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REGION 5
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

'99 JUN 30 P2:43

IN THE MATTER OF:

DePere Foundry Inc.,
DePere, Wisconsin

Respondent.

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Docket No. **CAA-5-99-017**
Proceeding to Assess
Administrative Penalty
under Section 113(d) of the
Clean Air Act,
42 U.S.C. §7413(d)

ADMINISTRATIVE COMPLAINT AND
NOTICE OF PROPOSED ORDER ASSESSING A PENALTY

Administrative Complaint

1. This is an administrative action for the assessment of a civil penalty brought pursuant to 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 or Suspension of Permits", 40 C.F.R. Part 22.
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 DePere Foundry Inc., ("DePere"), a corporation, doing business in the State of Wisconsin.

STATUTORY AND REGULATORY BACKGROUND

4. Section 109 of the Act, 42 U.S.C. § 7409, required the Administrator of U.S. EPA to publish National Ambient Air Quality Standards ("NAAQS") for several pollutants, including particulate matter ("PM"). The NAAQS for

PM promulgated by the Administrator of U.S. EPA pursuant to Section 109 of the Act, are set forth at 40 C.F.R. § 50.6.

5. In order to achieve the NAAQS, Section 110 of the Act, 42 U.S.C. § 7410, requires each State to adopt and submit to U.S. EPA for approval a State Implementation Plan ("SIP"), providing for the implementation, maintenance and enforcement of the NAAQS for all criteria air pollutants including PM₁₀, and containing regulations limiting emissions of such pollutants from sources within each State.
6. On May 31, 1972, U.S. EPA approved Wisconsin's SIP, with some exceptions, which then became federally enforceable under the Clean Air Act (37 Fed. Reg. 10842).
7. Wisconsin SIP Rule 154.11(6)(a)1 was approved as part of the federally enforceable Wisconsin SIP effective on April 18, 1983 (48 Fed. Reg. 9860). Wis. Admin. Code § NR 431.04.
8. Wisconsin SIP Rule 154.11(6) states that no person shall suffer, cause, allow or permit emissions into the ambient air from any direct or portable source in excess of one of the limitations set forth in Wisconsin SIP Rule 154.11(6)(a) - (f).
9. Wisconsin SIP Rule 154.11(6)(a)1 limits the opacity of emissions from direct and portable sources located in subregion 1 of the Lake Michigan Intrastate Air Quality Control Region to 20 percent.
10. Section 113(a) of the Act provides the Administrator of the U.S. EPA ("Administrator") with the authority to issue compliance and penalty orders against any person that has violated or is in violation of an

applicable Implementation Plan or permit. That authority has been delegated to the Director, Air and Radiation Division, Region 5, U.S. EPA ("Director").

11. Section 113(d) (1) of the Act, 42 U.S.C. §7413(d) (1), and U.S. EPA's Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19, provide that the Administrator may issue an administrative order assessing a civil penalty of up to \$27,500 per day of violation, whenever the Administrator finds that a person has violated or is violating any requirement or prohibition of an applicable implementation plan or any permit issued under a SIP.

GENERAL ALLEGATIONS

12. Respondent owns and operates a cupola melting furnace and other processes necessary for production of grey iron castings, at its foundry located at 805-815 S. Sixth Street, in DePere, Wisconsin ("Foundry").
13. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).
14. Respondent's Foundry is a "major stationary source" as defined at Section 302(j) of the Act, 42 U.S.C. § 7602(j).
15. Respondent is an "owner and/or operator" as defined at Section 111(a) (5) of the Act, 42 U.S.C. § 7411(a) (5).
16. Respondent's cupola and grey iron casting production processes emit visible emissions into the atmosphere.

17. On March 26, 1999, U.S. EPA issued a Notice of Violation ("NOV") to the Respondent for violations of Wisconsin SIP Rule 154.11(6)(a)1 at its Foundry in DePere, Wisconsin.
18. On April 29, 1999, representatives of U.S. EPA met with Respondent to discuss the NOV. In this meeting Respondent was informed that U.S. EPA may seek civil penalties for the violations of the Act referred to in the NOV.
19. The Attorney General of the United States has concurred with the determination of the Administrator of U.S. EPA, each through their respective delegates, that an administrative assessment of civil penalties is appropriate for the period of violations alleged in this Complaint.

