UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. _____
MFS, INC. (A/K/A MINERAL FIBER SPECIALISTS),	)	
	)	
Defendant.	)	

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint against Defendant MFS (a/k/a Mineral Fiber Specialists) ("MFS"), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for civil penalties and injunctive relief pursuant to Section 113(b) of the Clean Air Act, as amended ("CAA"), 42 U.S.C. § 7413(b), for violations by Defendant of Section 112 of the CAA, 42 U.S.C. § 7412, and the applicable requirements of 40 C.F.R. Part 63, Subpart DDD.

JURISDICTION, VENUE, AND NOTICE

2. This Court has jurisdiction over the subject matter of this action, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1345 and 1355.

3. Venue is proper in this judicial district, pursuant to Section 113(b) of the CAA, 42

U.S.C. § 7413(b), and 28 U.S.C. § 1391(b), because Defendant is doing business in this district and because the violations alleged herein occurred in this judicial district.

4. Authority to bring this action is vested in the United States Department of Justice, pursuant to Section 305 of the CAA, 42 U.S.C. § 7605.

5. Notice of the commencement of this civil action has been given to the Commonwealth of Pennsylvania ("Pennsylvania") Department of Environmental Protection ("PADEP") in accordance with Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

THE DEFENDANT

6. Defendant MFS is a corporation formed under the laws of Pennsylvania. At all relevant times, Defendant conducted business both within Pennsylvania and within this judicial district. Defendant MFS manufactures mineral wool at its facility in the City of Bethlehem, Northampton County, Pennsylvania.

7. Defendant is a "person" within the meaning of Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

STATUTORY FRAMEWORK

8. The CAA establishes a comprehensive scheme which seeks, inter alia, to protect and enhance the quality of this nation's air resources so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b).

9. Section 112(d)(1), 42 U.S.C. § 7412(d)(1), requires the Administrator of EPA to promulgate regulations establishing emission standards for each category or

subcategory of major sources and area sources of hazardous air pollutants ("HAPs"). On July 16, 1992, the Administrator published a list of major source categories, including mineral wool, for which National Emission Standards for Hazardous Air Pollutants ("NESHAP") are to be promulgated.

10. Section 112(d)(2), 42 U.S.C. § 7412(d)(2), provides that emission standards promulgated under this Section and applicable to new or existing sources shall require the maximum degree of reduction in emissions of the hazardous air pollutants, subject to other requirements and conditions specified in this subsection.

11. The NESHAP for mineral wool production was promulgated on June 1, 1999 and is codified at 40 C.F.R. Part 63, Subpart DDD ("MW NESHAP"), specifically §§ 63.1175 - 63.1196.

12. Terms applicable to the MW NESHAP are defined at Section 7412(a) of the CAA, 42 U.S.C. § 7412(a), 40 C.F.R. § 63.2 and/or 40 C.F.R. § 63.1196.

13. Section 112(a)(1) of the CAA, 42 U.S.C. 7412(a)(1), defines "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any combination of HAPs.

14. Section 112(a)(1) of the CAA, 42 U.S.C. 7412(a)(1), defines "existing source" to mean any stationary source other than a new source.

15. Section 112(a)(1) of the CAA, 42 U.S.C. 7412(a)(1), defines "stationary source" to have the same meaning as provided at 42 U.S.C. § 7411(a), which defines "stationary source" as any building, structure, facility, or installation which emits or may emit any air pollutant.

16. Pursuant to 40 C.F.R. § 63.2, "affected source" means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the CAA.

17. Section 112(a)(6) of the CAA, 42 U.S.C. 7412(a)(6), defines "hazardous air pollutant" to mean any air pollutant listed pursuant to Section 112(b) of the CAA, 42 U.S.C. 7412(b).

18. Section 112(a)(9) of the CAA, 42 U.S.C. § 7411(a)(9), defines "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source.

19. Pursuant to 40 C.F. R. § 63.1175, the MW NESHAP applies to existing, new and reconstructed cupolas and curing ovens at facilities that produce mineral wool.

20. Pursuant to 40 C.F.R. § 63.1196, "cupola" means a large, water-cooled metal vessel to which is charged a mixture of fuel, rock and/or slag, and additives. As the fuel is burned, the charged mixture is heated to a molten state for later processing to form mineral wool.

21. Pursuant to 40 C.F.R. § 63.1177, MW NESHAP applies to an owner or operator of an existing, new, or reconstructed mineral wool production facility that is located at a plant site that is a major source of HAP emissions and the plant emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAPs at a rate of 22.68 megagrams (25 tons) or more per year.

