

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

_____)	
UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	
)	Civil Action No. 16-7955
v.)	
)	
S.H. BELL 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 on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

Nature of Action

1. This is a civil action brought by the United States against S.H. Bell Company (“S.H. Bell”) to obtain injunctive relief and civil penalties for violations of the Clean Air Act (“CAA”), 42 U.S.C. § 7401 *et seq.* S.H. Bell has refused to install air pollution monitors at its bulk material handling facility in southeast Chicago, Illinois (“Facility”). S.H. Bell handles and stores many different types of materials at its Facility, including in large outdoor storage piles. EPA inspections have shown that the storage and processing of these materials has created particulate matter pollution that has affected the surrounding community. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, EPA requested pollution monitors to determine whether S.H. Bell is emitting particulate matter pollution at levels that violate the requirements of the CAA.

Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 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 CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391 and 1395, because the violations at S.H. Bell's Facility have occurred and are occurring in this District.

Notice

4. The United States has provided notice of the commencement of this action to the Illinois Environmental Protection Agency pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

The Parties

5. Plaintiff, the United States of America, is acting by authority of the Attorney General of the United States and through the undersigned attorneys, on behalf of the Administrator of EPA. Authority to bring this action is vested in the Attorney General of the United States by Section 305 of the CAA, 42 U.S.C. § 7605, and pursuant to 28 U.S.C. §§ 516 and 519.

6. S.H. Bell is a private corporation incorporated under the laws of Pennsylvania. S.H. Bell is headquartered in Pittsburgh, Pennsylvania, with six bulk material handling facilities in Illinois, West Virginia, Ohio, Pennsylvania, and Maryland.

7. S.H. Bell is a corporate entity and therefore a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

Statutory Background

8. Congress enacted the CAA “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

National Ambient Air Quality Standards

9. Section 109 of the CAA, 42 U.S.C. § 7409, required EPA to establish national ambient air quality standards (“NAAQS”) that specify the maximum permissible concentration of air pollutants. The country is divided into different areas for purposes of determining whether the NAAQS is attained.

10. One of these air pollutants is particulate matter, or “PM.” PM can travel through the air and become embedded in human lungs, and once embedded can also travel to the bloodstream. Exposure to PM pollution has been linked to decreased lung function, aggravated asthma, and premature death in people with heart or lung disease, among other health impacts.

11. PM can be varying sizes. EPA has established NAAQS for PM that is equal to or less than 10 microns in diameter (“PM₁₀”).

12. The NAAQS for PM₁₀ is a concentration in the air of 150 micrograms per cubic meter (“µg/m³”), averaged over 24 hours. The standard is attained when the expected number of days per calendar year with a 24-hour average PM₁₀ concentration above 150 µg/m³ is equal to or less than one. If two or more days experience a PM₁₀ concentration above 150 µg/m³, then the PM₁₀ NAAQS is not met. *See* 40 C.F.R. § 50.6.

The Illinois State Implementation Plan and S.H. Bell’s Permit

13. The CAA requires states to meet NAAQS by developing plans, called State Implementation Plans (“SIPs”), which impose regulatory requirements on individual sources of

air pollution. 42 U.S.C. § 7410(a)(1) and (a)(2).

14. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, Illinois adopted and submitted to EPA various regulations in Title 35 of the Illinois Administrative Code that have been approved by EPA and which, taken together, constitute the SIP for the State of Illinois.

15. Pursuant to Section 113 of the CAA, 42 U.S.C. § 7413(a) and (b), SIP requirements approved by EPA are federally enforceable. 42 U.S.C. § 7413; 40 C.F.R. § 52.23.

16. Individual sources of air pollution are also subject to requirements in federally enforceable state operating permits (“FESOP”). On April 10, 2006, the Illinois Environmental Protection Agency issued a FESOP to S.H. Bell for its Facility under Application Number 83020023 (“S.H. Bell Permit”).

