IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
A. FINKL & SONS COMPANY	)	
	)	
Defendant.	)	
	)	

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency ("U.S. EPA"), alleges:

Nature of the Action

1. This is a civil action brought pursuant to Section 113(b) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(b), for injunctive relief and civil penalties for violations by A. Finkl & Sons Company ("the Defendant") at its plant in Chicago, Illinois of the New Source Performance Standards ("NSPS") promulgated pursuant to Section 111 of the Act, 42 U.S.C. § 7411, the Title V Permit requirements of the Act, 42 U.S.C. § 7661a and the permitting requirements in the Illinois State Implementation Plan ("SIP").

Jurisdiction and Venue

2. This court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395 because the Defendant resides in this District,

the violations which constitute the basis of this Complaint occurred within this District, and Defendant's plant is located in this District.

Notices

4. On March 31, 2003, U.S. EPA issued a Finding of Violation/Notice of Violation to Defendant for Defendant's violations of the Act and the Illinois State Implementation Plan ("SIP") pursuant to Section 113(a)(1) and (a)(3) of the Act, 42 U.S.C. § 7413(a)(1) and (a)(3).

5. Notice of commencement of this action has been given to the State of Illinois as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

Defendant

6. Defendant, A. Finkl & Sons Company ("A.Finkl"), is a Delaware corporation which owns and operates a steel manufacturing and forging plant ("the Plant") at 2011 North Southport Avenue, Chicago, Cook County, Illinois.

7. Defendant is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

Statutory and Regulatory Background

8. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

New Source Performance Standards

9. Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of U.S. EPA to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause or significantly contribute to air pollution which may endanger public health or welfare.

10. Section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B), requires the Administrator of U.S. EPA to promulgate regulations establishing federal standards of performance for new sources of air pollutants within each of these categories. "New source" is defined as any

stationary source, the construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a)(2). These standards are known as New Source Performance Standards ("NSPS").

11. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a NSPS after the effective date of the NSPS applicable to such source.

12. Pursuant to Sections 111 and 114 of the Act, 42 U.S.C. §§ 7411 and 7414, U.S. EPA promulgated 40 C.F.R. Part 60, Subpart A, §§ 60.1 - 60.19, which contains general provisions regarding NSPS.

13. 40 C.F.R. § 60.1 states that the provisions of 40 C.F.R. Part 60 apply to the owner or operator of any stationary source which contains an affected facility, the construction, reconstruction, or modification of which is commenced after the publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

14. 40 C.F.R. § 60.2 defines "affected facility" as any apparatus to which a standard is applicable.

15. Pursuant to Section 111(b)(1) of the Act, 42 U.S.C. § 7411(b)(1), U.S. EPA has identified electric arc furnaces as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. U.S. EPA has also promulgated NSPS for electric arc furnaces. NSPS requirements for electric arc furnaces for which construction or modification is commenced after August 17, 1983 are codified at 40 C.F.R. Part 60, Subpart AAa, §§ 60.270a-276a.

16. The "affected facilities" to which Subpart AAa applies are, among other things, electric arc furnaces in steel plants that produce carbon, alloy, or specialty steels and for which construction, modification or reconstruction is commenced after August 17, 1983. 40 C.F.R. § 60.270a.

17. Under Subpart AAa, "electric arc furnace" ("EAF") means a furnace that produces molten steel and heats the charge materials with electric arcs from carbon electrodes. For the purposes of this subpart, an EAF consists of the furnace shell and the roof and the transformer. 40 C.F.R. § 60.271a.

18. "Modification" under NSPS is defined as "any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted." 40 C.F.R. § 60.2. With certain exceptions not relevant here, any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of Section 111 of the Act, 42 U.S.C. § 7411. 40 C.F.R. § 60.14(a).

19. Under 40 C.F.R. § 60.14(a), upon modification, an existing facility becomes an "affected facility" for each pollutant to which a standard applies and for which there is an increase in the rate of emissions.

20. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source. Thus, a violation of an NSPS is a violation of Section 111(e) of the Act.

