

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. **CAA-5-2001-011**
)
Hancock Manufacturing)
Company, Inc.) Proceeding to Assess a
Toronto, Ohio,) 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), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination, or Suspension of Permits" (Consolidated Rules), 40 C.F.R. Part 22, for violations of the Ohio State Implementation Plan, approved under Section 110 of the Act, and Section 112 of the Act, 42 U.S.C. § 7412, and the regulations promulgated thereunder setting forth the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning, 40 C.F.R. Part 63, Subpart T.

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 Hancock Manufacturing Company, Inc., a corporation doing business in Toronto, Ohio.

Statutory and Regulatory Background

4. Section 110 of the Act, 42 U.S.C. § 7410, requires each

State to adopt and submit a plan which provides for the implementation, maintenance, and enforcement of any national primary or secondary standard established pursuant to Section 109 of the Act, 42 U.S.C. § 7409. These plans are required to include enforceable emission limitations, control measures, schedules for compliance, and permit programs for new sources.

5. Section 110(n)(1) of the Act, 42 U.S.C. § 7410(n)(1), provides that any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to Section 110 as in effect prior to November 15, 1990, shall remain in effect as part of such applicable implementation plan.

6. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, the Administrator approved Ohio Administrative Code (OAC) Chapter 3745-21 as part of the federally enforceable State Implementation Plan (SIP) on October 23, 1980. This approval became effective on October 31, 1980 (45 Fed. Reg. 72119). This includes OAC 3745-21-09, Control of emissions of volatile organic compounds from stationary sources, which requires certain controls for solvent cleaning machines.

7. 3745-21-09(O)(4)(e)(viii) provides that each owner or operator of a conveyORIZED degreaser shall operate and maintain such conveyORIZED degreaser with downtime covers for closing off the entrance and exit during shutdown hours in order to minimize solvent evaporation from the unit.

8. 40 C.F.R. § 52.23 states that failure to comply with the provisions of the state implementation plan is a violation subject to enforcement under Section 113 of the Act.

9. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Halogenated Solvent Cleaning (Degreaser MACT) at 40 C.F.R. §§ 460 through 469.

10. The NESHAP for Halogenated Solvent Cleaning applies to each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform, or any combination of these halogenated hazardous air pollutant (HAP) solvents, in a total concentration greater than 5 percent by weight, as a cleaning and/or drying agent.

11. 40 C.F.R. § 63.468(a) provides that each owner or operator of an existing solvent cleaning machine subject to the provisions of this subpart shall submit an initial notification report to the Administrator no later than August 29, 1995.

12. 40 C.F.R. § 63.9(j) provides that any change in the information already provided under this section shall be provided to the Administrator in writing within 15 calendar days after the change.

13. The federal regulation found at 40 C.F.R. § 63.464(a) provides that, as an alternative to meeting the requirements in § 63.463, each owner or operator of a batch or in-line solvent cleaning machine can elect to comply with the requirements of § 63.464. An owner or operator of a solvent cleaning machine who elects to comply with 40 C.F.R. § 63.464 shall comply with the requirements specified in either paragraph (a)(1) or (a)(2) of

this section.

14. 40 C.F.R. § 63.464(b) provides that each owner or operator of a batch vapor or in-line solvent cleaning machine complying with § 63.464(a) shall demonstrate compliance with the applicable 3-month rolling average monthly emission limit on a monthly basis as described in § 63.465(b) and (c).

15. 40 C.F.R. § 63.464(c) provides that each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of § 63.463 shall submit an exceedance report to the Administrator semiannually except when, the Administrator determines on a case-by-case basis that more frequent reporting is necessary to accurately assess the compliance status of the source, or an exceedance occurs. Once an exceedance has occurred the owner or operator shall follow a quarterly reporting format until a request to reduce reporting frequency under paragraph (i) of this section is approved.

16. 40 C.F.R. § 63.460(d) provides that each solvent cleaning machine subject to this subpart that commenced construction or reconstruction on or before November 29, 1993, shall achieve compliance with the provisions of this subpart no later than December 2, 1997.

17. Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A), prohibits any person from operating a source in violation of any emissions standard, limitation, or regulation promulgated under Section 112.

18. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$25,000 per day of violation up

to a total of \$200,000 for, among other things, NESHAP and SIP 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 Collection Improvements Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for, among other things, NESHAP and SIP violations that occurred on or after January 31, 1997.

19. The Administrator may assess a penalty greater than \$220,000, under Section 113(d)(1), where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action.

20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$220,000, is appropriate for an administrative penalty action.

21. 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.

