

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. 21 117
) CAA-5- 2000-0 07
Praefke Brake & Supply) Proceeding to Assess a
Corporation) Civil Penalty under
West Bend, Wisconsin,) Section 113(d) of the
) Clean Air Act,
Respondent.) 42 U.S.C. § 7413(d).
_____)

ADMINISTRATIVE COMPLAINT

I. Introduction

1. This is an administrative proceeding to assess a civil penalty under 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, Region 5, United States Environmental Protection Agency (U.S. EPA), Chicago, Illinois.

3. The Respondent is Praefke Brake & Supply Corporation, 133 Oak Street, West Bend, Michigan, a company doing business in the State of Wisconsin.

II. Statutory and Regulatory Background

4. On March 31, 1971, pursuant to Section 112 of the Clean Air Act, the Administrator published an initial list of hazardous air pollutants, including asbestos.

5. Asbestos standards promulgated under Section 112 are codified at 40 C.F.R. Part 61, Subpart M, and were most recently amended on November 20, 1990. 55 Fed. Reg. 48424.

6. Subpart M applies to, among other things, operations

which fabricate friction products containing commercial asbestos, except those operations that primarily install asbestos friction materials on motor vehicles, as defined in 40 C.F.R.

§ 61.147(a)(2).

7. "Fabricating" means any processing (e.g., cutting, sawing, drilling . . .) of a manufactured product that contains commercial asbestos..... In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating, as defined in 40 C.F.R. § 61.141.

8. 40 C.F.R. § 61.147(b)(3) requires the owner or operator of any fabricating operation to monitor each potential source of asbestos emissions from any part of the fabricating facility, including air cleaning devices, process equipment and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds per source of emissions.

9. 40 C.F.R. § 61.147(b)(5) requires the owner or operator of any fabricating operation to maintain records of, among other things, the results of the visible emissions monitoring required by 40 C.F.R. § 61.147(b)(3).

10. 40 C.F.R. § 61.147(b)(6) requires the owner or operator of any fabricating operation to retain a copy of all monitoring and inspection records for at least 2 years.

11. 40 C.F.R. § 61.150(a)(1)(v) requires that for asbestos-

containing waste material that is to be transported off the facility site, containers or wrapped materials must be labeled with the name of the waste generator and the location at which the waste was generated.

12. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for violations that occurred prior to January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collections Improvements Act of 1996 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. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.

III. General Allegations

13. Respondent is a company organized and operating under the laws of the State of Wisconsin.

14. Respondent is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

15. Respondent owned and operated a friction product fabricating operation, as defined in 40 C.F.R. § 61.147(a)(2) and 40 C.F.R. § 61.141, at 8075 North 76th Street, Milwaukee, Wisconsin, ("the Milwaukee facility").

16. On September 20, 1999, U.S. EPA sent a Finding of Violation to the Respondent for its violations of the regulations at 40 C.F.R. §§ 61.147(b)(3), 61.147(b)(5), 61.147(b)(6) and 61.150(a)(1)(v).

17. On October 26, 1999, U.S. EPA and the Respondent held a

conference to discuss the violations alleged in the September 20, 1999, Finding of Violation.

IV. Specific Allegations

Count I

18. Complainant incorporates paragraphs 1 through 17 of this complaint, as if set forth in this paragraph.

19. From at least September 20, 1998, through March 17, 1999, Respondent failed to monitor the potential sources of asbestos emissions from its fabricating facility, for visible emissions to the outside air, in violation of the regulation at 40 C.F.R. § 61.147(b)(3).

Count II

20. Complainant incorporates paragraphs 1 through 17 of this complaint, as if set forth in this paragraph.

21. From at least September 20, 1998, through March 17, 1999, Respondent failed to maintain records of its visible emissions monitoring in violation of the regulation at 40 C.F.R. § 61.147(b)(5).

Count III

22. Complainant incorporates paragraphs 1 through 17 of this complaint, as if set forth in this paragraph.

23. From at least September 20, 1998, through March 17, 1999, Respondent failed to retain copies of its monitoring and inspection records for the past 2 years in violation of the regulation at 40 C.F.R. § 61.147(b)(6).

Count IV

24. Complainant incorporates paragraphs 1 through 17 of

this complaint, as if set forth in this paragraph.

25. From at least September 20, 1998, through March 17, 1999, Respondent failed to label its containers or wrapped materials of asbestos-containing waste to be transported off its facility, with the location at which the waste was generated, in violation of the regulation at 40 C.F.R. § 61.150(a)(1)(v).

V. The Proposed Civil Penalty

26. 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).

27. 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 \$62,700. 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.

28. 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.

VI. Rules Governing This Proceeding

29. 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.

VII. Filing and Service of Documents

30. 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
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (R-19J)
Chicago, IL 60604-3590

31. 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 Jeffery M. Trevino to receive any Answer and subsequent legal documents that Respondent serves in this proceeding. You may contact him at telephone number (312) 886-6729. His address is:

Jeffery M. Trevino
Associate Regional Counsel
Office of Regional Counsel
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, IL 60604-3590

VIII. Penalty Payment

32. Respondent may resolve this proceeding at any time by paying the proposed civil penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by

delivering the check to:

Region 5
U.S. Environmental Protection Agency
P.O. Box 70753
Chicago, IL 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 Jeffery M. Trevino and to:

Attn: Compliance Tracker
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (AE-17J)
Chicago, IL 60604-3590

IX. Opportunity to Request a Hearing

33. 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 34 through 39 below.

X. Answer

34. 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 30 above, and must serve copies of the written Answer on the other parties.

35. 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.

36. 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.

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

38. 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 33 above.

39. 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.

XI. Settlement Conference

40. 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 Jeffery Trevino at the address or telephone number specified in paragraph 31 above.

41. 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.

XII. Continuing Obligation to Comply

42. 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.

4/19/00
Date



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

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CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original and one copy of the Administrative Complaint, Docket No. ____ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a correct copy of the Administrative Complaint, a copy 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 a copy of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent by placing them in the custody of the United States Postal Service addressed as follows:

Gordon E. Praefke, President
Praefke Brake & Supply Corporation
133 Oak Street
West Bend, Wisconsin 53095

cc: Matt Burgoyne, Controller
Praefke Brake & Supply Corporation
133 Oak Street
West Bend, Wisconsin 53095

on the 21 day of April, 2000.

Shanee Rucker
Shanee Rucker
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 2199026506