



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

REPLY TO THE ATTENTION OF
A-18J

SEP 28 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard L. Keyser, Chief Executive Officer
W.W. Grainger, Inc.,
100 Grainger Parkway
Lake Forest, Illinois 50045

Re: In the Matter of W.W. Grainger, Inc.,
CAA Docket No.

CAA-05-2004 0052

Dear Mr. Keyser:

I have enclosed a complaint filed against W.W. Grainger, under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The complaint alleges violations of Section 610 of the Clean Air Act, 42 U.S.C. § 7671i, and the regulations at 40 C.F.R. Part 82, Subpart C.

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, Mony Chabria, Associate Regional Counsel (C 14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at 312) 386-6842.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Rothblatt".

Stephen Rothblatt, Director
Air and Radiation Division

Enclosures

1. 2. 3. 4. 5.

cc: Julie Armitage
Compliance and Enforcement Section
Illinois Environmental Protection Agency

James A. Vroman
Jenner & Block LLP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

W.W. Grainger, Inc.
Lake Forest, Illinois,

Respondent.

) Docket No. CAA-05- 2004 0052
)
) Proceeding to Assess a
) Civil Penalty under
) Section 113(d) of the
) Clean Air Act,
) 42 U.S.C. § 7413(d)
)

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REGIONAL OFFICE
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U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION V

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 W.W. Grainger, Inc. (Respondent or Grainger), a corporation doing business in Illinois.

Statutory and Regulatory Background

4. Under Sections 608 and 610 of the Clean Air Act, the Administrator of U.S. EPA promulgated the Ban on Nonessential Products Containing Class I Substances and Ban on Nonessential Products Containing or Manufactured with Class II Substances, found at 40 C.F.R. Part 82, Subpart C (Nonessential Product Ban).

5. The Nonessential Product Ban, at 40 C.F.R. § 82.64(d), prohibits W.W. Grainger from selling or distributing, or offering for sale or distribution, in interstate commerce any product identified as being nonessential in 40 C.F.R. § 82.70(a) or 40

C.F.R. § 82.70(c).

6. The Nonessential Product Ban, at 40 C.F.R. § 82.68(d), requires that any person, including W.W. Grainger, who sells or distributes any aerosol or other pressurized dispenser of cleaning fluid for electronic and photographic equipment which contains a class II substance must prominently display a sign where sales of such product occur which states: "It is a violation of federal law to sell, distribute, or offer to sell or distribute, any aerosol hydrochlorofluorocarbon-containing cleaning fluid for electronic and photographic equipment to anyone who is not a commercial user of this product. The penalty for violating this prohibition can be up to \$25,000 per unit sold. Individuals purchasing such products must present proof of their commercial status in accordance with 40 C.F.R. § 82.68(c)."

7. The Nonessential Product Ban, at 40 C.F.R. § 82.64(e), prohibits any person from selling or distributing, or offering for sale or distribution, in interstate commerce any of the products specified in 40 C.F.R. § 82.70(b) to a person who does not provide proof of being a commercial purchaser, as defined under 40 C.F.R. § 82.62.

8. The Nonessential Product Ban, at 40 C.F.R. § 82.68(c), requires that any person who sells or distributes any aerosol or pressurized dispenser of cleaning fluid for electronic and photographic equipment which contains a class II substance must verify that the purchaser is a commercial entity as defined in 40 C.F.R. § 82.62(b). In order to verify that the purchaser is a commercial entity, the person who sells or distributes this

product must request documentation that proves the purchaser's commercial status by containing one or more of the commercial identification numbers specified in 40 C.F.R. § 82.62(b).

9. The Nonessential Product Ban, at 40 C.F.R. § 82.70, identifies certain products, which release a class II substance, as being nonessential, including at subsection (b) any aerosol or pressurized dispenser of cleaning fluid for electronic and photographic equipment which contains a class II substance, except for those sold or distributed to a commercial purchaser, and at subsection (c) any plastic foam product which contains, or is manufactured with a class II substance, except any foam insulation product, as defined in 40 C.F.R. § 82.62.

