

RECEIVED
REGIONAL HEARING
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Dynachem, Inc.
Georgetown, Illinois

Respondent.

) Docket No. ^{01 JUL 17 AM 11:14} CAA-5-2001-013
)
) Proceeding to Assess a
) Civil Penalty under
) Section 113(d) of the
) Clean Air Act,
) 42 U.S.C. § 7413(d)
)

Administrative Complaint

1. This is an administrative proceeding 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 (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Dynachem, Inc. an Illinois corporation doing business in Illinois.

Statutory and Regulatory Background

4. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Hazardous Organic Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (Hazardous Organic NESHAP or HON), at 40 C.F.R. Part 63, Subparts F, G and H (§§ 63.100 through 63.182).

5. 40 C.F.R. § 63.100 states that the provisions of 40 C.F.R. Part 63, Subparts F, G, and H apply to chemical manufacturing process units that (a) manufacture as a primary

product one or more of the chemicals listed in Table 1 of 40 C.F.R. Part 63; (b) use as a reactant or manufacture as a product, or co-product, one or more of the organic hazardous air pollutants listed in Table 2 of 40 C.F.R. Part 63; and (c) are located on a plant site that is a major source as defined in section 112(a) of the Act.

6. In the Act, Section 112(a), the term "major source" means 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, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

7. The Hazardous Organic NESHAP for equipment leaks, 40 C.F.R. Part 63, Subpart H (§§ 63.160 through 63.182), applies to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors and other equipment components operating in organic hazardous air pollutant service within a subject chemical manufacturing process unit.

8. The Hazardous Organic NESHAP, at 40 C.F.R. § 63.180, requires each owner or operator subject to 40 C.F.R. Part 63, Subpart H to comply with the test methods and procedures requirements provided in 40 C.F.R. § 63.180. These include, among other things, the test methods and procedures requirements for volatile organic compound (VOC) leak monitoring and detection.

9. The Hazardous Organic NESHAP, at 40 C.F.R. § 63.180(b)(1), requires that the VOC leak monitoring and detection required under 40 C.F.R. Part 63, Subpart H, comply with Method 21 of 40 C.F.R. Part 60, Appendix A.

10. The Hazardous Organic NESHAP, at 40 C.F.R. § 63.180(b)(2)(i) states that the detection instrument used for VOC leak monitoring and detection required under Subpart H must meet the performance criteria of Method 21 of 40 C.F.R. Part 60, Appendix A.

11. The Hazardous Organic NESHAP, at 40 C.F.R. § 63.180(b)(3) states that the instrument used for VOC leak monitoring required under Subpart H must be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 C.F.R. Part 60, Appendix A.

12. Method 21 of 40 C.F.R. Part 60, Appendix A, requires, among other things, that the instrument used to conduct VOC leak monitoring and detection must meet the following specifications and performance criteria: monitoring instrument response time must be equal to or less than 30 seconds; the calibration precision must be equal to or less than 10 percent of the calibration gas value; the gas cylinders used for calibration must have a shelf life specified; and the cylinder standards must be either re-analyzed or replaced at the end of the specified shelf life. 40 C.F.R. Part 60, App. A, Meth. 21 (3.2).

13. Method 21 of 40 C.F.R. Part 60, Appendix A, states that calibration of the instrument is conducted by introducing the calibration gas into the instrument sample probe and then

adjusting the instrument meter readout to correspond to the calibration gas value. 40 C.F.R. Part 60, App. A, Meth. 21 (4.2).

14. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for NESHAP violations that occurred on or after January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

General Allegations

15. Dynachem owns and operates a chemical manufacturing process unit that manufactures phenol sulfonic acid, toluene sulfonic acid, xylene sulfonic acid, and benzene sulfonic acid (the "acid plant"), on Maple Grove Road, Georgetown, Illinois.

16. Dynachem's acid plant's products are all chemicals listed in Table 1 of 40 C.F.R. § 63.100.

17. Dynachem's acid plant uses phenol, toluene, xylene, and benzene as reactants, all of which are hazardous air pollutants listed in Table 2 of 40 C.F.R. § 63.100.

18. Dynachem's acid plant is located on a plant site that has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. 40 C.F.R. § 63.100(b)(3) and Section 112(a) of the Act, 42 U.S.C. § 7412.

