



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 3 0 2004

REPLY TO THE ATTENTION OF
C-14J

Larry Musarra, President
M & M Drying, LTD.
1831 East Highland Road
Twinsburg, Ohio 44087

Re: In the Matter of M & M Drying, LTD.
CAA Docket No.

~~CAA 05-~~ 2004 0055

Dear Mr. Musarra:

I have enclosed a complaint filed against M & M Drying, LTD., under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The complaint alleges violations of failing to prepare a site specific test plan and failing to conduct a performance test on its thermal chip dryer as required by 40 C.F.R. §63.1511(a) and (b), failing to submit a notification of compliance status report required by 40 C.F.R. 63.1515(b) and failing to maintain the proper operating temperature as required by §63.1506(f).

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 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.

In addition, 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, Michael Berman, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-6837.

Sincerely,


Stephen Rothblatt, Director
Air and Radiation Division

Enclosures

cc: Robert Hodabansi, Chief (Enclosures)
Division of Air Pollution Control
Ohio Environmental Protection Agency

Dan Aleman, Administrator
Air Pollution Control Division
Canton City Health Department

Thomas Grist (Enclosures)
General Counsel
M & M Drying, LTD.

Addresses

Robert Hodabansi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

Dan Aleman, Administrator
Air Pollution Control Division
Canton City Health Department
420 Market Avenue North
Canton, Ohio 44702-1544

Thomas Grist
General Counsel
M & M Drying, LTD.
1831 East Highland Road
Twinsburg, Ohio 44087

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

M & M Drying, LTD.
4125 Mahoning Road NE
Canton, Ohio 44705
(Respondent)

) Docket No. ~~CA-95-~~ 2004 0055
)
) 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 M & M Drying, LTD. (M & M Drying) 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 Secondary Aluminum Production at 40 C.F.R. Part 63, Subpart RRR.
5. The Secondary Aluminum Production NESHAP applies to the owner or operator of each secondary aluminum production facility. 40 C.F.R. §63.1500.
6. 40 C.F.R. §63.3 defines an "owner or operator" as any person who owns, leases, operates, controls, or supervises a

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stationary source.

7. The Secondary Aluminum Production NESHAP, at 40 C.F.R. §63.1501(c), requires that the owner or operator of any affected source which is constructed or reconstructed at any existing aluminum die casting facility, aluminum foundry, or aluminum extrusion facility which otherwise meets the applicability criteria set forth in §63.1500 must comply with the requirements of this subpart by March 24, 2003 or upon startup, whichever is later.
8. 40 C.F.R. § 63.1503, defines a secondary aluminum production facility as any establishment using clean charge, aluminum scrap, or dross from aluminum production, as the raw material and performing one or more of the following processes: scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (i.e., melting, holding, sweating, refining, fluxing, or alloying), recovery of aluminum from dross, in-line fluxing, or dross cooling.
9. The Secondary Aluminum Production NESHAP states at 40 C.F.R. § 63.1500(C)(1) that "the requirements of this subpart pertaining to dioxin and furan (D/F) emissions and associated operating, monitoring, reporting and recordkeeping requirements apply to the following affected sources, located at a secondary aluminum production facility that is an area source of hazardous air pollutants (HAPs) as defined in § 63.2: . . . (1) Each new and existing thermal chip dryer.

10. "Stationary Source" is defined at 40 C.F.R. §63.2 as any building, structure, facility, or installation which emits or may emit any air pollutant.
11. "Area source" is defined at 40 C.F.R. § 63.2 as "any stationary source of hazardous air pollutants that is not a major source as defined in this part.
12. Pursuant to 40 C.F.R. § 63.1501, the thermal chip dryer installed at M & M Drying is an "affected source".
13. "New source" is defined at 40 C.F.R. § 63.2 as "an affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this part establishing an emission standard applicable to such source."
14. "Affected source" is defined at 40 C.F.R. § 63.2 and says that for the purposes of Part 63, it means "...the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the Act. Each relevant standard will define the "affected source." as defined in this paragraph ..."
15. "Hazardous air pollutant" is defined at 40 C.F.R. § 63.2 as "any air pollutant listed in or pursuant to section 112(b) of the Act.
16. Dibenzofurans, and 2,3,7,8-tetrachlorodibenzo-p-dioxin are listed as hazardous air pollutants in Section 112(b) of the

Act, 42 U.S.C. 7412(b).

17. "Dioxins and furans" is defined at 40 C.F.R. § 63.1503 as "tetra-, penta-, hexa- and octachlorinated dibenzo dioxins and furans."
18. The Administrator first proposed a relevant emission standard for dioxins and furans, pursuant to section 112 of the Act, 40 C.F.R. Part 63, Subpart RRR, for thermal chip dryers, on March 23, 2000. 40 C.F.R. §63.1505.
19. 40 C.F.R. § 63.1503, defines a thermal chip dryer as a device that uses heat to evaporate oil or oil/water mixtures from unpainted/uncoated aluminum chips.
20. 40 C.F.R. § 63.1503 defines chips as small, uniformly-sized, unpainted pieces of aluminum scrap.
21. Pursuant to 40 C.F.R. §1511(a), prior to conducting the initial performance test required by 40 C.F.R. §63.1511(b), the owner or operator must prepare a site-specific test plan which satisfies all of the requirements, and must obtain approval of the plan pursuant to the procedures, set forth in §63.7(c).
22. Pursuant to 40 C.F.R. § 63.1511(b), the owner or operator must demonstrate initial compliance with each applicable emission equipment, equipment, work practice, or operational standard for each affected source and emission unit, and report results in the notification of compliance status report as described in § 63.1515(b).
23. Pursuant to 40 C.F.R. § 63.1501(c) and § 63.1511(b), the owner or operator of any new affected source for which an

initial performance test is required must conduct this initial performance test by March 24, 2003 or within 90 days after this date.

