



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

SEP 27 2006

REPLY TO THE ATTENTION OF:

(AR-18J)

George Holloway  
Vice President of Engineering  
Scott Brass, Inc.  
31140 Edison Road  
New Carlisle, Indiana 46552

Re: In the Matter of Scott Brass, Inc.  
CAA Docket No. **CAA-05-2006-0033**

Dear Mr. Holloway:

I have enclosed a complaint filed against Scott Brass, Inc., under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The complaint alleges violations of the Indiana State Implementation Plan and the New Source Performance Standards at Subpart M for Secondary Brass and Bronze Production Plants.

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, Jeffery Trevino, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-6729.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Blakley for".

Cheryl L. Newton, Acting Director  
Air and Radiation Division

Enclosures

cc: Laurence A. McHugh  
Barnes & Thornburg  
600 1<sup>st</sup> Source Bank Center  
South Bend, Indiana 46601-1632

David McIver, Chief  
Office of Enforcement Air Section  
Indiana Department of Environmental Management

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: ) Docket No. CAA-05-2006-0033  
)  
Scott Brass, Inc. ) Proceeding to Assess a Civil  
31140 Edison Road ) Penalty under Section 113(d)  
New Carlisle, Indiana, 46552 ) of the Clean Air Act,  
) 42 U.S.C. § 7413(d)  
Respondent. )  
)

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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 Scott Brass, Inc. (Scott Brass), a corporation doing business in Indiana.

Statutory and Regulatory Background

4. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a New Source Performance Standard (NSPS) after the effective date of the applicable NSPS to such source.

5. The NSPS for secondary brass and bronze production plants at 40 C.F.R. Part 60, Subpart M, applies to the following affected facilities, which commenced construction or modification after June 11, 1973, in secondary brass and bronze production plants: electric furnaces with a production capacity of 1,000 kg (2205 lb).

6. 40 C.F.R § 60.2 defines "affected facility" under the NSPS means, with reference to a stationary source, any apparatus to which a standard is applicable.

7. 40 C.F.R. § 60.2 defines "construction," as the fabrication, erection or installation of an affected facility.

8. 40 C.F.R. § 60.7(a)(1) requires that an owner or operator furnish the Administrator with a written notification of the date construction of an affected facility is commenced. This notification shall be postmarked no later than 30 days after such date.

9. 40 C.F.R. § 60.7(a)(3) requires that an owner or operator furnish the Administrator with written notification of the actual date of initial start-up of an affected facility. This notification must be postmarked no later than 15 days after such date.

10. 40 C.F.R. § 60.132(b) prohibits an owner or operator to discharge or cause the discharge into the atmosphere from an electric furnace any gases which exhibit 10 percent opacity or greater.

11. 40 C.F.R. §§ 60.11(e)(1) and 60.133(b)(2) require the owner or operator of an affected facility to conduct an initial Method 9 visible emission test within 60 days after achieving the maximum production rate at which the affected facility will be operated, but no later than 180 days after initial start-up of the facility.

12. 40 C.F.R. § 60.7(a)(6) requires that an owner or operator furnish the Administrator with a written notification of the anticipated date for conducting the opacity observations required by 40 C.F.R. § 60.11(e)(1), postmarked not less than 30 days prior to the anticipated test date.

13. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), states that it shall be unlawful for any person to violate any requirement of a Title V permit or to operate a major source without a Title V permit. Section 502(b) of the Act, 42 U.S.C. § 7661a(b), requires the Administrator of U.S. EPA to promulgate regulations establishing the minimum elements of a Title V permit program.

14. On July 21, 1992, U.S. EPA promulgated regulations required by the Act for Title V state operating permit programs. 57 Fed. Reg. 32295. These regulations are codified at 40 C.F.R. Part 70.

15. 40 C.F.R. § 70.1(b) provides that all sources subject to the regulations at Part 70 shall have a permit to operate that

assures compliance by the source with all applicable requirements.

16. 40 C.F.R. § 70.5(a) provides that each owner or operator shall submit a timely and complete permit application.

17. 40 C.F.R. § 70.5(a)(2) provides, among other things, that information required under 40 C.F.R. § 70.5(c) must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. U.S. EPA promulgated final approval of the Indiana Title V program on November 14, 1995 (60 Fed. Reg. 57188), as codified in 326 Indiana Administrative Code (IAC) 2-7. The program became effective on December 14, 1995. See 40 C.F.R. Part 70, Appendix A.

