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DEPARTMENT OF ENVIRONMENTAL PROTECTION

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

SEP 16 12 47

IN THE MATTER OF:) Docket No. CAA-5- 2000-0 04
)
Pace Industries, Inc.) Proceeding to Assess a
Chicago, Illinois) Civil Penalty under
) Section 113(d) of the
) Clean Air Act,
Respondent.) 42 U.S.C. § 7413(d)
)
)

Administrative Complaint

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, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Pace Industries, Inc. (Pace), a corporation doing business in the State of Illinois.

Statutory and Regulatory Background

4. The National Emission Standards for Hazardous Air Pollutants (NESHAP) at part 63, subpart A, 40 C.F.R. §§ 63.1 - 63.15 were established pursuant to Section 112 of the Act and contain standards regulating specific categories of sources who have the potential to emit hazardous air pollutants (HAPs) listed in part 63.

5. The NESHAP at 40 C.F.R. §§ 63.1 - 63.15 provides general provisions which apply to owners and operators who are subject to subsequent subparts of part 63. The general

provisions eliminate the repetition of requirements applicable to all owners or operators effected by part 63.

6. On December 7, 1995, in accordance with Section 112 (d) of the Act, U.S. EPA promulgated the NESHAP for Wood Furniture Manufacturing Operations (Wood Furniture NESHAP). These standards were codified at part 63, Subpart JJ, 40 C.F.R. §§ 63.800 - 63.819.

7. The Wood Furniture NESHAP applies to each facility that is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components and that is located at a plant that is a major source of HAPs as defined in part 63, subpart A, 40 C.F.R. § 63.2.

8. A "major source" is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity or, in the case of radionuclides, a different criteria from those specified in this sentence. 42 U.S.C. § 7412(a)(3) and 40 C.F.R. § 63.2.

9. The NESHAP general provisions at 40 C.F.R. § 63.9 (b)(2) and the Wood Furniture NESHAP at part 63, subpart JJ, Table 1 require the owner or operator of an affected source that has an initial start-up before the effective date of a relevant standard under this part to notify the Administrator in writing that the source is subject to the relevant standard within 270

days of the effective date.

10. The Wood Furniture NESHAP, at 40 C.F.R. § 63.800 (e) specifies that the compliance date for existing affected sources that emit less than 50 tons per year of any HAPs in 1996 is December 7, 1998.

11. The Wood Furniture NESHAP, at 40 C.F.R. § 63.802 (a) specifies that each owner or operator of an existing affected source subject to Subpart JJ must limit volatile hazardous pollutants (VHAPs) from finishing operations by meeting the emission limitations for existing sources presented in Subpart JJ using any of the compliance methods listed in 40 C.F.R. § 63.804 (a)(1) - (a)(4), which include calculating average VHAP content for all finishing materials below lb VHAP/lb solid, use of compliant finishing materials, use of a control system as specified, or combination of these methods.

12. The Wood Furniture NESHAP, at 40 C.F.R. § 63.806 (b)(2) requires the owner or operator of an affected source subject to the emission limits of Subpart JJ to maintain records of the VHAP content, in kg VHAP/kg solid (lb VHAP/lb solids), as applied, of each finishing material and contact adhesive subject to the emission limits in § 63.802.

13. The emission limit for sealer, basecoat, and topcoat, as applied, is 1 lb VHAP/lb solid. The emission limit for thinner, as applied, is 10% VHAP content. 40 C.F.R. § 63.802(a), Table 3.

14. The Wood Furniture NESHAP, at 40 C.F.R. § 63.803 (a) requires each owner or operator of an affected source subject to

Subpart JJ to prepare and maintain a written work practice implementation plan that defines environmentally desirable work practices for each wood furniture manufacturing operation. The plan shall address each of the work practice standards presented in 40 C.F.R. § 803(b) - (1). The plan is required to be developed no more than 60 days after the compliance date.

15. 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 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.

General Allegations

16. Paragraphs 1-15 are incorporated herein by reference.

17. Respondent is an Illinois corporation with a plant located at 2545 W. Polk Street, Chicago, Illinois 60612 ("facility").

18. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602 (e).

19. Respondent's facility emits or has the potential to emit HAPs in excess of 10 tons per year of any HAP.

20. Pace emitted HAPs during the calendar year 1996, 1997, and 1998, as follows:

| Year | Actual emissions (tpy) | Potential emissions (tpy) |
|------|------------------------|---------------------------|
| 1996 | 14.02 | 59.0 |
| 1997 | 6.32 | 26.6 |
| 1998 | 7.18 | 30.2 |

21. Respondent's facility is a "stationary source" as defined at Section 112(a)(3) of the Act, 42 U.S.C. § 7412(a)(3).

22. Respondent's facility is a "major source" as defined at 42 U.S.C. § 7412(a)(3) and 40 C.F.R. § 63.3.

23. Respondent's facility is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components.

24. Pace had an initial start-up before the effective date of the NESHAP for wood furniture manufacturing operations.

25. On March 2, 1999, U.S. EPA conducted a compliance inspection at the facility to determine Respondent's compliance with the Clean Air Act.

26. At the time of the inspection, Respondent did not produce records of the amount of finishing material, as applied, and contact adhesives in kg VHAP/kg solids (lb VHAP/lb solids) and had not prepared and maintained a written work practice implementation plan that defines environmentally desirable work practice for its wood furniture manufacturing operation that addresses each of the work practice standards presented in 40 C.F.R. § 803(b) - (1).