21. Pursuant to 40 C.F.R. § 60.7(a), any owner or operator of an affected facility subject to NSPS must furnish written notification to U.S. EPA of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies postmarked 60 days or as soon as practicable before the change is commenced with information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change.

22. Pursuant to 40 C.F.R. § 60.8, the owner or operator of an affected facility that is an electric arc furnace must conduct a performance test in accordance with 40 C.F.R. § 60.273a within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility and furnish U.S. EPA a written report of the results of such performance test.

23. Pursuant to 40 C.F.R. § 60.272a(a)(1), no owner or operator subject to the provisions of 40 C.F.R., Part 60, Subpart AAa, shall cause to be discharged into the atmosphere from an EAF any gases which exit from a control device and contain particulate matter in excess of 12 mg/dscm (0.0052 gr/dscf).

24. Pursuant to 40 C.F.R. § 60.272a(a)(3), no owner or operator subject to the provisions of Subpart AAa shall cause to be discharged into the atmosphere from an EAF any gases which exit from a shop and, due solely to the operations of any affected EAF, exhibit 6 percent opacity or greater.

25. Pursuant to 40 C.F.R. § 60.273a(a), a continuous monitoring system for the measurement of the opacity of emissions discharged into the atmosphere from control devices shall be installed, calibrated, maintained, and operated by the owner or operator subject to Subpart AAa. Pursuant to 40 C.F.R. § 60.273a(c), a continuous monitoring system for the measurement of opacity is not required on modular, multiple-stack, negative-pressure or positive-pressure fabric filters if observations of opacity of the visible emissions from the control device are performed by a certified visible emission observer as specified in this section.

26. Pursuant to 40 C.F.R. § 60.274a(b), except as provided under § 60.274a(d), the owner or operator subject to the provisions of Subpart AAa shall check and record on a once-per-shift basis furnace static pressure (if a direct-shell evacuation control ("DEC") system is in use, and a furnace static pressure gauge is installed according to § 60.274a(f)) and either: check and record the control system fan motor amperes and damper positions on a once-per-shift basis; install, calibrate, and maintain a monitoring device that continuously records the volumetric flow rate through each

separately ducted hood; or install, calibrate, and maintain a monitoring device that continuously records the volumetric flow rate at the control device inlet and check and record damper positions on a once-per-shift basis.

27. Pursuant to 40 C.F.R. § 60.274a(d), the owner or operator shall perform monthly operational status inspections of the equipment that is important to the performance of the total capture system (i.e., pressure sensors, dampers, and damper switches). This inspection shall include observations of the physical appearance of the equipment (e.g., presence of hole in ductwork or hoods, flow constrictions caused by dents or accumulated dust in ductwork, and fan erosion). Any deficiencies shall be noted and proper maintenance performed.

28. Pursuant to 40 C.F.R. § 60.274a(f), except as provided for under § 60.273(d), the owner or operator shall install, calibrate, and maintain a monitoring device that allows the pressure in the free space inside the EAF to be monitored if emissions during any phase of the heat time are controlled by use of a DEC system. 40 C.F.R. § 60.273a(d) provides that a furnace static pressure monitoring device is not required on any EAF equipped with a DEC system if observations of shop opacity are performed by a certified visible emission observer as specified in this section.

Title V Permit Program

29. Title V of the Act, 42 U.S.C. §§ 7661a-7661f, establishes an operating permit program for certain sources, including "major sources." Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), on July 21, 1992, EPA promulgated regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. 57 Fed. Reg. 32295. These regulations are codified at 40 C.F.R. Part 70.

30. Section 503(c) of the Act, 42 U.S.C. § 7661b(c), has at all relevant times provided that any person required to have a permit shall submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official who shall certify the accuracy of the

information submitted. Section 503(b) of the Act, 42 U.S.C. § 7661b(b), requires a compliance plan to include, among other things, a "schedule of compliance." Section 501(3) of the Act, 42 U.S.C. § 7661(3), defines a "schedule of compliance" as "a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition."

31. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), has at all relevant times required that each Title V permit include, among other things, enforceable emission limitations and standards, a schedule of compliance, and such other conditions as are necessary to assure compliance with applicable requirements of the Act and the requirements of the applicable SIP.

32. Section 70.1(b) of the Title V permit regulations, 40 C.F.R. § 70.1(b), requires all subject sources to have a permit to operate that assures compliance with all applicable requirements. Section 70.2 of the Title V permit regulations, 40 C.F.R. § 70.2, defines "applicable requirement" as " . . . (1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter; . . . (3) Any standard or other requirement under section 111 of the Act, including section 111(d); . . . ."

33. U.S. EPA granted interim approval of the Illinois Title V program, effective March 7, 1995. The Illinois Title V program was granted final full approval by U.S. EPA, effective November 30, 2001. *See* 40 C.F.R. Part 70, Appendix A.

State Implementation Plan

34. Pursuant to Section 109 of the Act, 42 U.S.C. § 7409, the Administrator of U.S. EPA promulgated national ambient air quality standards ("NAAQS") for certain major air pollutants, including, among other things, nitrogen dioxide, sulfur dioxide, particulate matter and ozone. The NAAQS are set forth at 40 C.F.R. §§ 50.4-50.11.

35. Pursuant to Section 110(a) of the Act, 42 U.S.C. § 7410(a), each State was required to promulgate and submit to U.S. EPA for approval a SIP containing regulations for achieving NAAQS within the State.

36. On May 31, 1972, the Administrator of U.S. EPA approved Illinois Pollution Control Board ("IPCB") Rule 103 as part of the federally-enforceable SIP for Illinois. 37 Fed. Reg. 10862.

37. IPCB Rule 103(b)(1) prohibits, among other things, the operation of any new emission source required to obtain a construction permit from operating without first obtaining an operating permit. IPCB Rule 103(b)(1) has been recodified at 35 Ill. Adm. Code § 201.143.

38. IPCB Rule 101 defines "new emission source" as "any emission source, the construction or modification of which is commenced on or after April 14, 1972." IPCB Rule 101 has been recodified at 35 Ill. Adm. Code § 201.102.

39. IPCB Rule 101 defines "modification" as "any physical change in, or change in the method of operations, of an emission source or of air pollution control equipment which increases the amount of any specified air contaminant emitted by such source or equipment or which results in the emission of any specified air contaminant not previously emitted." IPCB Rule 101 has been recodified at 35 Ill. Adm. Code § 201.102.

Enforcement Provisions

40. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that:

> Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies ofsuch finding. At any time after the expiration of 30 days following the date onwhich such notice of a violation is issued, the Administrator may . . .
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> * * *
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> (C) bring a civil action in accordance with subsection (b) of the section.

41. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that "except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter . . . the Administrator may . . . bring a civil action in accordance with subsection (b) of this section . . . ."

42. Whenever any person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit, Section 113(b)(1) of the Act, 42 U.S.C. § 7413(b)(1), and 40 C.F.R. § 52.23 authorize the Administrator to initiate a judicial enforcement action against such person for a permanent or temporary injunction, and/or for a civil penalty of up to $25,000 per day for each violation for violations occurring on or before January 30, 1997, $27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and $32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

43. Whenever any person has violated, or is in violation of, requirements of the Act other than those specified in Section 113(b)(1), 42 U.S.C. § 7413(b)(1), including violations of Section

165(a), 42 U.S.C. § 7475(a), and Section 502(a) of the Act, 42 U.S.C. § 7661a(a), the Administrator is authorized by Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), to initiate a judicial enforcement action against such person for a permanent or temporary injunction, and/or for a civil penalty of up to $25,000 per day for each violation occurring on or before January 30, 1997, $27,500 per day for each such violation occurring from January 31, 1997 through March 15, 2004, and $32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

First Claim For Relief
(NSPS violations at EAF No. 4848020)

44. Paragraphs 1 through 43 are realleged and incorporated herein by reference.

45. Defendant A. Finkl is the "owner or operator," within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of an electric arc furnace within the meaning of 40 C.F.R § 60.270a, designated as EAF 4848020 (also known as EAF No. 2), located at its Plant.