22. Pursuant to 40 C.F.R. § 63.1196, "mineral wool" means a fibrous glassy substance made from natural rock (such as basalt), blast furnace slag or other slag, or a mixture

of rock and slag. It may be used as a thermal or acoustical insulation material or in the making of other products to provide structural strength, sound absorbency, fire resistance, or other required properties.

23. Pursuant to 40 C.F.R. 63.1180(a), facilities with existing cupolas were required to complete performance testing and demonstrate compliance with the particulate matter ("PM") emission limits no later than: (1) June 2, 2002 or (2) June 3, 2003, if the one-year extension provision of Section 112(i)(3)(B), 42 U.S.C. § 7412(i)(3)(B) applies.

24. 40 C.F.R. § 63.1178, requires that a facility must limit emissions of PM from each existing, new or reconstructed cupola to 0.05 Kilograms of PM per megagram (0.10 pound of PM per ton) of melt or less.

25. Pursuant to 40 C.F.R. § 63.2, "performance test" means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate PM compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

26. Pursuant to 40 C.F. R. § 63.1181, the owner or operator of a cupola must comply with the standards set forth in §63.1181, including, but not limited to, conducting a performance test as specified in 40 C.F.R. § 63.1188 and showing compliance with the PM emission limits while the bag leak detection system is installed, operational, and properly adjusted.

27. Pursuant to 40 C.F.R. § 63.1196, "PM" means emissions of particulate matter that serve as a surrogate for metals (in particulate or volatile form) on the list of hazardous air pollutants in Section112 of the CAA, including, but not limited to: antimony, arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium.

28. 40 C.F.R. § 63.1196, defines "bag leak detection system" as a monitoring device for a fabric filter that identifies an increase in particulate matter emissions resulting from a broken filter bag or other malfunction and sounds an alarm.

29. 40 C.F.R. § 63.1188 requires an owner or operator of a cupola to take certain actions, including, but not limited to, conducting a performance test, consisting of three test runs, for each cupola and curing oven subject to this subpart at the maximum production rate to demonstrate compliance with each of the applicable emission limits in §§ 63.1178 and 63.1179 of this subpart.

30. The performance testing required under 40 C.F.R. § 63.1188 includes the measures specified as (c) through (i) of § 63.1188.

31. An owner or operator, subject to the MW NESHAP, is required to prepare and submit reports as required by 40 C.F.R. § 63.1193 and 40 C.F.R. § 63.10, which requirement includes, but is not limited to, a performance report that "documents the process and control equipment operating parameters during the test period."

GENERAL ALLEGATIONS

32. MFS owns and operates a mineral wool production plant ("Facility"), located at Easton Road, Rural Route 5, Box 5151, Bethlehem, Pennsylvania.

33. At all times relevant to this Complaint, MFS has been the owner or operator of the Facility.

34. MFS operates two cupolas at the Facility for melting material for production of mineral wool. Mineral wool is produced from slag, silica and bauxite, which is melted at a high

temperature in the cupola furnaces, fueled by coke. The molten material is discharged from the furnaces onto rapidly rotating wheels, which convert the molten material into fibers. The fibers are collected, baled, and shipped offsite for use in the production of such things as insulation and ceiling tiles.

35. The Facility is a "major source," pursuant to 40 C.F.R. § 63.1177, because it emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAPs at a rate of 22.68 megagrams (25 tons) or more per year.

36. Each of the cupolas is an existing cupola and is subject to the PM emission limits under 40 C.F.R. § 63.1178.

37. MFS is subject to 40 C.F.R. § 63.1180(a) and was required to conduct performance testing and demonstrate compliance with the MW NESHAP by June 2, 2002, or by June 3, 2003, if an extension of one year was permitted under 40 C.F.R. § 63.1180(a)(2).

38. By letter, dated July 31, 2001, MFS requested that EPA approve an alternative test standard proposing the use of HAP metal emissions in lieu of the PM emission standard set forth in the MW NESHAP to demonstrate compliance with the MW NESHAP. By letter, dated May 14, 2002, MFS responded to EPA's May 10, 2002, request for clarification of certain information provided in MFS's July 31, 2001, request regarding an alternative test standard and test method. Upon considering, among other things, MFS's request and a supplemental submission regarding alternative testing, EPA denied the request for approval of an alternative standard to demonstrate compliance with the MW NESHAP.

