

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. **CAA-05- 2002-0 00 9**
)
Cosmed of Illinois) Proceeding to Assess a
Waukegan, Illinois) Civil Penalty under
) Section 113(d) of the
Respondent.) 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 Cosmed of Illinois (Cosmed), a corporation doing business in Illinois.

Statutory and Regulatory Background

4. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) General Provisions at 40 C.F.R. §§ 63.1 through 63.15 (Subpart A).

5. Subpart A, at 40 C.F.R. § 63.1(a)(4), applies to owners or operators who are subject to subsequent Subparts of Part 63.

6. Subpart A, at 40 C.F.R. § 63.4(a)(2), prohibits owners and operators subject to Part 63 from failing to keep records

required, notify, report, or revise reports as required under Part 63.

7. Subpart A, at 40 C.F.R. § 63.7(a)(2)(i) requires owners or operators of an affected source required to do performance testing under a relevant standard to perform such tests within 180 days after the effective date of a relevant standard for a new source that has an initial startup date before the effective date.

8. Subpart A, at 40 C.F.R. § 63.8(b)(1), requires owners and operators to conduct monitoring as set forth in § 63.8 and the relevant standard(s).

9. Subpart A, at 40 C.F.R. § 63.8(c)(1), requires owners and operators of affected sources to maintain and operate each continuous monitoring system (CMS) as specified in § 63.8, or in a relevant standard, and in a manner consistent with good air pollution control practices.

10. Subpart A, at 40 C.F.R. § 63.8(c)(2), requires all CMS to be installed such that representative measurements of emissions or process parameters from the affected source are obtained.

11. Subpart A, at 40 C.F.R. § 63.8(c)(3), requires all CMS to be installed, operational, and the data verified as specified in the relevant standard either prior to or in conjunction with conducting performance tests under § 63.7. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

12. Subpart A, at 40 C.F.R. § 63.10(b)(1) requires the owner or operator of an affected source subject to the provisions of Part 63 to maintain files of all information (including all reports and notifications) required by Part 63 recorded in a form suitable and readily available for expeditious inspection and review. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.

13. Subpart A, at 40 C.F.R. § 63.10(b)(2)(vii), requires the owner or operator of an affected source subject to Part 63 to maintain relevant records for such source of all required measurements needed to demonstrate compliance with a relevant standard.

14. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Sterilization Facilities at 40 C.F.R. §§ 63.360 through 63.367 (Subpart O).

15. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities (Subpart O), at 40 C.F.R. § 63.360(a), subjects all sterilization sources using 1 ton in sterilization or fumigation operations to the emissions standards in § 63.362, except as specified in paragraphs (b) through (e) of § 63.360.

16. Subpart O, at 40 C.F.R. §§ 63.360(a) and (g)(4),

requires the owner or operator of any sterilization facility with an initial startup date before December 6, 2000, using 1 or more tons of ethylene oxide, to comply with the emission standards in § 63.362 for aeration room vents by December 6, 2000.

17. Subpart O, at 40 C.F.R. § 63.363(a)(1), requires the owner or operator of a source subject to emission standards in § 63.362 to conduct an initial performance test using the procedures listed in § 63.7 according to the applicability in Table 1 of § 63.360, the procedures listed in § 63.363, and the test methods listed in § 63.365.

18. Subpart O, at 40 C.F.R. § 63.363(a)(2) requires the owner or operator of all sources subject to the emission standards in § 63.362 to complete performance testing within 180 days after the compliance date for the specific source as determined in § 63.360(g).

19. Subpart O, at 40 C.F.R. § 63.364(a)(1), requires the owner or operator of a source subject to the emissions standards in § 63.362 to comply with the monitoring requirements in § 63.8 and § 63.364.

20. Subpart O, at 40 C.F.R. § 63.367(a) requires the owner or operator of a source subject to § 63.362 to comply with the recordkeeping requirements in § 63.10(b) and (c) according to the applicability in Table 1 of § 63.360, and in § 63.367.

