean Air Act Stationary Source Civil Penalty Policy."
22. COMPLAINANT'S EXHIBIT 22 U.S. EPA Policy, dated January 17, 1992, "Clarifications to the October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy."
23. COMPLAINANT'S EXHIBIT 23 U.S. EPA Policy, dated May 9, 1997, "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996)."
24. COMPLAINANT'S EXHIBIT 24 U.S. EPA Policy, dated September 21, 2004, "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)."
25. COMPLAINANT'S EXHIBIT 25 Dun and Bradstreet Report for Wisconsin Veneer and Plywood, Inc. dated March 5, 2008.

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| 26. | COMPLAINANT'S EXHIBIT 26 | Company Briefs-Gale Group for Wisconsin Veneer and Plywood, Inc. dated December 17, 2008. |
| 27. | COMPLAINANT'S EXHIBIT 27 | Declaration of Farro Assadi describing the status of any expiration, requested revisions, revisions, proposed renewals, and effective dates with respect to Wisconsin Department of Natural Resources Air Pollution Operation Permit #459044300-P02 and Permit #459044300-P10. |
| 28. | COMPLAINANT'S EXHIBIT 28 | Region 5 Delegation 7-6-A, Clean Air Act, Administrative Enforcement Actions: Issuance of Complaints and Orders, and Signing of Consent Agreements, etc. |

Copies of these exhibits are attached to this Prehearing Exchange.

Complainant hereby requests the Presiding Officer to take judicial notice of the following:

1. The Clean Air Act, 42 U.S.C. § 7401 et seq.;
2. 40 C.F.R. Part 70;
3. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, as amended, including 61 Fed. Reg. 9064, March 6, 1996.

Complainant respectfully reserves the right to elect to not introduce any of the foregoing exhibits at the hearing and/or, to supplement its prehearing exchange with additional exhibits not listed above and will provide reasonable notice to the Presiding Officer and Respondent concerning any modifications to the above exhibit list.

3. A statement as to its views as to the appropriate place of hearing and estimate of the time needed to present its direct case. Also state if translation services are necessary in regard to the testimony of any anticipated witnesses, and, if so, state the language to be translated.

Complainant requests that the hearing in this matter be held at a suitable location in or near Wausau, Wisconsin. Respondent's Facility is in Mattoon, Wisconsin which is not too far from Wausau, Wisconsin and Wausau, Wisconsin is relatively accessible to U.S. EPA personnel and prospective witnesses.

By Complainant:

1. A copy of the Air Pollution Operation Permit #459044300-P02 issued to Respondent, referenced in Paragraph 7 of the Complaint.

Complainant's Response: Complainant has provided a copy of this permit as Complainant's Exhibit 1, described above.

2. A statement describing the status of any expiration, requested revisions, revisions, proposed renewals, and effective dates with respect to Wisconsin Department of Natural Resources Air Pollution Operation Permit #459044300-P02 and Permit #459044300-P10.

Complainant's Response: Complainant has provided this statement as Complainant's Exhibit 27, described above.

3. A copy of the joint determination of the Administrator and Attorney General referenced in Paragraph 12 of the Complaint.

Complainant's Response: Complainant has provided a copy of these determinations as Complainant's Exhibits 19 and 20, described above.

4. A copy of the Finding of Violation referenced in Paragraph 19 of the Complaint.

Complainant's Response: Complainant has provided a copy of the Finding of Violation as Complainant's Exhibit 18, described above.

5. A copy of any documents in support of the allegations in Paragraphs 22, 23, 24, 26 and 27 of the Complaint.

Complainant's Response: Complainant has provided copies of documents supporting the allegations in Paragraphs 22, 23, 24, 26 and 27 and Complainant's Exhibits 5-17, described above.

6. A narrative statement explaining in detail the calculation of the proposed penalty, addressing each penalty assessment factor in Section 113(e) of the Clean Air Act.

Complainant's Response: Section 113(e) of the Clean Air Act requires that the Administrator take into consideration the following factors when determining the amount of a penalty to be assessed under Section 113 of the Clean Air Act: 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, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and such other factors as justice may require.

The Clean Air Act Stationary Source Civil Penalty policy, dated October 25, 1991, updated by the January 17, 1992, May 9, 1997 and September 21, 2004 memoranda reflects the factors enumerated in Section 113(e) of the Clean Air Act. Page 2, Clean Air Act Stationary Source Civil Penalty Policy, October 25, 1991. U.S. EPA used this penalty policy to calculate the proposed penalty in this case against Wisconsin Veneer and Plywood, Inc. (WV&P).

U.S. EPA believes that there was no economic benefit from the noncompliance, so this component of the proposed penalty is \$0. A separate gravity component was calculated for the pressure drops at the boiler outside the allowable range in violation of WV&P's Title V permit requirements and for failing to submit accurate semi-annual reports and compliance certifications as required by its Title 5 permit from January 1, 2004 to December 31, 2006.

