

Statutory and Regulatory Background

5. On September 3, 1981, U.S. EPA approved 35 IAC § 212.448 (Electric Arc Furnaces) as part of the federally enforceable SIP for the State of Illinois. 46 Fed. Reg. 44172 (September 3, 1981).

6. 35 IAC § 212.448 states that the total particulate emissions from meltdown and refining, charging, tapping, slagging, electrode port leakage and ladle lancing shall not exceed the allowable emission rate specified by Section 212.321 (Standards for New Sources) or 212.322 (Standards for Existing Sources), whichever is applicable.

7. On February 21, 1980, U.S. EPA approved 35 IAC § 212.322 (Particulate Matter Emissions from Process Emission Sources; Existing Process Sources) as part of the federally enforceable State Implementation Plan (SIP) for the State of Illinois. 45 Fed. Reg. 11493 (February 21, 1980).

8. 35 IAC § 212.322(a) states that no person shall cause or allow the emission of particulate matter into the atmosphere, in any one hour period from any existing process emission source which, either alone or in combination with the emission of particulate matter from all other similar new or existing process emission sources at a plant or premises, exceeds the allowable emission rate.

9. The allowable emission rate for particulate matter at

existing sources is obtained by determining the process weight rate of the process emission sources and referencing Table 2.2 of Section 212.322 and/or provided equations of 35 IAC § 212.322.

10. According to 35 IAC § 212.322, the allowable emission rate for process emission sources with process weight rates in excess of 30 tons per hour is determined by using the equation: $E = [55.0(P)^{0.11}] - 40.0$. Where: E = allowable emission rate in pounds per hour (lb/hr) and P = process weight rate in tons per hour (Tph).

11. On May 31, 1972, U.S. EPA approved 35 IAC § 201, Subpart A (Permits and General Provisions, Definitions). 37 Fed. Reg. 10862 (May 31, 1972).

12. 35 IAC § 201.102 defines "existing emission source" as any emission source, the construction or modification of which commenced prior to April 14, 1972.

13. 35 IAC § 201.102 defines "person" as any individual, corporation, partnership, firm....or any legal successor, representative, agent or agency of the foregoing.

General Allegations

14. Paragraphs 1-13 are incorporated herein by reference.

15. The Respondent in this proceeding is Calumet.

16. Respondent is a Delaware corporation, registered to do business in the State of Illinois, with a place of business located at 317 East 11th Street, Chicago Heights, Illinois.

17. The term "person", as that term is defined at 35 IAC § 201.102, includes a corporation.

18. Respondent is a "person" as defined at 35 IAC § 201.102.

19. Respondent owns or operates a mini-steel mill.

20. Respondent's mini-steel mill contains a melt shop with 2 electric arc furnaces and a cast house.

21. Respondent's melt shop, electric arc furnaces, and cast house were constructed before April 14, 1972.

22. Respondent's melt shop, electric arc furnaces, and cast house emit particulate matter.

23. Particulate emissions from Calumet's melt shop and cast house are ducted to a baghouse.

24. Particulate Matter is an Air Pollutant.

25. Particulate emissions from Calumet's melt shop, cast house, and associated baghouse are subject to the particulate mass emission limit set forth in the Illinois SIP at 35 IAC § 212.322.

Count I

26. Complainant incorporates paragraphs 1 through 25 of this Complaint, as if set forth in this paragraph.

27. U.S. EPA issued a Request for Information Pursuant to the Clean Air Act (Section 114 Request) to Calumet on November 19, 1998, requiring Calumet to, among other things,

sample emissions from the melt shop/cast house baghouse.

28. On March 7, 1999, Calumet conducted stack testing to measure particulate emissions at the melt shop/cast house baghouse, pursuant to the Section 114 Request.

29. The particulate emission testing conducted at Calumet on March 7, 1999, demonstrates that Calumet violated 35 IAC § 212.322, as summarized below:

Particulate Emission Rate Limitations
For Process Emission Units

<u>ALLOWABLE RATE</u>	<u>ACTUAL EMISSION RATE</u>
42.46 lb/hr	92.97 lb/hr

30. On or about June 11, 1999, the Administrator issued to Calumet a Notice Of Violation (NOV) pursuant to Section 113(a) of the Act, 42 U.S.C. § 7413(a), for the violation of the particulate mass emission limit set forth in the Illinois SIP at 35 IAC § 212.322.

31. On June 14, 1999, the Administrator notified the State of Illinois that Calumet had allegedly violated the requirements of the CAA and the Illinois SIP.

