

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
TECHNISAND INCORPORATED,)
BRIDGMAN, MICHIGAN)
)
a division and wholly-owned subsidiary of)
)
FAIRMOUNT MINERALS LIMITED,)
CHARDON, OHIO)
)
)
RESPONDENT.)
)
_____)

Proceeding to Assess an
Administrative Penalty under
Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d).

Docket No. **CAA-05-2001 17**

ADMINISTRATIVE COMPLAINT AND
NOTICE OF PROPOSED ORDER ASSESSING A PENALTY

ADMINISTRATIVE COMPLAINT

1. This administrative action for the assessment of a civil penalty is filed pursuant to Section 113(d) of the Clean Air Act (the Act), as amended, 42 U.S.C. § 7413(d), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (the Consolidated Rules), 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, Region 5, United States Environmental Protection Agency (USEPA or the Agency).
3. The Respondent is TechniSand Incorporated (TechniSand), a division and wholly-owned subsidiary of Fairmount Minerals Limited (Fairmount).
4. TechniSand is, and was at all times relevant to this Complaint, a corporation incorporated under the laws of the State of Delaware with a place of business located at 3840 Livingston Road, Bridgman, Michigan.

5. Fairmount is, and was at all times relevant to this Complaint, a corporation incorporated under the laws of the State of Delaware with a place of business located at 11833 Ravenna Road, Chardon, Ohio.

STATUTORY AND REGULATORY BACKGROUND

6. Section 109 of the Act, 42 U.S.C. § 7409, required the Administrator of USEPA (Administrator) to publish National Ambient Air Quality Standards (NAAQS) for several pollutants, including particulate matter (PM).
7. On April 30, 1971, in accordance with the Act, the Administrator published the Agency's *National Primary and Secondary Ambient Air Quality Standards* in the Federal Register. 36 Fed. Reg. 8186.
8. The applicable NAAQS for PM, promulgated by the Administrator pursuant to Section 109 of the Act, are set forth at 40 C.F.R. § 50.7. 62 Fed. Reg. 38711.
9. In order to achieve the objectives dictated by the NAAQS program, Section 110 of the Act, 42 U.S.C. § 7410, required each state to adopt and submit to USEPA for approval a State Implementation Plan (SIP) containing procedures and regulations for reducing emissions from sources of air pollution, including PM, within each state.
10. Each SIP was to be designed to achieve the NAAQS within established time limits and, thereafter, to maintain such standards.
11. On June 11, 1992, USEPA approved Michigan Air Pollution Control Commission Rule (MACR) 336.1331 (Rule 331 or the Rule) as part of the federally enforceable SIP for Michigan. 57 Fed. Reg. 24752.

12. The federally approved version of Rule 331(1) (a) sets forth the maximum allowable emission rates Table 31 which must be complied with for any process or process equipment listed in Table 31.
13. On July 26, 1982, USEPA approved Michigan Air Pollution Control Commission Rule (MACR) 336.1116 (Rule 116) as part of the federally enforceable SIP for Michigan. 47 Fed. Reg. 32116.
14. MAC R336.1116(o), Rule 116(o), defines "process" or "process equipment" as any equipment, device, or contrivance, and all appurtenances thereto, for changing any materials or for the storing or handling of any materials, including ducts and stacks, the use of which may cause discharge of an air contaminant into the outer air.
15. MAC R336.1116(o), Rule 116(o), also states that "process" or "process equipment" includes fuel-burning or refuse burning equipment.
16. One of the processes identified at Table 31 is exhaust systems serving material handling equipment not otherwise listed in Table 31. See Table 31, Subpart J.
17. On July 26, 1982, USEPA approved Michigan Air Pollution Control Commission Rule (MACR) 336.1113 (Rule 113) as part of the federally enforceable SIP for Michigan. 47 Fed. Reg. 32116.
18. MAC R336.1113(d), Rule 113(d), defines "material handling equipment" as any device, contrivance, or equipment used to bag, blend, convey, crush, grind, load, mix, shed, store, transfer, or unload a physical substance.
19. Table 31, Part (J), of Rule 331 restricts the emissions of particulate matter from exhaust systems serving material handling equipment not

otherwise listed in Table 31, to 0.10 pounds per thousand pounds of exhaust gas.

