

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF) Docket No. CAA-07-2009-0021
)
CHARGER, INC. AND ALL FAMILY)
CRAFT, INC.)
)
RICHLAND, MISSOURI) COMPLAINT, NOTICE OF
) PROPOSED PENALTY AND
) NOTICE OF OPPORTUNITY FOR
) HEARING
)
Respondents)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7413(d).

2. This Complaint serves as notice that the United States Environmental Protection Agency, Region 7 ("EPA") has reason to believe that Respondents have violated the National Emission Standards for Hazardous Air Pollutants ("NESHAPs"), 40 C.F.R. Part 63, Subpart VVVV, promulgated pursuant to Section 112 of the Act, 42 U.S.C. § 7412, and that Respondents are therefore in violation of Section 112 of the Act, 42 U.S.C. § 7412. Furthermore, this Complaint serves as notice pursuant to Section 113(d)(2)(A), 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for such violation.

Parties

3. The Complainant, by delegation from the Administrator of EPA, and The Regional Administrator of EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. Respondents Charger, Inc. ("Charger") and All Family Craft, Inc., ("AFC") are incorporated under the laws of Missouri and registered to do business in Missouri.

Statutory and Regulatory Background

5. Section 112 of the Act, 42 U.S.C. § 7412, grants the Administrator of EPA authority to regulate hazardous air pollutants which may have an adverse effect on health or the environment.

6. Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), defines “major stationary source” as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, ten tons per year or more of any hazardous air pollutant (HAP) or twenty-five tons per year or more of any combination of HAPs.

7. Section 112(f)(4) of the CAA, 42 U.S.C. § 7412(f)(4), prohibits the emission of any air pollutant to which a standard under Section 112 applies from any stationary source in violation of such standard, except in compliance with the regulations promulgated by EPA.

8. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, the Administrator established National Emissions Standards for Hazardous Air Pollutants (NESHAPs), 40 C.F.R. Part 63. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more HAPs listed in Part 63. Special provisions are set forth in the Subparts to Part 63.

9. Subpart VVVV sets forth the NESHAP for boat manufacturing facilities. Subpart VVVV sets forth emissions limits for sources of HAPs. Subpart VVVV also contains work practice, reporting, and monitoring requirements. Sources affected under Subpart VVVV include boat manufacturing facilities that build fiberglass boats or aluminum recreational boats that are a major source of HAPs in and of itself or because it is collocated with other sources of HAPs, such that all sources combined constitute a major source. 40 C.F.R. § 65.5683(a)(1) and (2). The compliance date for existing affected sources is August 22, 2004. 40 C.F.R. § 65.5695; 40 C.F.R. Part 63, Subpart VVVV, Table 1.

10. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Section 112 of the Act, 42 U.S.C. § 7412. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule, 40 C.F.R. Part 19, EPA may assess penalties of no more than \$27,500 per day for each violation occurring between January 30, 1997 and March 14, 2004; no more than \$32,500 per day for each violation occurring between March 15, 2004, and January 12, 2009; and no more than \$37,500 per day for each violation occurring after January 12, 2009.

Factual Background

11. Respondents are each a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

12. Charger operates a boat manufacturing facility located at Highway 7, Richland, Missouri 65556.

13. AFC operates a boat manufacturing facility located at Highway 7, Richland, Missouri 65556.

14. Respondents' facilities are located on a contiguous area, are under common control, and together and separately, have the potential to emit more than 10 tons per year of the HAP styrene. Styrene is a listed HAP. 42 U.S.C. § 7412(b)(1). Therefore, Respondents' facilities are a major stationary source as defined by Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1) and 40 C.F.R. § 63.5683(a)(2).

15. Respondents are subject to 40 C.F.R. Part 63, Subpart VVVV, as owners and operators of a boat manufacturing facility that has the potential to emit more than 10 tons per year of a hazardous air pollutant.

16. On or about January 31, 2007, EPA representatives performed an Air Compliance Inspection at Respondents' facilities in Richland, Missouri.

17. On June 27, 2007, EPA sent a follow-up information request to Charger, under Section 114 of the CAA. On September 18, 2007, EPA sent a letter to Charger requesting the information that was not provided in response to the Section 114 request. On December 21, 2007, EPA sent a letter to Charger stating that it had failed to adequately respond to EPA's Section 114 request.

Findings of Violation

Count I

18. Paragraphs 1-17 are incorporated by reference as if fully set forth herein.

19. Respondents failed to demonstrate compliance with the HAP emission limit in 40 C.F.R. Part 63, Subpart VVVV by using a 12 month rolling average or using compliant resins and gel coats for twenty-one months. 40 C.F.R. § 63.5701

20. Respondents' failure to comply with 40 C.F.R. Part 63, Subpart VVVV is a violation of Section 112 of the Act, 42 U.S.C. § 7412.

