

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. CAA-5- 2000-0 08
)
FCI, Inc.) Proceeding to Assess a
Chicago, Illinois) Civil Penalty under
) Section 113(d) of the
) Clean Air Act,
Respondent.) 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 FCI, Inc. (FCI), a corporation doing business in the State of Illinois.

Statutory and Regulatory Background

4. In accordance with the Act, U.S. EPA has established national ambient air quality standards ("NAAQS") for criteria air pollutants, including ozone. 42 U.S.C. § 7409. The NAAQS establish primary standards to protect the public health and secondary standards to assure public welfare. The Act required each state to submit to U.S. EPA for approval a State Implementation Plan (SIP) that provides for the implementation, maintenance and enforcement of NAAQS in each air quality control region in each state. 42 U.S.C. § 7410. The Act provides that

U.S. EPA approval of a SIP makes all the requirements of that SIP enforceable by U.S. EPA. 42 U.S.C. § 7413(d).

5. On May 19, 1998, U.S. EPA approved the rules for controlling volatile organic material (VOM) emissions from wood furniture coating operations in the Chicago and Metro East ozone non-attainment areas as set forth in 35 Ill. Admin. Code 218.204 et. seq. as part of the federally-enforceable SIP for the State of Illinois. 63 Fed Reg 27489 (May 19, 1998).

6. The limits set forth in the rule apply to a source's wood furniture coating lines if the source contains process emissions units, which as a group have a potential to emit 22.7 Mg (25 tons) or more of VOM per calendar year and have not limited emissions to less than that through production capacity limitations contained in a federally enforceable operating permit or SIP revision. 35 Ill. Admin. Code 218.208(2)(c).

7. 35 Ill. Admin. Code 218.204 sets forth the VOM emission limitations for wood furniture coaters, specifying that no owner or operator of a coating line shall apply at any time any coating in which the VOM content exceeds the emission limitations for the specified coating.

8. The emission limitation for wood furniture sealers and topcoats, is 1.9 lb VOM/lb solid for a non-acid-cured alkyd amino vinyl sealer. 35 Ill. Admin. Code 218.204 (L)(2)(B)(i)

9. 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 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

10. Paragraphs 1-9 are incorporated herein by reference.

11. Respondent is an Illinois corporation with a plant located at 1750 N. Lawndale Ave, Chicago, Illinois 60647 ("facility").

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

13. Respondent's facility is engaged in wood furniture coating operations.

14. Respondent's facility is a "stationary source" as defined at Section 112(a)(3) of the Act, 42 U.S.C. § 7412(a)(3).

15. Respondent is an "owner or operator" of a "coating line" containing "emission units" as these terms are defined at 35 Ill. Admin. Code 211 et seq.

16. During calendar year 1999, Respondent's wood furniture coating lines contained emission units, which as a group, had a potential to emit greater than 25 tons or more of VOM per calendar year.

17. During calendar year 1999, Respondent did not limit emissions to less than 25 tons of VOM per calendar year through production or capacity limitations contained in a federally enforceable state operating permit or SIP revision.

18. FCI applied a non-acid-cured alykd amino vinyl sealer at its wood furniture coating line from at least May 12 through May 21, 1999, with a VOM content of more than 1.9 lb VOM/lb /lb

solid.

19. On August 5, 1999, U.S. EPA issued a Finding of Violation (FOV) to FCI for violations of the Wood Furniture NESHAP and Notice of Violation (NOV) for violations of the Illinois SIP in 1998.

20. On September 8, 1999, U.S. EPA held on conference with FCI regarding the August 5, 1999 FOV and NOV.

21. On February 10, 2000, U.S. EPA issued a second NOV for violations of the Illinois SIP in 1999.

Count I

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

23. FCI's use of a non-acid-cured alkyd amino vinyl sealer at its wood furniture coating line from at least May 12 through May 21, 1999, with a VOM content of more than 1.9 lb VOM/lb solid is a violation of the emission limitation for wood furniture coaters at Ill. Admin. Code 218.204 (L)(2)(B)(i).

24. FCI's violation of 35 Ill. Admin. Code 218.214 constitutes a violation of the federally-approved Illinois SIP and subjects FCI to the assessment of a civil penalty pursuant to Section 113 (d) of the Act, 42 U.S.C. § 7413(d).

Proposed Civil Penalty

25. 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).

26. 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 **\$45,100**. 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.

27. 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

28. 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 (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

29. 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

30. 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 David Mucha, Associate Regional Counsel to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Mucha at (312) 886-9032. Mr. Mucha's address is:

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

Opportunity to Request a Hearing

31. 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 herein.

Answer

32. 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 herein, above, and must serve copies of the written answer on the other parties.

33. 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.

34. 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.

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

36. 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 herein, above.

37. 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

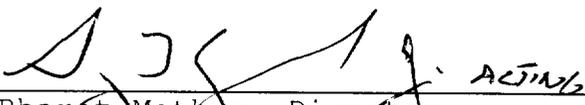
38. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact David Mucha at the address or phone number specified in herein, above.

39. 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

40. 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.

5/12/00
Date


Bharat Mathur, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

In the Matter of FCI Industries, Inc.

Docket No.

CAA-5- 2000-0 08

CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number **CAA-5- 2000-0 08** 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:

Paul Bartolemi, President
FCI Industries, Inc.
1750 North Lawndale Avenue
Chicago, Illinois 60647

I also certify that copies of the Administrative Complaint were sent by First class Mail to:

David Kolaz, Manager
Compliance and Systems Management Section
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

Harish Narayen, Acting Regional Manager
Region I
Illinois Environmental Protection Agency
1701 First Avenue
Suite 1202
Maywood, Illinois 60153

on the 12 day of May, 2000.

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

CERTIFIED MAIL RECEIPT NUMBER: 2199026408

CAA-5- 2000-008