18. 326 IAC 2-7, Section 2 requires that any source, including an area source, that is subject to a standard, limitation or other requirement under Section 111 of the Clean Air Act, apply for a Part 70 permit.

19. 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 SIP or Title V permit violations that occurred from January 31, 1997 through 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 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 (2004).

20. 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.

21. 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**

11. Scott Brass owns and operates a brass manufacturing facility located at 31140 Edison Road, New Carlisle, Indiana 46552, and the facility was constructed in 1997.

12. Scott Brass manufactures brass and copper alloy strip metal.

13. Scott Brass owns and operates two melting furnaces and two holding furnaces, controlled by two baghouses.

14. On June 3, 2004, Scott Brass submitted an application for a Federally Enforceable State Operating Permit (FESOP).

15. Indiana Department of Environmental Management (IDEM) issued to Scott Brass a FESOP No. 141-19182-00171, which became

effective on November 16, 2005.

16. On July 7, 2005, U.S. EPA and IDEM conducted a Clean Air Act compliance inspection at the New Carlisle, Indiana facility.

21. On August 30, 2005, U.S. EPA issued to Scott Brass a Finding of Violation (FOV) alleging that Scott Brass failed to comply with specific notification and testing requirements for the NSPS, as well as, failed to apply for a Part 70 permit from the IDEM, when the facility commenced construction in 1997.

22. On September 28, 2005, U.S. EPA and Scott Brass held a conference to discuss the August 30, 2005 FOV.

**Count I - NSPS Notification and Testing Violations**

23. Complainant incorporates paragraphs 1 through 22 of this complaint, as if set forth in this paragraph.

24. Respondent's failure to conduct a Method 9 visible emission test within 60 days of achieving a maximum production rate, but not later than 180 days after start-up of its four electric induction furnaces, two electric induction melting furnaces and two electric induction holding furnaces, is a violation 40 C.F.R. §§ 60.11(e)(1) and 60.133(b)(2).

25. Respondent's failure to provide written notice to the U.S. EPA of the initial Method 9 visible emission test, required by 40 C.F.R. §§ 60.11(e)(1) and 60.133(b)(2), no less than 30 days of the anticipated date of this test, is a violation of

40 CFR § 60.7(a)(6).

26. Respondent's failure to provide written notice to the U.S. EPA of the date of the commencement of construction for its four electric induction furnaces no later than 30 days after such date, is a violation of 40 C.F.R. § 60.7(a)(1).

27. Respondent's failure to provide written notice to the U.S. EPA of the actual date of initial start-up within 15 days after such date, is a violation of 40 C.F.R. § 60.7(a)(3).

**Count II - Failure To Apply For Timely Part 70 Permit**

28. Complainant incorporates paragraphs 1 through 22 of this complaint, as if set forth in this paragraph.

29. Respondent's failure to apply for a Part 70 permit before the date of construction is a violation of 326 IAC 2-7.

**Proposed Civil Penalty**

30. 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).

31. 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 \$42,470. 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.

32. 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**

33. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules) at 40 C.F.R. Part 22 (2004) 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**

34. 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 (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

35. 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 Jeffery Trevino to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Jeffery Trevino at (312) 886-6729. Mr. Trevino's address is:

Jeffery Trevino (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

**Penalty Payment**

36. 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 Jeffery Trevino 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 60604-3511

**Opportunity to Request a Hearing**

37. 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 38 through 43 below.

**Answer**

38. 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 34, above, and must serve copies of the written answer on the other parties.

39. 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.

40. 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.

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

42. 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 37 above.

43. 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**

44. 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 Jeffery Trevino at the address or phone number specified in paragraph 35, above.

45. 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**

46. 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.

9-27-06

Date

Pamela Blakley for

Cheryl L. Newton, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

**CAA-05-2006-0033**

In the Matter of Scott Brass

Docket No. **CAA-05-2006-0033**

CERTIFICATE OF SERVICE

I, Betty Williams; certify that I hand delivered the original and one copy of the Administrative Complaint, docket number CAA-05-2006-0033 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 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:

George Holloway, Vice President of Engineering  
Scott Brass, Inc.  
31140 Edison Road  
New Carlisle, Indiana 46552

Laurence A. McHugh  
Barnes & Thornburg  
600 1<sup>st</sup> Source Bank Center  
South Bend, Indiana 46601-1632

on the 28<sup>th</sup> day of September, 2006.

Betty Williams  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 70010320 00061455 0211 - George Holloway  
70010320 00058920 2580 - Laurence A. McHugh

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