46. In July 1989, Defendant A. Finkl undertook the "modification" of EAF 4848020 as that term is defined in the NSPS. 40 C.F.R. § 60.2. This modification included replacing the 7.5 MVA transformer used to power EAF 4848020 with a 12 MVA transformer. This modification decreased the heat times for EAF 4848020 and increased the maximum hourly emission rate of particulate matter from EAF 4848020 above the maximum hourly emissions achievable at EAF 4848020 prior to the change.

47. Upon modification, EAF 4848020 became an "affected facility" under Subparts A and AAa of NSPS and is subject to the NSPS, including provisions of Subparts A and AAa of the

NSPS.

48. Defendant A. Finkl failed to conduct a performance test in accordance with the procedures required by 40 C.F.R. § 60.275a within 60 days after achieving the maximum production rate or within 180 days after initial startup of EAF 4848020 after the modification and furnish a written report of the results of such performance test to U.S. EPA in violation of 40 C.F.R. § 60.8. To date, Defendant A. Finkl has not conducted a performance test of EAF 4848020 in accordance with the procedures required by 40 C.F.R. § 60.275a and furnished a written report of the results of such performance test to U.S. EPA.

49. On information and belief, following modification of EAF 4848020 in July 1989, particulate emissions from EAF 4848020 did not comply with the NSPS emission limitations for particulate matter in 40 C.F.R. § 60.272a(a)(1). Particulate emissions from EAF 4848020 continued to violate 40 C.F.R. § 60.272a(a)(1) on numerous occasions since August, 2001.

50. On information and belief following modification of EAF 4848020 in July 1989, the opacity of emissions from EAF 4848020 did not comply with the NSPS opacity limitation in 40 C.F.R. § 60.272a(a)(3). The opacity of emissions from EAF 4848020 continued to violate 40 C.F.R. § 60.272a(a)(3) on numerous occasions since August, 2001.

51. Upon information and belief, Defendant A. Finkl failed to comply with the NSPS requirement for a continuous monitoring system for the measurement of opacity applicable to EAF 4848020 after the modification in violation of 40 C.F.R. § 60.273a(a) or, in the alternative, to perform observations of opacity of the visible emissions by a certified visible emission observer in violation of 40 C.F.R. § 60.273a(c).

52. Upon information and belief, Defendant A. Finkl failed to comply with the NSPS requirements to check and record on a once-per-shift basis furnace static pressure and perform certain monitoring and recording functions applicable to EAF 4848020 after the modification in violation of 40 C.F.R. § 60.274a(b) or, in the alternative, to perform monthly operational status inspections of the equipment that is important to the performance of the total capture system, note any deficiencies and perform proper maintenance in violation of 40 C.F.R. § 60.274a(d).

53. Upon information and belief, Defendant A. Finkl failed to comply with the NSPS requirements to install, calibrate, and maintain a monitoring device that continuously records the pressure in the free space inside EAF 4848020 in violation of 40 C.F.R. § 60.274a(f) or, in the alternative, to perform observations of opacity by a certified visible emission observer in violation of 40 C.F.R. § 60.273a(d).

54. Upon information and belief, Defendant A. Finkl failed to comply with the NSPS requirement to retain records of the measurements required in 40 C.F.R. § 60.274a for at least two years following the date of the measurement in violation of 40 C.F.R. § 60.276a(a).

55. Each day that Defendant A. Finkl fails to comply with each of the NSPS requirements described above constitutes a violation of the NSPS regulations and the Act.

56. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant A. Finkl is subject to injunctive relief and civil penalties up to $25,000 per day for each such violation occurring on or before January 30,1997, $27,500 per day for each such violation occurring from January 31, 1997 through March 15, 2004, and $32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

Second Claim For Relief
(NSPS violations at EAF No. 4848010)

57. Paragraphs 1 through 56 are realleged and incorporated herein by reference.

58. Defendant A. Finkl is the "owner or operator," within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of an electric arc furnace within the meaning of 40 C.F.R § 60.270a, designated as EAF 4848010 (also known as EAF No. 1), located at its Plant.