20. Section 113(a) of the Act provides the Administrator with the authority to issue administrative penalty orders against any person that has violated or is in violation of an applicable implementation plan or permit.
21. The Administrator's authority under Section 113(a) of the Act has been delegated to the Director, Air and Radiation Division, USEPA (the Director).
22. Section 113(d) of the Act, 42 U.S.C. §7413(d), and USEPA's *Civil Monetary Penalty Inflation Rule*, found at 40 C.F.R. Part 19, provide that the Administrator may issue an administrative order against any person assessing a civil penalty of up to \$27,500 per day of violation, whenever the Administrator finds that such person has violated or is violating any requirement or prohibition of an applicable implementation plan or any permit issued under a SIP.
23. While Section 113(d) (1) of the Act limits the Administrator's authority to issue a penalty of no greater than \$220,000 and for a period of violation of no longer than one year before the date of the commencement of an enforcement action, it also allows the Agency to seek a penalty greater than \$220,000 and for a period of longer than one year before the date of the commencement of an enforcement action when appropriate and upon the concurrence of the Agency and the United States Department of Justice.
24. Section 302(e) of the Act, 42 U.S.C. § 7602(e), defines the term "person" as including, among other things, a corporation.

25. Section 111(a) (5) of the Act, 42 U.S.C. § 7411(a) (5), defines the term "owner or operator" as any person who owns, leases, operates, controls or supervises a stationary source.
26. Section 111(a) (3) of the Act, 42 U.S.C. § 7411(a) (3), defines the term "stationary source" any building, structure, facility or installation which emits or may emit any air pollutant.
27. Section 302(j) of the Act, 42 U.S.C. § 7602(j), defines the term "major stationary source" as any stationary facility or source of air pollutants which directly emits or has the potential to emit, one hundred tons or more per year or any air pollutant.

GENERAL ALLEGATIONS

28. Respondent is, and was at all times relevant to the Complaint, a corporation.
29. Because Respondent is, and was at all times relevant to the Complaint, a corporation, Respondent is, and was at all times relevant to the Complaint, a "person" as that term is defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).
30. Respondent's place of business located at 3840 Livingston Road, Bridgman, Michigan (the Facility) is, and was at all times relevant to the Complaint, a facility which emits or may emit an air pollutant.
31. Because the Facility is, and was at all times relevant to the Complaint, a facility which emitted, emits or may emit an air pollutant, the Facility is, and was at all times relevant to the Complaint, a "stationary source"

as that term is defined at Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3).

32. Respondent owns and operates, and at all times relevant to the Complaint owned and operated, the Facility located at 3840 Livingston Road, Bridgman, Michigan, a stationary source.
33. Because Respondent owns and operates, and at all times relevant to the Complaint owned and operated, a stationary source, Respondent is, and was at all times relevant to the Complaint, a "owner or operator" as that term is defined at Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5).
34. The Facility is a stationary facility and a source of air pollutants, which directly emits, or has the potential to emit, one hundred tons or more per year of an air pollutant.
35. Because the Facility is, and was at all times relevant to the Complaint, a source of air pollutants, which directly emits, or has the potential to emit, one hundred tons or more per year of an air pollutant, the Facility is, and was at all times relevant to the Complaint, a "major stationary source" as that term is defined at Section 302(j) of the Act, 42 U.S.C. § 7602(j).
36. The Facility contains, and at all times relevant to the Complaint contained, three sand processing lines which include, and at all times relevant to the Complaint included, equipment, devices and contrivances, including but not limited to, dryers, which burn fuel, coolers, ducts, exhaust systems and stacks thereto, for the changing and handling of sand

which causes, and at all times relevant to the Complaint caused, the discharge of air contaminants into the outer air.

