

- 40 C.F.R. § 51.166 setting forth SIP approval requirements for the prevention of significant deterioration (PSD) of air quality.
6. Section 161 of the Act, 42 U.S.C. § 7471, and 40 C.F.R. § 51.166(a)(1) requires the States to submit SIPs containing emission limitations and other measures necessary to prevent the significant deterioration of air quality. Pursuant to Section 110(a) of the Act, 42 U.S.C. § 7410(a), the Administrator determined that the Ohio SIP did not satisfy the requirements to ensure the prevention of significant deterioration of air quality. As a result, the Administrator disapproved the PSD portion of the Ohio SIP, 40 C.F.R. § 52.1884(a).
 7. In accordance with Section 110(c) of the Act, 42 U.S.C. § 7410(c) and 40 C.F.R. § 52.21(a), the Administrator incorporated the provisions of 40 C.F.R. § 52.21(b) through (w) [PSD Regulations] as part of the Ohio SIP, 40 C.F.R. § 52.1884(b).
 8. "Major stationary source" is defined at 40 C.F.R. § 52.21(b)(1)(i)(b) as any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Act.
 9. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act."
 10. "Construction" is defined at 40 C.F.R. § 52.21(b)(8) as "any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions."

11. "Begin actual construction" is defined at 40 C.F.R. § 52.21(b)(11) as "initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those onsite activities other than preparatory activities which mark the initiation of the change."
12. "Significant" is defined at 40 C.F.R. § 52.21(b)(23)(i) as "net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates" including but not limited to: "100 tons per year (TPY) CO, 40 TPY of NO_x, 40 TPY of SO₂, 25 TPY of Particulate Matter and 40 TPY of volatile organic compounds for Ozone."
13. 40 C.F.R. § 52.21(i) states "no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements."
14. Section 165(a) of the Act states, *inter alia*, that no major emitting facility may be constructed or modified unless a permit has been issued in accordance with requirements of Part C of the Act.
15. The issuance and effective dates for a PSD permit are regulated under 40 C.F.R. § 124.15.
16. 40 C.F.R. § 124.15(a) states, "After the close of the public comment period under § 124.10 on a draft permit, the Regional Administrator shall issue a final permit decision..." Pursuant to this requirement,

the Ohio Environmental Protection Agency ("Ohio EPA") issued a Permit to Install to Chrysler Corporation on June 26, 1998.

17. 40 C.F.R. § 124.15(b)(1) states, "A final permit decision... shall become effective thirty (30) days after the service of notice of the decision unless... a later effective date is specified in the decision..."
18. 40 C.F.R. § 124.20(d) states, "Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time."
19. The Permit to Install issued to Chrysler Corporation by Ohio EPA on June 26, 1998 states under the PSD requirements section, "In accordance with 40 C.F.R. 124.15, 124.19, and 124.20, the following shall apply: (1) the effective date of this permit shall be 30 days after the service of notice to any public commentors of the final decision to issue, modify, or revoke and re-issue the permit, unless the service of notice is by mail, in which case the effective date of the permit shall be 33 days after the service of notice..."
20. 40 C.F.R. § 52.21(r) provides, *inter alia*, that any owner or operator of a source subject to the PSD regulations who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

21. 40 C.F.R. § 52.23 provides, *inter alia*, that failure to comply with any provisions of 40 C.F.R. Part 52, or with any approved regulatory provision of a SIP or with any permit condition, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the SIP, subjects the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Act.
22. 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 air violations 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.
23. 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.
24. 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

25. DaimlerChrysler Corporation is located at 1000 Jeep Parkway, Toledo, Ohio in Lucas County.
26. DaimlerChrysler Corporation operates a motor vehicle assembly plant.

27. Lucas County is an area presently classified as attainment or unclassifiable for all criteria pollutants, with the exception of SO₂. 40 C.F.R. Subpart B, § 81.336.
28. On June 26, 1998, Ohio EPA issued a PSD permit to Chrysler Corporation for the construction of the New Toledo Assembly Plant. Ohio EPA issued a Citizen Advisory noticing issuance of the PSD permit by mail on June 30, 1998. Therefore, pursuant to the regulations and the terms of the PSD permit, the PSD permit was not effective until August 3, 1998, 33 days after Ohio EPA mailed the Citizen Advisory to commentors.
29. On August 26, 1999, Margaret M. Guerriero, Acting Director, Air and Radiation Division, Region 5, issued a Notice of Violation, pursuant to Section 113 of the Act, 42 U.S.C. § 7413, to DaimlerChrysler Corporation, alleging violations of Section 165 of the Clean Air Act and 40 C.F.R. § 52.21.

