

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

06 MAY -3 AM 9: 14  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	Docket No. CAA-07-2006-0165
	)	
ABLE MANUFACTURING	)	COMPLAINT AND NOTICE OF
& ASSEMBLY, LLC	)	OPPORTUNITY FOR HEARING
	)	
Joplin, Missouri	)	Proceeding to Assess Civil Penalty
	)	Under Section 113(d) of the Clean
Respondent.	)	Air Act for NESHAP Violations

**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. Pursuant to Section 113(d) of the Act, and in accordance with 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 CFR Part 22 ("Part 22"), Complainant hereby provides notice of its proposal that the Administrator assess a civil penalty against Able Manufacturing & Assembly, LLC ("Respondent") for violations of 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 notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty assessment.

**Parties**

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director of the Air, RCRA, and Toxics Division, EPA, Region VII.

4. The Respondent is Able Manufacturing & Assembly, LLC ("Able"), a company organized under the laws of Indiana and registered to do business in Missouri. Able owns and operates a facility located at 1000 Schifferdecker Avenue in Joplin, Missouri.

## Statutory and Regulatory Background

5. The Clean Air Act establishes a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Clean Air Act, 42 U.S.C. § 7401(b)(1).

6. Section 112 of the Act, 42 U.S.C. § 7412, authorizes the Administrator of EPA to regulate hazardous air pollutants ("HAPs") which may have an adverse effect on health or the environment.

7. The Administrator established emission standards, codified at 40 C.F.R. Part 63, Subpart VVVV: National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing, for new and existing boat manufacturing facilities with resin and gel coat operations, carpet and fabric adhesive operations, or aluminum recreational boat surface coating operations.

8. Pursuant to 40 C.F.R. § 65.5683, the NESHAPs for Boat Manufacturing applies to owners or operators of boat manufacturing facilities that build fiberglass boats or aluminum recreational boats, and are a major source of HAPs.

9. Pursuant to 40 C.F.R. § 63.2, "owner or operator" is defined as "any person who owns, leases, operates, controls, or supervises a stationary source."

10. Section 112(a)(1) of the Clean Air Act, 42 U.S.C. § 7412(a)(1), defines "major 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, in the aggregate, ten (10) tons per year or more of any hazardous air pollutant or twenty-five (25) tons per year or more of any combination of hazardous air pollutants.

11. Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3), and 40 C.F.R. § 63.2 defines a "stationary source" as "any building, structure, facility, or installation which emits or may emit any air pollutant" which has been designated as hazardous by the Administrator of the EPA.

12. Pursuant to 40 C.F.R. § 63.2, "affected source" is defined as "the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to section 112 of the Act."

13. Pursuant to 40 C.F.R. § 63.5689, the affected source to which the provisions of the NESHAPs for Boat Manufacturing, 40 C.F.R. Part 63, Subpart VVVV, apply is "the combination of all of the boat manufacturing operations listed in paragraphs (a) through (f) of this section." Paragraphs (a) through (f) are as follows:

15. Section 113(d) of the Act, 42 U.S.C. § 7413(d), pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, 28 U.S.C. § 2461, authorizes the Administrator to issue an administrative order against any person assessing a civil administrative penalty of up to \$32,500 per day of violation for each violation occurring after March 15, 2004, 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 Act referenced therein, including Section 112.

### Violations

16. The Complainant hereby states and alleges that Respondent has violated the Clean Air Act and federal regulations, promulgated pursuant to the Act, as follows:

### General Allegations

17. Respondent is the owner and operator of the boat manufacturing facility located at 1000 Schifferdecker Avenue in Joplin, Missouri.

18. Respondent's boat manufacturing facility was a major source of hazardous air pollutants on or before August 22, 2001, and continued to be a major source at all times relevant to this Complaint.

19. Respondent is subject to 40 C.F.R. Part 63, Subpart VVVV.

20. Respondent is, and at all times referred to herein, was a "person" as defined at 42 U.S.C. § 7602(e).

### Count I

21. The facts alleged in paragraphs 5 through 20 are realleged and incorporated herein as if fully stated.

22. Pursuant to 40 C.F.R. § 63.5698, Respondent is required to limit its organic HAP emissions pursuant to Equation 1 in 40 C.F.R. § 63.5698. The emission limit is based on a 12-month rolling average.

23. Respondent's emissions exceeded the HAP limit set by 40 C.F.R. § 63.5698 for the months of September 2005, through and including February 2006.

24. Respondent's failure to comply with 40 C.F.R. § 63.5698 is a violation of Section 112 of the Act, 42 U.S.C. § 7412.

### Relief

25. Section 113(d) of the CAA, 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 up to \$32,500 per day for each violation of the CAA occurring after March 15, 2004. The penalty proposed below is based upon the facts stated in this Complaint, and on the nature, circumstances, extent and gravity of the above cited violations in accordance with the Clean Air Act, Section 113(e), 42 U.S.C. § 7413(e), and the Stationary Source Civil Penalty Policy, October 25, 1991 (copy enclosed), as well as Respondent's history of any prior violations and degree of culpability.

### Proposed Penalty

26. For the violations stated herein, it is proposed that a penalty of \$53,760.00 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 Respondent's business, the economic benefit of noncompliance and any willfulness of the Respondent.

27. Payment of the total penalty, \$53,760.00, may be made by certified or cashier's check payable to the "Treasurer, United States of America," and shall be delivered, with a transmittal that identifies the case name and docket number to:

U.S. Environmental Protection Agency  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

And

Kristi Denney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101.

## **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

### **Answer and Request for Hearing**

28. Pursuant to Section 113(d)(2) of the CAA, Respondent has the right to request a hearing to contest any material fact contained in this Complaint. To preserve this right, Respondent must file a written answer and request for hearing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region VII, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101, within thirty (30) days of service of this Complaint and Notice of Opportunity to Request a Hearing. Said answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

- a) The circumstances or arguments that are alleged to constitute the grounds of defense;
- b) The facts that Respondent intends to place at issue;
- c) The basis for opposing any proposed relief; and
- d) Whether a hearing is requested.

Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes an admission of the allegations.

29. If Respondent requests a hearing, it shall be held and conducted in accordance with 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 (40 C.F.R. Part 22 (copy enclosed)).

30. If Respondent fails to file a written answer and request for a hearing within thirty (30) days of service of this Complaint and Notice of Opportunity to Request a Hearing, such failure will constitute a binding admission of all of the facts alleged in this Complaint, and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer, and the civil penalties proposed therein shall become due and payable without further proceedings.

31. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, the Presiding Officer or any person likely to advise these officials in the decision of this case.


### Settlement Conference

32. Whether or not a Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case and settlement. To request an informal settlement conference, contact Kristi Denney, Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101, telephone (913)551-7294.


33. A request for an informal settlement conference does not extend the time to answer. Whether or not the informal settlement conference is pursued, to preserve the right to a hearing, a written answer and request for a hearing must be filed within thirty (30) days of service of this Complaint.

34. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. However, no penalty reduction will be made simply because an informal settlement conference is held. If settlement is reached, the parties will enter into a written Consent Agreement and a Final Order will be issued by the Regional Judicial Officer, United States Environmental Protection Agency, Region VII. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

5/2/06  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
William A. Spratlin  
Director  
Air, RCRA and Toxics Division

5/3/06  
Date

  
Kristi J. Denney  
Assistant Regional Counsel

Enclosures: Consolidated Rules of Practice  
Clean Air Act Penalty Policy  
Small Business Resources Information Sheet  
SEC Disclosure Information Sheet