37. Because the Facility contains, and at all times relevant to the Complaint contained, three sand processing lines which include, and at all times relevant to the Complaint included, equipment, devices and contrivances, including but not limited to, dryers, which burn fuel, coolers, ducts, exhaust systems and stacks thereto, for the changing and handling of sand which causes, and at all times relevant to the Complaint caused, the discharge of air contaminants into the outer air, the Facility contains "process equipment" as defined at Rule 116(o), MAC R336.1116(o).
38. The sand processing equipment at the Facility is, and at all times relevant to the Complaint was, used to convey, mix, blend and transfer sand.
39. Because the sand processing equipment at the Facility is, and at all times relevant to the Complaint was, used to convey, mix, blend and transfer sand, the processing equipment at the Facility is, and at all times relevant to the Complaint was, "material handling equipment" as defined at Rule 113(d), MAC R336.1113(d).
40. Because the Facility contains, and at all times relevant to the Complaint contained, process equipment and material handling equipment with exhaust systems which serve them, the Facility and its process equipment and material handling equipment with exhaust systems which serve them is, and at all times relevant to the Complaint was, subject to Michigan SIP Rule

331 and the particulate emission limit as set forth in Table 31 of Rule 331.

41. The facility contains three sand processing lines identified herein as: the Raw Sand Plant; the #3 Resin Plant and the #5 Resin Plant.
42. As a person who owns and operates a major stationary source, Respondent is subject to the requirements promulgated under Sections 109 and 110 of the Act, 42 U.S.C. §§ 7409 and 7410.

SPECIFIC ALLEGATIONS

43. On or about December 11, 1996, Respondent submitted to the Michigan Department of Environmental Quality (MDEQ) a Permit-To-Install application for a permit to "opt-out" of the requirements of Title V of the Act (PTI Application # 759-96).
44. On March 11, 1997, MDEQ notified Respondent that Respondent's permit application did not contain sufficient information for MDEQ to complete its review of the application. Accordingly, MDEQ's letter requested additional information concerning the amounts and types of emissions from various emission sources at the Facility.
45. On March 25, 1997, Respondent notified MDEQ that it had hired Applied Science & Technology, Incorporated (ASTI) to manage environmental compliance at the Facility.
46. On April 30, 1998, Mr. Tom Durham of ASTI, confirmed in writing to MDEQ that Respondent desired to delay review and issuance of its CAA Title V permit while it undertook "an extensive review of all emissions calculations for the Bridgman site."

47. On May 8, 1998, MDEQ notified Respondent that it wanted the facility to conduct performance testing within sixty (60) days from Respondent's receipt of the letter to quantify emissions from the facility for CAA Title V purposes and that if MDEQ did not receive this information in a timely manner, Respondent's permit application might be denied.
48. On June 6, 1998, representatives of MDEQ and USEPA conducted an inspection of the Facility due to several citizen complaints concerning emissions from the facility. During the inspection, the representatives observed sand emissions from the Raw Sand Plant cooler that, in their opinion, exceeded the opacity limit in Respondent's permit.
49. On October 21, 1998; November 4, 20 and 21, 1998; and January 6 and 7, 1999, Respondent, pursuant to the above-cited request by MDEQ, conducted stack tests at several sources of air pollution at the Facility to determine its compliance with the Michigan SIP.
50. On September 21, 1999, USEPA issued an information request pursuant to Section 114(a) of the Act, 42 U.S.C. § 7414(a), requesting information from Respondent to determine if the Facility was in compliance with the Michigan SIP and the CAA.
51. On October 14, 1999, Respondent submitted to the Agency its response to USEPA's September 21, 1999 information request.
52. On February 9, 2000, USEPA issued a Notice of Violation (NOV) to Respondent, pursuant to Section 113(a) (1) of the Act, 42 U.S.C. § 7413(a) (1), for alleged violations of Michigan SIP Rule 331, MACR 336.1331, at Respondent's Facility in Bridgman, Michigan.

53. On February 9, 2000, USEPA, pursuant to Section 113(a) (1) of the Act, 42 U.S.C. § 7413(a)(1), mailed a copy of the above-referenced NOV to the State of Michigan and notified the State in writing of the findings of the Administrator as set forth in the NOV.
54. On February 29, 2000, representatives of USEPA met with representatives of Respondent to discuss the Administrator's findings as set forth in the NOV.
55. On March 9, 2000, Respondent, through ASTI, provided USEPA with information requested in the Agency's February 29, 2000 meeting with Respondent.
56. On March 30, 2000, Respondent, through ASTI, requested an extension of the date by when it was to provide a copy of its proposed stack test protocol to USEPA.
57. On March 30, 2000, Respondent, through ASTI, provided USEPA with additional information concerning stack tests performed at the Facility by ASTI in March of 1999.
58. On May 5, 2000, Respondent, through ASTI, provided USEPA with additional information concerning new stack tests to be performed by ASTI to demonstrate Respondent's compliance with the Act.
59. On May 15, 2000, USEPA responded to Respondent's March 30 and May 5, 2000 letters.
60. On May 31, 2000, Respondent, through ASTI, provided USEPA with additional information concerning new stack tests to be performed by ASTI to demonstrate current compliance with the Act.