59. In July 1997, Defendant A. Finkl undertook the "modification" of EAF 4848010 as that term is defined in the NSPS. 40 C.F.R. § 60.2. This modification included replacing the 7.5 MVA transformer used to power EAF 4848010 with a 18.75 MVA transformer. This modification decreased the heat times for EAF 4848010 and increased the maximum hourly emission rate of particulate matter from EAF 4848010 above the maximum hourly emissions achievable at EAF 4848010 prior to the change.

60. Upon modification, EAF 4848010 became an "affected facility" under Subparts A and AAa of NSPS and is subject to the NSPS, including provisions of Subparts A and AAa of the NSPS.

61. Defendant A. Finkl failed to conduct a performance test in accordance with the procedures required by § 60.275a within 60 days after achieving the maximum production rate or within 180 days after initial startup of EAF 4848010 after the modification and furnish a written report of the results of such performance test to U.S. EPA in violation of 40 C.F.R. § 60.8. To date, Defendant A. Finkl has not conducted a performance test of EAF 4848010 in accordance with the

procedures required by 40 C.F.R. § 60.275a and furnished a written report of the results of such performance test to U.S. EPA.

62. Following modification of EAF 4848010 in July 1997, particulate emissions from EAF 4848010 did not comply with the NSPS emission limitations for particulate matter in 40 C.F.R. § 60.272a(a)(1). Particulate emissions from EAF 4848010 continued to violate 40 C.F.R. § 60.272a(a)(1) on numerous occasions since August, 2001.

63. Following modification of EAF 4848010 in July 1997, the opacity of emissions from EAF 4848010 did not comply with the NSPS opacity limitation in 40 C.F.R. § 60.272a(a)(3). The opacity of emissions from EAF 4848010 continued to violate 40 C.F.R. § 60.272a(a)(3) on numerous occasions since August, 2001.

64. Upon information and belief, Defendant A. Finkl failed to comply with the NSPS requirement for a continuous monitoring system for the measurement of opacity applicable to EAF 4848010 after the modification in violation of 40 C.F.R. § 60.273a(a) or, in the alternative, to perform observations of opacity of the visible emissions by a certified visible emission observer in violation of 40 C.F.R. § 60.273a(c).

65. Upon information and belief, Defendant A. Finkl failed to comply with the NSPS requirements to check and record on a once-per-shift basis furnace static pressure and perform certain monitoring and recording functions applicable to EAF 4848010 after the modification in violation of 40 C.F.R. § 60.274a(b) or, in the alternative, to perform monthly operational status inspections of the equipment that is important to the performance of the total capture system, note any deficiencies and perform proper maintenance in violation of 40 C.F.R. § 60.274a(d).

66. Upon information and belief, Defendant A. Finkl failed to comply with the NSPS requirements to install, calibrate, and maintain a monitoring device that continuously records the pressure in the free space inside EAF 4848010 in violation of 40 C.F.R. § 60.274a(f) or, in the alternative, to perform observations of opacity by a certified visible emission observer in violation of 40 C.F.R. § 60.273a(d).

67. Upon information and belief, Defendant A. Finkl failed to comply with the NSPS requirement to retain records of the measurements required in 40 C.F.R. § 60.274a for at least two years following the date of the measurement in violation of 40 C.F.R. § 60.276a(a).

68. Each day that Defendant A. Finkl fails to comply with each of the NSPS requirements described above constitutes a violation of the NSPS regulations and the Act.

69. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant A. Finkl is subject to injunctive relief and civil penalties up to $25,000 per day for each such violation occurring on or before January 30,1997, $27,500 per day for each such violation occurring from January 31, 1997 through March 15, 2004, and $32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

Third Claim for Relief
(Title V Permit Program Violations)

70. Paragraphs 1 through 69 are realleged and incorporated herein by reference.

71. At all times relevant to this complaint, the Plant was a "major stationary source" within the meaning of Section 302(j) of the Act, 42 U.S.C. § 7602(j), and a "major source" as defined at 40 C.F.R. § 70.2.

