

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF) DOCKET No. **CAA-5- '99 - 050**
)
Wisconsin Department of Administration)
University of Wisconsin) **Proceeding to Assess an**
La Crosse, Wisconsin) **Administrative Penalty**
) **under Section 113(d) of**
) **the Clean Air Act,**
Respondent) **42 U.S.C. § 7413(d)**
)

ADMINISTRATIVE COMPLAINT

1. This is an administrative action to assess a civil penalty pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and 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," 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Acting Director of the Air and Radiation Division of the United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Wisconsin Department of Administration, University of Wisconsin (UW) La Crosse Campus.

REGULATORY BACKGROUND

4. The Administrator of U.S. EPA approved Wisconsin Administrative Code NR 154.11 on March 9, 1983, at 48 Fed. Reg. 9860, as part of the federally enforceable State Implementation Plan (SIP) for Wisconsin, pursuant to Section 110(a) of the Act.

5. Wisconsin Administrative Code § NR 154.11(4)1 provides, in part, that no person shall cause, allow, or permit the emission of particulate matter to the ambient air from any indirect heat exchanger, power or heating plant, fuel-burning installation constructed on or before April 1, 1972, in excess of 0.6 pounds of particulate matter per million BTU of heat input to any stack.

GENERAL FINDINGS

6. Respondent, UW, La Crosse, Wisconsin has a heating plant with two coal-fired boilers that it operates for the purpose of providing useful heat for the University.

7. Respondent's two coal-fired boilers each have a rated capacity of 75 million BTU per hour.

8. Respondent's heating plant with its two coal-fired boilers is a fuel burning installation, as contemplated by Wisconsin Administrative Code § NR 154.01.

9. The Attorney General of the United States and the Administrator of U.S. EPA, each through their respective delegates, have jointly determined that an administrative penalty action is appropriate for the period of violations alleged in this Complaint.

SPECIFIC FINDINGS

10. Paragraphs 1 through 9 of this Complaint are hereby incorporated by reference as if fully set forth herein.

11. On January 21-22, 1998, Respondent performed a stack emission test at its heating plant to determine compliance with

the facility's emission limit.

12. The results of the January 21-22, 1998 stack test demonstrate an average emission rate of 0.9962 pounds of particulate per million BTU of heat input for Boiler Unit #2.

13. The average emission rate of 0.9962 pounds of particulate per million BTU of heat input for Boiler Unit #2 during the January 21-22, 1998 stack test is in excess of the limit of 0.6 pounds of particulate per million BTU of heat input that was established by Wisconsin Administrative Code § NR 154.11(4)(b)1.

14. Respondent failed to comply with particulate emission limits beginning January 21, 1998, in violation of Wisconsin Administrative Code § 154.11(4)(b)(1).

15. On March 19, 1999, Complainant issued a Finding of Violation to Respondent, under Section 113(a)(1) of the Act, 42 U.S.C. § 7313(a)(1), notifying Respondent that it was in violation of the Wisconsin SIP.

16. Respondent's failure to operate its boiler at the University of Wisconsin La Crosse Campus represents a violation of the Wisconsin SIP.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

17. The Administrator of U.S. EPA 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 according to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

18. Under Section 113(e) of the Act, 42 U.S.C. § 7413(e), the Administrator of U.S. EPA must consider the following factors when assessing an administrative penalty under Section 113(d):

- a. the size of Respondent's business;
- b. the economic impact of the proposed penalty on Respondent's 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 any credible evidence;
- e. Respondent's payment of penalties previously assessed for the same alleged violations;
- f. the economic benefit of noncompliance;
- g. the seriousness of the violations; and
- h. such other factors as justice may require.

19. Based upon an evaluation of the facts alleged in this Complaint and the factors in paragraph 18, above, Complainant proposes that the Administrator of U.S. EPA assess a civil penalty against Respondent of \$28,000.00. 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). The Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors set forth above to particular cases. The penalty calculation is explained

in more detail below. A copy of the Penalty Policy accompanies this Complaint.

20. In determining the proposed penalty, Complainant considered the economic benefit that Respondent received from the violations. The penalty must be sufficient to prevent the violator from gaining a monetary benefit from avoiding or delaying the expenditures that are necessary to comply. The economic benefit realized by Respondent is the cost avoided by its delayed replacement of the Oxygen Trim Level Controller. Here, the economic benefit realized by Respondent is less than \$5,000. In its discretion, Complainant has decided not to include an economic benefit component.