61. On June 8, 2000, ASTI provided USEPA with a copy of its proposed protocol for the stack tests to be performed at the Facility.
62. On June 19, 2000, USEPA notified ASTI that the Agency approved of ASTI's protocol for the stack tests to be performed at the Facility.
63. On August 14, 2000, USEPA, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), sent a letter to the United States Department of Justice requesting a joint determination between the designees of the Administrator and the Attorney General to waive the penalty limit and time limit found at Section 113(d) of the Act, 42 U.S.C. § 7413(d).
64. On August 21, 2000, Respondent submitted to USEPA the results of the stack tests conducted by ASTI at the Facility on July 5, 6 and 7, 2000. These results demonstrated that, as of that date, the Facility was in compliance with the applicable requirements of the Michigan SIP Rules and the Act.
65. On August 31, 2000, the Attorney General of the United States jointly concurred with a determination of the Administrator of USEPA, each through their respective delegates, that this matter, while involving a proposed civil penalty greater than \$220,000 and a period of violation longer than one year, was appropriate for an administrative penalty action.
66. On August 31, 2000, USEPA sent a certified letter to Respondent notifying Respondent of the Agency's intent to file the subject enforcement action and requesting any relevant information that the Respondent might wish to provide USEPA, such as any evidence of reliance upon compliance assistance provided by USEPA, or any State agency exercising delegated authority, mis-identification of the proper party, or financial factors bearing upon

- Respondent's to pay a civil penalty and to continue in business. The letter notified Respondent that USEPA would be seeking a proposed penalty of approximately \$250,000 for several alleged violations of the Act.
67. On September 18, 2000, the Office of Enforcement and Compliance Assurance concurred with the August 31, 2000 determination of the Attorney General of the United States determination that this matter, while involving a penalty greater than \$220,000 and a period of violation longer than one year, was appropriate for an administrative penalty action.
 68. On November 3, 2000, Respondent replied to USEPA's August 31, 2000 pre-filing letter and submitted information to the Agency.
 69. On November 6, 2000 representatives of Respondent met with representatives of USEPA in Chicago to discuss settlement of this matter.
 70. On November 29, 2000, USEPA issued an information request, pursuant to Section 114(a) of the Act, 42 U.S.C. § 7414(a), to ASTI requesting information related to certain emissions tests conducted by ASTI at the Facility.
 71. On December 20, 2000, Respondent submitted an additional reply to USEPA's August 31, 2000 pre-filing letter and submitted additional information to the Agency.
 72. On January 11 and 15, 2001, ASTI replied to USEPA's November 29, 2000 information request.
 73. On January 26, 2001, Respondent submitted additional information in response to USEPA's August 31, 2000 pre-filing letter.

74. On February 28, 2001, Respondent submitted a formal request to USEPA to consider Respondent's ability to pay the proposed penalty in this matter and submitted additional information in response to USEPA's August 31, 2000 pre-filing letter.
75. On March 7, 2001, USEPA requested additional financial information from Respondent in order to analyze Respondent's claim of its inability to pay the proposed penalty in this matter.
76. On April 12, 2001, USEPA issued an information request, pursuant to Section 114(a) of the Act, 42 U.S.C. § 7414(a), to Respondent requesting additional financial information related to Respondent's ability to pay the proposed civil penalty and information concerning possible additional violations of the Act at the Facility.
77. On May 16, 2001, Respondent provided the Agency with a reply to USEPA's April 12, 2001 information request and submitted additional information to the Agency.
78. On May 31, 2001, USEPA requested additional information from Respondent.
79. On June 8, 2001, Respondent provided additional information to USEPA.
80. On July 13, 2001, Respondent provided additional information to USEPA.
81. On July 23, 2001, after analyzing all of the financial information submitted by Respondent, USEPA determined that Respondent has the ability to pay a civil penalty of up to \$451,000.
82. On July 24, 2001, USEPA sent a letter to Respondent stating that, among other things, the Agency, based upon information submitted to USEPA, had revised the proposed civil penalty to \$214,003 and that the Agency

believed Respondent had the ability to pay a penalty of up to \$451,000 in this matter.

