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REGION 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No.)
Countrymark Cooperative, Inc.) ; CAA-5- '99 - 048)
Mount Vernon, Indiana,) Proceeding to Assess an)
Respondent.) Administrative Penalty)
) under Section 113(d) of the)
) Clean Air Act,)
) 42 U.S.C. § 7413(d))
)

Administrative Complaint

1. This is an administrative action for the assessment of a civil penalty brought pursuant to 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 Countrymark Cooperative, Inc. (Countrymark), a corporation doing business in the State of Indiana.

Statutory and Regulatory Background

4. Subpart GGG of the New Source Performance Standards (NSPS), 40 C.F.R. Part 60, applies to any affected facility within a petroleum refinery that was constructed after January 4, 1983. 40 C.F.R. § 60.590(a)(1). The group of all equipment within a process unit is an "affected facility". 40 C.F.R. § 60.590(a)(3).

5. Section 60.591 of Subpart GGG, 40 C.F.R. § 60.591, defines "equipment" as each valve, pump, pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service.
6. Section 60.592(a) of Subpart GGG, 40 C.F.R. § 60.592(a), requires owners or operators subject to Subpart GGG to comply with the specific standards for each type of equipment set forth at 40 C.F.R. §60.482-1 through § 60.482-10. In addition, 40 C.F.R. § 60.592(d) requires owners or operators subject to NSPS Subpart GGG to comply with the test methods and procedures set forth at 40 C.F.R. § 60.485, except as provided in 40 C.F.R. § 60.593. No exception set forth at 40 C.F.R. § 60.593 applies to Countrymark.
7. The regulations at 40 C.F.R. § 60.482-7 set forth standards for valves in gas/vapor service and in light liquid service. Specifically, 40 C.F.R. § 60.482-7(a) requires that each valve be monitored monthly to detect leaks by the methods specified in 40 C.F.R. § 60.485(b). According to 40 C.F.R. § 60.482-7(c), any valve for which a leak is not detected for two successive months may be monitored the first month of every quarter, beginning with the next quarter, until a leak is detected.
8. 40 C.F.R. § 60.485(b)(1) requires that Method 21 be used to determine the presence of leaking sources.

9. Method 21, "Determination of Volatile Organic Compound Leaks", found at 40 C.F.R. Part 60, Appendix A, requires that a probe be moved along the periphery of all surfaces where leaks can occur. If any increased meter reading occurs, the probe must remain at the maximum reading location for two times the response time of the sampling equipment. Method 21 requires that valves be monitored by placing the probe at the point where the valve stem exits the packing and sampling the stem circumference. Method 21 also requires sampling of the periphery of the packing gland take-up flange seat and all other points where a leak can occur.
10. Section 60.592(e) of Subpart GGG, 40 C.F.R. § 60.592(e), requires owners and operators to comply with the recordkeeping provisions set forth at 40 C.F.R. § 60.486.
11. 40 C.F.R. § 60.486(e) requires each owner or operator to keep in a readily accessible location a log that lists the identification number of each valve subject to Subpart GGG.
12. Section 60.11(d) of the NSPS General Provisions, 40 C.F.R. §60.11(d), requires the owner or operator of an affected facility, to the extent practicable, to maintain and operate that facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions, at all times,

including periods of startup, shutdown, and malfunction.

13. Pursuant to Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), whenever the Administrator finds that any person has violated NSPS, the Administrator may issue an administrative penalty order.
14. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), authorizes the Administrator to assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for Clean Air Act violations that occurred prior to January 31, 1997. The Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred on or after January 31, 1997.
15. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to bring an administrative action to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the 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 Attorney General of the United States and the Administrator, each through their respective delegates, have

determined that an administrative assessment of civil penalties is appropriate for the period of violations alleged in this Complaint.

General Allegations

17. Countrymark owns and operates a petroleum refinery located at 1200 Refinery Road, Mount Vernon, Indiana (Countrymark refinery).

Count I

18. Paragraphs 1 through 17 of this Complaint are incorporated by reference as if set forth in this paragraph.
19. Countrymark's refinery contains valves which are in VOC service.
20. Prior to June 25, 1998, Countrymark did not keep in a readily accessible location a log listing the identification number of each valve subject to Subpart GGG.
21. Countrymark's failure to keep in a readily accessible location a log listing the identification number of each valve subject to Subpart GGG was a violation of 40 C.F.R. §60.486(e).

Count II

22. Paragraphs 1 through 21 of this Complaint are incorporated by reference as if set forth in this paragraph.
23. 40 C.F.R. § 60.11(d) requires Countrymark to conduct its quarterly leak detection and repair (LDAR) inspections in a

manner consistent with good air pollution control practice for minimizing emissions.

24. Countrymark's refinery contains at least 968 valves which are in VOC service.
25. Between June of 1996 and June 25, 1998, Countrymark's valves in VOC service were not individually tagged.
26. Valves at Countrymark's refinery which are in VOC service are located in the CCR Platformer process unit and in the PENEX process unit.
27. Valves in VOC service at Countrymark's refinery are located in 25 bays.
28. Prior to June 25, 1998, Countrymark performed its own LDAR inspections of valves in VOC service.
29. Prior to June 25, 1998, Countrymark's LDAR inspections were usually performed by three third shift employees who worked into the morning shift to complete the inspections.
30. Prior to June 25, 1998, the Countrymark employees who performed the LDAR inspections usually completed them in approximately six hours.
31. Prior to June 25, 1998, Countrymark did not provide its employees with any formal training regarding the performance of LDAR inspections.
32. Prior to June 25, 1998, training received by Countrymark employees who performed the LDAR inspections was limited to

training received while in the process of performing the inspections.