24. Pursuant to 40 C.F.R. § 63.1501(c) and § 63.1515(b), the owner or operator of a new affected source must submit a notification of compliance status report by March 24, 2003 or within 90 days after this date.
25. Pursuant to 40 C.F.R. §1506(f), the owner or operator of a thermal chip dryer with emissions controlled by an afterburner must: (1) maintain the 3-hour block average operating temperature of each after burner at or above the average temperature established during the performance test.
26. The Administrator of the 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 each violation that occurred between January 31, 1997 and March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred on and after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 13, 2004).
27. 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.

28. 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

29. M & M Drying owned and operated a "secondary aluminum production facility" (Canton Facility) at 4125 Mahoning Road NE, Canton, Ohio as that term is defined at 40 C.F.R. §63.1503.
30. The Canton Facility is an aluminum foundry.
31. Respondent owned and operated an 8,000 pounds per hour natural gas fired thermal chip dryer with emissions controlled by an afterburner at the Canton facility
32. The Canton Facility's thermal chip dryer was used as a device that uses heat to evaporate oil or oil/water mixtures from unpainted/uncoated aluminum chips.
33. The thermal chip dryer was installed at the Canton facility, and its operation was started in August 2000.
34. The thermal chip dryer at the Canton facility was purchased by Respondent on September 5, 2001 from Ravenna Aluminum.
35. The thermal chip dryer was owned and operated at the Canton facility by Respondent from September 5, 2001 to June 17, 2004.
36. The thermal chip dryer is subject to the requirements of 40 C.F.R. Part 63, Subpart RRR. 40 C.F.R. §65.1500(c).

37. Respondent's thermal chip dryer is a "stationary source" as that term is defined at 40 C.F.R. § 63.2.
38. Respondent's thermal chip dryer is an "area source" as that term is defined at 40 C.F.R. § 63.2.
39. Respondent's thermal chip dryer is a "new source" as that term is defined at 40 C.F.R. § 63.2.
40. Respondent's thermal chip dryer is an "affected source" as that term is defined at 40 C.F.R. § 63.2.
41. Respondent failed to conduct a performance test on its thermal chip dryer as required by 40 C.F.R. § 63.1511(b).
42. Respondent failed to submit a complete notification of compliance status report required by 40 C.F.R. § 63.1511(b) and § 63.1515(b).

Count I

43. Complainant incorporates paragraphs 1 through 42 of this complaint, as if set forth in this paragraph.
44. Respondent failed to prepare a site-specific test plan for the performance test required by 40 C.F.R. §63.1511 as required by 40 C.F.R. §1511(a).
45. Respondent failed to obtain approval of a site-specific test plan for the performance test pursuant to the procedures, set forth in 40 C.F.R. §63.7(c), as required by 40 C.F.R. §1511(a).

Count II

46. Complainant incorporates paragraphs 1 through 45 of this complaint, as if set forth in this paragraph.
47. Respondent failed to conduct a performance test on its

thermal chip dryer as required by 40 C.F.R. § 63.1511(b).

Count III

48. Complainant incorporates paragraphs 1 through 47 of this Complaint, as if set forth in this paragraph.
49. Respondent failed to submit a notification of compliance status report for its thermal chip dryer as required by C.F.R. § 63.1511(b) and § 63.1515(b).

Count IV

50. Complainant incorporates paragraphs 1 through 49 of this Complaint, as if set forth in this paragraph.
51. Respondent failed to maintain the 3-hour block average operating temperature of each after burner at or above the average temperature established during the performance test as required by 40 C.F.R. §63.1506(f)(1) since Respondent did not conduct a performance test as required by 40 C.F.R. §63.1511(b).

Proposed Civil Penalty

52. 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).
53. 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 \$144,000. 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.

54. 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

55. 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

56. 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

57. 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 Michael Berman to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may

telephone Michael Berman at (312) 886-6837. Michael Berman's address is:

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

Penalty Payment

58. 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 Michael Berman 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

59. 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 60 through 65 below.

Answer

60. 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 56, above, and must serve copies of the written answer on the other parties.
61. 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.
62. 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.
63. Respondent's failure to admit, deny, or explain any material

factual allegation in the complaint constitutes an admission of the allegation.

64. 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 59 above.
65. 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

66. 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 Michael Berman at the address or phone number specified in paragraph 57, above.

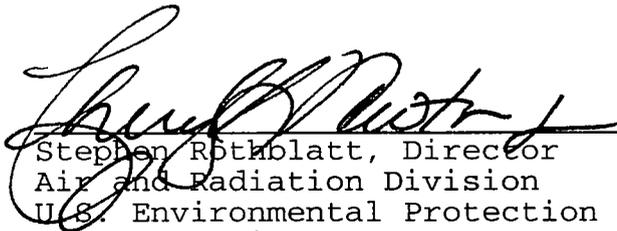
67. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing 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

68. 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.

Date

9/30/04



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

CAA-05- 2004 0055

In the Matter of M & M Drying
Docket No.

~~CAA-05-~~ 2004 0055

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number ~~CAA-05-~~ 2004 0055 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:

Larry Musarra, President
M & M Drying, LTD.
1831 East Highland Road
Twinsburg, Ohio 44087

Thomas Grist
General Counsel
M & M Drying, LTD.
1831 East Highland Road
Twinsburg, Ohio 44087

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REGION V

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CLERK

on the 30th day of September, 2004.


Loretta Shaffer
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0004 1558 5298