UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	Docket No. CAA-05-2011-0012
	)	
Heritage-WTI, Inc. East Liverpool, Ohio,	)	Amended Complaint to Assess a Civil Penalty under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)
Respondent.	)	

Amended Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the CAA), 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, Region 5, Chicago, Illinois.

3. The Respondent is Heritage-WTI, Inc. (WTI), a corporation doing business in Ohio.

Statutory and Regulatory Background

4. Section 112 of the CAA, 42 U.S.C. § 7412, authorizes the Administrator of EPA (the Administrator, or EPA) to regulate "hazardous air pollutants" that may have an adverse effect on health or the environment.

5. Section 112(f)(4) of the CAA, 42 U.S.C. § 7412(f)(4), prohibits the emission of any air pollutant to which a standard under Section 112 applies from any stationary source in violation of such standard without first obtaining a waiver from EPA.

6. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, 40 C.F.R. 63, Subpart EEE, 40 C.F.R. §§ 63.1200 through 63.1221 (HWC MACT), which set forth the standards applicable to the operation of hazardous waste incinerators, among other sources.

7. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator may issue an order requiring compliance to any person who has violated or is violating the HWC MACT. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

8. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, authorize EPA to assess a civil penalty of up to $37,500 per day of violation up to a total of $295,000 for violations that occurred after January 12, 2009.

General Allegations

9. WTI was and is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602.

10. WTI was and is an "owner" and an "operator" as those terms are defined in Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. § 63.2, of a "hazardous waste incinerator," as that term is defined in 40 C.F.R. §§ 260.10 and 63.1201, located at 1250 St. George Street, East Liverpool, Ohio (Incinerator).

11. At all times relevant to this amended complaint, WTI was subject to the HWC MACT, 40 C.F.R. 63, Subpart EEE, 40 C.F.R. §§ 63.1200 through 63.1221, because it burned hazardous waste in the Incinerator it owns and operates.

12. At all times relevant to this amended complaint, WTI's Incinerator was an "area source" within the meaning of Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), and 40 C.F.R. § 63.2.

13. At all times relevant to this amended complaint, WTI's Incinerator was an "existing source" within the meaning of the HWC MACT at 40 C.F.R. §§ 63.1201(a) and 63.1206(a)(1)(ii)(B), because it was constructed prior to April 19, 1996.

14. 40 C.F.R. § 63.1207(d) requires an existing source incinerating hazardous waste to conduct periodic and timely comprehensive performance tests (CPT) to, among other things, demonstrate compliance with the emission standards provided by 40 C.F.R. §§ 63.1219 through 63.1221.

15. The compliance date for the HWC MACT for existing hazardous waste incinerators was on or before October 14, 2008, unless EPA granted an extension under 40 C.F.R. §§ 63.6(i) or through 63.1213.

16. Neither EPA nor the Ohio Environmental Protection Agency (Ohio EPA) granted WTI an extension of time under 40 C.F.R. §§ 63.6(i) or through 63.1213 to comply with the emission standards of the HWC MACT.

17. Pursuant to Section 112(l) of the CAA, 42 U.S.C. § 7412(l), Ohio EPA developed and submitted to the Administrator for approval a program for the implementation and enforcement of emission standards and other requirements for air pollutants subject to Section 112 of the CAA, 42 U.S.C. § 7412.

18. On July 11, 2001, EPA delegated to Ohio EPA the authority to implement the HWC MACT in Ohio through its Title V Permit Program. *See* 66 Fed. Reg. 36173 (2001).

19. Ohio EPA's HWC MACT authority under its Title V Permit Program includes, among other things, the authority to approve a CPT, with EPA retaining the right to comment on the proposed CPT.

20. On December 22, 2008, Ohio EPA issued to WTI a Title V permit.

21. On October 5, 2007, WTI's testing contractor, ENSR/AECOM, submitted a CPT plan and continuous monitoring system (CMS) performance evaluation test (PET) plan for the Incinerator to EPA and Ohio EPA on behalf of WTI.

22. Between April 2, 2008 and February 23, 2010, EPA and Ohio EPA provided comments to WTI on the CPT and CMS PET plans, and WTI submitted revisions to EPA and Ohio EPA addressing their comments.

23. On March 16, 2010, Ohio EPA approved the CPT and CMS PET plans as revised on February 4 and 23, 2010.

24. On March 30 and 31, April 1 and 2, and May 11 and 12, 2010, WTI conducted the CPT (Spring CPT) for the Incinerator, as required by 40 C.F.R. § 63.1207.

25. On June 14, 2010, WTI received the preliminary CPT results from ENSR/AECOM, its testing contractor, and forwarded them to EPA and Ohio EPA.

26. On June 14, 2010, WTI ceased burning hazardous waste in its hazardous waste incinerator (Incinerator), and requested interim operating parameter limits (OPL) from EPA and Ohio EPA to demonstrate and maintain compliance with the dioxin/furan and mercury emission standards of the HWC MACT.

27. On June 14, 2010, EPA and Ohio EPA verbally approved WTI's interim OPL request, and WTI modified its operating procedures to burn hazardous waste in the Incinerator in compliance with the interim OPLs and the dioxin/furan and mercury emission standards of the HWC MACT.

28. On June 18, 2010, EPA issued to WTI a Finding of Violation for violations of HWC MACT emission standards during the CPT.

29. On June 23, 2010, Ohio EPA issued to WTI a Notice of Violation for violations of HWC MACT emission standards during the CPT.

30. On June 30, 2010, EPA and WTI representatives met to discuss the violations and WTI's June 14, 2010, request for interim OPLs. Ohio EPA representatives joined the conference by telephone.