33. Prior to June 25, 1998, a different group of Countrymark employees performed the LDAR inspections each quarter.
34. Between June 1996 and June 1998, Countrymark's failure to keep in a readily accessible location a log listing the identification number of each valve subject to Subpart GGG, together with its manner of conducting its LDAR inspections as described above in paragraphs 22 through 33, was not consistent with good air pollution control practices for minimizing emissions in violation of 40 C.F.R. § 60.11(d).

Proposed Civil Penalty

35. Section 113(e) of the Act, 42 U.S.C. § 7413(e), requires the Administrator to consider the following factors when assessing an administrative penalty under Section 113(d):
 - a. the size of Respondent's business;
 - b. the economic impact of the proposed penalty on Respondent's business;
 - c. Respondent's full compliance history and good faith efforts to comply;
 - d. the duration of the violations alleged in the complaint as established by any credible evidence;
 - e. Respondent's payment of penalties previously assessed for the same violations;
 - f. the economic benefit of noncompliance;
 - g. the seriousness of the violations; and

h. such other factors as justice may require.

36. Based upon an evaluation of the facts alleged in this Complaint and the factors set forth in Section 113(e)(1) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$73,500. In developing the proposed penalty, 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), a copy of which is enclosed with this Complaint.
37. Complainant has not determined an economic benefit to Respondent resulting from its noncompliance. Therefore the proposed penalty does not contain a component for economic benefit.
38. In evaluating the seriousness of the violations, Complainant considered the importance of the LDAR work practice standards to achieving the goals of the Act and its implementing regulations. Accordingly, the proposed penalty includes a component corresponding to the importance of these regulations to the regulatory scheme.
39. Complainant considered the duration of the violations in assessing the actual or possible harm resulting from the violations. Countrymark was in violation of the LDAR requirements from June 1996 through June 1998. Complainant

- based the penalty on the duration of these violations.
40. In calculating the proposed penalty, Complainant considered the size of Respondent's business. Accordingly, the proposed penalty includes a component which is based on Respondent's net worth.
 41. In calculating the proposed penalty, Complainant considered Respondent's compliance history. Because Complainant does not know of any prior citations against Respondent for violating environmental laws, Complainant has not increased the proposed penalty based on this factor.
 42. Complainant considered the economic impact of the proposed penalty on Respondent's business. Based on the best information available to Complainant at this time, including the December 10, 1998 Dun & Bradstreet report, the proposed penalty reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.
 43. 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 bonafide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Penalty Payment

44. Respondent may pay the proposed penalty by sending a certified or cashier's check payable to "Treasurer, the

United States of America", 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:

Attn: Sarah Graham (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

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

Rules Governing This Proceeding

45. 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.

Opportunity to Request a Hearing

46. The Administrator must provide 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), with an opportunity for a hearing. Respondent has the right to a hearing to contest any material fact alleged in the Complaint and to contest the appropriateness of the proposed penalty. To request a hearing, Respondent must specifically make the request in its Answer, as discussed in paragraphs 47 through 53 below. If Respondent requests a hearing, U.S. EPA will hold the hearing and conduct it according to the Consolidated Rules.

Answer

47. Respondent must file a written answer to this complaint if Respondent contests any material fact alleged in 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 following address:

Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

48. 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.

49. Respondent's 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.
50. Respondent's failure to admit, deny or explain any material factual allegation in the complaint constitutes an admission of the allegation.
51. Respondent's answer must also state:
 - a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
 - b. the facts that Respondent disputes;
 3. the basis for opposing any proposed relief; and
 - d. whether Respondent requests a hearing.
52. Respondent must send a copy of the answer and any documents subsequently filed in this action to Janice S. Loughlin, Associate Regional Counsel (C-14A), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may

telephone Ms. Loughlin at (312) 886-7158.

53. If Respondent does not file a written answer within 30 calendar days after receiving this complaint, the Administrator may issue a default order, after motion, under Section 22.17(a) of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations made in the complaint and a waiver of Respondent's right to contest such factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the default order becomes final under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

54. Whether or not Respondent requests a hearing, Respondent 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 Sarah Graham, Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Ms. Graham at (312) 886-6797.
55. Respondent's request for a settlement conference does not extend the 30 calendar day period to file a written Answer to this Complaint. Respondent may pursue simultaneously the

settlement conference and adjudicatory hearing process. 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 the parties hold a 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.

9/30/99
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

CAA-5-99-048

REC

In the Matter of Countrymark Cooperative, Inc.

Docket No.

CAA-5- '99 - 048

'99 SEP 30 10:33

CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original of the Administrative Complaint, docket number ~~CAA-5- '99 - 048~~ 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 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:

John T. Deaton, Vice President
Countrymark Cooperative, Inc.
1200 Refinery Road
Mount Vernon, IN 47620-9225

I also certify that copies of the Administrative Complaint were sent First Class Mail to:

Felicia George, Assistant Commissioner
Office of Enforcement
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

Phil Perry, Acting Chief
Compliance Branch
Office of Air Management
Indiana Department of Environmental Management
100 North Senate, Room 1001
Indianapolis, Indiana 46206

on the 30th day of September, 1999.

Betty Williams
Betty Williams
AECAS (IL/IN)

CAA-5 • 99 - 010

CERTIFIED MAIL RECEIPT NUMBER: P 140895450