UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF	)	
DAVID L. STERGION d/b/a STERGION AUTOMOTIVE,	)	DOCKET NO. CAA-07-2001-0014
Respondent.	)	

INITIAL DECISION AND DEFAULT ORDER

By Motion for Default Order filed July 3, 2001, Complainant, the Director of the Air, RCRA (Resource Conservation and Recovery Act), and Toxics Division, United States Environmental Protection Agency, Region VII ("EPA"), moved for a default judgment against Respondent David L. Stergion d/b/a Stergion Automotive for liability under the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq., in the full amount of the penalty in the Complaint filed March 19, 2001, Sixteen Thousand Five Hundred ($16,500) Dollars.

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties at 40 C.F.R. Part 22, 64 Federal Register 40138 (July 23, 1999) and based upon the record in this matter and the following Findings of Fact, Conclusions of Law, and Determination of Penalty, Complainant's Motion for Default Judgment is hereby GRANTED. The Respondent, David L. Stergion d/b/a Stergion Automotive, is hereby found in default and a civil penalty is assessed against him in the amount of $16,500.

BACKGROUND

This civil administrative action arises under Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d). This proceeding is governed by 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 ("Consolidated Rules") at 40 C.F.R. Part 22, Subpart I, 64 Federal Register 40138 (July 23, 1999).

Section 114(a) of the CAA, 42 U.S.C. § 7414(a), provides the EPA Administrator or authorized representative with authority to, among other things, require any person subject to any requirements of the CAA (with an exception not applicable in this case) to provide such information as the Administrator or authorized representative may reasonably require. On March 19, 2001, a Complaint was issued against the Respondent alleging violation of Section 114(a) of the CAA, 42 U.S.C. § 7414(a), due to Respondent's failure to submit information to EPA in accordance with said provision. A civil penalty of Sixteen Thousand Five Hundred ($16,500) Dollars was proposed in the Complaint.

The Complaint issued to Respondent states in paragraph 22, page five, in a section entitled "Answer and Request for Hearing" that, "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 for Hearing, such failure will constitute a binding admission of all of the allegations in this Complaint, and a waiver of Respondent's right to a hearing under the CAA. A Default Order may thereafter be issued

by the Regional Administrator, and the civil penalties proposed therein shall become due and payable without further proceedings."

The Complaint in this matter names David L. Stergion d/b/a Stergion Automotive as Respondent. On October 10, 2000, a letter from EPA requiring Respondent to provide information to EPA pursuant to Section 114 of the CAA was sent by certified mail to Respondent. The record contains a certified mail receipt which shows that the above letter was delivered on October 13, 2000. On January 4, 2001, EPA sent Respondent a second certified letter again requesting information pursuant to Section 114 of the CAA and advising that failure to respond to a Section 114 of the CAA requirement to provide information is a violation of the CAA and could result in an enforcement action for the recovery of civil penalties. The record contains a certified mail receipt which shows that the above letter was delivered, although the receipt does not show the delivery date. On March 19, 2001, Complainant filed a Complaint, which was personally served on Respondent on May 11, 2001. To date, Respondent has failed to file an Answer to the Complaint.

On July 3, 2001, Complainant filed a Motion for Default Judgment. On August 24, 2001, Respondent was personally served with said Motion for Default Order and a Proposed Default Order. To date, Respondent has failed to file a Response to Complainant's Motion for Default Judgment.

FINDINGS OF FACT

Pursuant to 40 C.F.R. § 22.17 and the entire record in this matter, I make the following findings of fact:

1. 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.

2. On March 19, 2001, pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), Complainant filed an administrative Complaint against the Respondent, David L. Stergion d/b/a Stergion Automotive, alleging violation of Section 114(a) of the Act, 42 U.S.C. § 7414(a) and seeking administrative penalty of Sixteen Thousand Five Hundred ($16,500) Dollars.

3. On May 11, 2001, Respondent was personally served with the above-referenced Complaint.

4. Based on the allegations of the Complaint and the record before me:

(1) Respondent is David L. Stergion d/b/a Stergion Automotive and Section 302(e) of the CAA, 42 U.S.C. § 7602(e) defines a "person" as "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof."

(2) Respondent operates an automotive repair facility in St. Louis, Missouri and conducts service, maintenance and repair on motor vehicle air conditioners (MVACS) containing class I and class II refrigerants.

(3) Section 114(a) of the CAA, 42 U.S.C. § 7414(a), provides the Administrator with authority to, among other things, require any person subject to any requirement of CAA (with an exception not applicable here) to provide such information as the Administrator may reasonably require.

(4) Section 113(a)(3) provides that the Administrator may issue a civil penalty order for specified violations of the Act, including violation of an order to provide information pursuant to Section 114(a).

(5) On October 10, 2000 and January 4, 2001, Complainant issued letters pursuant to Section 114 of the Clean Air Act requiring submittal of documents and information to determine compliance with the requirements of Section 609 of the CAA. The letters were sent by certified U.S. mail.

(6) On November 17, 2000, Respondent was contacted by telephone to request submittal of the required information. Several other attempts to reach Respondent by telephone have been unsuccessful.

(7) To date, Respondent has failed to provide the requested information.

(8) Section 113(d) of the CAA, 42 U.S.C. § 7413(d) authorizes a civil penalty of up to $27,500 per day for each violation of the CAA.

5. The Consolidated Rules provide that an order of default may be issued "after motion, upon failure to file a timely answer to the complaint; upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer; or upon failure to appear at a conference or hearing." The Rules also provide that "[d]efault by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations." 40 C.F.R. § 22.17(a).

