

5. NR 154.11(4)(b)1 provides, in part, that no person shall cause, allow, or permit the emission of particulate matter to the ambient air from any indirect heat exchanger, power or heating plant, fuel-burning installation constructed on or before April 1, 1972, in excess of 0.6 pounds of particulate matter per million Btu of heat input to any stack.

6. Section 114 of the Clean Air Act authorizes U.S. EPA to require owners or operators of any emission sources to sample such emissions in accordance with procedures or methods as the Administrator shall prescribe. 42 U.S.C. § 7414.

7. 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 CAA violations that occurred on or after January 31, 1997, under Section 113(d)(1) of the CAA, 42 U.S.C. §7413(d)(1), and 40 C.F.R. Part 19.

General Allegations

8. Paragraphs 1 through 7 of this Complaint are incorporated by reference as if fully set forth in this paragraph.

9. Trane owns and operates a boiler house at Trane's Plant 2, 3600 Pammel Creek Road, La Crosse, Wisconsin.

10. Trane constructed Boiler No. 6 in 1962.

11. Particulate emissions from the Trane's boilers are subject to NR 154.11(4)(b)1 in the Wisconsin SIP.

12. On February 25, 1999, U.S. EPA issued an information

request pursuant to Section § 114 of the CAA, 42 U.S.C. § 7414, that required Trane to test for particulate matter and sulfur dioxide emissions from Boiler No. 5 and No. 6.

13. On April 20, 1999, Trane conducted a stack test on Boiler No. 6.

14. During this stack test, Trane Company's Boiler No. 6 had emissions of 0.7904 lb/MMBtu.

15. Thus, Boiler No. 6's emissions exceed the limitation of 0.6 lb/MMBtu found NR 154.11(4)(b)1. This constitutes a violation of NR 154.11(4)(b)1.

16. On July 30, 1999, U.S. EPA issued a notice of violation to Trane for this violation of the Wisconsin SIP regulation NR 154.11(4)(b)1.

17. On September 1, 1999, U.S. EPA and Trane held a conference to discuss the July notice of violation.

Proposed Civil Penalty

18. 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).

19. 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). Enclosed with this complaint is a copy of the penalty policy.

20. 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

21. 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

22. 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

23. 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 Leslie A. Kirby, Assistant Regional Counsel to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Kirby at (312)886-7166. Ms. Kirby's address is:

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

Payment of Penalty

24. 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 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

25. Respondent must also include on the check the case name and the docket number and in the letter transmitting the check. Respondent simultaneously must send copies of the check and

transmittal letter 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

and

Leslie A. Kirby, (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

26. 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 27 through 32 below.

Answer

27. 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 22, above, and must serve copies of the written answer on the other parties.

28. 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.

29. 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.

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

31. 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 26 above.

32. 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

33. 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 Leslie A. Kirby at the address or phone number specified in paragraph 23, above.

34. 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

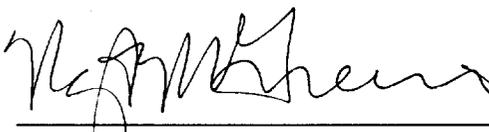
conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

35. 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.

Sept. 23, 1999

Date



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

CAA-5-99-037

In the Matter of The Trane Company
Docket No. : **CAA-5-99-037**

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original of the foregoing Administrative Complaint to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed 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, as revised by 64 Fed. Reg. 40138-40190 (July 23, 1999), and a copy 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 it in the custody of the United States Postal Service addressed as follows:

Gerald Arndt
Vice President/General Manager
The Trane Company
3600 Pammel Creek Road
La Crosse, Wisconsin 54601-5799

on the 24 day of September, 1999.

Shanee Rucker
Shanee Rucker
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: P140 777 056

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RECEIVED