



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

JUL 30 1999

REPLY TO THE ATTENTION OF
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael Sulzberger
General Manager
Prairie Central Cooperative
Route 1, Box 230
Chenoa, Illinois 61726

Re: In the Matter of Prairie Central Cooperative
Weston, Illinois
CAA Docket No. **CAA-5-99-021**

Dear Mr. Sulzberger:

Enclosed herein is an Administrative Complaint filed against Prairie Central Cooperative pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d) and an executed original of the final Consent Agreement and Consent Order (CACO) resolving the claims cited in the Complaint. U.S. EPA filed the Complaint and the CACO simultaneously.

The CACO requires the payment of a civil penalty of \$69,000. Payment instructions are specified in paragraphs 11 through 14 of the CACO. Your check should display the case document number **CAA-5-99-021** and the billing document number BD # 056099008.

If you require any additional information or clarification of any issue regarding this matter, please contact Karl Karg, Assistant Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, (312) 886-7948, or Linda Hamsing,

Environmental Engineer (AE-17J), 77 West Jackson Boulevard,
Chicago, Illinois 60604-3590, (312) 886-6810.

Sincerely yours,



Margaret M. Guerriero, Acting Director
Air and Radiation Division

Enclosures

cc w/enc:

David Kolaz, Chief
Compliance and Systems Management Section
Illinois Environmental Protection Agency

Richard Jennings, Manager
Region 2
Illinois Environmental Protection Agency

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REG. 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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In the Matter of:)	Docket No. CAA-5-99-021
)	PRO
)	Proceeding to Assess
)	Administrative Penalty
Prairie Central Cooperative)	Under Section 113(d) of the
)	
Respondent.)	Clean Air Act
)	42 U.S.C. § 7413(d)

ADMINISTRATIVE COMPLAINT

This is an action for the assessment of a civil administrative penalty brought, pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" (Consolidated Rules), 40 C.F.R. Part 22, against Respondent Prairie Central Cooperative for violations of the Illinois State Implementation Plan.

PARTIES

1. 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.

2. The Respondent is Prairie Central Cooperative, which owns and operates a grain handling operation located in Weston, Illinois.

STATUTORY AND REGULATORY BACKGROUND

3. On February 21, 1980, U.S. EPA approved Illinois Pollution Control Board (PCB) Rule 203(d)(8) as part of the federally enforceable State Implementation Plan (SIP) for the State of Illinois. 45 Fed. Reg. 11472. Due to recodification of the Illinois PCB Rules, Rule 203(d)(8) is currently set forth at 35 Ill. Admin. Code § 212.461 through § 212.463.

4. Ill. PCB Rule 203(d)(8)(A)(ii)(a) [35 Ill. Admin. Code § 212.461(b)(2)(A)] requires that roof or bin decks and other exposed surfaces at grain elevator operations be kept clean of grain and dust that would tend to rot or become airborne.

5. Ill. PCB Rule 203(d)(8)(A)(v) [35 Ill. Admin. Code § 212.461(b)(5)] requires that the yard and driveway of any grain elevator operation be asphalted, oiled or equivalently treated to control dust.

6. Ill. PCB Rule 203(d)(8)(F) [35 Ill. Admin. Code § 212.462(e)] requires grain handling operations for which construction or modification commenced on or after June 30, 1975, to comply with the control equipment requirements of 35 Ill. Admin. Code § 212.462(b), except for grain handling operations which will handle an annual throughput of less than 300,000 bushels.

7. Ill. PCB Rule 203(d)(8)(B)(ii) [35 Ill. Admin. Code § 212.462(b)] requires, for a major dump pit located outside of a

major population area: that induced draft be applied to the pit and its associated equipment and that the induced draft air stream at the pit be confined and conveyed through air pollution control equipment which has an overall rated and actual particulate collection efficiency of not less than 90 percent by weight; or that an equivalent method, technique, system or combination thereof be used that is adequate to achieve, at a minimum, a particulate matter emission reduction equal to the 90 percent reduction.

8. A major dump pit is defined in 35 Ill. Admin. Code § 211.3570 as: "any dump pit with an annual throughput of more than 300,000 bushels, or which receives more than 40 percent of the annual grain throughput of the grain handling operation." 35 Ill. Admin. Code § 211.3570 was approved as part of the Illinois SIP on September 9, 1994. 59 Fed. Reg. 46567.