10. The Nonessential Product Ban, at 40 C.F.R. § 82.62, defines "foam insulation product," when used to describe a product containing or consisting of plastic foam, to mean a product containing or consisting of four types of closed cell rigid foam.

11. The Nonessential Product Ban, at 40 C.F.R. § 82.62, defines "commercial," when used to describe the purchaser of a product, to mean a person that uses the product in the purchaser's business or sells it to another person and has one of the following identification numbers: (1) A federal employer identification number; (2) A state sales tax exemption number; (3) A local business license number; or (4) A government contract number.

12. 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 violations of Section 610 of the Act and rules promulgated under the Act that occurred from January 31, 1997 to 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, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

13. The Administrator may assess a penalty greater than the penalty limitations identified above where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action. 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

14. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than the penalty limitations, is appropriate for an administrative penalty action.

15. 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.

16. 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

17. Grainger owns and operates a facilities maintenance products distribution company, headquartered at 100 Grainger Road, Lake Forest, Illinois. Grainger sells products via catalog, internet, and store.

18. Grainger is a "person" as that term is defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

19. Dichlorofluoroethane, also known as HCFC-141b, is a substance designated as class II in 40 C.F.R. Part 82, Appendix B to Subpart A.

20. Dichlorofluoroethane, is a "Class II substance" as that term is defined at 40 C.F.R. § 82.62.

21. Since June 3, 1996, until the present, Grainger has sold or distributed products SKU#1D260 Contact Cleaner 2000 Spray and SKU#2F017 LPS Electro Contract Cleaner via its internet website, www.grainger.com.

22. Since October 1, 1999, until the present, Grainger has sold or distributed products SKU#5JC05 Electro-wash NX Degreaser and SKU#5JC07 Flux-off No Clean Brush Clean via its internet website, www.grainger.com.

23. Grainger's products identified as SKU#1D260 Contact Cleaner 2000 Spray, SKU#2F017 LPS Electro Contact Cleaner, SKU#5JC05 Electro-wash NX Degreaser, and SKU#5JC07 Flux-off No Clean Brush Clean are aerosol cleaning fluids for electronic and



photographic equipment.

24. Grainger's products identified as SKU#1D260 Contact Cleaner 2000 Spray, SKU#2F017 LPS Electro Contact Cleaner, SKU#5JC05 Electro-wash NX Degreaser, and SKU#5JC07 Flux-off No Clean Brush Clean contain dichlorofluoroethane.

Count I

25. Complainant incorporates paragraphs 1 through 24 of this complaint, as if set forth in this paragraph.

26. From September 30, 1999, until August 5, 2004, Grainger's product SKU#4W941 Wheel Chock, a plastic foam product, contained and/or was manufactured with dichloroethane.