31. On July 2, 2010, WTI revised its interim OPL request.

32. On July 15, 2010, EPA issued final written approval of WTI's interim OPL request, and WTI further modified its operating procedures to ensure compliance with the interim OPLs.

33. On September 15 and 16, 2010, WTI conducted a re-test CPT (September CPT) to demonstrate compliance with the dioxin/furan and mercury emission standards in the HWC MACT.

34. WTI conducted a dioxin/furan performance test as part of the September CPT, using EPA Publication SW–846 Method 0023A.

35. The average dioxin/furan emission concentration during the September CPT was 0.0086 ng TEQ/dscm @ 7% O_2.

36. On September 15, 2010, WTI conducted a metals performance test as part of the September CPT, using Reference Method 29 in 40 C.F.R. 60, Appendix A.

37. The average mercury emission concentration during the September CPT was 7.04 µg/dscm @ 7% O_2.

Count I

38. Complainant incorporates paragraphs 1 through 37 of this amended complaint, as if set forth fully in this paragraph.

39. Pursuant to 40 C.F.R. § 63.1219(a)(1)(i)(A), the owner or operator of an existing hazardous waste incinerator equipped with a waste heat boiler must not discharge or cause combustion gases to be emitted into the atmosphere that contain dioxins and furans in excess of 0.20 nanogram toxic equivalent per dry standard cubic meter, corrected to 7 percent oxygen (ng TEQ/dscm @ 7% O_2).

40. At all times relevant to this amended complaint, WTI's Incinerator was equipped with a waste heat boiler.

41. On May 11 and 12, 2010, WTI conducted a dioxin/furan performance test as part of the Spring CPT, using EPA Publication SW–846 Method 0023A.

42. The average dioxin/furan emission concentration during the dioxin/furan performance test was 0.518 ng TEQ/dscm @ 7% O_2.

43. For the period from May 11, 2010 until June 14, 2010, WTI violated 40 C.F.R. § 63.1219(a)(1)(i)(A) and Section 112(f)(4) of the CAA, 42 U.S.C. § 7412(f)(4), by discharging into the atmosphere combustion gases containing dioxin/furan in excess of the standards set forth at 40 C.F.R. § 63.1219(a)(1)(i)(A).

Count II

44. Complainant incorporates paragraphs 1 through 37 of this amended complaint, as if set forth in this paragraph.

45. Pursuant to 40 C.F.R. § 63.1219(a)(2), the owner or operator of an existing hazardous waste incinerator must not discharge or cause combustion gases to be emitted into the atmosphere that contain mercury in excess of 130 micrograms per dry standard cubic meter, corrected to 7 percent oxygen (μg/dscm @ 7% O_2).

46. On May 11, 2010, WTI conducted a metals performance test as part of the Spring CPT, using Reference Method 29 in 40 C.F.R. 60, Appendix A.

47. The average mercury emission concentration during the Spring CPT was 290.7 μg/dscm @ 7% O_2.

48. For the period from May 11, 2010 through June 14, 2010, WTI violated 40 C.F.R. § 63.1219(a)(2) and Section 112(f)(4) of the CAA, 42 U.S.C. § 7412(f)(4), by discharging into the atmosphere combustion gases containing mercury in excess of the standards set forth at 40 C.F.R. § 63.1219(a)(2).

Proposed Civil Penalty

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

50. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (Penalty Policy). Enclosed with this amended complaint is a copy of the penalty policy.

51. Based upon an evaluation of the facts alleged in this amended complaint and the factors in Section 113(e) of the CAA, Complainant proposes that the Administrator assess a $151,800 civil penalty against Respondent.

52. 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 a bona fide issue of its ability to pay, or other defenses relevant to the appropriateness of the penalty.

Rules Governing This Proceeding

53. *The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules) at 40 C.F.R. Part 22 (2010) govern this proceeding to assess a civil penalty. A copy of the Consolidated Rules is enclosed with the amended complaint served on Respondent.

Filing and Service of Documents

54. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to include as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

55. 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 Associate Regional Counsel John Matson to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Matson at (312) 886-2243. Mr. Matson's address is:

John Matson, Associate Regional Counsel
Office of Regional Counsel
EPA, Region 5
77 West Jackson Boulevard, (C-14J)
Chicago, Illinois 60604-3511

Penalty Payment

56. 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
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

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 John Matson and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Opportunity to Request a Hearing

57. 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 CAA, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the amended 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 58 through 63 below.

Answer

58. Respondent must file a written answer to this amended complaint if Respondent contests any material fact of the amended 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 54, above.

59. If Respondent chooses to file a written answer to the amended complaint, it must do so within 30 calendar days after receiving the amended 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.

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

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

62. 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 57 above.

63. If Respondent does not file a written answer within 30 calendar days after receiving this amended 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 amended 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 EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

64. 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 John Matson at the address or phone number specified in paragraph 55, above.

65. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this amended complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

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

6/20/11
Date

Cheryl L. Newton
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

In the Matter of Heritage-WTI, Inc.
Docket No. CAA-05-2011-0012

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CERTIFICATE OF SERVICE

I, CYNTHIA DIXON, certify that I hand delivered the original and one copy of the Amended Complaint, docket number CAA-05-2011-0012 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:

Frank Murray
Vice President and General Manager
Heritage-WTI, Inc.
1250 St. George Street
East Liverpool, Ohio 43920-3400

Michael Scanlon, Esq.
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204-3535

I further certify that on that date, I arranged for a copy of the Amended Complaint to be sent via pouch delivery to:

Chief Administrative Judge Susan L. Biro
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington D.C. 20460-2001

on the 28th day of June 2011.

Cynthia Dixon
Administrative Program Assistant

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7643 8742 (Murray)
7009 1680 0000 7643 8759 (Scanlon)