

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: ) Docket No. ~~CAA-05-~~ '01-0015  
)  
Consumers Concrete ) Proceeding to Assess a  
Corporation ) Civil Penalty under  
Kalamazoo, Michigan ) Section 113(d) of the  
) Clean Air Act,  
Respondent. ) 42 U.S.C. § 7413(d)  
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**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 Consumers Concrete Corporation (Consumers), a corporation doing business in the State of Michigan.

**Statutory and Regulatory Background**

4. Under Section 111 of the Act, the Administrator of U.S. EPA (the Administrator) promulgated the New Source Performance Standards (NSPS) for Nonmetallic Mineral Processing Plants at 40 C.F.R. Part 60, Subpart OOO, (§§ 60.670 through 60.676), in addition to General Provisions at 40 C.F.R. §§ 60.1 through 60.19.

5. The NSPS for Nonmetallic Mineral Processing Plants applies to the following affected facilities, which commenced

construction, reconstruction, or modification after August 31, 1983, in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station.

6. "Affected facility" under the NSPS means, with reference to a stationary source, any apparatus to which a standard is applicable. 40 C.F.R. § 60.2. "Affected facility" under the NSPS for Nonmetallic Mineral Processing Plants, as defined at 40 C.F.R. §60.670(e), means a facility that commences construction, reconstruction or modification after August 31, 1983.

7. The NSPS at 40 C.F.R. § 60.676(a)(1) requires each owner or operator seeking to comply with Section 60.670(d) (replacement of equipment by equipment of equal or smaller size) to submit to the Administrator certain information about the existing facility being replaced and the replacement piece of equipment. The date of which such notification shall be submitted is specified in 40 C.F.R. § 60.7(a)(1).

8. The Administrator may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for NSPS 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 NSPS violations that occurred on or after January 31, 1997. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.

9. 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.

10. 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

11. Respondent owns and operates a nonmetallic mineral processing plant at 700 Nazareth Road, Kalamazoo, Michigan (Nazareth Road Plant).

12. Respondent's Nazareth Road Plant is subject to the requirements of the NSPS for Nonmetallic Mineral Processing Plants at 40 C.F.R. Part 60, Subpart 000.

13. In 1998, Respondent replaced three existing conveyors with two new conveyors of equal size at the Nazareth Road Plant.

14. The replaced conveyers described in paragraph 13, above, are "affected facilities", because they were constructed and began operation after August 31, 1983.

15. Respondent is an "owner and/or operator", as defined at Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5).

16. On January 5, 2001, U.S. EPA sent Respondent a Finding

of Violation for the violations of 40 C.F.R. §§ 60.676(a)(1) at its Nazareth Road Plant.

17. On February 13, 2001, U.S. EPA met with Respondent to discuss the January 5, 2001, Finding of Violation.

**Count I**

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

19. Respondent violated 40 C.F.R. § 60.676(a)(1), because it failed to submit to the Administrator information about the replacement of the conveyers, described in paragraph 13, above, which occurred in 1998, no later than 30 days after their construction. Respondent did not submit the required information regarding the replacement of the conveyors until July 27, 1999.

**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 \$36,300. 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.

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 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**

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 (E-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 Susan Tennenbaum to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Susan Tennenbaum at (312) 886-0273. Ms. Tennenbaum's address is:

Susan Tennenbaum (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 Susan Tennenbaum 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 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**

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 Susan Tennenbaum 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.

7/20/01  
Date

  
Cheryl Newton, 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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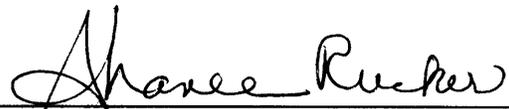
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~~CAA-05~~ 01-0015

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 ~~CAA-05~~ 01-0015 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 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:

on the 23 day of July, 2001.

  
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Shanee Rucker  
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9580 9205