

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
AUSTIN POWDER COMPANY,	)	
	)	
Defendant.	)	
	)	

**COMPLAINT**

The United States of America, by the authority of the Attorney General and through the undersigned attorneys, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency (U.S. EPA), files this Complaint against Austin Powder Company (“Austin Powder” or “Defendant”) and alleges as follows:

**NATURE OF ACTION**

1. This is a civil action for injunctive relief and penalties brought against Austin Powder for violations of the Clean Water Act (CWA or “Act”), 33 U.S.C. §§ 1251-1388, at its Red Diamond Plant located in McArthur, Ohio (“the Facility”). The United States seeks: (1) injunctive relief to stop Defendant’s ongoing violations of the CWA, including discharges of pollutants in violation of the terms and conditions of Defendant’s National Pollutant Discharge Elimination System (NPDES) permit, and (2) civil penalties for Defendant’s past and ongoing violations of the CWA at the Facility.

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355 and CWA Section 309(b), 33 U.S.C. § 1319(b). Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1395, and CWA Section 309(b), 33 U.S.C. § 1319(b), because Defendant resides within this District and because the violations that constitute the basis of this Complaint occurred and are occurring at Defendant's Facility located in the District.

## **NOTICE**

3. The United States has provided notice of the commencement of this action to the State of Ohio as required by CWA Section 309(b), 33 U.S.C. § 1319(b).

## **AUTHORITY**

4. The United States Department of Justice has authority to bring this action on behalf of the Administrator of U.S. EPA pursuant to 28 U.S.C. §§ 516 and 519 and CWA Section 506, 33 U.S.C. § 1366.

## **DEFENDANT**

5. Defendant Austin Powder is an Ohio corporation with its headquarters in the State of Ohio.

6. Defendant owns and operates a manufacturing facility located at 430 Powder Plant Road in McArthur, Ohio.

7. Defendant is a "person" within the meaning of CWA Sections 311(a)(7) and 502(5), 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 122.2.

## CLEAN WATER ACT

8. Congress enacted the CWA to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

### **National Pollutant Discharge Elimination System**

9. To accomplish this goal, CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source to the waters of the United States except as authorized by, and in compliance with, certain enumerated Sections of the CWA, including CWA Section 402, 33 U.S.C. § 1342.

10. In order to achieve its objective, the CWA includes, *inter alia*, the NPDES provisions, which allow pollutants to be discharged to navigable waters only in compliance with an NPDES permit issued by U.S. EPA or an authorized state pursuant to CWA Section 402. 33 U.S.C. § 1342.

11. CWA Section 502(5), 33 U.S.C. § 1362(5), defines “person” to include an “individual, corporation, partnership, [or] association.”

12. CWA Section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

13. CWA Section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” as “spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

14. CWA Section 502(7), 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States, including territorial seas.”

15. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” as “any discernible, confined and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well [or] discrete fissure . . . from which pollutants are or may be discharged.”

16. CWA Section 402(a), 33 U.S.C. § 1342(a), provides that the permit-issuing authority may issue a NPDES permit that authorizes the discharge of any pollutant into navigable waters of the United States, upon the condition that such discharge will meet certain specific requirements of the CWA or such other conditions as U.S. EPA determines necessary to carry out the provisions of the CWA. In addition, U.S. EPA may prescribe conditions pertaining to test procedures, data and information collection, reporting, and such other requirements as deemed appropriate by U.S. EPA.

17. NPDES permits establish “effluent limitations,” which are defined as “any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from the point sources into navigable waters.” 33 U.S.C. § 1362(11).

18. Effluent limitations can be numeric effluent limitations, which prohibit a facility from exceeding concentration or mass-based limits on pollutants in a discharge into receiving waterbodies.

19. Pollutants are subject to different types of numeric effluent limitations, such as maximum, minimum, daily maximum, 7-day average, and monthly average. A pollutant may be subject to multiple limits, such as a daily and a 7-day or monthly average limit.

20. Effluent limitations can also be narrative standards, which prohibit a facility from causing unacceptable impacts onto and into receiving waterbodies.

21. CWA Section 402(b), 33 U.S.C. § 1342(b), provides that a state may establish and administer its own permit program, and, after U.S. EPA authorizes the state's program, it may also issue NPDES permits. The State of Ohio requested approval from U.S. EPA to administer its own permit program for discharges into navigable waters within Ohio, and such approval was granted by U.S. EPA on March 11, 1974, 39 Fed. Reg. 26,061 (July 16, 1974).

**Issuance of Administrative Orders Under the Clean Water Act**

22. CWA Section 309(a)(3), 33 U.S.C. § 1319(a)(3), provides that whenever the Administrator finds a person in violation of CWA Section 301(a), 33 U.S.C. § 1311(a), he/she may issue an order requiring that person to comply with the provisions of the CWA. Violation of an order issued under CWA Section 309(a)(3), 33 U.S.C. § 1319(a)(3), constitutes a violation of CWA Section 301(a), 33 U.S.C. §§ 1311(a)

**CWA Enforcement Authority**

23. CWA Section 309(b), 33 U.S.C. § 1319(b), provides that U.S. EPA is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction for any violation actionable under CWA Section 309(a), 33 U.S.C. § 1319(a), including violation of any term or condition of an NPDES permit.

24. CWA Section 309(d), 33 U.S.C. § 1319(d), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. § 19.4, provides that any person who violates CWA Section 301, 33 U.S.C. § 1311, is subject to a civil penalty of up to \$37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015, and up to \$59,973 per day for each violation occurring on or after November 3, 2015.

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