



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 28 2011

REPLY TO THE ATTENTION OF:
AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kevin M. Boyle, President
Schulze & Burch Biscuit Company
1133 West 35th Street
Chicago, Illinois 60609

Re: In the Matter of Schulze & Burch Biscuit Company, Docket No. CAA-05-2011-0034

Dear Mr. Boyle:

I have enclosed the Complaint filed by the U.S. Environmental Protection Agency against Schulze & Burch Biscuit Company under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and a copy of 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.

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 (E-19J), EPA, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604 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. If you choose to file an answer, you also must mail a copy of it to Ann L. Coyle, Associate Regional Counsel (C-14J), EPA, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

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 Ms. Ann L. Coyle, Associate Regional Counsel at (312) 886-2248.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cheryl L. Newton".

Cheryl L. Newton
Director

Air and Radiation Division

Enclosures

cc: Regional Hearing Clerk
U.S. EPA, Region 5

Carey S. Rosemarin
Law Offices of Carey S. Rosemarin, P.C.

Mr. Ray Pilapil, Chief
Compliance and Enforcement Section
Illinois Environmental Protection Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2011-0034
)	
Schulze & Burch Biscuit Company)	Proceeding to Assess a Civil Penalty
Chicago, Illinois)	Under Section 113(d) of the Clean Air
)	Act, 42 U.S.C. § 7413(d)
Respondent)	
_____)	

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, United States Environmental Protection Agency (EPA), Region 5, Chicago, Illinois.
3. The Respondent is Schulze & Burch Biscuit Company (Respondent), a corporation doing business in Illinois.

Statutory and Regulatory Background

4. EPA approved Illinois Pollution Control Board (IPCB) Rules 101 and 103 as part of the federally enforceable state Implementation Plan (SIP) for Illinois. 37 Fed. Reg. 10862 (May 31, 1972).
5. IPCB Rule 101 now is codified at 35 Illinois Administrative Code (IAC) § 201.102.
6. IPCB Rule 103(a)(1) now is codified at 35 IAC § 201.142.
7. IPCB Rule 103(b)(1) now is codified at 35 IAC § 201.143.
8. 35 IAC § 201.102 defines an “emission source” as any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

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9. 35 IAC § 201.102 defines a “new emission source” as any emission source that commences construction or modification on or after April 14, 1972.

10. 35 IAC § 201.102 defines “specified air contaminant” as, among other things, any air contaminant for which emission standards or other specific limitations have been established under the air pollution regulations of the Illinois Administrative Code.

11. Standards and limitations for emissions of volatile organic material (VOM) from stationary sources located in Cook County, Illinois are set forth at 35 IAC Part 218.

12. VOM is a “specified air contaminant” under 35 IAC § 201.102.

13. 35 IAC § 201.102 defines “construction” as onsite fabrication, erection or installation of an emission source or of air pollution control equipment.

14. 35 IAC § 201.102 defines “modification” as any physical change in, or change in the method of operations of, an emission source or air pollution control equipment which increases the amount of any specified air contaminant emitted by such source or equipment or which results in the emission of any specified air contaminant not previously emitted. It shall be presumed that an increase in the use of raw materials, the time of operation, or the rate of production will change the amount of any specified air contaminant emitted.

15. 35 IAC § 201.142 states that no person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Illinois Environmental Protection Agency (IEPA).

16. 35 IAC § 201.143 states that no person shall cause or allow the operation of any emission source or new air pollution control equipment, for which a construction permit is required, without first obtaining an operational permit from IEPA.

17. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation, with a maximum of \$270,000, for each SIP violation that occurred after March 15, 2004, through January 12, 2009, and may assess a civil penalty of up to \$37,500 per day, with a maximum of \$295,000, for each SIP violation that occurred after January 12, 2009, under Section 113(d) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

18. 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

19. 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 violations alleged in this complaint.

General Allegations

20. Respondent owns and operates a facility (facility) at 1133 West 35th Street in Chicago, Cook County, Illinois, that manufactures and distributes food products.

21. In 1939, Respondent began operations as a contracted food manufacturer and in 1971, began operations as a private label food manufacturer.

22. Respondent has operated continuously since 1939.

23. In 1982, Respondent modified and made operational one 9.92 million British Thermal Unit per hour (mmBTU/hr) baking oven on line #2.