22. 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

23. Hancock Manufacturing is a "person" as defined at Section 302 of the Clean Air Act, 42 U.S.C. § 7602.

24. Hancock Manufacturing owns and operates a facility that manufactures casings for automotive oil filters and automotive air conditioning units, located in Toronto, Ohio, which contains seven in-line vapor degreasers.

25. Six of the vapor degreasers are "existing" as defined in 40 C.F.R. § 63.461 by the NESHAP for Halogenated Solvent Cleaning, and one is a "new" vapor degreaser as defined in the same subpart.

26. The six existing degreasers use trichloroethane (TCE) as a solvent and the new vapor degreaser uses methylene chloride in a total concentration greater than five percent by weight, as a cleaning and/or drying agent.

27. The degreasers have solvent/air interfaces.

28. The degreasers are subject to the provisions of 40 C.F.R. Part 63, Subpart T.

29. On December 27, 2000, Bharat Mathur, Director, Air and Radiation Division, Region 5, issued a Notice of Violation pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), and a Finding of Violation to Hancock Manufacturing, alleging violations of the applicable NESHAP for Halogenated Solvent Cleaning, 40 C.F.R. § 63.460-469, and the Ohio State Implementation Plan, Control of Emissions of Volatile Organic

Compounds from Stationary Sources, Ohio Administrative Code Chapter 3745-21-09 (45 Fed. Reg. 72119).

30. U.S. EPA and Hancock Manufacturing held a conference on January 25, 2001, to discuss the Notice of Violation and Finding of Violation in accordance with Section 113 of the Act.

Specific Allegations

Count I - OAC 3745-21-09(O) (4) (e) (viii)

31. Complainant incorporates paragraphs 1 through 30 of this complaint, as if set forth in this paragraph.

32. According to OAC 3745-21-09(O) (4) (e) (viii), a person shall operate and maintain the conveyORIZED degreaser with downtime covers for closing off the entrance and exit during shutdown hours in order to minimize solvent evaporation from the unit.

33. During an Ohio Environmental Protection Agency inspection at Hancock Manufacturing on June 21, 1999, the downtime covers were not properly in place on the degreasers.

34. Hancock Manufacturing's failure to ensure that the downtime covers were properly in place on the degreasers constitutes a violation of OAC 3745-21-09(O) (4) (e) (viii).

Count II - 40 C.F.R. § 63.468(a)

35. Complainant incorporates paragraphs 1 through 30 of this complaint, as if set forth in this paragraph.

36. According to 40 C.F.R. § 63.468(a), each owner or operator of an existing solvent cleaning machine subject to the provisions of this subpart shall submit an initial notification report to the Administrator no later than August 29, 1995.

37. Hancock Manufacturing submitted the initial notification reports for the six existing degreasers on September 26, 1995.

38. Hancock Manufacturing's failure to submit an initial notification for each existing degreaser by August 29, 1995, constitutes a violation of the reporting deadline established under 40 C.F.R. § 63.468(a), and of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

Count III - 40 C.F.R. § 63.9(j)

39. Complainant incorporates paragraphs 1 through 30 of this complaint, as if set forth in this paragraph.

40. According to 40 C.F.R. § 63.9(j), any change in the information already provided under this section shall be provided to the Administrator in writing within 15 calendar days after the change.

41. Hancock Manufacturing submitted an initial notification report for each existing degreaser on September 26, 1995.

42. Hancock Manufacturing chose the alternative standard at 40 C.F.R. § 63.464 as its anticipated compliance approach in the initial notification reports.

43. Hancock Manufacturing submitted an additional notification report for each existing degreaser, dated May 1, 1998, selecting the basic equipment standard under 40 C.F.R. § 63.463 as its anticipated compliance approach.

44. Hancock Manufacturing failed to submit a change in information on the initial notification to the Administrator within 15 calendar days after the change.

45. Hancock Manufacturing's failure to submit a change in notification within 15 calendar days after the change in compliance approach constitutes a violation of the reporting deadline established under 40 C.F.R. § 63.9(j), and Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

Count IV - 40 C.F.R. § 63.464(a)

46. Complainant incorporates paragraphs 1 through 30 of this complaint, as if set forth in this paragraph.

47. According to 40 C.F.R. § 63.464(a), as an alternative to meeting the requirements in 40 C.F.R. § 63.463, each owner or operator of a batch or in-line solvent cleaning machine can elect to comply with the requirements of 40 C.F.R. § 63.464.

Requirements include the maintenance of a log of solvent additions and deletions for each solvent cleaning machine and to ensure that the emissions from each solvent cleaning machine are equal to or less than the applicable emission limit presented in table 5 of the subpart as determined using procedures in 40 C.F.R. § 63.465(b) and (c).

