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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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IN THE MATTER OF: )  
)  
Village of Freeburg ) Docket No. **CAA-5-99-035**  
Freeburg, Illinois, )  
)  
Respondent. ) Proceeding to Assess an  
) Administrative Penalty  
) under Section 113(d) of the  
) 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 Village of Freeburg (Freeburg), a municipality in the State of Illinois.

**Statutory and Regulatory Background**

4. Under Section 109 of the Act, 42 U.S.C. § 7409, the Administrator of the U.S. EPA (the "Administrator") has promulgated national air quality standards ("NAAQS") for certain listed air pollutants, including ozone. The NAAQS for ozone is found in 40 C.F.R. § 50.6.

5. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to submit to the Administrator, for approval or

disapproval, a plan for the implementation, maintenance, and enforcement of the NAAQS.

6. The State of Illinois adopted and submitted to U.S. EPA a state implementation plan (SIP) for implementation, maintenance, and enforcement of the NAAQS that was approved by U.S. EPA. Under Section 113(a) and (b) of the Act, 42 U.S.C. § 7413(a) and (b), SIP provisions that have been approved by U.S. EPA are federally enforceable.

7. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries in which air quality is better than the NAAQS for each listed pollutant, those areas in which it is worst, and those areas which cannot be classified due to insufficient data. The Administrator is required to publish a list of such areas, and thereafter to make any necessary modifications to the list. An area which meets the NAAQS for a particular pollutant is termed an "attainment" area, an area which does not meet the NAAQS is termed a "nonattainment" area; and an area which cannot be classified due to insufficient data is termed "unclassifiable."

8. On March 3, 1978, U.S. EPA designated St. Clair County as nonattainment for ozone (43 Fed. Reg. 8964). On November 6, 1991, U.S. EPA designated St. Clair County as nonattainment for ozone and classified it as moderate nonattainment (56 Fed. Reg. 56749).

9. On December 17, 1992, U.S. EPA approved Illinois Pollution Control Board Rule 203 ("Illinois Rule 203"), containing major stationary source requirements for new or modified sources constructed in nonattainment areas, as part of the federally enforceable SIP for Illinois (57 Fed. Reg. 59928). Illinois Rule 203 became effective on February 16, 1993.

10. Illinois Rule 203.201, 35 IAC § 203.201, prohibits any person from constructing a major new source or major modification in a nonattainment area except as in compliance with Illinois Rule 203 for that pollutant.

11. Illinois Rule 203.203(a), 35 IAC § 203.203(a), requires that a construction permit be obtained prior to actual construction of a major new source or major modification.

12. Illinois Rule 203.103, 35 IAC § 203.103, defines "actual construction" to mean in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and erection of permanent storage structures.

13. Illinois Rule 203.206(b)(3)(A), 35 IAC § 203.206(b)(3)(A), specifies that for an area designated as nonattainment for ozone, a major stationary source is a stationary source which emits or has the potential to emit

nitrogen oxides in an amount equal to or greater than 100 tons per year in an area classified as marginal or moderate nonattainment for ozone.

14. Illinois Rule 203.207(a), 35 IAC § 203.207(a), defines a major modification as a physical change, or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant for which the area is designated a nonattainment area.

15. Illinois Rule 203.207(b), 35 IAC § 203.207(b), provides that any net emissions increase that is significant for volatile organic material or nitrogen oxides shall be considered significant for ozone.

16. Illinois Rule 203.208, 35 IAC § 203.208, specifies that a net emissions increase is the amount by which the sum of any increase in actual emissions from a particular physical change or change in method of operation at a source, and any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable, exceeds zero.

17. Illinois Rule 203.209(a)(2), 35 IAC § 203.209(a)(2), specifies that a net emission increase in the pollutant emitted is significant if the rate of emission is equal to or in excess of 40 tons per year of nitrogen oxides for a nonattainment area for nitrogen dioxide and 40 tons per year of nitrogen oxides for

an nonattainment area for ozone.