72. As set forth in paragraphs 46 and 59 above, Defendant A. Finkl undertook modifications as defined under the NSPS regulations at 40 C.F.R. § 60.2 at the Facility. As a result of these modifications, Defendant A. Finkl was required to comply with the NSPS requirements for electric arc furnaces at 40 C.F.R. Part 60, Subpart AAa.

73. When Defendant A. Finkl subsequently submitted an application for a Title V operating permit for the Facility, A. Finkl failed to identify all CAA requirements applicable to the Facility and include a compliance plan for all applicable requirements for which the source was not in compliance (including the requirement to meet the NSPS at 40 C.F.R. Part 60, Subpart AAa). A. Finkl thereafter operated EAF 4848020 and EAF 4848010 at the Facility without meeting such limitations and requirements and without having a valid operating permit that required compliance with such limitations and requirements or that contained a compliance plan for all applicable requirements for which the source was not in compliance. A. Finkl's conduct violated Sections 503(c) and 504(a) of the Act, 42 U.S.C. §§ 7661b(c) and 7661c(a).

74. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant A. Finkl is subject to injunctive relief and civil penalties up to $25,000 per day for each such violation occurring on or before January 30,1997, $27,500 per day for each such violation occurring from January 31, 1997 through March 15, 2004, and $32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

Fourth Claim for Relief
(Illinois SIP General Permit Requirement Violations)

75. Paragraphs 1 through 74 are realleged and incorporated herein by reference.

76. In July 1989, Defendant A. Finkl undertook the "modification" of EAF 4848020 as that term is defined in IPCB Rule 101. This modification included replacing the 7.5 MVA transformer used to power EAF 4848020 with a 12 MVA transformer. This modification decreased the heat times for EAF 4848020 and increased the maximum hourly emission rate of particulate matter from EAF 4848020 above the maximum hourly emissions achievable at EAF 4848020 prior to the change. Upon modification, EAF 4848020 became a "new emission source" as defined at IPCB Rule 101.

77. In July 1997, Defendant A. Finkl undertook the "modification" of EAF 4848010 as that term is defined in IPCB Rule 101. This modification included replacing the 7.5 MVA transformer used to power EAF 4848010 with a 18.75 MVA transformer. This modification decreased the heat times for EAF 4848010 and increased the maximum hourly emission rate of particulate matter from EAF 4848010 above the maximum hourly emissions achievable at EAF 4848010 prior to the change. Upon modification, EAF 4848010 became a "new emission source" as defined at IPCB Rule 101.

78. Upon information and belief, Defendant A. Finkl has operated and continues to operate EAF 4848020 and EAF 4848010 after the modifications described in paragraphs 76 and 77 above without first obtaining operating permits from Illinois EPA in violation of IPCB Rule 103(b)(1).

79. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant A. Finkl is subject to civil penalties up to $25,000 per day for each such violation occurring on or before January 30,1997, $27,500 per day for each such violation occurring from January 31, 1997 through March 15, 2004, and $32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

Prayer for Relief

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 79 above, the United States of America requests that this Court:

1. Permanently enjoin the Defendant from operating EAF 4848020 and EAF 4848010 except in accordance with the Clean Air Act and any applicable regulatory requirements;

2. Order Defendant to comply with the NSPS provisions of the Act;

3. Order Defendant to apply for an amended Title V Permit that is in conformity with the requirements of the Title V permit program and the NSPS requirements of the Act ;

4. Order Defendant to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Air Act alleged above;

5. Assess a civil penalty against Defendant of up to $25,000 per day for each violation of the Clean Air Act and applicable regulations prior to January 30, 1997, $27,500 per day for each such violation occurring from January 31, 1997 through March 15, 2004, and $32,500 per day for each such violation occurring after March 15, 2004;

6. Award Plaintiff its costs of this action; and

7. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

STEVEN J. WILLEY
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-2807

PATRICK J. FITZGERALD
United States Attorney

By:

JONATHAN C. HAILE
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 886-2055

OF COUNSEL:

CHRISTINE M. LISZEWSKI
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604-3590
(312) 886-4670