UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	**Docket No. CAA-5- 2000-0 03**
	)	
Essroc Italcementi Group	)	**Proceeding to Assess a**
Logansport, Indiana,	)	**Civil Penalty under**
	)	**Section 113(d) of the**
Respondent.	)	**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 Essroc Italcementi Group (Essroc), a corporation doing business in Indiana.

Statutory and Regulatory Background

4. On June 17, 1987, under Section 110 of the Act, 42 U.S.C. § 7410, U.S. EPA approved the visible emissions regulation 325 IAC 5-1 as part of the federally enforceable State Implementation Plan (SIP) for Indiana. 52 Fed. Reg. 23032. U.S. EPA approved the recodification of this rule as 326 IAC 5-1 on June 15, 1995. 60 Fed. Reg. 31412. U.S. EPA also approved minor revisions to 326 IAC 5-1 on April 16, 1997. 62 Fed. Reg. 18523.

5. 326 IAC 5-1-2 prohibits the discharge of visible emissions in excess of an average of 40 percent opacity in

24 consecutive readings from any subject source or facility located in an attainment area for particulate matter, as determined by the procedures contained in 326 IAC 5-1.

6. 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 the Act 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

7. Paragraphs 1-6 are incorporated herein by reference.

8. The Respondent in this proceeding is Essroc.

9. Respondent is a Pennsylvania corporation, registered to do business in the State of Indiana, with a place of business located at 3084 West County Road 225 South, Logansport, Indiana.

10. Essroc is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

11. Essroc owns and operates a portland cement plant and a limestone quarry located in Logansport, Indiana.

12. Essroc's limestone quarry contains conveyors and screening equipment.

13. Essroc's conveyors and screening equipment emit particulate matter.

14. Particulate emissions from Essroc's conveyors and screening equipment are subject to the visible emissions provisions of the Indiana SIP at 326 IAC 5-1.

15. On July 14, 1999, U.S. EPA representatives conducted an inspection of Essroc's Logansport facility, and observed visible

emissions from Essroc's Conveyor Belt #1 and Screen Shaker Outlet to Conveyor Belt #3.

16. On September 20, 1999, U.S. EPA issued a Notice of Violation to Essroc based on its observations during the July 14, 1999 inspection.

17. On November 10, 1999, representatives of U.S. EPA and Essroc held a conference to discuss the September 20, 1999 Notice of Violation.

Count I

18. Complainant incorporates paragraphs 1 through 17 of this complaint, as if set forth in this paragraph.

19. During the July 14, 1999 inspection, U.S. EPA conducted observations of the opacity of the emissions from Conveyor Belt #1, in accordance with the procedures specified in 326 IAC 5-1-4.

20. U.S. EPA calculated the opacity readings it collected into the following six-minute averages: 46.3%, 48.5%, 47.9%, 60.8%, and 57.3%.

21. Based on the July 14, 1999 opacity readings, U.S. EPA has determined that Essroc discharged from Conveyor #1 visible emissions into the atmosphere that exhibited greater than 40 percent opacity in 24 consecutive readings.

22. Essroc's discharge from Conveyor #1 of visible emissions into the atmosphere that exhibited greater than 40 percent opacity in 24 consecutive readings constitutes a violation of 326 IAC 5-1 and of the Act.

Count II

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

24. During the July 14, 1999 inspection, U.S. EPA conducted observations of the opacity of the emissions from the Screen Shaker Outlet to Conveyor Belt #3, in accordance with the procedures specified in 326 IAC 5-1-4.

25. U.S. EPA calculated the opacity readings it collected into the following six-minute averages: 20.4%, 42.1%, and 40.6%.

26. Based on the July 14, 1999 opacity readings, U.S. EPA has determined that Essroc discharged from the Screen Shaker Outlet to Conveyor #3 visible emissions into the atmosphere that exhibited greater than 40 percent opacity in 24 consecutive readings.

27. Essroc's discharge from the Screen Shaker Outlet to Conveyor #3 of visible emissions into the atmosphere that exhibited greater than 40 percent opacity in 24 consecutive readings constitutes a violation of 326 IAC 5-1 and of the Act.

Proposed Civil Penalty

28. 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).

29. 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 $27,500. 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), Clarifications to the October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy dated January 17, 1992, and Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty inflation rule (Pursuant to the Debt Collection Improvement Act of 1996) dated May 9, 1997. Enclosed with this complaint is a copy of the penalty policy.

30. 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

31. 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

32. 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

33. 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 Louise C. Gross to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Gross at (312) 886-6844. Ms. Gross' address is:

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

Penalty Payment

34. 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 Ms. Gross 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

35. 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 36 through 41 below.

Answer

36. 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 32, above, and must serve copies of the written answer on the other parties.

37. 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.

38. 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.

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

40. 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 35 above.

41. 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

42. 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 Ms. Gross at the address or phone number specified in paragraph 33, above.

43. 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

44. 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.

2/3/00
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 Essroc Italcementi Group
Docket No. CAA-5- 2000-0 03

CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number CAA-5- 2000-0 03 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:

Brian Graf, Senior Environmental Manager
Essroc Italcementi Group
State Road 25 South
3084 West C.R. 225 South
Logansport, Indiana 46947

Marcie R. Horowitz, Esquire
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204

and, mailed copies of the Clean Air Act Administrative Complaint to:

David McIver, Chief
Air Section
Office of Enforcement
Indiana Department of Environmental Management
100 North Senate Avenue, Room 1001
Indianapolis, Indiana 46206-6015

on the 7th day of February, 2000.

Betty Williams
Betty Williams
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: Z199026383