Count II

21. Paragraphs 1-17 are incorporated by reference as if fully set forth herein.

22. Respondents failed to submit the initial notifications as required by 40 C.F.R. § 63.576, by December 20, 2001.

23. Respondents' failure to comply with 40 C.F.R. Part 63, Subpart VVVV, as set forth above is a violation of Section 112 of the Clean Air Act. 42 U.S.C. § 7412.

Count III

24. Paragraphs 1-17 are incorporated by reference as if fully set forth herein.

25. Respondents failed to submit semi-annual compliance reports, required by 40 C.F.R. § 63.5764, for fourteen months.

26. Respondents' failure to comply with 40 C.F.R. Part 63, Subpart VVVV, as set forth above is a violation of Section 112 of the CAA. 42 U.S.C. § 7412.

Relief

27. Section 113(d) of the Act, 42 U.S.C. § 7413(d), as amended by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Parts 19 and 27, authorizes a civil penalty of no more than \$25,000 per day for each violation occurring before January 30, 1997; no more than \$27,500 per day for each violation occurring between January 30, 1997 and March 14, 2004; no more than \$32,500 per day for each violation occurring between March 15, 2004, and January 12, 2009; and no more than \$37,500 per day for each violation occurring after January 12, 2009.

PROPOSED PENALTY

28. For the violations stated herein, it is proposed that a penalty of Seventy-Six Thousand, Eight Hundred Dollars and No Cents (\$76,800.00) be assessed. The proposed penalty was determined by calculation, in accordance with the enclosed Clean Air Act Stationary Source Civil Penalty Policy, by combining the factors in the policy, including the appropriate penalty for each Count set forth herein, the size of the Respondents' businesses, the economic benefit of noncompliance and any willfulness of the Respondents.

29. Payment of the total penalty, \$76,800.00, may be made by certified cashier's check payable to the Treasurer, United States of America, referencing Docket Number CAA-07-2009-0021, and remitted to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

with a copy to:

Sara S. Hertz
Assistant Regional Counsel
United States Environmental Protection Agency, Region VII
901 N. Fifth Street
Kansas City, Kansas 66101.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

30. Respondents may request a hearing to contest any material fact contained in the Complaint above or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted in accordance with 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, ("Consolidated Rules") a copy of which is enclosed herein.

31. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to hearing, Respondents must file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing ("Complaint"). The answer shall clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with respect to which Respondents have any knowledge, or shall clearly state that Respondents have no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondents dispute; (c) the basis for opposing any proposed relief; and (d) whether a hearing is requested. Said answer shall be filed with the following:

Regional Hearing Clerk
United States Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

32. Failure to admit, deny, or explain any material factual allegation in this Complaint constitutes an admission of the allegation.

33. A hearing upon the issues raised by this Complaint and the answer may be held if requested by Respondents in the answer. If Respondents do not request a hearing, the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

34. If Respondents fail to file a written answer within thirty (30) days of

service of this Complaint and Notice of Opportunity for Hearing, Respondents may be found in default. Such default by Respondents constitutes and admission of all facts alleged in the Complaint and a waiver of Respondents' rights to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed herein shall become due and payable unless the record clearly demonstrates that the requested relief is inconsistent with the CAA.

Informal Settlement Conference

35. Whether or not Respondents request a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

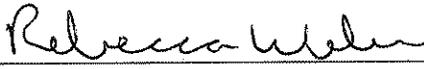
Sara Hertz
Assistant Regional Counsel
United States Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101
Telephone: 913-551-7316.

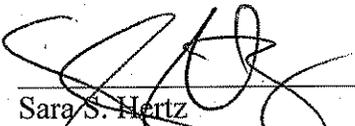
36. Please note that a request for informal settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted.

37. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of informal conference. Any settlement which may be reached as a result of such conference shall be embodied in a written Consent Agreement and Final Order ("CA/FO") issued by the Regional Judicial Officer, EPA, Region 7. The issuance of such a CA/FO shall constitute a waiver of Respondents' right to request a hearing on any matter stipulated therein.

38. If Respondents have not filed an answer within the thirty (30) day time period allowed by this Notice, the penalties proposed above may be assessed by the entry of a Default Order.

8/13/09
Date


Rebecca A. Weber
Director
Air and Waste Management Division


Sara S. Hertz
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Complaint to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

Mr. Joe Dorris
Charger, Inc.
All Family Craft, Inc.
Highway 7 North
Richland, Missouri 65556

Mr. Steve Feeler, Chief
Enforcement Section
Air Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102.

8/14/09
Date



A handwritten signature in black ink, appearing to be 'S. Feeler', is written over a horizontal line.