SPECIFIC ALLEGATIONS

COUNT I

20. Paragraphs 1 through 19 are realleged and incorporated herein as reference.
21. On March 23, 1998, March 26, 1998, April 7, 1998, April 27, 1998, July 29, 1998 and September 16, 1998, a representative of Wisconsin Department of Natural Resources conducted visible emission readings at the cupola melting furnace.
22. The visible emission readings taken during the inspection were as follows:

DATE	TIME	AVERAGE OPACITY	LOCATION
March 23, 1998	4:19PM - 4:51PM	46.0%	Stack S10, Baghouse C30
March 26, 1998	3:15PM - 3:20PM	40.0%	Stack S10, Baghouse C30
March 26, 1998	3:21PM - 3:26PM	36.0%	Stack S10, Baghouse C30
March 26, 1998	3:27PM - 3:32PM	29.0%	Stack S10, Baghouse C30
March 26, 1998	3:33PM - 3:38PM	22.0%	Stack S10, Baghouse C30
April 7, 1998	1:35PM - 1:40PM	60.0%	Stack S10, Baghouse C30
April 7, 1998	1:41PM - 1:46PM	63.0%	Stack S10, Baghouse C30
April 7, 1998	1:47PM - 1:52PM	62.0%	Stack S10, Baghouse C30
April 7, 1998	1:53PM - 1:58PM	59.0%	Stack S10, Baghouse C30
April 7, 1998	1:59PM - 2:04PM	63.0%	Stack S10, Baghouse C30
April 27, 1998	4:40PM - 4:45PM	61.0%	Stack S10, Baghouse C30
April 27, 1998	4:46PM - 4:51PM	60.0%	Stack S10, Baghouse C30

April 27, 1998	4:52PM - 4:57PM	54.0%	Stack S10, Baghouse C30
April 27, 1998	4:58PM - 5:03PM	52.0%	Stack S10, Baghouse C30
April 27, 1998	5:04PM - 5:09PM	58.0%	Stack S10, Baghouse C30
April 27, 1998	4:40PM - 4:45PM	39.0%	Hole in the Roof Above Cupola Charge Door
April 27, 1998	4:46PM - 4:51PM	29.0%	Hole in the Roof Above Cupola Charge Door
April 27, 1998	4:52PM - 4:57PM	28.0%	Hole in the Roof Above Cupola Charge Door
April 27, 1998	4:58PM - 5:03PM	27.0%	Hole in the Roof Above Cupola Charge Door
April 27, 1998	5:04PM - 5:09PM	35.0%	Hole in the Roof Above Cupola Charge Door
July 29, 1998	1:23PM - 1:28PM	70.0%	Rim of Cupola Cap
July 29, 1998	1:29PM - 1:34PM	70.0%	Rim of Cupola Cap
July 29, 1998	1:35PM - 1:40PM	64.0%	Rim of Cupola Cap
July 29, 1998	1:41PM - 1:46PM	62.0%	Rim of Cupola Cap
July 29, 1998	1:47PM - 1:52PM	54.0%	Rim of Cupola Cap

Sept. 16, 1998	2:45PM - 2:50PM	33.0%	Hole in the Roof Above Cupola Charge Door
Sept. 16, 1998	2:51PM - 2:56PM	28.0%	Hole in the Roof Above Cupola Charge Door
Sept. 16, 1998	2:57PM - 3:02PM	24.0%	Hole in the Roof Above Cupola Charge Door
Sept. 16, 1998	3:03PM - 3:08PM	26.0%	Hole in the Roof Above Cupola Charge Door
Sept. 16, 1998	3:09PM - 3:14PM	22.0%	Hole in the Roof Above Cupola Charge Door

23. The visible emission readings documented that the emissions from the cupola were in excess of 20% opacity, therefore in violation of the opacity limits established by the Wisconsin SIP Rule NR 154.11(6) (a)1.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

24. Pursuant to Section 113(d) (1) of the Act, 42 U.S.C. § 7413(d) (1), and 40 C.F.R. Part 19, the Administrator may assess a civil penalty not to exceed \$27,500 per day of violation, up to a total of \$220,000 for

violations of an applicable SIP or permit that occurred on or after January 31, 1997.

