IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	Civil Action No.
CF INDUSTRIES, INC.,	)	
Defendant.	)	

COMPLAINT

Plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), by and through the undersigned attorneys, alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought against CF Industries, Inc. ("CF Industries" or "Defendant") pursuant to Sections 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(b). This Complaint seeks the assessment of civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the CAA, 42 U.S.C. §§ 7470-92; Title V of the CAA, 42 U.S.C. § 7661 *et seq.*; and the State Implementation Plan ("SIP") for the State of Florida ("Florida") promulgated pursuant to Section 110 of the CAA, 42 U.S.C. § 7410. *See* Fla. Admin. Code 62-212.400.

2. This action is based upon violations that occurred at two sulfuric acid plants, specifically the "C" and "D" sulfuric acid plants (hereinafter collectively "C and D SAPs") which are part of a phosphate fertilizer manufacturing facility located at 10608 Paul Buchman

Hwy, Plant City, Florida (hereinafter "Plant City Facility") that was owned and operated by Defendant at the time of the violations. The C and D SAPs emit sulfur dioxide ("SO_2"), which is a regulated pollutant under the CAA, into the atmosphere.

JURISDICTION, AUTHORITY AND VENUE

3. This Court has jurisdiction over the subject matter of this action and the Defendant pursuant to Sections 113(b) of the CAA, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

4. Authority to bring this action on behalf of the United States is vested in the U.S. Attorney General pursuant to Section 305(a) of the CAA, 42 U.S.C. § 7605(a), and 28 U.S.C. §§ 516 and 519.

5. Venue is proper in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391 and 1395(a), because the violations that constitute the basis of this Complaint occurred in this District and the C and D SAPs are located in this District.

NOTICES

6. Pursuant to Sections 113(a)(1) and 113(b) of the CAA, 42 U.S.C. § 7413(a), (b), EPA has given notice of the violations and of this action to CF Industries and Florida more than thirty days prior to the filing of this Complaint.

DEFENDANT

7. Defendant CF Industries is incorporated under the laws of the State of Illinois headquartered in Illinois, and was doing business in the State of Florida at the Plant City Facility at the time of the violations. CF Industries sold the Plant City Facility on March 17, 2014 (hereafter, the "Facility Sale Date") and has not operated the plant since that time.

8. CF Industries is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

9. 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. 42 U.S.C. § 7401(b)(1).

A. National Ambient Air Quality Standards

10. Section 108(a) of the CAA, 42 U.S.C. § 7408(a), requires the Administrator of EPA to promulgate a list of each air pollutant, emissions of which may reasonably be anticipated to endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. Pursuant to Section 108(a), EPA has identified, *inter alia*, sulfur oxides (including SO_2) as such a pollutant. *See* 40 C.F.R. §§ 50.4 and 50.5 (effective May 22, 1996 through Aug. 22, 2010); *see also* 40 C.F.R. § 50.17 (effective Aug. 23, 2010).[1]

11. Section 109(a) of the CAA, 42 U.S.C. § 7409(a), requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS") for those air pollutants ("criteria pollutants") for which air quality criteria have been issued pursuant to Section 108 of the CAA, 42 U.S.C. § 7408. The primary NAAQS are to be adequate to protect the public health with an adequate margin of safety, and the secondary NAAQS are to be adequate to protect the public welfare from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air. Pursuant to Section 109(a) of the CAA, EPA has promulgated primary and secondary NAAQS for sulfur oxides, including SO_2. 40 C.F.R. §§ 50.4 and 50.5 (effective May 22, 1996 through Aug. 22, 2010); 40 C.F.R. § 50.17 (effective Aug. 23, 2010).

[1] The citations in this Complaint are to the statutes and regulations in place at the time that the alleged violations occurred. The provisions of 40 C.F.R. § 50 were amended, effective August 23, 2010, to include, *inter alia*, separate national primary ambient air quality standards for sulfur oxides (SO_2). *See* 40 C.F.R. § 50.17 (Aug. 23, 2010).

12. Pursuant to Section 107(d)(1)(A) of the Act, 42 U.S.C. § 7407(d)(1)(A), each state is required to designate those areas, or districts, within its boundaries where the air quality attains the NAAQS, fails to attain the NAAQS, or cannot be classified due to insufficient data (unclassifiable). Designations that have been approved by EPA are set forth at 40 C.F.R. Part 81. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area. An area that cannot be classified due to insufficient data is "unclassifiable."

B. State Implementation Plan

13. To achieve the objectives of the NAAQS and the CAA, Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each State to adopt and submit to EPA for approval a plan that provides for the attainment and maintenance of the NAAQS in each air quality control region within each state. This plan is known as a State Implementation Plan ("SIP").

14. In 1972, pursuant to Section 110 of the CAA, the State of Florida submitted to EPA for approval the "State of Florida Air Implementation Plan" (hereafter "Florida SIP"), detailing requirements for the attainment and maintenance of the NAAQS. On May 31, 1972, EPA approved the Florida SIP. *See* 37 Fed. Reg. 10858. Since its initial EPA approval, the Florida SIP has been amended, re-codified, and approved several times. *See, e.g.*, 46 Fed. Reg. 17020 (Mar. 17, 1981); 48 Fed. Reg. 52716 (Nov. 22, 1983); 59 Fed. Reg. 52916 (Oct. 20, 1994); 60 Fed. Reg. 2688 (Jan. 11, 1995); 64 Fed. Reg. 32346 (June 16, 1999); Fla. Dept. of Env. Protection, Air Regulation Timelines (CFR and FAC): Air Regulations Timelines 9-23-2019.xlsx, available at https://floridadep.gov/air/air-business-planning/documents/air-regulation-timelines-cfr-and-fac (last visited Sept. 24, 2019). These constitute Florida's "applicable implementation plan," within the meaning of Section 113(b) and 302(q) of the CAA, 42 U.S.C.

§§ 7413(b) and 7602(q), and are considered the "Florida SIP." *See* Fla. Admin. Code 62-212.400.

C. Prevention of Significant Deterioration ("PSD") Requirements

1. General Federal PSD Provisions

15. Part C of Title I of the CAA, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470. These provisions are referred to herein as the "PSD program."

16. The core of the PSD program is that "[n]o major emitting facility . . . may be constructed" or modified[2] unless various requirements are met. 42 U.S.C. § 7475(a). These requirements include obtaining a permit with emission limits, demonstrating that emissions will not contribute to a NAAQS violation, and applying "best available control technology" ("BACT")[3] to control emissions. *Id.*

[2] Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" to include "modification" (as defined in Section 111(a) of the Act). "Modification" is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted."

[3] "Best available control technology means an emissions limitation . . . based on the maximum degree of reduction for [the regulated] pollutant . . . which would be emitted from [the] major modification which the Administrator, . . . taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques . . . for control of such pollutant." 40 C.F.R. § 52.21(b)(12). It is a case-by-case determination made for each individual permit.

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