

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	Case No. 3:20-cv-00950
)	
v.)	
)	
HYDRITE CHEMICAL CO.)	
)	
Defendant.)	
)	

COMPLAINT

Plaintiff, the United States of America, by authority of the Attorney General of the United States and through the undersigned Attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought by the United States against Defendant Hydrite Chemical Co. (“Hydrite”) for injunctive relief and the assessment of civil penalties for violations of Section 113 of the Clean Air Act (the “CAA”), 42 U.S.C. § 7413, at Hydrite’s chemical blending and manufacturing facility located at 114 North Main Street, Cottage Grove, Wisconsin (the “Facility”). Hydrite has violated regulatory requirements imposed by National Emission Standards for Hazardous Air Pollutants (“NESHAP”) promulgated pursuant to CAA Section 112, 42 U.S.C. § 7412, as well as requirements imposed by permits for the Facility issued pursuant to the federally enforceable CAA State Implementation Plan (the “Wisconsin SIP”) and the CAA Title V permit program adopted by the State of Wisconsin and approved by EPA pursuant to CAA Sections 110 and 501-507, 42 U.S.C. §§ 7410 and 7661-7661f.

JURISDICTION AND VENUE

2. The Court has jurisdiction over the subject matter of this civil action pursuant to CAA Section 113, 42 U.S.C. § 7413, and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this district pursuant to CAA Section 113, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), (c), and 1395(a), because the violations of the CAA giving rise to this complaint occurred and are occurring at Hydrite's Facility in this district.

NOTICE

4. In accordance with CAA Section 113(a)(1), 42 U.S.C. § 7413(a)(1), EPA issued Hydrite a Notice and Finding of Violation on June 30, 2017 (the "Violation Notice"), and simultaneously sent a copy of the Violation Notice to the Wisconsin Department of Natural Resources. The Violation Notice alleged violations of several NESHAPs, CAA permits, and the Wisconsin SIP at the Facility.

5. The United States has provided notice of the commencement of this action to the State of Wisconsin pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b).

THE DEFENDANT

6. Hydrite owns and operates a chemical blending and manufacturing facility located at 114 North Main Street, Cottage Grove, Wisconsin.

7. The Facility is also a Resource Conservation and Recovery Act ("RCRA") licensed treatment, storage, and disposal facility that manages and processes hazardous waste material that is generated off-site, such as spent solvents provided by other companies.

8. Hydrite's operations at the Facility result in the emission of air pollutants that are regulated under the CAA, including volatile organic compounds ("VOCs") and hazardous air pollutants ("HAPs").

9. Hydrite is a corporation formed under the laws of the State of Wisconsin and does business in Wisconsin.

10. Hydrite is a “person” as defined in CAA Sections 113(b) and 302(e), 42 U.S.C. §§ 7613(b) and 7602(e).

11. The Facility is a “stationary source” as defined in CAA Sections 113(b) and 302(z), 42 U.S.C. §§ 7613(b) and 7602(z).

12. Hydrite is an “owner or operator” of the Facility within the meaning of CAA Section 113(b), 42 U.S.C. §§ 7613(b).

STATUTORY AND REGULATORY BACKGROUND

National Emission Standards for Hazardous Air Pollutants

1. General

13. CAA Section 112 sets forth a national program for the control of HAPs. 42 U.S.C. § 7412. As originally promulgated in the Clean Air Act Amendments of 1970, Section 112 directed EPA to publish a list of HAPs. A HAP was defined as “an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.” 42 U.S.C. § 1857c-7 (1971). At that time, Congress directed EPA to establish HAP standards that provided “an ample margin of safety to protect the public health from such hazardous air pollutant.” *Id.*

14. Between 1970 and 1990, EPA listed eight substances as hazardous air pollutants and promulgated emission standards for seven of them. H.R. Rep. No. 101-490, 101st Cong., 2d Sess., pt 1 at 151 (1990). Of relevance to this action, EPA issued standards relating to volatile hazardous air pollutants from equipment leaks, found in Title 40 of the Code of Federal Regulations, Part 61, Subpart V. 40 C.F.R. §§ 61.240–61.247.

15. Through the Clean Air Act Amendments of 1990, Congress replaced the then-existing Section 112 and established a new program for the control of HAPs. H.R. Rep. No. 101-490, 101st Cong., 2d Sess., pt 1 at 324 (1990). The regulations then in existence under the original Section 112 remained in full force and effect.

16. With the 1990 amendments, Congress itself established a list of 189 hazardous air pollutants believed to cause adverse health or environmental effects. 42 U.S.C. § 7412(b)(1).

17. Congress directed EPA to publish a list of all categories and subcategories of, *inter alia*, major sources of HAPs. 42 U.S.C. § 7412(c).

18. A “major source” of HAPs was and is defined 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 HAP or 25 tons per year or more of any combination of HAPs. 42 U.S.C. § 7412(a)(1).

19. A “stationary source” was and is defined as any building, structure, facility, or installation which emits or may emit any air pollutant. 42 U.S.C. § 7412(a)(3) (stating that “stationary source” under Section 112(a) has the same meaning as that term has under Section 111(a) of the CAA, 42 U.S.C. § 7411(a)(3)).

20. A “category” of sources is a group of sources having some common features suggesting that they should be regulated in the same way and on the same schedule. 57 Fed. Reg. 31576, 31578 (July 16, 1992). A single stationary source can be comprised of multiple source categories. *Id.*

21. Congress directed EPA to promulgate regulations establishing emission standards for each category or subcategory of, *inter alia*, major sources of HAPs. 42 U.S.C. § 7412(d)(1). These emission standards must require the maximum degree of reduction in emissions of HAPs that the Administrator, taking into consideration the cost of achieving such emission reduction,

and any non-air quality health and environmental impacts and energy requirements, determines is achievable for the new or existing sources in the category or subcategory to which the emission standard applies. 42 U.S.C. § 7412(d)(2).

22. To the extent that it is not feasible to prescribe or enforce an emission standard for control of a HAP, Congress authorized EPA to promulgate “design, equipment, work practice, or operational” standards, which are to be treated as emission standards. 42 U.S.C. § 7412(h).

23. The emission standards promulgated under the 1990 Amendments to CAA Section 112, 42 U.S.C. § 7412, are known as the “NESHAPs” (“National Emission Standards for Hazardous Air Pollutants”) for Source Categories or “MACT” (“maximum achievable control technology”) standards. These emission standards are found in Part 63 of Title 40 of the Code of Federal Regulations.

24. After the effective date of any emission standard, limitation, or regulation promulgated pursuant to CAA Section 112, no person may operate a source in violation of such standard, limitation, or regulation. 42 U.S.C. § 7412(i)(3).

2. MACT General Provisions – 40 C.F.R. Part 63, Subpart A

25. Pursuant to CAA Section 112, 42 U.S.C. § 7412, EPA has promulgated regulations that contain general provisions applicable to sources that are subject to MACT standards. 40 C.F.R. Part 63, Subpart A, §§ 63.1–63.16 (“Subpart A”).

26. Under Subpart A, the provisions of 40 C.F.R. Part 63 “apply to the owner or operator of any stationary source that (i) emits or has the potential to emit any hazardous air pollutant listed in or pursuant to section 112(b) of the Act; and (ii) is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to this part.” 40 C.F.R. § 63.1(b)(1).

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