25. Section 113(e) (1) of the Act, 42 U.S.C. § 7413(e) (1), requires the Administrator of U.S. EPA to take the following factors into consideration when determining the amount of any penalty assessment under Section 113:

- 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 violations;
- f. the economic benefit of noncompliance;
- g. the seriousness of the violations; and
- h. such other factors as justice may require.

26. Based upon the facts alleged in this Complaint and the factors in paragraph 25 above, Complainant proposes to assess a civil penalty against Respondent of \$77,850. Complainant calculated this proposed penalty according to Section 113(e) (1) of the Act. In developing the proposed penalty, Complainant considered the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy, a copy of which is enclosed with this Complaint.

27. The Act requires that, when determining an appropriate penalty, U.S. EPA must consider the economic benefit a violator derives from the alleged violations. The penalty must be sufficient to preclude the violator from deriving monetary benefit due to its having avoided or delayed expenditures that would have ensured compliance with the Act, both for deterrence purposes and because other regulated entities have incurred similar expenses in maintaining compliance with the Act. Respondent's economic benefit resulted from Respondent's delay in replacing an old baghouse. The cost of this action was \$151,000, the delayed expenditure of which resulted in an economic benefit to Respondent of \$11,850.
28. Pursuant to the Act, Complainant has considered the seriousness of Respondent's violations. One factor reflecting the seriousness of the violations is the degree by which the violations exceeded the standard. Complainant compared the highest detected opacity violation with the standard. Accordingly, the proposed penalty includes a component corresponding to the actual or potential environmental harm from the violations.
29. In considering 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 located in an attainment area for PM. Accordingly, the proposed penalty includes a component corresponding to the actual or potential harm from a violation in an attainment area for PM.

30. In considering the seriousness of the violation, Complainant also considered the importance of the visible emission and fugitive dust rules to achieving the goals of the Act and its implementing regulations. Accordingly, the proposed penalty includes a component corresponding to the importance of these violations to the regulatory scheme.
31. Pursuant to the Act, Complainant has considered the duration of the violations in assessing the actual or possible harm resulting from such violations. The violations occurred on March 23, 1998, March 26, 1998, April 7, 1998, April 27, 1998, July 29, 1998 and September 16, 1998. Thus, Complainant based the economic benefit on a total duration of violation of less than one month.
32. Pursuant to the Act, Complainant has considered the size of Respondent's business in determining the appropriate penalty. Respondent's net worth, as determined by Dun and Bradstreet financial information service, is less than \$1,000,000. Accordingly, the proposed penalty includes a component which is based on the size of Respondent's business.
33. In determining an appropriate civil penalty under the Act, Complainant has considered Respondent's compliance history and its good faith efforts to comply. Because Complainant is aware of no prior citations against Respondent for violations of environmental statutes, Complainant has not enhanced the proposed penalty based on this factor.

30. In considering the seriousness of the violation, Complainant also considered the importance of the visible emission and fugitive dust rules to achieving the goals of the Act and its implementing regulations. Accordingly, the proposed penalty includes a component corresponding to the importance of these violations to the regulatory scheme.
31. Pursuant to the Act, Complainant has considered the duration of the violations in assessing the actual or possible harm resulting from such violations. The violations occurred on March 23, 1998, March 26, 1998, April 7, 1998, April 27, 1998, July 29, 1998 and September 16, 1998. Thus, Complainant based the economic benefit on a total duration of violation of less than one month.
32. Pursuant to the Act, Complainant has considered the size of Respondent's business in determining the appropriate penalty. Respondent's net worth, as determined by Dun and Bradstreet financial information service, is less than \$1,000,000. Accordingly, the proposed penalty includes a component which is based on the size of Respondent's business.
33. In determining an appropriate civil penalty under the Act, Complainant has considered Respondent's compliance history and its good faith efforts to comply. Because Complainant is aware of no prior citations against Respondent for violations of environmental statutes, Complainant has not enhanced the proposed penalty based on this factor.