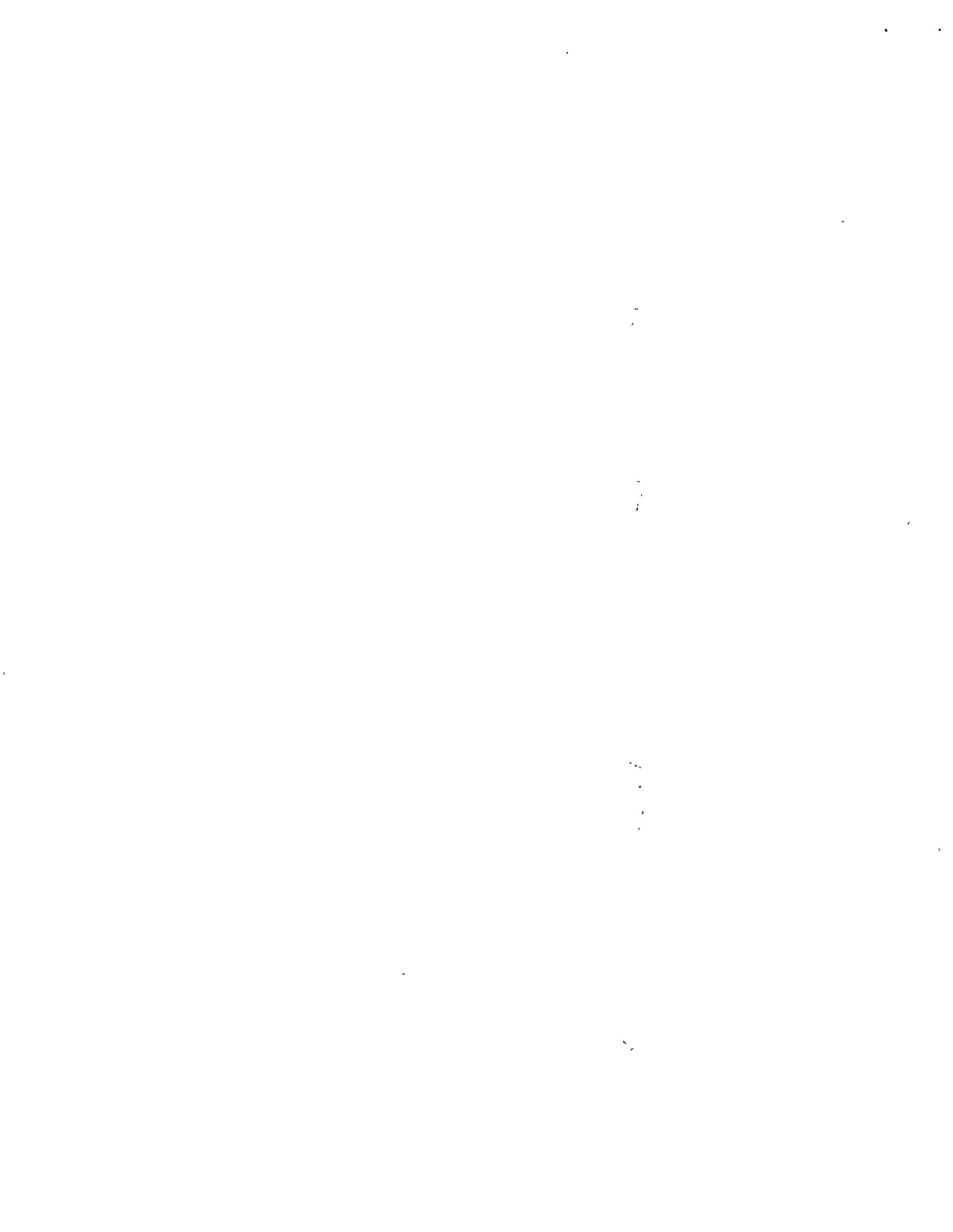
27. From September 30, 1999, until August 5, 2004, Grainger's product SKU#4W941 Wheel Chock was made of an open cell flexible polyurethane foam.

28. From September 30, 1999, until August 5, 2004, Grainger's product SKU#4W941 Wheel Chock was not a "Foam Insulation Product" as defined in 40 C.F.R. § 82.62.

29. From September 30, 1999, until August 5, 2004, Grainger's product SKU#4W941 Wheel Chock was nonessential, as described in 40 C.F.R. § 82.70(c).

30. From September 30, 1999, until August 5, 2004, Grainger sold or distributed, or offered to sell or distribute, in interstate commerce its product SKU#4W941 Wheel Chock.

31. From September 30, 1999, until August 5, 2004, Grainger was in violation of 40 C.F.R. § 82.64(d) and Section 610 of the Act, 42 U.S.C. § 7671i, for selling or distributing a product identified as being nonessential in 40 C.F.R. § 82.70(a) or



§ 82.70(c).

Count II

32. Complainant incorporates paragraphs 1 through 24 of this Complaint, as if set forth in this paragraph.

33. From June 3, 1996, until August 21, 2004, Grainger did not display the following sign on its website where it sold aerosol or other pressurized dispensers of cleaning fluids for electronic or photographic equipment containing class II substances: "It is a violation of federal law to sell, distribute, or offer to sell or distribute, any aerosol hydrochlorofluorocarbon-containing cleaning fluid for electronic and photographic equipment to anyone who is not a commercial user of this product. The penalty for violating this prohibition can be up to \$25,000 per unit sold. Individuals purchasing such products must present proof of their commercial status in accordance with 40 C.F.R. § 82.68(c)."