9. On May 31, 1972, U.S. EPA approved Illinois PCB Rules 101 and 102, as part of the Illinois SIP. Due to recodification, Illinois PCB Rules 101 and 102 are currently set forth at 35 Ill. Admin. Code §§ 201.102 and 201.141, respectively.

10. Illinois PCB Rule 102 requires that no person cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate air

pollution regulations.

11. Illinois PCB Rule 101 defines air pollution as the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

GENERAL ALLEGATIONS

12. Prairie owns and operates a grain handling operation located in Weston, Illinois, which is outside of a major population area.

13. Prairie's grain handling operation in Weston, Illinois is subject to the Illinois SIP, Ill. PCB Rule 203(d)(8) (35 Ill. Admin. Code §§ 212.461 and 212.462).

14. Prairie's grain handling operation in Weston, Illinois contains a corn dump pit, constructed in 1991 ("new corn dump pit").

15. On October 21, 1996, in response to a citizen's complaint of air pollution, the Illinois Environmental Protection Agency (IEPA) inspected Prairie's grain handling operation in Weston, Illinois.

16. On October 30, 1997, a citizen living near Prairie's grain elevator operation submitted a videotape to U.S. EPA showing apparent corn chaff on complainant's property.

17. On December 11, 1997, U.S. EPA and IEPA conducted an inspection of Prairie's grain handling operation in Weston, Illinois. During the inspection, U.S. EPA obtained, among other things, copies of records of the amount of grain received, dried and shipped.

18. During the December 11, 1997 inspection, Prairie representatives indicated that the amount of corn received into the new corn dump pit constitutes about 50 percent of the total corn received at the plant. During the period beginning January 1997 and ending November 1997, the total corn received at the plant was 1,893,837 bushels.

19. Since the time it was constructed in 1991, until at least February of 1999, the new corn pit was not equipped with induced draft air pollution control equipment to achieve 90 percent control or an equivalent control system.

20. On March 28, 1998, U.S. EPA issued to Prairie a Notice of Violation (NOV) for the violations of the Illinois SIP which are cited in this Complaint.

21. On May 26, 1998, U.S. EPA, at the request of Prairie, held a conference with Prairie, pursuant to Section 113 of the Clean Air Act, to discuss the violations and the means of achieving compliance.

22. On September 28, 1998, U.S. EPA issued an Administrative Consent Order to Prairie requiring the submittal

of a compliance plan and quarterly reports to achieve compliance with the Illinois SIP by September 1, 1999.

23. On January 25, 1999, Prairie submitted its first quarterly report required by the Administrative Order. This report stated that Prairie has applied for and received a construction permit to install a "Dustmaster" choke loading system. According to information submitted by Prairie, this choke loading system, when operated properly, has been deemed by IEPA as equivalent to an induced draft system for control under 35 IAC § 212.462(b).

24. The Attorney General of the United States has concurred with the determination of the Administrator of U.S. EPA, each through their respective delegates, that an administrative assessment of civil penalties is appropriate for the period of violations alleged in this Complaint.

Count I

25. Paragraphs 1 through 24 of this Complaint are realleged as if fully set forth herein.

26. During the October 21, 1996, inspection, the IEPA inspector observed particulate matter on the top of bins, in violation of Illinois PCB Rule 203(d)(8)(A)(ii)(a) [35 Ill. Admin. Code § 212.461(b)(2)(A)] and Section 113 of the Act.

Count II

27. Paragraphs 1 through 26 of this Complaint are realleged

as if fully set forth herein.

28. During the October 21, 1996 inspection, the IEPA inspector observed that the northeast driveway was not asphalted, oiled or equivalently treated to control dust, in violation of Illinois PCB Rule 203(d)(8)(A)(v) [35 Ill. Admin. Code § 212.461(b)(5)].

Count III

29. Paragraphs 1 through 28 of this Complaint are realleged as if fully set forth herein.

30. The violations alleged in Counts I and II, above, and the corn chaff on complainant's property, indicate that Prairie caused or tended to cause air pollution. Specifically, air contaminants emitted by Prairie unreasonably interfered with the enjoyment of life or property within the meaning of Illinois PCB Rule 102.

