

RECEIVED  
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 5**

**IN THE MATTER OF:**

Woodland Paving Company  
Comstock Park, Michigan

Respondent.

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) Docket No. '99 SEP 21 11:50

) **CAA-5-99-034**

) Proceeding to Assess a  
) Civil Penalty under  
) Section 113(d) of the  
) Clean Air Act,  
) 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 Woodland Paving Company, a corporation doing business in Michigan.

**Statutory and Regulatory Background**

4. On May 6, 1980, U.S. EPA approved Rule 201 of the Michigan Department of Natural Resources, Air Pollution Control Commission General Rules (Rule 201), as part of the federally enforceable state implementation plan (SIP) for Michigan. 45 Fed. Reg. 29790.

5. Rule 201(3) authorizes approval of an application for a permit to install, subject to any condition, specified in writing, that is necessary to assure compliance with the SIP.

6. 40 C.F.R. § 52.23 provides that failure to comply with any approved regulatory provision of a SIP, or with any permit

limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the SIP, shall render the person so failing to comply in violation of a requirement of any applicable implementation plan and subject to an enforcement action under Section 113 of the Clean Air Act.

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 Clean Air Act 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.

8. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

9. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

#### **General Allegations**

10. Complainant incorporates paragraphs 1 through 9 of this complaint, as if set forth in this paragraph.

11. Woodland Paving Company (Woodland) owns and operates an asphalt plant located at 3566 Millcreek Avenue, Comstock Park,

Michigan.

12. Woodland received Permit to Install No. 990-90 from the State of Michigan for its Comstock Park, Michigan asphalt plant.

13. Woodland received a Supplement to Permit to Install No. 990-90 from the State of Michigan for its Comstock Park, Michigan asphalt plant. (Attachment A).

14. Woodland's Supplement to Permit to Install No. 990-90 ("the PTI") contains special condition no. 23 that provides that the carbon monoxide emission rate shall not exceed 0.21 pound per ton of hot mix asphalt produced.

15. Emissions from Woodland's asphalt plant are subject to the special conditions contained in the permit to install.

16. On June 24, 1998, Woodland conducted stack tests at its facility for carbon monoxide emissions.

17. The results of the June 24, 1998 stack tests demonstrated carbon monoxide emissions in excess of the limit of 0.21 pounds per ton of hot mix asphalt produced as set forth by special condition no. 23, and summarized in the table below.

<b>Summary of Carbon Monoxide (CO) Violations</b>		
<b>Date of violation</b>	<b>Test method employed</b>	<b>Results (lbs/ton)</b>
June 24, 1998	Method 10	Run 1 - 0.31 Run 2 - 0.27 Run 3 - 0.18 Avg.- 0.25

18. On April 29, 1999, U.S. EPA issued a notice of violation to Woodland for violations of the Michigan SIP, Rule

201 of the Michigan Department of Natural Resources, Air Pollution Control Commission General Rules.

19. On May 27, 1999, U.S. EPA and Woodland Paving Company held a telephone conference to discuss the April 29, 1999, notice of violation.

#### **Proposed Civil Penalty**

20. 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).

21. 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 \$21,250. 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), and the memorandum, Clarifications to the October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy, dated January 17, 1992. Enclosed with this complaint is a copy of the penalty policy. (Attachment B).

22. 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**

23. 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. 40137 (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. (Attachment C).

**Filing and Service of Documents**

24. 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

25. 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 Cynthia Kawakami to receive service for Complainant of all documents in this proceeding. You may telephone Cynthia Kawakami at (312) 886-0564. Cynthia Kawakami's address is:

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

**Penalty Payment**

26. 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 Cynthia Kawakami 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**

27. 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 28 through 33 below.

**Answer**

28. 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 24, above, and must serve copies of the written answer on the other parties.

29. 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.

30. 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.

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

32. 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 27 above.

33. 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 40 C.F.R. § 22.17. 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 40 C.F.R. § 22.27(c).

#### **Settlement Conference**

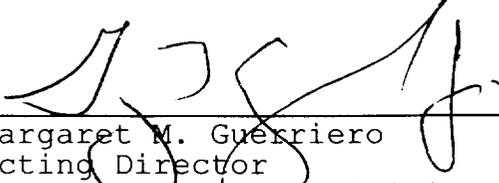
34. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Cynthia Kawakami at the address or phone number specified in paragraph 25, above.

35. 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**

36. 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.

9/20/99  
Date

  
\_\_\_\_\_  
Margaret M. Guerriero  
Acting 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, Shanee Rucker, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number 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. 40137 (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 by placing them in the custody of the United States Postal Service addressed as follows:

Gary Stevenson  
General Manager  
Woodland Paving Company  
3566 Millcreek Avenue, NE  
Comstock Park, Michigan 49321

on the 21 day of September, 1999.

Shanee Rucker  
Shanee Rucker  
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: P140 777 043

RECEIVED  
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FBI