For the pressure drops at the boilers outside the allowable range in WV&P's Title V permit, WV&P's records 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, and that during the same period, the pressure drop for multi-cyclone C08 was outside of the allowable range during 1,861 readings. The Title V permit required reading and recording of pressure drop once for every 8 hours of operation or once per day, whichever yields a higher number of readings. So, assuming that the facility operated 24 hours per day, then length of violation = $1,912 / 3 = 637$ days, or 21.2 months which leads to an assessment of \$25,000. These violations fall under emission control equipment violation: intermittent or improper operation of control equipment which yields a penalty assessment of \$5,000. 2.5 months of pressure drop violations occurred before March 15, 2004, when the statutory penalty amount changed. The \$30,000 total penalty for the pressure drop violations is then divided by the total months of violation (21.2) to arrive at a monthly penalty amount (\$1415). For 2.5 months, that monthly penalty amount is multiplied by 1.1 (\$3,891). For the remaining 18.7 months, the monthly penalty amount is multiplied by 1.2895 (\$34,123). This yields a total penalty of \$38,014 for those violations.

For failing to submit accurate semi-annual reports and compliance certifications, the report for the first half of 2004 was due July 1, 2004. The violations were remedied with

corrected reports submitted in February 2007. This works out to 30 months of violation which leads to an assessment of \$30,000. These violations fall under submitting an incomplete report which yields a penalty assessment of \$5,000. All of the incomplete reporting violations occurred after March 15, 2004 when the statutory penalty amount changed. That total penalty amount (\$35,000) is multiplied by 1.2895 to yield a penalty of \$45,132 for those violations.

The limited financial data which U.S. EPA was able to obtain for this facility indicates net sales of \$37.2 million for 2007 but does not indicate the net worth of this facility. As a result, U.S. EPA assumed a net worth of \$1,000,000 to \$5,000,000. The penalty policy recommends a \$10,000 penalty component. This component is multiplied by 1.2895 to account for the change in the statutory maximum penalties, which yields a penalty of \$12,895 for this component.

When the various penalty components are added together, a total penalty of \$96,041 results.

7. A copy of any "penalty policy" or any amendment, appendix or clarification thereto, upon which Complainant has relied upon in consideration of a proposed penalty assessment, *including* the Clean Air Act Stationary Source Civil Penalty Policy, the clarifications thereto dated January 17, 1992, *but not* the Modification to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule.

Complainant's Response: Complainant relied on the 1991 Clean Air Act Stationary Source Civil Penalty Policy as modified by the Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule in calculating the proposed penalty for this matter. Complainant has provided a copy of those documents as Complainant's Exhibits 23-26.

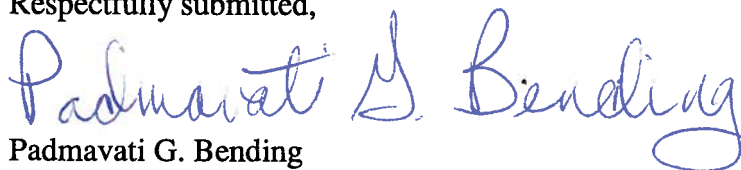
8. A statement regarding whether the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. § 3501 et seq., applies to this proceeding, whether there is a current Office of Management and Budget control number involved herein and whether the provisions of Section 3512 of the PRA are applicable in this case.

Complainant's Response: The Paperwork Reduction Act of 1990 (PRA) applies to the collection of information from persons by an agency. The definition of agency is limited to agencies in the executive department of the Federal government. 44 U.S.C. §3502(a). As a result, collection of information specified by Congress is not subject to the PRA. The PRA does not apply to the recordkeeping and reporting requirements of permits required by Title V of the Clean Air Act because the requirements to submit the results of required monitoring and to report on compliance with the terms and conditions of the Title V permit stem from the Clean Air Act itself, specifically in Section 504(a) and (c), 42 U.S.C. §7661c(a) and (c).

Reservation of Rights.

Complainant respectfully reserves the right to supplement its list of witnesses, its list of exhibits, and/or its responses to the Prehearing Order Requests, upon reasonable notice to Wisconsin Veneer and Plywood, Inc., and to this Honorable Court.

Respectfully submitted,



Padmavati G. Bending
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CERTIFICATE OF SERVICE

I hereby certify that today I filed personally with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (E-13J), Chicago, Illinois, 60604-3590, the original document entitled Complainant's Initial Prehearing Exchange for this civil administrative action, and that I issued to the Court (via pouch mail) and Respondent's Counsel (via first class mail) a copy of the original document:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., N.W.
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Mildred Vargas
Mildred Vargas
Secretary

March 12, 2009
Date