Count IV

31. Paragraphs 1 through 30 of this Complaint are realleged as if fully set forth herein.

32. Prairie's new corn dump pit handles a grain throughput of 300,000 bushels of grain per year or greater and must comply with Ill. PCB Rule 203(d)(8)(F) and (d)(8)(B)(ii) [35 Ill. Admin. Code §§ 212.462(e) and 212.462(b)].

33. Since the time it was constructed in 1991, until at least February of 1999, the new corn pit was not equipped with

induced draft air pollution control equipment to achieve 90 percent control or an equivalent control system, in violation of Ill. PCB Rule 203(d)(8)(B)(ii) [35 Ill. Admin. Code § 212.462(b)]. The Federal Statute of Limitations limits the length of period for which penalties may be sought for these violations to 5 years, or those violations beginning in July 1994 through the present.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

34. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, the Administrator of U.S. EPA may assess a civil penalty not to exceed \$25,000 per day up to a total of \$200,000 for each violation of the Illinois SIP occurring prior to January 31, 1997, and not to exceed \$27,500 per day up to a total of \$220,000 for each violation occurring on or after January 31, 1997.

35. Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires the Administrator to take the following factors into consideration when determining the amount of any penalty to be assessed under Section 113: the size of Respondent's business; the economic impact of the proposed penalty on Respondent's business; Respondent's full compliance history and good faith efforts to comply; the duration of the violations alleged in the Complaint as established by any credible evidence; payment by Respondent of penalties previously actions; and such other

factors as justice may require.

36. Based upon the facts alleged in this Complaint and after consideration of the factors discussed above as they relate to Respondent and to the facts and circumstances of Respondent's violations, U.S. EPA hereby proposes to issue to Respondent a Final Order Assessing Administrative Civil Penalties in the amount of \$ 69,547. U.S. EPA calculated the proposed penalty in accordance with Section 113(e)(1) of the CAA. In developing the penalty proposed in this Complaint, Complainant considered the particular facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy ("Penalty Policy"), a copy of which is enclosed with this Complaint.

37. The CAA requires that, when determining an appropriate penalty, U.S. EPA must consider the economic benefit a violator derives from the alleged violations. The penalty must be sufficient to preclude the violator from deriving monetary benefit due to its having avoided or delayed expenditures that would have insured compliance with the CAA, both for deterrence purposes and because other regulated entities have incurred similar expenses in maintaining compliance with the CAA. In this case, U.S. EPA calculated the economic benefit resulting from Respondent's delay in installing the Dustmaster control system. According to Respondent, the cost of this system was \$ 22,667

with \$300 in annual operating costs, the delayed expenditure of which resulted in an economic benefit to Respondent of \$ 12,547.

38. In accordance with the CAA, U.S. EPA considered the seriousness of Respondent's violations. One factor reflecting the seriousness of the violations is the amount of the pollutant emitted as a result of the violation. Thus, the emissions without the control system have been compared with the regulatory standard requiring 90 percent control. Accordingly, the proposed penalty includes a component corresponding to the actual or potential environmental harm from the violations.

39. In considering the seriousness of the violation, U.S. EPA also considered the air quality status of the area in which the Respondent's facility is located. Respondent's facility is located in an attainment area for particulate matter. 40 C.F.R. § 81.314. Accordingly, the proposed penalty includes a component corresponding to the actual or potential harm from a violation in an attainment area for particulate matter.

40. In accordance with the CAA, U.S. EPA considered the duration of the violations in assessing the actual or possible harm resulting from such violations. The violation for failure to control the corn pit emissions by 90 percent commenced in 1991 and continued through at least February of 1999. However, due to the Federal Statute of Limitations, U.S. EPA will only cite this violation beginning five years prior to the date of filing of

this Complaint, or, July 1994. The violations for failing to keep the roof decks free from dust and to treat the driveway to control dust each lasted less than one month. Thus, the penalty has been based on a 58-month duration of violation for the failure to install the control system, a 1-month duration for failure to keep the roof decks free from dust, and a 1-month duration for failure to treat the driveway to control dust.

