

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. CAA-05-2001-0022
)
Russell Products Co., Inc.) Proceeding to Assess a
Cleveland, Ohio,) Civil Penalty under
Respondent.) 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 Russell Products Co., Inc. (Russell), a corporation doing business in Ohio.

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 Halogenated Solvent Cleaning (Degreaser MACT) at 40 C.F.R. §§ 63.460 through 63.469.

5. The NESHAP for Halogenated Solvent Cleaning applies to any facilities operating a solvent cleaning machine that use any one of or any combination of the following halogenated solvents: methylene chloride, perchloroethylene, trichloroethylene, 1,1,1,- trichloroethane, carbon tetrachloride, and chloroform, or

in a total concentration of greater than 5 percent by weight, as a cleaning and/or drying agent.

6. The NESHAP, at 40 C.F.R. § 63.468 (a) and (e), requires the owner or operator of any solvent cleaning machine to submit an Initial Notification Report and an Initial Statement of Compliance to the Administrator. Batch vapor solvent cleaning machines installed and started up prior to November 29, 1993 were required to submit an initial notification by August 29, 1995 and to submit an initial statement of compliance by May 1, 1998.

7. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for NESHAP violations that occurred prior to January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collections Improvements Act of 1996 increased the statutory maximum penalty 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. 31 U.S.C. § 3701 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 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 violations alleged in this complaint.

General Allegations

10. Russell owns and operates four existing batch vapor solvent cleaning machines. One at its facility located at 1200 DeValera, Akron, Ohio, one at its facility located at 1066 Home Avenue, Akron, Ohio, and two located at its facility located at 275 North Forge Street, Akron, Ohio. All four machines were installed and started up prior to November 29, 1993. The solvent used is trichloroethylene. Therefore Russell is subject to the Halogenated Solvent NESHAP.

Count I

11. Complainant incorporates paragraphs 1 through 10 of this complaint, as if set forth in this paragraph.

12. Russell did not submit an initial notification or initial statement of compliance for any of its four batch vapor solvent cleaning machines, as required by 40 C.F.R. § 63.468 (a) and (e) and as stated in paragraph 6 of this document.

13. From August 29, 1995 to present Russell has been in violation of 40 C.F.R. § 63.468 (a).

14. From May 1, 1998 to present Russell has been in violation of 40 C.F.R. § 63.468 (e).

Proposed Civil Penalty

15. 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).

16. 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 \$23,625 (TWENTY-THREE THOUSAND SIX HUNDRED TWENTY-FIVE DOLLARS). 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). Enclosed with this complaint is a copy of the penalty policy.

17. 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

18. 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 64 Fed. Reg. 40138 (1999) (to be codified 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

19. 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

20. 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 Richard Wagner to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Wagner at (312)886-7948. Mr. Wagner's address is:

Richard Wagner (C-14J)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

21. 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 Richard Wagner 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

22. 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 23 through 28 below.

Answer

23. 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 19, above, and must serve copies of the written answer on the other parties.

24. 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.

25. 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.

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

27. 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 22 above.

28. 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

29. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to

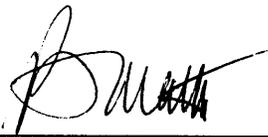
discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Richard Wagner at the address or phone number specified in paragraph 20, above.

30. 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

31. 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.

9-27-01
Date



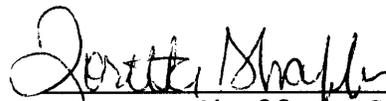
Bharat Mathur, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

In the Matter of Russell Products
Docket No.

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number CAA-05-2001-0022 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 64 Fed. Reg. 40138 (1999) (to be codified 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:

on the 27th day of September, 2001.



Loretta Shaffer, Secretary
AECAS (OH/MN)

CERTIFIED MAIL RECEIPT NUMBER: 70993400000096014400