### **General Allegations**

18. Freeburg is a "person" as defined at Section 302 of the Act, 42 U.S.C. § 7602.

19. Freeburg's electric utility generating complex is located at 412 West High Street in Freeburg, Illinois (the "Freeburg facility").

20 The Freeburg facility is located in St. Clair County, Illinois.

21. Prior to March 1997, the Freeburg facility contained six generators, numbered 1,2,3,4,6, and 7, which have the total potential to emit approximately 1325 tons per year of nitrogen oxides ("NOx").

22. Prior to March 1997, the Freeburg facility was a major source as defined by Illinois Rule 203.206(b)(3)(A).

23. In March of 1997, Freeburg initiated construction of two 1,825 kW generators, generators #8 and #9, at the Freeburg facility.

24. Generators # 8 and #9 have a potential to emit approximately 315 tons per year of NOx.

25. Construction of generators #8 and #9 is a major modification of a source as defined by Illinois Rule 203.207, 35 IAC § 203.207.

26. Construction of generators #8 and #9 is construction of a major new source as defined by Illinois Rule 203.206, 35 IAC § 203.206.

27. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative assessment of civil penalties is appropriate for the period of violations alleged in this complaint.

**Count I**

28. Paragraphs 1 through 27 of this complaint are incorporated by reference as if fully set forth in this paragraph.

29. Freeburg commenced construction of generators #8 and #9 without first obtaining a permit to construct as required by Illinois Rule 203.201 and 203.203(a), 35 IAC §§ 203.201 and 203.203(a).

30. Freeburg's failure to obtain a permit to construct prior to actual construction of generators #8 and #9 violates the Illinois SIP, Illinois Rule 203.201 and 203.203, 35 IAC §§ 203.201 and 203.203.

31. On September 28, 1998, U.S. EPA issued a notice of violation to Freeburg for violations of the Illinois SIP regulation Illinois Rule 203.201 and 203.203.

32. On October 27, 1998, U.S. EPA and Freeburg held a

conference to discuss the September 28, 1998, notice of violation.

**Proposed Civil Penalty**

33. 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)

34. 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 \$38,400. 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.

35. 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**

36. 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. 40137 (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**

37. 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

38. 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 Gaylene Vasaturo to receive service for Complainant of all documents in this proceeding. You may telephone Gaylene Vasaturo at (312) 886-1811. Ms. Vasaturo's address is:

Gaylene Vasaturo (C-14J)  
Associate Regional Counsel  
U.S. EPA, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604-3590

**Penalty Payment**

39. 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 Gaylene Vasaturo 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**

40. 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 to contest 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 41 through 46 below.

#### **Answer**

41. 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 37 above, and must serve copies of the written answer on the other parties.

42. 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.

43. Respondent's written answer must clearly and directly admit, deny or explain each of the factual allegations contained 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.

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

45. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds for 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 40 above.

46. 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 40 C.F.R. § 22.17(a). 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 under 40 C.F.R. § 22.27(c).

#### **Settlement Conference**

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

48. 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 adjudicatory hearing processes. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because the parties hold such a conference.

**Continuing Obligation to Comply**

49. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act or any other applicable federal, state or local law.

9/22/99  
Date

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

**CAA-5-99-035**

REC

In the Matter of Village of Freeburg  
Docket No.

**CAA-5-99-035**

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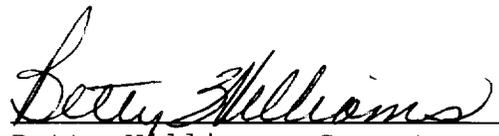
CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original and one copy of the foregoing Administrative Complaint 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. 40137 (July 23, 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:

Allen L. Watters  
Village President  
Village of Freeburg  
14 Southgate Center  
Freeburg, Illinois 62243

Gregory Nold, Esq.  
Nold & Nold  
P.O. Box 99  
Freeburg, Illinois 62243

on the 22nd day of September, 1999.

  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: P140779181 (Watters)

CERTIFIED MAIL RECEIPT NUMBER: P140779182 (Nold)