21. 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 NESHAP 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

22. Paragraphs 1-21 are incorporated herein by reference.

23. The Respondent in this proceeding is Cosmed of Illinois.

24. Cosmed of Illinois is an affiliate of Cosmed Group, Inc.

25. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

26. Respondent is an Illinois corporation with a place of business located at 1160 Northpoint Boulevard, Waukegan, Illinois.

27. Respondent owns and operates a commercial ethylene oxide sterilization facility with process operations at the Waukegan location.

28. Respondent notified the Illinois Environmental Protection Agency on April 4, 1995, that sterilization operations at the Waukegan facility started up on May 29, 1994.

29. Respondent uses at least ten tons of ethylene oxide per year at the Waukegan facility.

30. Respondent's Waukegan facility includes aeration rooms vented to ethylene oxide emissions control equipment consisting of two acid water scrubbers.

31. Respondent notified the Illinois Environmental Protection Agency on December 4, 2000, that it completed construction of two packed towers permitted to control emissions

from the facility's aeration rooms and that the towers are operational.

32. Respondent is subject to Subpart O and not exempt from the emissions standards in 40 C.F.R. § 63.362 or any other provision of Subpart O pursuant to the exceptions at 40 C.F.R. § 63.360(b) through (e).

33. Respondent's aeration room vents are subject to the emission limits at 40 C.F.R. § 63.362(d).

34. Respondent is subject to the General Provisions of Part 63 at 40 C.F.R. §§ 63.1 through 63.15 (Subpart A) according to the applicability of Subpart A to Part 63 in Table 1 of § 63.360, including, but not limited to, performance test requirements at § 63.7, monitoring requirements at § 63.8, and recordkeeping and reporting requirements at § 63.10.

Count I

35. Complainant incorporates paragraphs 1 through 34 of this complaint, as if set forth in this paragraph.

36. Respondent has not conducted a performance test of the aeration room vents' emissions control system at its Waukegan facility.

37. Respondent's failure to conduct a performance test of the aeration room vents' emissions control system at its Waukegan facility constitutes a violation of 40 C.F.R. §§ 63.7(a)(2)(i) and 63.363(a)(2).

Count II

38. Complainant incorporates paragraphs 1 through 34 of this complaint, as if set forth in this paragraph.

39. Respondent did not install a CMS at its Waukegan facility to measure emissions or process parameters from the aeration room vents prior to or in conjunction with conducting performance tests of the aeration room vents' emission control systems, pursuant to §§ 63.7 and 63.363(a).

40. Respondent's failure to install a CMS at its Waukegan facility to measure emissions or process parameters from the aeration room vents constitutes a violation of 40 C.F.R. § 63.8(c)(2).

Count III

41. Complainant incorporates paragraphs 1 through 34 of this complaint, as if set forth in this paragraph.

42. Respondent does not maintain records of all required measurements needed to demonstrate compliance with the emission limits at 40 C.F.R. § 63.362(d).

43. Respondent's failure to maintain records of all required measurements needed to demonstrate compliance with the aforementioned emission limits constitutes a violation of 40 C.F.R. §§ 63.4(a)(2), 63.10(b)(2)(vii) and 63.367(a).

Proposed Civil Penalty

44. 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).

45. 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 \$132,000. 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.

46. 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

47. 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

48. 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

49. 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 Joanna Glowacki, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Joanna Glowacki at (312) 353-3757. Joanna Glowacki's address is:

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

Penalty Payment

50. 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 Joanna Glowacki, Associate Regional Counsel, 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

51. 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 52 through 57 below.

Answer

52. 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 48, above, and must serve copies of the written answer on the other parties.

53. 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.

54. 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.

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

56. 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 51 above.

57. 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

58. 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 Joanna Glowacki, Associate Regional Counsel, at the address or phone number specified in paragraph 49, above.

59. 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.

In the Matter of Cosmed
Docket No.

CAA-05- 2002 -0 00 9

CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number CAA-05- 2002 -0 00 9 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 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:

Ms. Monica Figueroa
General Manager
Cosmed of Illinois
1160 Northpoint Boulevard
Waukegan, IL 60085

I also certify that a copy of the Administrative Complaint was sent by First Class Mail to:

Julie Armitage, Acting Manager
Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

on the 3rd day of June, 2002

Betty Williams
Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9586 4969