COUNT 1

83. Paragraphs 1 through 81 are realleged and incorporated herein as reference.
84. On October 21, 1998, Respondent conducted a stack test at the Facility to determine the particulate (PM) emission rate from the #3 Resin Plant dryer.
85. The results of the October 21, 1998 stack test on the #3 Resin Plant dryer documented an average PM emission rate of 0.64 pounds per thousand pounds of exhaust gas, exceeding the applicable 0.10 pounds per thousand pounds of exhaust gas emission limit established by Table 31 of Rule 331.
86. The October 21, 1998 stack test result demonstrates that, as of that date, Respondent was in violation of Michigan SIP Rule 331 and the applicable particulate emission limit of 0.10 pounds per thousand pounds of exhaust gas as set forth in Table 31 of the Rule.
87. Respondent is reasonably presumed to be in violation of its particulate emission limit from October 21, 1998, the date of the above-mentioned stack test, until April 27, 2000, the date it successfully installed pollution control equipment on the subject emission source.
88. Respondent's violation of the above-cited particulate emission limit is a violation of Michigan SIP Rule 331, a federally enforceable regulation promulgated under Section 110 the Act, subjects Respondent to civil penalties of up to \$27,500 per day per violation pursuant to Section

113(d) (1) of the Act, 42 U.S.C. § 7413(d) (1), and USEPA's Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19.

COUNT 2

89. Paragraphs 1 through 81 are realigned and incorporated herein as reference.
90. On November 20 and 21, 1998, and January 6, 1999, Respondent conducted stack tests at the Facility to determine the PM emission rate from the #3 Resin Plant cooler.
91. The results of the November 20 and 21, 1998, and January 6, 1999 stack tests on the #3 Resin Plant cooler documented an average PM emission rate of 0.12 pounds per thousand pounds of exhaust gas, exceeding the applicable 0.10 pounds per thousand pounds of exhaust gas emission limit established by Table 31 of Rule 331.
92. The November 20 and 21, 1998, and January 6, 1999 stack test results demonstrate that, as of those dates, Respondent was in violation of Michigan SIP Rule 331 and the applicable particulate emission limit of 0.10 pounds per thousand pounds of exhaust gas as set forth in Table 31 of the Rule.
93. Respondent is reasonably presumed to be in violation of its particulate emission limit from November 20 and 21, 1998, and January 6, 1999, the dates of the above-cited stack tests until October of 1999, the date Respondent re-routed the emission source to newly installed pollution control equipment.
94. Respondent's violation of this particulate emission limit is a violation of Michigan SIP Rule 331, a federally enforceable regulation promulgated

under Section 110 the Act , subjects Respondent to civil penalties of up to \$27,500 per day per violation pursuant to Section 113(d) (1) of the Act, 42 U.S.C. § 7413(d) (1), and USEPA's Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19.

COUNT 3

95. Paragraphs 1 through 81 are realigned and incorporated herein as reference.
96. On November 4, 1998 and January 7, 1999, Respondent conducted stack tests at the Facility to determine the PM emission rate from its #5 Resin Plant Mill vacuum lift.
97. The results of the November 4, 1998 and January 7, 1999 stack tests on the #3 Resin Plant Mill Vacuum Lift documented an average PM emission rate of 0.17 pounds per thousand pounds of exhaust gas, exceeding the applicable 0.10 pounds per thousand pounds of exhaust gas emission limit established by Table 31 of Rule 331.
98. The November 4, 1998 and January 7, 1999 stack test results demonstrate that, as of those dates, Respondent was in violation of Michigan SIP Rule 331 and the applicable particulate emission limit of 0.10 pounds per thousand pounds of exhaust gas as set forth in Table 31 of the Rule.
99. Respondent is reasonably presumed to be in violation of its particulate emission limit from November of 1998, the date of the above-cited stack tests, until March of 1999, the date the subject operations were terminated.
100. Respondent's violation of this particulate emission limit is a violation of Michigan SIP Rule 331, a federally enforceable regulation promulgated

under Section 110 the Act, subject Respondent to civil penalties of up to \$27,500 per day per violation pursuant to Section 113(d) (1) of the Act, 42 U.S.C. § 7413(d) (1), and USEPA's Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