41. In accordance with the CAA, U.S. EPA has considered the size of Respondent's business in determining the appropriate penalty. Respondent's net worth, as determined from a report prepared by the Dun & Bradstreet financial information service on June 30, 1997, is approximately \$ 11,490,018. Accordingly, the proposed penalty includes a component which is based on the size of Respondent's business.

42. In determining an appropriate civil penalty in accordance with the CAA, U.S. EPA considered Respondent's compliance history and its good faith efforts to comply. Because U.S. EPA is aware of no prior citations for violations of environmental statutes by Respondent, the proposed penalty has not been increased based on this factor.

43. In accordance with the CAA, U.S. EPA considered the economic impact of the penalty on Respondent's business. Based on information currently available, the proposed penalty of \$69,829 reflects a current presumption of Respondent's ability to

pay the penalty and to continue in business.

44. The penalty proposed in this Complaint has been developed based on the best information available to U.S. EPA at this time, and may be adjusted if the Respondent establishes bonafide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.

45. Respondent shall pay the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and shall deliver it, with a transmittal letter identifying the name of the case and docket number of this Complaint to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent shall also include on the check the name of the case and the docket number. Respondent simultaneously shall send copies of the check and transmittal letter to:

Linda L. Hamsing (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

and

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

OPPORTUNITY TO REQUEST A HEARING

46. Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2), requires the Administrator of U.S. EPA to provide to any person against whom the Administrator proposes to assess a penalty an opportunity to request a hearing on the proposed penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint or to contest the appropriateness of the amount of the proposed penalty. In order to request a hearing, you must specifically make such request in your Answer, as discussed in Paragraphs 47 through 51, below. Any hearing which you request regarding the Complaint will be held and conducted in accordance with the provisions of the Consolidated Rules.

ANSWER

47. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within thirty (30) calendar days of your receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays and Federal holidays shall be included, except when a time period expires on such, in which case the deadline shall be extended to the next business day.

48. Your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge regarding a particular factual allegation which you cannot admit, deny or explain, in which case the allegation will be deemed denied.

Your Answer shall also state with specificity:

- a. The circumstances or arguments which you allege constitute grounds for defense;
- b. The facts that you intend to place at issue; and
- c. Whether you request a hearing as discussed in paragraph 46, above.

49. Failure to respond to any factual allegation in this Complaint shall constitute admission of the alleged fact.

50. You must send a copy of your Answer and of any documents subsequently filed in this action to Karl Karg, Assistant Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Mr. Karg at (312) 886-7948.

51. If you fail to file a written Answer within thirty (30) calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order pursuant to 40 C.F.R. § 22.17(a). Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing. The civil

penalty proposed herein shall become due and payable without further proceedings sixty (60) days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. § 22.27 or § 22.31.

SETTLEMENT CONFERENCE

52. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Linda L. Hamsing, Air Enforcement and Compliance Assurance Branch (E-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Ms. Hamsing at (312) 886-6810.

53. Your request for an informal settlement conference does not extend the thirty calendar day period during which you must submit a written Answer to this Complaint. You may simultaneously pursue the informal settlement conference and adjudicatory hearing processes. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such a conference shall be embodied in a Consent Order. Your agreement to a Consent Order issued pursuant to 40 C.F.R. § 22.27 shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

CONTINUING OBLIGATION TO COMPLY

54. Neither assessment nor payment of an administrative civil penalty shall affect your continuing obligation to comply with the CAA or any other Federal, State or local law or regulation.

7/30/99
Date



Margaret M. Guerriero, Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency,
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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REGISTRATION

CERTIFICATE OF SERVICE

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I, Betty Williams, do hereby certify that the original of the foregoing Administrative Complaint and a original of the foregoing Consent Agreement and Consent Order (CACO), was hand delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that correct copies, along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, and a copy of the Penalty Policy (described in the Compliant) was mailed first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Michael Sulzberger, General Manager
Prairie Central Cooperative
Route 1, Box 230
Chenoa, Illinois 61726

Rick Saines
Gardner Carton & Douglas
321 N. Clark
Chicago, Illinois 60610

CAA-5-99-021

David Kolaz, Manager
Compliance and Systems Management Section
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

Richard Jennings, Regional Manager
Region II
Illinois Environmental Protection Agency
5415 North University Avenue
Peoria, Illinois 61614

on the 3rd day of August, 1999.



Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: P140779156