6. On May 11, 2001, Respondent was personally served with the Complaint and Notice of Opportunity for Hearing.

7. To date, Respondent has failed to file an Answer to the Complaint.

8. On July 3, 2001, Complainant filed a Motion for Default Order seeking assessment of the civil penalty sought in the Complaint.

9. On August 24, 2001, Respondent was personally served with the Motion for Default Order.

10. To date, Respondent has failed to respond to the Motion for Default Order.

CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. § 22.17(c) and based on the entire record in this matter, I make the following conclusions of law:

1. Jurisdiction for this action is conferred upon Complainant by Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

2. Pursuant to 40 C.F.R. § 22.5(b)(1)(iii), proof of service of the Complaint shall be made by affidavit of the person making personal service, or by properly executed receipt.

3. Respondent is a person under Section 302(e) of the Clean Air Act.

4. The Complaint was properly served on Respondent.

5. Respondent's failure to file a timely Answer to the Complaint constitutes a default by Respondent pursuant to 40 C.F.R. § 22.17(a).

6. Respondent's default constitutes an admission of all facts alleged in the Complaint, as described in the Findings of Fact above, and a waiver of the Respondent's right to a hearing on such factual allegations. 40 C.F.R. § 22.17(a) and 22.15(d).

7. Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), authorizes a civil penalty of up to $27,500 per day for each violation of the CAA.

8. Respondent was required to comply with Section 114 of the CAA and by failing to comply, Respondent has violated the requirements of Section 114(a) of the CAA, 42 U.S.C. § 7414(a) and is liable for civil penalties pursuant to Sections 113(a)(3) and 113(d) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d).

PENALTY CALCULATION

Under Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), the statutory penalty factors to be considered when assessing a penalty include the size of the Respondent's business; the economic impact of the proposed penalty on the Respondent's business; the Respondent's full compliance history and good faith efforts to comply; the duration of the violation alleged in the Complaint as established by credible evidence; payment by the Respondent of penalties previously assessed for the same violation; economic benefit of noncompliance; and the seriousness of the alleged violation. The EPA guidance document used to implement these statutory penalty factors in a consistent nationwide manner is the *Clean Air Act Stationary Source Civil Penalty Policy*, October 25, 1991 ("penalty policy").

The penalty policy provides that the starting point for assessing a penalty for violation of Section 113(d) of the CAA and the implementing regulations, 40 C.F.R. Part 82, Subpart F, is to determine the economic benefit and gravity of the violation.

In accordance with the CAA and the penalty policy, Complainant made the following determinations:

- The economic benefit component, calculated under the Penalty Policy for Count I is $0, based on the cost of compliance being an insignificant amount.
- The gravity component for Count I is $16,500 for failure to respond to the Section 114 requirements. [1]
- The size of violator component calculated under the Penalty Policy for this proposed penalty assessment is $0 where the net worth of the Respondent is unknown, but estimated to be less than $100,000.
- The total proposed penalty is derived by combining the total gravity component of $16,500 with the economic benefit of $0, plus the size of violator component of $0 for a total penalty of $16,500.

[1] $15,000 plus an additional upward adjustment of gravity component of 10% ($1,500) pursuant to the Civil Monetary Inflation Adjustment Rule, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701 (See May 9, 1997 Steven A. Herman Memorandum entitled "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996")).

I find it reasonable that because Complainant did not know the net worth of Respondent, it utilized the lowest amount for the size of violator component. Based on my review of the penalty policy, however, I find that Complainant has made an error in the size of violator component. According to the penalty policy, where the net worth or net current assets is under $100,000, the appropriate size of violator component is $2,000. Since this error benefits the Respondent and because I do not have the authority to raise the penalty amount (40 C.F.R. § 22.27(b)), I will not make any adjustments to the penalty calculation.

Evaluating all of the information, I have determined that the proposed civil administrative penalty of $16,500 is appropriate. The proposed penalty was calculated in accordance with Section 113 of the CAA, 42 U.S.C. §7413, and, except as noted above, the CAA Stationary Source Penalty Policy. The record supports the proposed penalty. A civil penalty of Sixteen Thousand Five Hundred ($16,500) Dollars is hereby assessed against the Respondent.

DEFAULT ORDER

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. § 22.17, Complainant's Motion for Default Judgment is hereby GRANTED and Respondent David L. Stergion d/b/a Stergion Automotive is hereby ordered to comply with all terms of this Order:

A. Respondent David L. Stergion d/b/a Stergion Automotive is hereby assessed a civil penalty in the amount of Sixteen Thousand Five Hundred ($16,500) Dollars and ordered to pay the civil penalty as directed in this Order.

B. Respondent David L. Stergion d/b/a Stergion Automotive shall pay the civil penalty by certified or cashier's check payable to the Treasurer of the United States within thirty (30) days after this default order has become final. The check shall be sent by certified mail, return receipt requested, to:

Mellon Bank
EPA - Region VII
Regional Hearing Clerk
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

C. A copy of the payment shall be mailed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, KS 66101. A transmittal letter identifying the name and docket number should accompany both the remittance and the copies of the check.

D. This Default Order constitutes an Initial Decision, as provided in 40 C.F.R. § 22.17(c). This Initial Decision shall become a final order unless (1) an appeal to the Environmental Appeals Board is taken from it by any party to the proceedings *within thirty (30) days from the date of service provided in the certificate of service accompanying this order*, (2) a party moves to set aside the Default Order, or the Environmental Appeals Board elects, *sua sponte*, to review the Initial Decision within forty-five (45) days after its service upon the parties.

IN THE MATTER OF David L. Stergion d/b/a Stergion Automotive
Docket No. CAA-07-2001-0014

IT IS SO ORDERED.

Date: September 27, 2001

/s/
Karina Borromeo
Regional Judicial Officer