

V. OPPORTUNITY TO REQUEST A HEARING

87. Sections 113(d) (2) of the CAA, 42 U.S.C. § 7413(d) (2), and 311(b) (6) (B) (ii) of the CWA, 33 U.S.C. § 1321(b) (6) (B) (ii), 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, to contest the appropriateness of the amount of the proposed penalty, or to request a judgment in your favor as a matter of law. To request a hearing, you must specifically make such request in your Answer, as discussed below.

88. The hearing you request regarding this Complaint will be held and conducted in accordance with the provisions of the Consolidated Rules, a copy of which accompanies this Complaint.

89. If you request a hearing on the proposed penalty for Count III, members of the public who have exercised their right to comment, and to whom U.S. EPA is obligated to give notice of the proposed proceeding, will have a right under Section 311(b) (6) (C) (ii) of the CWA, 33 U.S.C. § 1321(b) (6) (C) (ii), to present evidence for Count III. Under Section 311(b) (6) (C) of the CWA, and in accordance with Section 22.45 of the Consolidated Rules, U.S. EPA is providing public notice of and reasonable opportunity to comment on the proposed assessment of an administrative penalty against Respondent for violations alleged in Count III. If a hearing is held in this proceeding for Count III, members of the public who submitted timely

comments on this proposed penalty shall have the right to be heard and present evidence at the hearing.

VI. ANSWER & FILING OF DOCUMENTS

90. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk (E-19J) within 30 calendar days of your receipt of this Complaint. Her address is:

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

In computing any period of time allowed under this Complaint, the day of the event from which the designated period runs shall not be included. Saturdays, Sundays, and Federal holidays shall be included, except when a time period expires on such, in which case the time period shall be extended to the next business day.

91. 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 also shall specifically state:

- a. The circumstances or arguments which you allege constitute grounds for defense;
- b. The facts that you dispute or intend to place at issue;
- c. The basis for your opposing the proposed penalty; and
- d. Whether you request a hearing as discussed above.

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

93. You must send a copy of your Answer and of any documents subsequently filed in this action to Richard Clarizio at:

Richard Clarizio, (C-14J)
U.S. EPA, Region V
Office of Regional Counsel
77 West Jackson Boulevard
Chicago, Illinois 60604

You may telephone Mr. Clarizio at (312) 886-0559.

94. You must file with the Regional Hearing Clerk the original and one copy of each document you intend as part of the record in this proceeding. The Regional Hearing Clerk's address is presented in paragraph 90 above.

95. You 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 Richard Clarizio to receive service for Complainant of all documents in this proceeding. You may contact him at the address and telephone number identified in paragraph 93 above.

96. If you fail to file a written Answer within 30 calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order. 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 (40 CFR § 22.17). The civil penalty proposed herein shall become due and payable without further proceedings 30 days after the Default Order becomes the Final Order of the Administrator pursuant to 40 CFR § 22.27.

97. Failure to comply with an administrative penalty order subjects the Respondent to the provisions relating to the imposition of interest, penalty

and enforcement expenses set forth at Section 113(d) (5) of the CAA, 42 U.S.C. § 7413(d) (5) for Counts I and II and Section 311(b) (6) (H) of the CWA, 33 U.S.C. § 1321(b) (6) (H) for Count III. Interest will accrue at a rate established pursuant to 26 U.S.C. § 6621(a) (2). The U.S. EPA will also impose a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be a percentage (10 percent for non-payment of Counts I or II and 20 percent for Count III) of the aggregate amount of your outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter. You will be required to pay, in addition to all other penalties and interest, the United States' enforcement expenses, including, but not limited to, attorneys fees and costs incurred by the United States for collection proceedings. In such a collection proceeding, the validity, amount, and appropriateness of the administrative penalty assessed shall not be subject to review.

VII. SETTLEMENT CONFERENCE

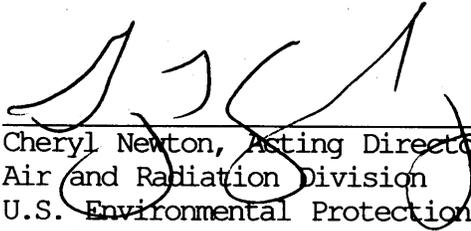
98. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Richard Clarizio, Office of Regional Counsel (C-14J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone Mr. Clarizio at (312) 886-0559.

99. Your request for an informal settlement conference does not extend the 30 calendar day period during which you must submit a written Answer to this Complaint. You may pursue simultaneously 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 Agreement and Final Order. Your agreement to a Consent Agreement and Final Order assessing administrative penalties shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

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

2/15/01
Date


Cheryl Newton, Acting Director ^{FWS}
Air and Radiation Division
U.S. Environmental Protection Agency,
Region 5

February 14, 2001
Date


William E. Muno, Director
Superfund Division
U.S. Environmental Protection Agency,
Region 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Consumers Recycling, Inc.
Detroit, Michigan
Respondent

)
) Docket No. **CAA-5- 2001-0 02**
)
) Proceeding to Assess
) Administrative Penalty
) under Sections 113(d)
) of the Clean Air Act
) 42 U.S.C. § 7413 and Class II
) Civil Penalty under Section 311
) of the Clean Water Act,
) 33 U.S.C. § 1321
)

CERTIFICATE OF SERVICE

I certify that on the date noted below, I filed the original and a copy of the Administrative Complaint with the Regional Hearing Clerk. I further certify that I provided to the U.S. EPA, Region 5 mail room a true and accurate copy of the Administrative Complaint and a copy of the attachments, including the "Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, so that these documents could be placed in U.S. first class, postage prepaid, certified mail, return receipt requested to the following person at the address listed below:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert L. Biederman
Registered Agent & Attorney for
Consumers Recycling, Inc.
Shifman & Carlson, P.C.
25505 W. 12 Mile Road
Suite 1800
Southfield, Michigan 48034

Jason D. Reynolds, General Manager
Consumers Recycling, Inc.
7777 West Chicago Ave
Detroit, Michigan 48204

Tim McGarry, Enforcement Section Supervisor
Michigan Department of Environmental Quality
Air Quality Division
P.O. Box 30260
Lansing, Michigan 48909

Wendy Barrott, Director
Air Quality Management Division
Wayne County Department of Environment
640 Temple Street
Detroit, Michigan 48201

Gregory A. Moore, Program Coordinator
City of Detroit
Department of Environmental Affairs
Administration
660 Woodward Ave, Suite 1590
Detroit, Michigan 48226

2/16/01

Date

Shanee Rucker

Shanee Rucker, Secretary
AECAS (MI/WI)

7099 3400 0000 9592 4120

Certified Mail No.