32. On July 7, 1999, representatives of Respondent and U.S. EPA met to discuss the violations alleged in the NOV.

Proposed Civil Penalty

33. The Administrator of U.S. EPA may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for SIP violations that occurred on or after January 31,

1997 according to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

34. Under Section 113(e) of the Act, 42 U.S.C. § 7413(e), the Administrator of U.S. EPA must consider the following factors when assessing an administrative penalty under Section 113(d):

- 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.

35. Based upon an evaluation of the facts alleged in this Complaint and the factors in paragraph 34 above, Complainant proposes that the Administrator of U.S. EPA assess a civil penalty against Respondent of \$80,850. 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.

36. In determining the proposed penalty, Complainant

considered the economic benefit that Respondent received from the violations. The penalty must be sufficient to prevent the violator from gaining a monetary benefit from avoiding or delaying the expenditures that are necessary to comply.

Respondent received an economic benefit of \$1,067 from delaying compliance costs. This is minimal economic benefit, and the U.S. EPA in its discretion has decided not to seek economic benefit.

37. Complainant considered the seriousness of Respondent's violations. One factor reflecting the seriousness of the violations is the amount of the pollutant emitted in violation of the Act. Complainant compared the highest detected violation, 92.97 lb/hr of particulate matter, with the standard, 42.46 lb/hr of particulate matter. Accordingly, the proposed penalty includes a component corresponding to the actual or potential environmental harm from the violations.

38. In evaluating 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 a portion of Cook County which is classified as "in attainment" with regard to the old Total Suspended Particulates standard and is considered unclassifiable for particulate matter smaller than 10 microns, which is treated in the same manner as an attainment area for regulatory purposes (40 C.F.R. § 81.314). Accordingly, the proposed penalty includes

a component corresponding to the actual or potential harm from a violation in an attainment area for particulate matter.

39. In evaluating the seriousness of the violation, Complainant also considered the toxicity of the pollutant. Because the particulate matter emissions from Respondent's baghouse contain chromium and lead, which are hazardous air pollutants that are known to cause death and serious irreversible illness, the proposed penalty includes an appropriately high factor for the toxicity of the pollutant.

40. Complainant considered the duration of the violations in assessing the actual or possible harm resulting from the violations. The violations commenced on or before March 7, 1999, and continued through April 24, 1999. Thus, Complainant based the penalty on a two month duration of violations.

41. In calculating the proposed penalty, Complainant considered the size of Respondent's business. Respondent's net worth is approximately \$[CBI], as determined by financial information, claimed as confidential business information, received from Respondent. Accordingly, the proposed penalty includes a component based on the size of Respondent's business.

42. Complainant considered Respondent's compliance history and its good faith efforts to comply. Because Respondent acted quickly to identify and correct the problems leading to the violation and has acted cooperatively in all respects,

Complainant has mitigated the proposed penalty based on this factor.

43. Complainant considered the economic impact of the proposed penalty on Respondent's business. Based on the best information available to Complainant at this time, including an April 5, 1999, Dun & Bradstreet report, the proposed penalty reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.

44. 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 bonafide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

45. 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.

Filing and Service of Documents

46. 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 (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

47. 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 Edward J. Messina to receive service for Complainant of all documents in this proceeding. You may telephone Mr. Messina at (312) 353-8892.

Mr. Messina's address is:

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

Penalty Payment

48. 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:

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

Edward Messina, (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

49. The Administrator of U.S. EPA 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 50 through 55 below.

Answer

50. 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 46, above, and must serve copies of the written answer on the other parties.

51. 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.

52. 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.

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

54. 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 49 above.

55. 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

56. 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, write to Bonnie Bush, Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Ms. Bush at (312) 353-6684.

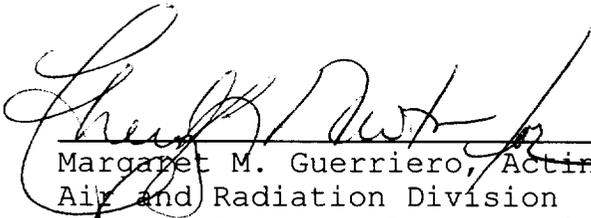
57. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the

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

58. 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.

9/21/99
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

CAA-5-99-040

In the Matter of Calumet Steel Company RECD
Docket No.

CAA-5-99-040

CERTIFICATE OF SERVICE SEP 24 12:14

I, Betty J. Williams, certify that I hand delivered the original of the Administrative Complaint, docket number CAA-5-99-040 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 and the Revocation or Suspension of Permits" at 40 C.F.R. Part 22, and copies 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 them in the custody of the United States Postal Service addressed as follows:

William J. Klein, President
Calumet Steel Company
317 East 11th Street
Chicago Heights, Illinois 60411

on the 24th day of September, 1999.

Betty Williams
Betty J. Williams
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: P140895449