19. On July 17-20, 2000, U.S. EPA inspected the Dynachem facility.

20. On July 19, 2000, U.S. EPA observed the calibration of the instrument Dynachem uses to do its VOC leak monitoring and leak detection at the acid plant. Dynachem also recorded the instrument's calibration precision results and response time.

21. On March 30, 2001, U.S. EPA issued a Finding of Violation to Dynachem for violation of the Hazardous Organic NESHAP, 40 C.F.R. § 63.180, on July 19, 2000.

22. On April 23, 2001, U.S. EPA and Dynachem held a conference to discuss the March 30, 2001, Finding of Violation.

Count I

23. Complainant incorporates paragraphs 1 through 21 of this Complaint, by reference herein.

24. On July 19, 2000, the procedures that Dynachem used during calibration did not comport with the requirements of 40 C.F.R. Part 60, Appendix A, Method 21. Specifically, after introducing the calibration gas into the instrument sample probe, Dynachem did not adjust the instrument meter readout to correspond to the calibration gas value. This constitutes a violation of 40 C.F.R. § 63.180(b)(3).

25. A violation of 40 C.F.R. § 63.180(b)(3) constitutes a violation of Section 112 of the Act, 42 U.S.C. § 7412.

Count II

26. Complainant incorporates paragraphs 1 through 21 of this Complaint, by reference herein.

27. On July 19, 2000, the detection instrument used in Dynachem's leak detection did not meet the performance criteria of Method 21 of 40 C.F.R. Part 60, Appendix A. Specifically, the

calibration precision test was greater than the required 10 percent; the instrument response time obtained and recorded was greater than the required 30 seconds; and the cylinder standard containing the 1000 ppm methane in air calibration gas did not have a specified shelf life and had expired. These constitute violations of 40 C.F.R. § 63.180(b)(2).

28. A violation of 40 C.F.R. § 63.180(b)(3) constitutes a violation of Section 112 of the Act, 42 U.S.C. § 7412.

Proposed Civil Penalty

29. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

30. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$ 8,296.00. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (Penalty Policy). Complainant also gave Respondent credit under U.S. EPA's May 1, 1998, Supplemental Environmental Projects Policy for the purchase of a new \$ 7,985 VOC leak detection instrument. Enclosed with this complaint is a copy of the Penalty Policy.

31. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent

establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

32. 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" (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

33. Respondent must file with the 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 (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

34. 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 Kathleen Schnieders to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Schnieders at (312) 353-8912. Ms. Schnieders' address is:

Kathleen Schnieders (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard

Chicago, Illinois 60604-3590

Penalty Payment

35. 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. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Kathleen Schnieders 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 60604-3590

Opportunity to Request a Hearing

36. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 34 through 39 below.

Answer

37. Respondent must file a written answer to this complaint

if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 33, above, and must serve copies of the written answer on the other parties.

38. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

39. 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.

40. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

41. 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 as discussed in paragraph 36 above.

42. 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 U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

43. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Kathleen Schnieders at the address or phone number specified in paragraph 34, above.

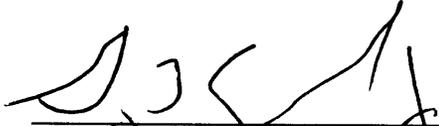
44. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

45. 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.

7/16/01

Date



Cheryl Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

2001-013

In the Matter of Dynachem, Inc.
Docket No. **CAA-5-2001-013**

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CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number _____ 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, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22, and copies of the Penalty Policy described in the Administrative 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:

Arman Melykian, President
Dynachem, Inc.
Maple Grove Road
Georgetown, Illinois 61846

Carolyn Hesse, Attorney at Law
Barnes & Thornburg
2600 Chaise Plaza
10 South LaSalle Street
Chicago, Illinois 60603

I also certify that I mailed copies of the Administrative Complaint by first class mail to:

John Justice, Regional Manager
Field Operations Section
Region III
Illinois Environmental Protection
2009 Mall Street
Collinsville, Illinois 62234

Julie Armitage, Acting Manager
Compliance and Enforcement Section
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

on the 17th day of July, 2001.


Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 95957708

CAA-5- 2009-0 13