34. Pursuant to the Act, Complainant has considered the economic impact of the penalty on Respondent's business. Based on the best information available to Complainant at this time, including the Dun & Bradstreet report, the proposed penalty of \$77,850 reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.
35. Complainant developed the penalty proposed in this Complaint based on the best information available to U.S. EPA at this time. Complainant may adjust the proposed penalty if the Respondent establishes bonafide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.
36. Respondent shall pay the assessed penalty by certified or cashiers' check payable to "Treasurer, the United States of America," and shall deliver it, with a transmittal letter identifying the name of the case and docket number of this Complaint to:

U.S. Environmental Protection Agency, Region 5
P.O. Box 70753
Chicago, Illinois 60604-3590

37. Respondent shall also include on the check the name of the case and the docket number. Respondent shall simultaneously send copies of the check and transmittal letter to:

Farro Assadi
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard (AE-17J)
Chicago, Illinois 60604-3590

and

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

Opportunity to Request a Hearing

38. Section 113(d) (2) of the Act, 42 U.S.C. § 7413(d) (2), requires the Administrator of U.S. EPA to provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint and/or to contest the appropriateness of the amount of the proposed penalty. To request a hearing, you must specifically make the request in your Answer, as discussed in paragraphs 38 through 43 below. Any hearing which you request regarding the Complaint will be held and conducted in accordance with the provisions of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" ("Consolidated Rules"), 40 C.F.R. Part 22.

Answer

39. To avoid being found in default, you 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 of your receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included.

Saturdays, Sundays and Federal holidays shall be included, except when a time period expires on such, in which case the deadline shall be extended to the next business day.

40. Your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge regarding a particular factual allegation which you cannot admit, deny or explain, in which case the allegation will be deemed denied.
41. Your Answer shall also state with specificity:
 - a. the circumstances or arguments which you allege constitute grounds for defense;
 - b. the facts that you intend to place at issue; and
 - c. whether you request a hearing as discussed in Paragraph 39 above.
42. Your failure to admit, deny or explain any material factual allegation in the Complaint will constitute an admission of the allegation. The Consolidated Rules provide that any hearing that shall be held will be a "hearing upon the issues raised by the complaint and answer."
43. You must send a copy of your Answer and of any documents subsequently filed in this action to Orelia Merchant, Assistant Regional Counsel (C-29A), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Ms. Merchant at (312) 886-2241
44. If you fail to file a written Answer within 30 calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order pursuant to 40 C.F.R. § 22.17(a). Issuance of a Default

Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing. The proposed penalty will become due and payable without further proceedings 60 days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. § 22.27 or § 22.31.

Settlement Conference

45. Whether or not you request 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 Farro Assadi, 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. Assadi at (312) 886-1424.
46. Your request for an informal settlement conference does not extend the 30 calendar day period during which you must submit a written Answer to this Complaint. You 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. Any settlement that the parties reach as a result of a conference will be embodied in a consent order. Your agreement to a consent order issued pursuant to 40 C.F.R. § 22.27 will constitute a waiver of your right to request a hearing on any matter stipulated to therein.

Continuing Obligation to Comply

47. Neither assessment nor payment of a civil penalty shall affect your continuing obligation to comply with the Act or any other Federal, State or local law or regulation.

6/29/99
Date



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

CERTIFICATE OF SERVICE

I certify that on this 30 day of June 1999, I filed the original Clean Air Act Administrative Complaint issued to the DePere Foundry Inc., with:

Regional Hearing Clerk
77 W. Jackson Blvd.
Chicago, Illinois 60604

and, deposited in the U.S. Mail, certified mail, return receipt requested, a copy of the Clean Air Act Administrative Complaint, a copy of the Clean Air Act Stationary Source Civil Penalty Policy and the Part 22 Rules of Practice addressed to the following Respondent:

Robert Antolec, President
DePere Foundry Inc.
805-815 S. Sixth Street
DePere, Wisconsin 54115

Certified Mail Number: P140 777015

and, mailed a copy of the Clean Air Act Administrative Complaint issued to DePere, to:

William R. Baumann, Chief
Combustion Section
Bureau of Air Management
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, Wisconsin 53707-7921

6/30/99
Date

Shanee Rucker
Shanee Rucker, Secretary
U.S. EPA, Region 5

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