COUNT I

30. Paragraphs 1 through 29 of this Complaint are incorporated by reference as if fully set forth in this paragraph.
31. 40 C.F.R. § 52.21(i) states "no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements."
32. Section 165(a) of the Act states, *inter alia*, that no major emitting facility may be constructed or modified unless a permit has been issued in accordance with requirements of Part C of the Act.
33. On June 16, 1998, Chrysler Corporation initiated construction of storm water sewers at the New Toledo Assembly Plant site.

34. Chrysler Corporation's commencement of actual construction of the storm water sewers before obtaining an effective PSD permit is a violation of Section 165(a)(1) of the Act and 40 C.F.R. § 52.21(i).

COUNT II

35. Paragraphs 1 through 29 of this Complaint are incorporated by reference as if fully set forth in this paragraph.
36. 40 C.F.R. § 52.21(i) states "no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements."
37. Section 165(a) of the Act states, *inter alia*, that no major emitting facility may be constructed or modified unless a permit has been issued in accordance with requirements of Part C of the Act.
38. On July 27, 1998, Chrysler Corporation initiated construction of sanitary sewers at the New Toledo Assembly Plant site.
39. Chrysler Corporation's commencement of actual construction on the sanitary sewers before obtaining an effective PSD permit is a violation of Section 165(a)(1) of the Act and 40 C.F.R. § 52.21(i).

PROPOSED CIVIL PENALTY

40. 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).
41. 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 **\$87,000.00**. 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.

42. 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

43. 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

44. 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

45. 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 Reginald Pallesen to receive any answer and subsequent legal documents that Respondent serves in this proceeding.

You may telephone Mr. Pallesen at (312) 886-0555. (Mr. Pallesen's address is:

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

PENALTY PAYMENT

46. 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:

Margaret Sieffert (AE-17J)
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and,

Reginald Pallesen (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

47. 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 48 through 53 below.

ANSWER

48. 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 44, above, and must serve copies of the written answer on the other parties.
49. 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.
50. 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.
51. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.
52. Respondent's answer must also state:
 - a. The circumstances or arguments which Respondent alleges constitute grounds for a defense;
 - b. The facts that Respondent disputes;

- c. The basis for opposing the proposed penalty; and
 - d. Whether Respondent requests a hearing discussed in Paragraph 47 above.
53. 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.

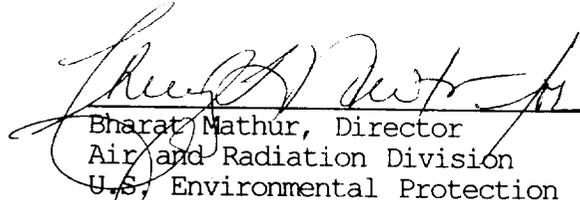
SETTLEMENT CONFERENCE

54. 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 Reginald Pallesen at the address or phone number specified in paragraph 45, above.
55. 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

56. 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.

5/11/00
Date


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

CAA-5- 2000-0 09

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number ~~CMA 5-2000-009~~ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, hand delivered the original of the foregoing Consent Agreement and Final Order 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 certified mail, return receipt requested to:

Mr. Roy Attard, Supervisor,
Advance Facilities Building Construction,
Assembly Manufacturing Engineering
DaimlerChrysler Corporation
1000 Jeep Parkway
Toledo, Ohio 43657

I also certify that a copy of the Order was sent by first class mail to:

Patrick M. Rahe, Partner
Hogan & Hartson, L.L.P.
Columbia Square
555 Thirteenth Street, NW
Washington D.C. 20004-1109

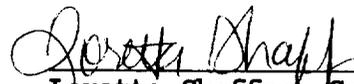
Karen Granata, Administrator
City of Toledo
Division of Environmental Services
348 South Erie
Toledo, Ohio 43602

and

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

on the 16th Day of MAY, 2000

2 199 026 582
Certified Mail Number


Loretta Shaffer, Secretary
ARD/AECAB/AECAS (MN/OH)