34. From June 3, 1996, until August 21, 2004, Grainger was in violation of 40 C.F.R. § 82.68(d) and Section 610 of the Act, 42 U.S.C. § 7671i, for failing to display proper notification where aerosol or other pressurized dispenser of cleaning fluids for electronic and photographic equipment repair containing class II substances are sold.

Count III

35. Complainant incorporates paragraphs 1 through 24 of this Complaint, as if set forth in this paragraph.

36. From June 3, 1996, until August 28, 2004, Grainger's internet website contained the following information directed to

consumers: "If you do not qualify as a business, there may be another way for you to purchase our products. 1. If your employer has an account, and is willing to allow you to make personal purchases off the company's account, then you may place an order at your local branch. However, you will be required to pay by cash or credit card. . . ."

37. Grainger's products identified as SKU#1D260 Contact Cleaner 2000 Spray, SKU#2F017 LPS Electro Contact Cleaner, SKU#5JC05 Electro-wash NX Degreaser, and SKU#5JC07 Flux-off No Clean Brush Clean are nonessential products manufactured with a class II substance, when sold or distributed to non-commercial purchasers.

38. An individual, making a personal purchase off his or her employer's account, is not a "commercial" purchaser, as the term is defined at 40 C.F.R. § 82.62.

39. From June 3, 1996, until August 28, 2004, Grainger was in violation of 40 C.F.R. § 82.64(e) and Section 610 of the Act, 42 U.S.C. § 7671i, for selling and distributing non-essential products manufactured with a class II substance to people who do not provide proof of being commercial purchasers.

Count IV

40. Complainant incorporates paragraphs 1 through 24 of this Complaint, as if set forth in this paragraph.

41. From June 3, 1996, until August 28, 2004, Grainger's internet website contained the following information directed to consumers: "If you do not qualify as a business, there may be another way for you to purchase our products. 1. If your

employer has an account, and is willing to allow you to make personal purchases off the company's account, then you may place an order at your local branch. However, you will be required to pay by cash or credit card. . . ."

42. An individual, making a personal purchase off his or her employer's account, is not a "commercial" purchaser, as the term is defined at 40 C.F.R. § 82.62.

43. From June 3, 1996, until August 28, 2004, Grainger was in violation of 40 C.F.R. § 82.68(c) and Section 610 of the Act, 42 U.S.C. § 7671i, for failing to verify that purchasers of aerosol or pressurized dispensers of cleaning fluid for electronic and photographic equipment containing a class II substance are commercial entities.

Proposed Civil Penalty

44. 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).

45. 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 \$368,547. 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.

46. 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

47. 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

48. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to be 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

49. 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 Mony Chabria to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Chabria at (312) 886-6842. Mr. Chabria's address is:

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

Chicago, Illinois 60604-3590

Penalty Payment

50. 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 Mony Chabria and to:

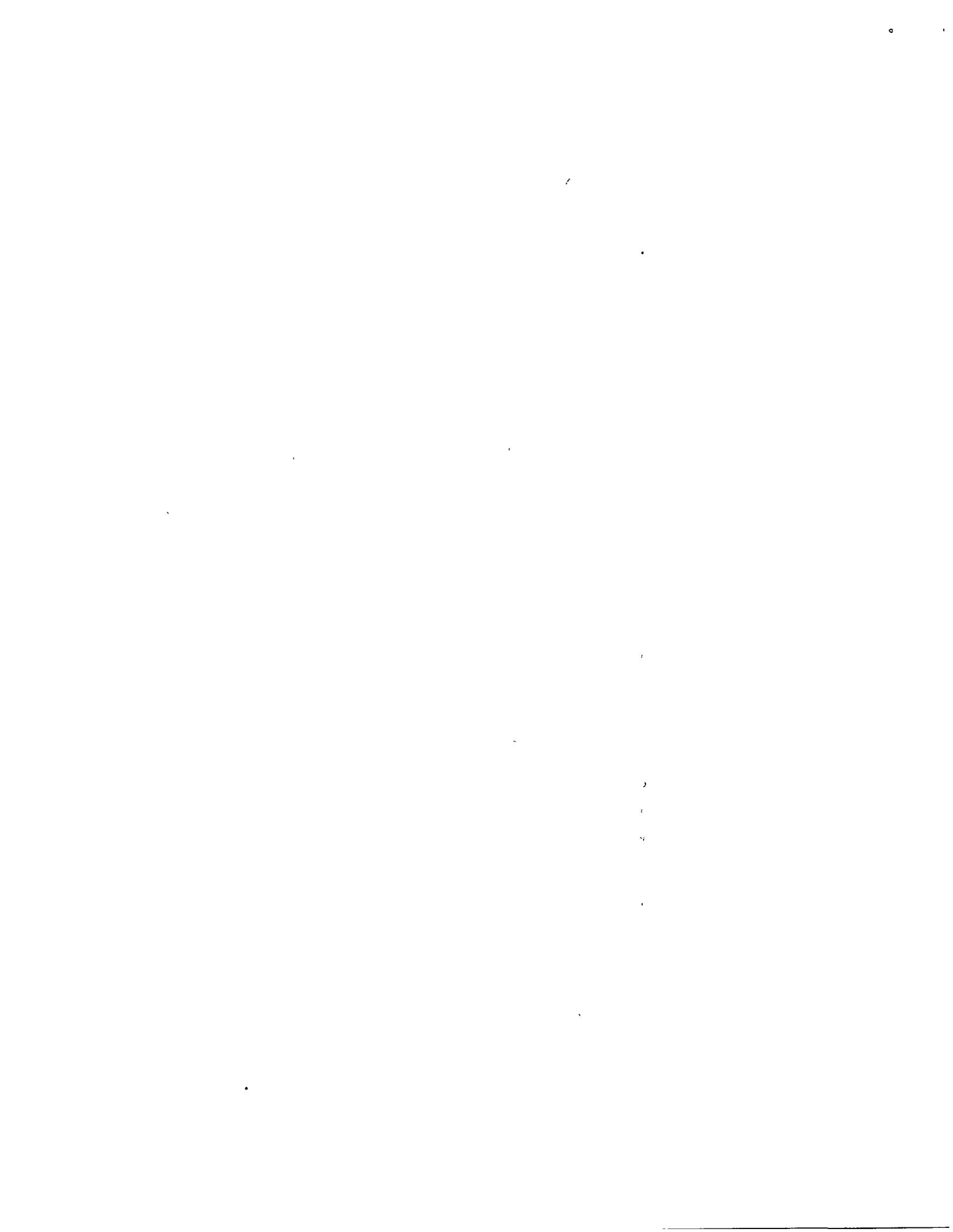
Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

51. 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 52 through 57 below.

Answer

52. 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 48, above, and must serve copies of the written answer on the other parties.

53. 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.

54. 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.

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

56. 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 51 above.

57. 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

58. 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 Mony Chabria at the address or phone number specified in paragraph 49, above.

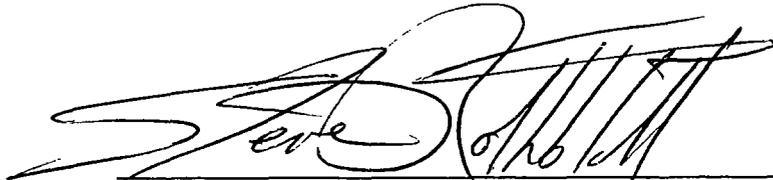
59. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing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

60. 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.

9/28/2004
Date



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 0052

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In the Matter of W.W. Grainger, Inc.
Docket No.

CAA-05- 2004 0052

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number CAA-05- 2004 0052 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:

Richard L. Keyser, Chief Executive Officer
W.W. Grainger, Inc.,
100 Grainger Parkway
Lake Forest, Illinois 60045

James A. Vroman, Partner
Jenner & Block LLP
One IBM Plaza
Chicago, Illinois 60611-7603

on the 28th day of September, 2004.


Shanee Rucker
AECAS MI/WI

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 1558 5342

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REGIONAL HEARING
CLERK
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REGION V

