

REF

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

'99 SEP 24 P1 55

CAA-5-99-038

IN THE MATTER OF:

International Malting Company LLC
Milwaukee, Wisconsin

Respondent.

Docket No.

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

COMPLAINT

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (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 International Malting Company LLC, (International Malting) a corporation doing business in the State of Wisconsin.

Statutory and Regulatory Background

4. On March 9, 1983, U.S. EPA approved Wisconsin Administrative Code Rule NR 154.11 as part of the federally enforceable state implementation plan (SIP) for the State of Wisconsin. 48 Fed. Reg. 9860.

5. Wisconsin Rule NR 154.11(2) states that no person shall cause, allow, or permit any materials to be handled, transported, or stored without taking precautions to prevent particulate matter from becoming airborne.

6. Wisconsin Rule NR 154.11(6)(a)1., states in summary that all direct and portable sources constructed or modified after April 1, 1972, in addition to all direct or portable sources located in the Southeast Wisconsin Air Quality Control Region shall meet a 20 percent (%) opacity limit.

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 SIP 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

8. The Respondent in this proceeding is International Malting Company LLC, (IMC) a corporation doing business in the State of Wisconsin.

9. Respondent owns and operates a malt manufacturing facility located at 2100 S.43rd Street, Milwaukee, Wisconsin (Milwaukee facility).

10. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e) and Wisconsin Rule NR 400.02(69).

11. Respondent is the "owner and/or operator", as defined at Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5) and an "operator", as defined at Wisconsin Rule NR 400.02(61), of a malt manufacturing operation, at its Milwaukee facility.

12. The Respondent's malt manufacturing operation is a source of fugitive dust emissions to the ambient air, and is therefore subject to Wisconsin Rule NR 154.11(2).

13. The Respondent's grain loading operation at its malt manufacturing operation is a direct source of emission to the ambient air.

14. The Respondent's operations at the Milwaukee facility are located within the Southeast Wisconsin Air Quality Control Region, and are therefore subject to Wisconsin Rule NR 154.11(6)(a)1.

15. On June 17, 1999, U.S. EPA sent a Notice of Violation to the Respondent for violations of Wisconsin Rules NR 154.11(2) and NR 154.11(6)(a)1.

16. On July 14, 1999, U.S. EPA met with IMC to discuss the June 17, 1999 Notice of Violation.

COUNT 1

17. Complainant incorporates Paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

18. On September 30, 1998, a Wisconsin Department of Natural Resources (WDNR) inspector obtained five particulate samples from a residence near the Milwaukee facility.

19. The five particulate samples were analyzed by the Wisconsin State Lab of Hygiene. The results of the analyses dated October 27, 1998, showed concentrations of barley grain dust as follows: Sample 1, 90%; Sample 2, 90%; Sample 3, 90 - 95%; Sample 4, 90%; and Sample 5, 30%.

20. The barley grain dust collected on September 30, 1998, was attributed to Respondent's facility.

21. Respondent violated Wisconsin Rule NR 154.11(2) because it "caused, allowed, or permitted materials to be handled, transported, or stored without taking precautions to prevent particulate matter from becoming airborne."

COUNT 2

22. Complainant incorporates Paragraphs 1 through 16 of this Complaint, as if set forth in this paragraph.

23. On December 7, 1998, WDNR performed visible emissions readings at the Respondent's facility.

24. Visible emissions readings taken during the December 7, 1998, inspection showed opacity readings greater than the 20% opacity limit set forth in Wisconsin Rule NR 154.11(6)(a)1., as tabularized below:

GRAIN LOADING PROCESS CYCLONE

<u>TIME</u>	<u>READING</u>
11:00 - 11:05	62.3%
11:06 - 11:11	53.3%
11:12 - 11:17	37.7%

25. As shown in the forgoing table, Respondent exceeded the 20% opacity limitation, in violation of Wisconsin Rule NR 154.11(6)(a)1. of the Wisconsin SIP on December 7, 1998, during the times set forth herein.

Proposed Civil Penalty

26. 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).

27. 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 \$169,287. 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.

28. 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

29. 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(July 23, 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

30. 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

31. 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 Thomas Nash to receive service for Complainant of all documents in this proceeding. You may telephone Mr. Nash at (312) 886-0552. Mr. Nash's address is:

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

Penalty Payment

32. 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 the docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Thomas Nash 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

33. 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 34 through 39 below.

Answer

34. 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 30, above, and must serve copies of the written answer on the other parties.

35. 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.

36. Respondent's 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.

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

38. Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes; and
- c. whether Respondent requests a hearing as discussed in paragraph 33 above.

39. 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

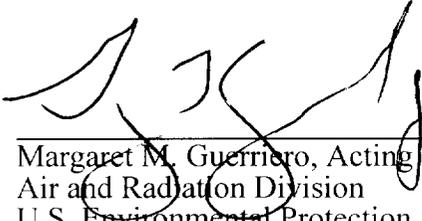
40. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Thomas Nash at the address or phone number specified in paragraph 31 above.

41. Respondent's request for an informal settlement conference does not extend the 30 calendar day period to file a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and 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 a conference.

Continuing Obligation to Comply

42. 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.

9/23/99
Date

 FOR

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. 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:

Mr. Gabriel Pujol, President
International Malting Company LLC
P.O. Box 712
Milwaukee, Wisconsin 53201

on the 24 day of September, 1999.

Shanee Rucker
Shanee Rucker
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: P140 777053

PRO

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RET