21. Complainant considered the seriousness of Respondent's violations. One factor reflecting the seriousness of the violations is the amount of the pollutant emitted in violation of the Act. Based on Respondent's January 21-22, 1998 performance test, Respondent's particulate emissions are over 66 percent above the allowable SIP limit of 0.6 pounds of particulate per million BTU. The penalty policy provides for the assessment of \$15,000 for levels of violation in the range of 61% to 90% above the standard. Accordingly, the proposed penalty includes a component corresponding to the actual or potential environmental harm from the violations.

22. In evaluating the seriousness of the violation, Complainant also considered the air quality status of the area in which the Respondent's facility is located. Respondent's

facility is in an attainment area for particulate matter. Accordingly, the proposed penalty includes a component corresponding to the actual or potential harm from a violation in an attainment area. The Penalty Policy provides for the assessment of \$5,000 in this case.

23. Complainant considered the duration of the violations in assessing the actual or possible harm resulting from the violations. The violations commenced on January 21, 1999, the date of the first stack emission test, and continued until March 5, 1999, when Respondent performed a second stack emission test at its heating plant to determine compliance with the facility's emission limit. The results of this stack test revealed an average emission rate of 0.4053 pounds of particulate per million BTU of heat input for Boiler Unit #2 demonstrating compliance with the SIP particulate limit. Thus, Complainant based the penalty on a forty-two day time period for duration of violations. The Penalty Policy provides for the assessment of \$8,000 for violations of one to three months duration.

24. In calculating the proposed penalty, Complainant considered the size of Respondent's business. Using its discretion based upon the facts and circumstances of this case, Complainant has decided not to assess a component for the size of Respondent's business.

25. Complainant considered Respondent's compliance history and its good faith efforts to comply. Because Complainant does not know of any prior citations against Respondent for violating

environmental laws, Complainant has not increased the proposed penalty based on this factor. Respondent's compliance history, along with good faith efforts Respondent made to comply, and its degree of cooperation, are reflected in the proposed penalty.

26. Complainant considered the economic impact of the proposed penalty on Respondent's business. Based on the best information available to Complainant at this time, the proposed penalty of \$28,000.00 reflects a presumption of Respondent's ability to pay the penalty and to continue in business.

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.

PENALTY PAYMENT

28. Respondent may pay the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

29. 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:

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

Joseph Cardile (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

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

OPPORTUNITY TO REQUEST A HEARING

30. The Administrator of U.S. EPA 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 and to contest the appropriateness of the proposed penalty. To request a hearing, Respondent must specifically make the request in its Answer, as discussed in paragraphs 31 through 36 below. If Respondent requests a hearing, U.S. EPA will hold the hearing and conduct it according to 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," 40 C.F.R.

Part 22. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

ANSWER

31. To avoid being found in default, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within 30 calendar days after receiving the Complaint. In counting the 30-day time period, the actual date of receipt is not included; Saturdays, Sundays and federal legal holidays are included. If the 30-day time period expires on a Saturday, Sunday or federal legal holiday, the time period extends to the next business day.

32. 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.

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

34. Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent intends to place at issue; and

- c. whether Respondent requests a hearing as discussed in paragraph 30 above.

35. Respondent must send a copy of the Answer and any documents subsequently filed in this action to Mary McAuliffe, Associate Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Ms. McAuliffe at (312) 886-6237.

36. If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Administrator of U.S. EPA 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 made in the Complaint and a waiver of the right to a hearing. The proposed penalty will be due without further proceedings 60 days after a default order becomes the final order of the Administrator under 40 C.F.R. § 22.27 or § 22.31.

SETTLEMENT CONFERENCE

37. Whether or not Respondent requests a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Joseph Cardile, Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Mr. Cardile at (312) 353-2151.

38. Respondent's request for a settlement conference does not extend the 30 calendar day period to file a written Answer to

this Complaint. Respondent may pursue simultaneously the 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

39. 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.

In the Matter of University of Wisconsin Department of Administration, University of Wisconsin
Docket No.

Sept 29, 1999
Date



Margaret 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 - 050

In the Matter of University of Wisconsin, La Crosse Campus
Docket No. CAA-5-99-050

CERTIFICATE OF SERVICE

I hereby certify that a copy of the ADMINISTRATIVE COMPLAINT AND NOTICE OF PROPOSED ORDER ASSESSING A PENALTY was sent via certified mail, return receipt requested, to the Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Ernest J. Spring
State Power Plant Engineer
Wisconsin Department of Administration
101 E. Wilson Street
Madison, Wisconsin 53707-7864

Edward Main, Esquire
Wisconsin Department of Administration
101 E. Wilson Street, 10th Floor
Madison, Wisconsin 53707-7864

The original and a copy was hand-delivered and filed with:

Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

30 September 99
Date

Shanee Rucker
Shanee Rucker, Secretary
AECAS (MI/WI)

Certified Mail No. P140 777 347

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