101. Pursuant to Section 113(d) (1) of the Act, 42 U.S.C. § 7413(d) (1), and 40 C.F.R. Part 19, the Administrator may assess a civil penalty not to exceed \$27,500 per day of violation, up to a total of \$220,000 for violations of an applicable state implementation plan or permit that occurred on or after January 31, 1997. The Administrator may assess a penalty greater than \$220,000 pursuant to Section 113(d) (1) where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty amount is appropriate for an administrative penalty action. The Administrator may also assess a penalty for a period of time greater than twelve months prior to the initiation of this administrative action pursuant to Section 113(d) (1) where the Administrator and the Attorney General of the United States jointly determine that a longer length of time is appropriate for an administrative penalty action. The Administrator and the Attorney General of the United States have jointly determined that a larger penalty amount and a longer length of time are appropriate in this matter.
102. Section 113(e) (1) of the Act, 42 U.S.C. § 7413(e) (1), requires the Administrator to take the following factors into consideration when determining the amount of any penalty assessment under Section 113:

- 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.

103. Based upon the facts alleged in this Complaint and the factors listed above, Complainant proposes to assess a revised civil penalty against Respondent of \$214,003. Complainant calculated this proposed penalty according to Section 113(e)(1) of the Act. In developing the proposed penalty, Complainant considered the facts and circumstances of this case with specific reference to USEPA's Clean Air Act Stationary Source Penalty Policy, a copy of which is enclosed with this Complaint.

104. The Act requires that, when determining an appropriate penalty, USEPA must consider the economic benefit a violator derives from the alleged violations. The penalty must be sufficient to preclude the violator from deriving monetary benefit due to its having avoided or delayed expenditures that would have ensured compliance with the Act, both for deterrence purposes and because other regulated entities have incurred similar expenses in maintaining compliance with the Act. Respondent's

economic benefit resulted from Respondent's delay in installing adequate control equipment to achieve compliance. According to figures provided to the Agency by Respondent, the total cost of installing the applicable control equipment for Respondent's facility was \$85,600, the delayed expenditure of which resulted in an economic benefit to Respondent of \$13,803.

105. Pursuant to the Act, Complainant has considered the seriousness of Respondent's violations. One factor reflecting the seriousness of the violations is the degree by which the violations exceeded the standard. Complainant compared the highest detected PM emission violation at each process with the standard. Accordingly, the proposed penalty includes a component corresponding to the actual or potential environmental harm from the violations.
106. In considering the seriousness of the violation, Complainant also considered the air quality status of the area in which the Respondent's facility is located. Respondent's facility is located in an attainment area for PM. Accordingly, the proposed penalty includes a component corresponding to the actual or potential harm from a violation in an attainment area for PM.
107. In considering the seriousness of the violation, Complainant also considered the importance of the PM rules to achieving the goals of the Act and its implementing regulations. Accordingly, the proposed penalty includes a component corresponding to the importance of these violations to the regulatory scheme.

108. Pursuant to the Act, Complainant has considered the duration of the violations in assessing the actual or possible harm resulting from such violations. For purpose of determining this penalty component for each noncomplying process, a period of violation began on the day of the stack test that documented a violation and ended when a control equipment was installed, resulting in compliance.
109. Pursuant to the Act, Complainant has considered the size of Respondent's business in determining the appropriate penalty. Respondent's net worth, as determined by Dun and Bradstreet financial information service is less than \$20,000,000. Accordingly, the proposed penalty includes a component which is based on the size of Respondent's business.
110. In determining an appropriate civil penalty under the Act, Complainant has considered Respondent's compliance history and its good faith efforts to comply. Because Complainant is aware of no prior Federal citations against Respondent for violations of environmental statutes, Complainant has not enhanced the proposed penalty based on this factor.
111. Pursuant to the Act, Complainant has considered the economic impact of the penalty on Respondent's business. Pursuant to Section 114 of the Act, 42 U.S.C. § 7414, Complainant gathered financial information from Respondent to determine if Respondent has the ability to pay the proposed penalty. An analysis of that information has determined that Respondent does in fact have the ability to pay the proposed penalty of \$214,003 and to continue in business.