24. In 1994, Respondent installed and made operational one 16.77 mmBTU/hr baking oven on line #3.

25. In 1983, Respondent installed and made operational one 9.6 mmBTU/hr baking oven on line #7.
26. In 1984, Respondent installed and made operational one 8.0 mmBTU/hr oven on line #8.
27. Respondent's four ovens are all capable of emitting VOM to the atmosphere.
28. Respondent's four ovens are "emission sources" under 35 IAC § 201.102.
29. Respondent's four ovens are "new emission sources" under 35 IAC § 201.102.
30. Respondent "modified" the line #2 oven under 35 IAC § 201.102.
31. Respondent "constructed" the line #3, #7 and #8 ovens under 35 IAC § 201.102.
32. On July 29, 2008, EPA issued a Notice of Violation to Respondent for violations of the Illinois SIP regulations at 35 IAC §§ 201.142 and 201.143.
33. On September 10, 2008, EPA and Respondent held a conference to discuss the July 29, 2008, Notice of Violation.
34. On February 10, 2011, EPA issued a notice of intent to file a civil administrative complaint letter to Respondent. In the letter, EPA stated that it intended to propose that a \$166,192 penalty be assessed against Respondent for the violations EPA would allege in the complaint.

Count I

35. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.
36. Respondent "constructed" and "modified" "new emission sources" as defined in 35 IAC § 201.102; therefore, it is subject to IEPA's construction permit requirements.

37. Respondent had not applied for or obtained a construction permit when it modified one 9.92 mmBTU/hr baking oven on line #2 in 1982.

38. Respondent had not applied for or obtained a construction permit when it installed one 9.6 mmBTU/hr baking oven on line #7 in 1983.

39. Respondent had not applied for or obtained a construction permit when it installed one 8.0 mmBTU/hr oven on line #8 in 1984.

40. Respondent had not applied for or obtained a construction permit when it installed one 16.77 mmBTU/hr baking oven on line #3 in 1994.

41. On March 30, 2009, Respondent applied for an air emission source construction permit with IEPA.

42. From March 30, 2006, through March 30, 2009, Respondent violated the requirements of 35 IAC § 201.142.

Count II

43. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

44. Respondent operated “new emission sources” as defined in 35 IAC § 201.102, for which construction permits were required; therefore, it is subject to IEPA’s operating permit requirements.

45. Respondent had not applied for or obtained an operating permit when it modified and continued operating one 9.92 mmBTU/hr baking oven on line #2 in 1982.

46. Respondent had not applied for or obtained an operating permit when it installed and began operating one 9.6 mmBTU/hr baking oven on line #7 in 1983.

47. Respondent had not applied for or obtained an operating permit when it installed and began operating one 8.0 mmBTU/hr oven on line #8 in 1984.

48. Respondent had not applied for or obtained an operating permit when it installed and began operating one 16.77 mmBTU/hr baking oven on line #3 in 1994.

49. Respondent applied for a federally enforceable state operating permit with IEPA on March 30, 2009; Respondent has not been issued an operating permit to date.

50. From March 30, 2006, through March 30, 2009, Respondent violated the requirements of 35 IAC § 201.143.

Proposed Civil Penalty

51. Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint of \$160,998.

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.

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

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 the Complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

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-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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 Ann L. Coyle, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Coyle at (312) 886-2248. Ms. Coyle's address is:

Ann L. Coyle (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Penalty Payment

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:

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

Respondent must include the case name, docket number and billing document number on 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 Ann L. Coyle at the addresses given above, and to:

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

Answer and Opportunity to Request a Hearing

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 an 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.

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.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address given above.

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 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.

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; and
- d. whether Respondent requests a hearing.

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

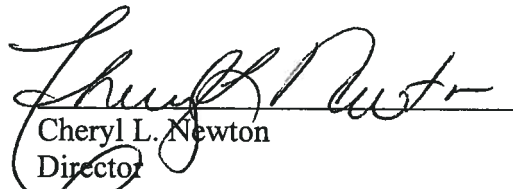
Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts alleged in the Complaint and to discuss a settlement. To request an informal settlement conference, Respondent may contact Ann L. Coyle at (312) 886-2248.

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

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.

3/28/11
Date


Cheryl L. Newton
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

In the Matter of: Schulze & Burch Biscuit Company
Docket No. CAA-05-2011-0034

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Complaint, docket number CAA-05-2011-0034 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a correct copy of the Administrative Complaint, a copy 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 a copy of the penalty policy described in the Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and to Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Kevin M. Boyle, President
Schulze & Burch Biscuit Company
1133 West 35th Street
Chicago, Illinois 60609

Carey S. Rosemarin
Law Offices of Carey S. Rosemarin, P.C.
500 Skokie Boulevard, Suite 510
Northbrook, Illinois 60062

I also certify that I sent a copy of the Administrative Complaint, by first-class mail to:

Mr. Ray Pilapil, Chief
Bureau of Air
Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

On the 29 day of March, 2011.



Loretta Shaffer
Administrative Program Assistant
AECAB/PAS

CERTIFIED MAIL RECEIPT NUMBER: 70010320000401920219

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