



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 22 2008

REPLY TO THE ATTENTION OF:

AE-17J

Certified Mail
Return Receipt Requested

Sean Wolf
Vice President
Wolf Paving Co., Inc.
612 North Sawyer Road
Oconomowoc, Wisconsin 53066

Re: In the Matter of Wolf Paving Co., Inc.
CAA Docket No. **CAA-05-2008-0029**

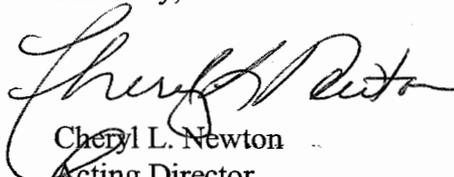
Dear Mr. Wolf:

I have enclosed a complaint filed against Wolf Paving Co., Inc. (you), under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d). The complaint alleges violations of Section 111(e) of the Act, 42 U.S.C. § 7411(e), and the New Source Performance Standards for Hot Mix Asphalt Facilities at 40 C.F.R. Part 60, Subpart I.

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 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.

In addition, 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 Padmavati Bending, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 353-8917.

Sincerely,


Cheryl L. Newton
Acting Director
Air and Radiation Division

Enclosure

cc: Ray Pilapil, Chief
Compliance and Systems Management Section
Illinois Environmental Protection Agency

Donald P. Gallo
Reinhart Boerner Van Deuren s.c.
P.O. Box 2265
Waukesha, Wisconsin 53187-2265

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2008-0029
)	
Wolf Paving Co., Inc.)	Proceeding to Assess a Civil Penalty
Oconomowoc, Wisconsin)	Under Section 113(d) of the Clean Air
)	Act, 42 U.S.C. § 7413(d)
Respondent.)	
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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) The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois.
- 3) The Respondent is Wolf Paving Co., Inc. (Wolf), a corporation doing business in Wisconsin.

Statutory and Regulatory Background

- 4) Under Section 111 of the Act, EPA promulgated the New Source Performance Standards (NSPS) for Hot Mix Asphalt Facilities at 40 C.F.R. §§ 60.90 through 60.93.
- 5) The NSPS for Hot Mix Asphalt Facilities applies to each hot mix asphalt facility constructed or modified after June 11, 1973 that is used to manufacture hot mix asphalt by heating and drying aggregate and mixing with asphalt cements.
- 6) The NSPS for Hot Mix Asphalt Facilities, at 40 C.F.R. § 60.92(a)(1), prohibits the owner or operator of an affected facility to discharge or cause the discharge into the atmosphere any gases which contain particulate matter (PM) in excess of 0.04 grains per dry standard cubic foot (gr/dscf) on and after the date on which the performance test required to be conducted under Section 60.8 is completed.
- 7) The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.
- 8) 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 the Attorney General of the United States

jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

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

General Allegations

- 10) Respondent owned and operated a batch, hot mix asphalt plant at Highway 18 and County Road C in Genesee, Wisconsin until January 2007.
- 11) The Genesee facility was subject to the NSPS for Hot Mix Asphalt Facilities.

Count I

- 12) Complainant incorporates paragraphs 1 through 11 of the Complaint, as if set forth in this paragraph.
- 13) In response to a 114 Request, on April 30, 2007, Respondent submitted to EPA the results of all performance tests it had conducted at the Genesee facility since January 1, 2003.
- 14) During a performance test Respondent conducted on October 13, 2004, the average PM emission rate was 0.08 gr/dscf, which exceeds the NSPS limit by 100 percent.
- 15) During a performance test Respondent conducted on June 22, 2005, the average PM emission rate was 0.049 gr/dscf, which exceeds the NSPS by 22.5 percent.
- 16) Respondent did not demonstrate compliance with the NSPS limit until September 14, 2005.
- 17) Respondent's failure to maintain continuous compliance with the PM limit of the NSPS for Hot Mix Asphalt Facilities is a violation of the NSPS for Hot Mix Asphalt Facilities and Section 111(e) of the Act, 42 U.S.C. § 7411(e).
- 18) On December 12, 2007, EPA issued a Finding of Violation (FOV) to Respondent regarding the violations described herein.
- 19) On January 29, 2008, EPA and Respondent held a conference to discuss the December 12, 2007 FOV.

Proposed Civil Penalty

- 20) Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint of \$114,740.

- 21) 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 EPA's *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991 (penalty policy). Enclosed with this Complaint is a copy of the penalty policy.
- 22) 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

- 23) 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 this Complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

- 24) Respondent must file with the 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-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

- 25) 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 Padmavati Bending, Associate Regional Counsel to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Bending at (312) 353-8917. Ms. Bending's address is:

Padmavati Bending, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Penalty Payment

- 26) 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:

For checks sent by regular U.S. Postal Service mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Or, for checks sent by express mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

- 27) Respondent must include the case name, docket number, and billing document number of 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 Ms. Bending at the address given above, and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Answer and Opportunity to Request a Hearing

- 28) 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 the 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.
- 29) 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.

- 30) To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address given above.
- 31) 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 the 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.
- 32) 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;
 - d. whether Respondent requests a hearing.
- 33) 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 EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

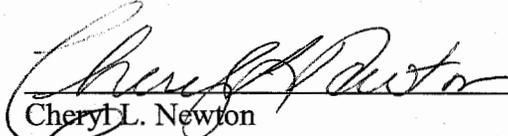
- 34) Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts alleged in the Complaint and to discuss a settlement. To request an informal settlement conference, Respondent may contact Ms. Bending at the address or phone number specified in paragraph 25 above.
- 35) 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

36) 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.

Date

7/22/08


Cheryl L. Newton

Acting Director
Air and Radiation Division

In the Matter of: Wolf Paving Co., Inc.
Docket No. **CAA-05-2008-0029**

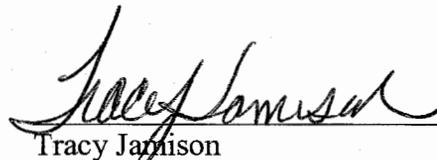
CERTIFICATE OF SERVICE

I, Tracy Jamison, certify that I hand delivered the original and one copy of the Complaint, docket number **CAA-05-2008-0029** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct 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:

Sean Wolf
Vice President
Wolf Paving Co., Inc.
612 North Sawyer Road
Oconomowoc, Wisconsin 53066

Donald P. Gallo
Reinhart Boerner Van Deuren s.c.
P.O. Box 2265
Waukesha, Wisconsin 53187-2265

on the 23 day of July, 2008.


Tracy Jamison
Administrative Automation Clerk
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0000 0185 7354