112.. Complainant developed the penalty proposed in this Complaint based on the best information available to USEPA at this time. Complainant may adjust the proposed penalty if the Respondent establishes any bonafide reasons it cannot pay the proposed penalty or defenses to the appropriateness of the penalty.

113. Respondent shall pay the assessed penalty by certified or cashiers' 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 60604-3590

114. Respondent shall also include on the check the name of the case and the docket number. Respondent shall simultaneously send copies of the check and transmittal letter to:

Farro Assadi (AE-17J)
Air and Radiation Division
USEPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

John P. Steketee (C-14J)
Associate Regional Counsel
Office of Regional Counsel
USEPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

OPPORTUNITY TO REQUEST A HEARING

115. Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2), requires the Administrator of USEPA to provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint and/or to contest the appropriateness of the amount of the proposed penalty. To request a hearing, you must specifically make the request in your Answer, as discussed below. Any hearing which you request regarding the Complaint will be held and conducted in accordance with the provisions of the Consolidated Rules, 40 C.F.R. Part 22.

ANSWER

116. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk, (E-19J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within thirty (30) calendar days of your receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays and Federal holidays shall be included, except when a time period expires on such, in which case the deadline shall be extended to the next business day.
117. 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.

118. Your Answer shall also state with specificity:

- a.. the circumstances or arguments which you allege constitute grounds for defense;
- b. the facts that you intend to place at issue; and
- c. whether you request a hearing as discussed in Paragraph 47 above.

119. Your failure to admit, deny or explain any material factual allegation in the Complaint will constitute an admission of the allegation. The Consolidated Rules provide that any hearing that shall be held will be a "hearing upon the issues raised by the complaint and answer."

120. You must send a copy of your Answer and of any documents subsequently filed in this action to Mr. John P. Steketee, Associate Regional Counsel (C-14J), USEPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Mr. Steketee at (312) 886-0558.

121. If you fail to file a written Answer within 30 calendar days of your receipt of this Complaint, the Administrator of USEPA may issue a Default Order pursuant to 40 C.F.R. § 22.17(a). 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. The proposed penalty will become due and payable without further proceedings 60 days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. § 22.27 or § 22.31.

SETTLEMENT CONFERENCE

122. 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 Farro Assadi, Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Mr. Assadi at (312) 886-1424.
123. Your request for an informal settlement conference does not extend the thirty (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. USEPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, USEPA will not reduce the penalty simply because the parties hold such a conference. Any settlement that the parties reach as a result of a conference will be embodied in a consent order. Your agreement to a consent order issued pursuant to 40 C.F.R. § 22.27 will constitute a waiver of your right to request a hearing on any matter stipulated to therein.

CONTINUING OBLIGATION TO COMPLY

124. Neither assessment nor payment of a civil penalty shall affect your continuing obligation to comply with the Act or any other Federal, State or local law or regulation.

Date

8/10/01


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

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CERTIFICATE OF SERVICE

I certify that on this date AUG 13 2001, I filed the original Clean Air Act Administrative Complaint issued to the TechniSand, Incorporated, a division and wholly-owned subsidiary of Fairmount Minerals, Limited, with:

Regional Hearing Clerk
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and, deposited in the United States Mail, via certified mail, return receipt requested, a copy of the Clean Air Act Administrative Complaint, a copy of the Clean Air Act Stationary Source Civil Penalty Policy and the 40 CFR Part 22 Consolidated Rules of Practice addressed to the following Respondent:

Cory J. Peruba
Environmental Coordinator
Fairmount Minerals
P.O. Box 177
Wedron, Illinois 60557

Certified Mail Number: 7099 3400 0000 9581 1840

and, mailed a copies of the Clean Air Act Administrative Complaint issued to TechniSand to:

Tim McGarry, Supervisor
Compliance and Enforcement Section
Air Quality Division
Michigan Department of Environmental Quality

Jon S. Faletto, Esq.
Howard & Howard Attorneys, P.C.
One Technology Plaza, Suite 600
211 Fulton Street
Peoria, Illinois 61602-1350

August 13, 2001
Date

Shanee Rucker
Shanee Rucker, Secretary
USEPA, Region 5

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