

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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EIRVING
AGENCY ENVIRONMENTAL PROTECTION
REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. CAA 07-2011-0013
)	
DAVIS PAINT COMPANY,)	
North Kansas City, Missouri)	ANSWER AND REQUEST FOR
)	HEARING
Respondent,)	
)	
Proceedings under Section 113(d) of the)	
Clean Air Act, 42 U.S.C. § 7413(d))	

**DAVIS PAINT COMPANY'S ANSWER TO COMPLAINT, NOTICE OF PROPOSED
PENALTY AND NOTICE OF OPPORTUNITY FOR HEARING
AND REQUEST FOR HEARING**

Comes now Respondent Davis Paint Company, by and through its attorney of record, and answers the Complaint, Notice of Proposed Penalty and Notice of Opportunity for Hearing as follows:

1. In response to paragraph 1 of the Complaint, Respondent admits that this is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act. Respondent denies that it is liable for any civil penalties.
2. In response to paragraph 2 of the Complaint, Respondent admits that the Complaint serves as notice of the matters stated in paragraph 2 of the Complaint. Respondent denies that it has violated or is in violation of any portion of the Clean Air Act. Respondent further denies that it is liable for any penalties.
3. Respondent admits the allegations contained in paragraph 3 of the Complaint.

4. Respondent admits the allegations contained in paragraph 4 of the Complaint.
5. Respondent admits the allegations contained in paragraph 5 of the Complaint.
6. Paragraph 6 of the Complaint contains purported statements of law to which no response is required. To the extent a response is required, Respondent denies the allegations of paragraph 6 of the Complaint.
7. Paragraph 7 of the Complaint contains purported statements of law to which no response is required. To the extent a response is required, Respondent denies the allegations of paragraph 7 of the Complaint.
8. Paragraph 8 of the Complaint contains purported statements of law to which no response is required. To the extent a response is required, Respondent denies the allegations of paragraph 8 of the Complaint.
9. Paragraph 9 of the Complaint contains purported statements of law to which no response is required. To the extent a response is required, Respondent denies the allegations of paragraph 9 of the Complaint.
10. Paragraph 10 of the Complaint contains purported statements of law to which no response is required. To the extent a response is required, Respondent denies the allegations of paragraph 10 of the Complaint.
11. Paragraph 11 of the Complaint contains purported statements of law to which no response is required. To the extent a response is required, Respondent denies the allegations of paragraph 11 of the Complaint.
12. Paragraph 12 of the Complaint contains purported statements of law to which no response is required. To the extent a response is required, Respondent denies the

allegations of paragraph 12 of the Complaint.

13. Paragraph 13 of the Complaint contains purported statements of law to which no response is required. To the extent a response is required, Respondent denies the allegations of paragraph 13 of the Complaint.
14. Respondent admits the allegations of paragraph 14 of the Complaint.
15. Respondent admits the allegations contained in paragraph 15 of the Complaint.
16. Respondent denies the allegations contained in paragraph 16 of the Complaint.
17. Respondent denies the allegations contained in paragraph 17 of the Complaint.
18. Respondent admits the allegations contained in paragraph 18 of the Complaint.

Count I

19. In response to paragraph 19 of the Complaint, paragraphs 1 through 18 of this Answer as if fully set forth herein.
20. Paragraph 20 of the Complaint contains purported statements of law to which no response is required. To the extent a response is required, Respondent denies the allegations of paragraph 20 of the Complaint.
21. Respondent admits that it did not submit a notice of compliance status and affirmatively states that it is not required to file any such notice because it is not subject to 40 C.F.R. Part 63, Subpart HHHHH. Respondent denies all other allegations contained in paragraph 21 of the Complaint.
22. Respondent denies the allegations contained in paragraph 22 of the Complaint.

Count II

23. In response to paragraph 23 of the Complaint, paragraphs 1 through 18 of this

Answer as if fully set forth herein.

24. Paragraph 24 of the Complaint contains purported statements of law to which no response is required. To the extent a response is required, Respondent denies the allegations of paragraph 24 of the Complaint.
25. Respondent admits that it did not submit compliance reports and affirmatively states that it is not required to file any such reports because it is not subject to 40 C.F.R. Part 63, Subpart HHHHH. Respondent denies all other allegations contained in paragraph 25 of the Complaint.
26. Respondent denies the allegations contained in paragraph 26 of the Complaint.

Relief

27. Paragraph 27 of the Complaint purports to summarize portions of the Clean Air Act and other federal laws. To the extent a response is required, Respondent denies the allegations contained in paragraph 27 of the Complaint.
28. Respondent admits that EPA Region 7 proposes to issue a Final Order Assessing an Administrative Penalty as stated in paragraph 28 of the Complaint, but denies that any such Final Order is appropriate or should be issued. Respondent denies that the proposed penalty is appropriate in the circumstances and further denies that the proposed penalty was properly calculated under the Clean Air Act Stationary Source Civil Penalty Policy. Respondent denies all allegations of paragraph 28 of the Complaint not expressly admitted herein.
29. Paragraph 29 of the Complaint contains allegations regarding logistics of remitting payment of the total penalty, to which no response is required. To the

extent any response is required, Respondent denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 29 of the Complaint and, therefore, denies same.

30. Respondent denies each and every allegation contained in the Complaint that is not explicitly admitted herein.

ADDITIONAL DEFENSES

31. The Complaint fails to state a claim upon which relief can be granted.
32. The penalties proposed in the Complaint do not accurately reflect the proper application of the Clean Air Act Stationary Source Civil Penalty Policy or the statutory factors set forth in the Clean Air Act.

REQUEST FOR HEARING

Respondent hereby requests a hearing on the matters set forth in the Complaint.

Respectfully submitted,

LAW OFFICES OF LINDSAY L. WOOD

By: 


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CERTIFICATE OF SERVICE

I certify that on this 15th day of July, 2011, I hand delivered the original and one copy of the foregoing document to Kathy Robinson, Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the above-mentioned date, I served a copy of the foregoing document by first class mail, postage prepaid, addressed to:

Ms. Sara S. Hertz
Assistant Regional Counsel
United States Environmental Protection Agency
901 North Fifth Street
Kansas City, Kansas 66101



Attorney for Respondent
Davis Paint Company