48. Hancock Manufacturing elected to comply with 40 C.F.R. § 63.464 in the September 26, 1995, initial notification report for each existing degreaser.

49. Hancock Manufacturing was unable to provide copies of the required records in response to the January 24, 2000, Request for Information. Instead, Hancock Manufacturing supplied copies of records required to be maintained for compliance with the basic equipment standard, 40 C.F.R. § 63.463.

50. Hancock Manufacturing's failure to submit the required

records constitutes a violation of the monitoring and recordkeeping requirements established under 40 C.F.R. § 63.464(a), and of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

Count V - 40 C.F.R. § 63.464(b)

51. Complainant incorporates paragraphs 1 through 30 of this complaint, as if set forth in this paragraph.

52. According to 40 C.F.R. § 63.464(b), each owner or operator of a batch vapor or in-line solvent cleaning machine complying with 40 C.F.R. § 63.464(a) shall demonstrate compliance with the applicable 3-month rolling average monthly emission limit on a monthly basis as described in 40 C.F.R. § 63.465(b) and (c).

53. Hancock Manufacturing elected to comply with 40 C.F.R. § 63.464 in the September 26, 1995, initial notification report for each existing degreaser.

54. Hancock Manufacturing was unable to provide copies of the required records in response to the January 24, 2000 Request for Information. Instead, Hancock Manufacturing supplied copies of records required to be maintained for compliance with the basic equipment standard, 40 C.F.R. § 63.463.

55. Hancock Manufacturing's failure to submit the required records constitutes a violation of the compliance provisions established under 40 C.F.R. § 63.464(b), and of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

Count VI - 40 C.F.R. § 63.464(c)

56. Complainant incorporates paragraphs 1 through 30 of

this complaint, as if set forth in this paragraph.

57. According to 40 C.F.R. § 63.464(c), if the applicable 3-month rolling average emission limit is not met, an exceedance has occurred. All exceedances shall be reported as required in 40 C.F.R. § 63.468(h).

58. Hancock Manufacturing elected to comply with 40 C.F.R. § 63.464 in the September 26, 1995, initial notification report for each existing degreaser.

59. Hancock Manufacturing was unable to provide copies of the required records in response to the January 24, 2000, Request for Information. Instead, Hancock Manufacturing supplied copies of records required to be maintained for compliance with the basic equipment standard, 40 C.F.R. § 63.463.

60. Hancock Manufacturing's failure to submit the required exceedance reports constitutes a violation of the reporting requirements established under 40 C.F.R. § 63.464(c), and of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

Proposed Civil Penalty

61. The Administrator must consider the factors specified in Section 113(e), 42 U.S.C. § 7413(e), of the Act when assessing an administrative penalty under Section 113(d), 42 U.S.C. § 7413(d).

62. The proposed civil penalty herein has been determined under those authorities in accordance with Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), which requires the Complainant to take the following factors into consideration in determining the amount of penalty assessed under Section 113:

- (a) the size of the Respondent's business;
- (b) the economic impact of the penalty on the 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 credible evidence (including evidence other than the applicable test method);
- (e) payment by Respondent of penalties previously assessed for the same alleged violations;
- (f) the economic benefits of noncompliance; and
- (g) the seriousness of the alleged violations.

63. 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 in the amount of **\$343,962**. This proposed penalty was calculated under Section 113(e) of the Act, with specific reference to the Clean Air Act Stationary Source Penalty Policy (Penalty Policy), a copy of which is attached to this Complaint as Exhibit A. The Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors set forth above to particular cases.

64. The proposed penalty of \$343,962 reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of its business and the economic

impact of the proposed penalty on its business.

65. 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

66. 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

67. 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

68. 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 Orelia Merchant to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Orelia Merchant at (312) 886-2241. Orelia Merchant's address is:

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

Penalty Payment

69. 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 Orelia Merchant 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

70. 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 71 through 76 below.

Answer

71. 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 67, above, and must serve copies of the written answer on the other parties.

72. 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.

73. 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.

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

75. 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 67 above.

76. 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

77. 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 Orelia Merchant at the address or phone number specified in paragraph 68, above.

78. 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

79. 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.

6/28/01
Date


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

CAA-5- 2001-011

In the Matter of Hancock Manufacturing Company, Inc.
Docket No. **CAA-5-2001-011**

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number CAA-5-2001-011 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 and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

on the 29 day of June, 2001.

Alicia Shatt For
Loretta Shaffer, Section Secretary
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 70993400000095810225