27. Upon request of U.S. EPA and subsequent to the inspection, Respondent did not produce records of the amount of finishing material, as applied, and contact adhesives in kg VHAP/kg solids (lb VHAP/lb solids) and did not produce a written work practice implementation plan that defines environmentally desirable work practice for its wood furniture manufacturing operation that addresses each of the work practice standards presented in 40 C.F.R. § 803(b) - (1).

28. On or about August 15, 1996, Pace submitted to the Illinois EPA an Initial Notification Report notifying the Illinois EPA that it was subject to the Wood Manufacturing NESHAP. This Report was provided to U.S. EPA on or about September 7, 1999.

29. During each of the calendar years 1996, 1997, 1998 and 1999 Pace exceeded the VHAP emission limitations specified at 40 C.F.R. § 63.802(a) from its finishing operations by its usage of sealer, basecoat, topcoat in excess of 1 lb VHAP/lb solid, as applied, and for thinner in excess of 10% VHAP content, as applied.

30. At relevant times during calendar year 1999, Pace did not limit VHAP emissions from finishing operations by meeting the emission limitations for existing sources by using one of the compliance methods listed at 40 C.F.R. § 63.804 (a)(1) through (a)(4), which include calculating average VHAP content for all finishing materials below 1 lb VHAP/lb solid, use of compliant finishing materials, use of a control system as specified, or combination of these methods.

31. At relevant times during calendar year 1999, Pace did not maintain records of the amount of finishing material, as applied, and contact adhesives in kg VHAP/kg solids (lb VHAP/lb solids).

32. At relevant times during calendar year 1999, Pace did not prepare and maintain a written work practice implementation plan that defines environmentally desirable work practice for each wood furniture manufacturing operation and addresses each of the work practice standards presented in 40 C.F.R. § 803(b) - (1).

33. On August 5, 1999, U.S. EPA issued a Finding of Violation (FOV) to Pace for violations of the Wood Furniture NESHAP.

34. On August 24, 1999, U.S. EPA held on conference with Pace regarding the August 5, 1999 FOV.

Count I

35. Paragraphs 1-34 are incorporated herein by reference.

36. Pace's failure to limit HAP emissions from its finishing operations by meeting the emission limitations for existing sources, using any of the compliance methods in 40 C.F.R. § 63.804 (a)(1) through (a)(4) is a violation of 40 C.F.R. § 63.802(a).

37. Pace's violation of 40 C.F.R. § 63.802(a) constitutes violation of the NESHAP and subjects Pace to the assessment of a civil penalty pursuant to Section 113 (d) of the Act, 42 U.S.C § 7413 (d).

Count II

38. Paragraphs 1-37 are incorporated herein by reference.

39. Pace's failure to maintain records of the amount of finishing material, as applied, and contact adhesives, in kg VHAP/kg solids (lb VHAP/lb solids), is a violation of 40 C.F.R. § 63.806 (b) (2).

40. Pace's violation of 40 C.F.R. § 63.806 (b) (2) constitutes a violation of the NESHAP and subjects Pace to the assessment of a civil penalty pursuant to Section 113 (d) of the Act, 42 U.S.C. § 7413 (d).

Count III

41. Paragraphs 1-40 are incorporated herein by reference.

42. Pace's failure to prepare and maintain a written work practice implementation plan that defines environmentally desirable work practices and addresses each of the work practice standards presented in 40 C.F.R. § 803(b) - (1) for its wood furniture manufacturing operation, no later than 60 days after the compliance date is a violation of 40 C.F.R. § 63.803 (a).

43. Pace's violation of 40 C.F.R. § 63.803(a) constitutes a violation of the NESHAP and subjects Pace to the assessment of a civil penalty pursuant to Section 113 (d) of the Act, 42 U.S.C. § 7413 (d).

Proposed Civil Penalty

44. 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).

45. 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 \$177,204. 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.

46. 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

47. 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

48. 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

49. 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 David Mucha, Associate Regional Counsel to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Mucha at (312) 886-9032. Mr. Mucha's address

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

Penalty Payment

50. 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 David P. Mucha and 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

Opportunity to Request a Hearing

51. 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 herein.

Answer

52. 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 herein, above, and must serve copies of the written answer on the other parties.

53. 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.

54. 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.

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

56. 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 herein.

57. 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

58. 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

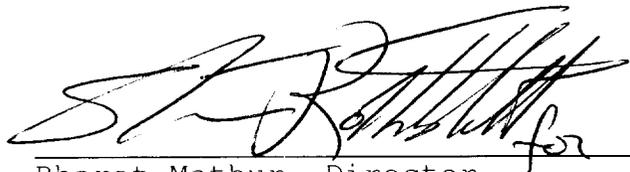
settlement. To request an informal settlement conference, Respondent may contact David Mucha at the address or phone number specified in herein, above.

59. 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

60. 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.

2/15/2000
Date


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

In the Matter of Pace Industries, Inc.

Docket No. **CAA-5- 2000-0 04**

CERTIFICATE OF SERVICE 16 18:47

I, Betty Williams, certify that I hand delivered the original and one copy of the Administrative Complaint; docket number **CAA-5- 2000-0 04** 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 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:

James Palka, President
Pace Industries, Inc.
2545 W. Polk Street
Chicago, Illinois 60612

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

David Kolaz, Manager
Compliance and Systems Management Section
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

Harish Narayen, Acting Regional Manager
Region I
Illinois Environmental Protection Agency
1701 First Avenue
Suite 1202
Maywood, Illinois 60153

on the 16th day of February, 2000.



Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 2 199026384