39. On or about May 14, 2002, approximately 20 days prior to the MW NESHAP compliance deadline of June 2, 2002, MFS requested by letter a one-year extension of the

compliance date, pursuant to 40 C.F.R. 63.1180(a)(2). Neither EPA or PADEP responded to the request extension in writing prior to June 2, 2002.

40. For purposes of this enforcement action, the United States takes the position that the extension was not denied, and therefore MFS was required to meet the requirement under in 40 C.F.R. 63.1180(a)(2) by, at latest date, June 3, 2003.

41. Pursuant to 40 C.F.R. § 63.7(a)(2), unless a waiver of performance testing is granted by the Administrator under this section, the owner or operator of the affected source is required to perform such tests within 180 days of the compliance date for such source.

42. No waiver of performance testing was granted by the Administrator under 40 C.F.R. § 63.7. MFS failed to complete the required testing within 180 days of the compliance date and has failed to date to complete such testing.

43. MFS failed to conduct the required performance testing and failed to demonstrate compliance with the MW NESHAP by June 3, 2003 and has so failed as of the date of initiation of this civil action.

44. On July 29, 2004, EPA issued to MFS an Administrative Compliance Order ("ACO"), which required, among other things, that MFS: (a) conduct performance testing, within 30 days from the date of receipt the ACO, as required by 40 C.F.R. § 63.1188 and (b) demonstrate through the performance testing compliance with the PM emission standard. The ACO also stated that failure to comply with the ACO may result in the initiation of a judicial or administrative action for appropriate relief, including civil penalties, as provided by Section 113 of the CAA, 42 U.S.C. § 7413. Further, it advised MFS that it could request a conference with EPA concerning the violations alleged in the ACO.

45. MFS requested a conference with EPA, as provided under the ACO, and a conference was conducted on September 8, 2004. Based upon information provided by MFS during the conference, EPA determined that the MW NESHAP formaldehyde standard, which was referenced in Section III, Paragraph 31, of the ACO was not applicable to MFS. Therefore, any reference to compliance with any standard for formaldehyde in the ACO was not applicable to MFS.

46. MFS did not perform the requirements of the ACO, which are set forth in Section IV, Paragraph 34.A-C.

47. On September 29, 2004, EPA representatives conducted an inspection of the Facility when the two cupolas were in operation.

48. On October 12, 2004, EPA sent MFS a request for information, pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, requesting information related to actions MFS has taken to comply with the MW NESHAP. MFS responded to the October 12, 2004, request for information on November 4, 2004.

49. Based upon the September 29, 2004, EPA inspection and MFS's November 4, 2004, response to the information request, EPA concluded that MFS continued to operate its Facility in violation of 40 C.F.R. § 63.1180(a)(2).

50. As of the date of commencement of this civil action, MFS continues in violation of 40 C.F.R. §§ 63.1178(a)(1) and 63.1180(a)(2).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Failure to Conduct Performance Testing on the Two Cupolas at the Facility)

51. The allegations of paragraphs 1 through 50 above, are realleged and fully incorporated herein by reference.

52. Because MFS has failed to conduct performance testing on the cupolas at its Facility and has failed to demonstrate compliance with the MW NESHAP, MFS violated and remains in violation of 40 C.F.R. §§ 63.1178(a)(1) and 63.1180(a)(2).

SECOND CLAIM FOR RELIEF

(Failure to Submit Performance Test Report)

53. The allegations of paragraphs 1 through 52 above, are realleged and fully incorporated herein by reference.

54. MFS has failed to submit to EPA performance testing required by the MW NESHAP, documenting the process and control equipment operating parameters during the test period, the test method and procedures, the analytical procedures, all calculations, and the results of the performance test, as required under 40 C.F.R. § 63.10(d)(2). Therefore, MFS violated and remains in violation of 40 C.F.R. § 63.1193(a).

REQUEST FOR RELIEF

WHEREFORE, plaintiff, United States of America, respectfully prays that:

(a) Pursuant to Section 113(b) of the CAA, 42 U.S.C. 7413(b), as amended, the Court assess civil penalties against MFS not to exceed $27,500 [$32,500 per day effective March 14,

2004] for each day of each violation of the MW NESHAP, promulgated under Section 112 of the CAA, 42 U.S.C. § 7412;

(b) Defendant MFS be enjoined from further violations of the CAA, 42 U.S.C. §§ 7401-7671q, and the MW NESHAP;

(c) The United States be awarded its costs and expenses incurred in this action; and

(d) The United States be awarded such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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Date

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