Opacity and PM Requirements for S.H. Bell

17. The Illinois SIP and the S.H. Bell Permit set forth requirements related to opacity and PM emissions.

18. The materials and storage piles at S.H. Bell’s Facility emit PM pollution into the air. Some of this PM pollution is visible. Opacity measurements are a way to measure visible PM pollution.

19. 35 Ill. Admin. Code 212.316(d) and Condition Number 2(c) of the S.H. Bell Permit list emission standards for storage piles. Both state that “no person shall cause or allow fugitive particulate matter emissions from any storage pile to exceed an opacity of 10%, to be measured four feet from the pile surface.”

20. 35 Ill. Admin. Code 201.141 states that “[n]o person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause

air pollution in Illinois, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.”

21. 35 Ill. Admin. Code 201.102 defines “air pollution” as “the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.”

22. 35 Ill. Admin. Code 212.301 states that “[n]o person shall cause or allow the emission of fugitive particulate matter from any process, including any material handling or storage activity, that is visible by an observer looking generally toward the zenith at a point beyond the property line of the emission source.”

23. Condition Number 9 of S.H. Bell’s Permit states that “no person shall cause or allow any visible emissions of fugitive particulate matter from any process, including material handling or storage activity, beyond the property line of the emission source” pursuant to 35 Ill. Admin. Code 212.301.

EPA’s Section 114 Authority

24. Section 114(a) of the CAA, 42 U.S.C. § 7414(a), authorizes EPA to require the installation of monitors at a facility. Section 114(a) states, in part:

For the purpose . . . (ii) of determining whether any person is in violation of any such standard or any requirement of [a SIP], or (iii) carrying out any provision of this chapter . . . the Administrator may require any person who owns or operates any emission source . . . on a one-time, periodic or continuous basis to . . . (C) install, use, and maintain such monitoring equipment . . . and (G) provide such other information as the Administrator may reasonably require.

25. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes EPA to institute a civil action for injunctive relief and civil penalties for violations of Section 114(a), 42 U.S.C. § 7414(a).

26. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4 establish maximum civil penalties for violations of the CAA, including violations of the Illinois SIP and any condition or limitation of a FESOP. The maximum civil penalty per day per violation of the CAA is \$37,500 for violations occurring on or before November 2, 2015, and, effective August 1, 2016, \$93,750 per day per violation of the CAA for violations occurring after November 2, 2015.

General Allegations

S.H. Bell's Facility

27. S.H. Bell owns and operates a bulk material handling facility at 10218 South Avenue O in Chicago, Illinois.

28. S.H. Bell receives bulk materials via shipments by truck, rail, and barge. It then stores bulk materials at the Facility until the material is purchased and loaded onto a truck or railcar for shipment to a customer.

29. S.H. Bell handles and stores manganese and manganese-based alloys, ferro alloys, direct reduced iron, frac sand, pig iron, silicon carbide, silicon metal, fluorspar, primary metals, refractory products, scrap metal, steel, fertilizer, and limestone.

30. S.H. Bell sometimes processes the material it stores. This processing includes crushing larger pieces to smaller pieces and screening out larger pieces of material.

EPA's Initial Inspections and Notice of Violation to S.H. Bell

31. EPA performed several inspections at the S.H. Bell Facility in 2014 and 2015.

32. During a May 19, 2014 inspection, a certified EPA inspector performed opacity observations and found fugitive particulate matter emissions from a storage pile at the Facility to have an opacity of 12.7%. Another observation on May 19, 2014, found fugitive particulate

matter emissions from a different storage pile at the Facility to have an opacity of 10.4%. These opacity readings exceed the 10% limit in 35 Ill. Admin. Code 212.316(d) and Condition Number 2(c) of the S.H. Bell Permit.

33. During a May 20, 2014 inspection, EPA observed visible PM pollution crossing the property line of S.H. Bell's Facility, in violation of 35 Ill. Admin. Code 212.301 and Condition Number 9 of S.H. Bell's Permit.

34. On July 15, 2014, EPA issued a Notice of Violation ("NOV") to S.H. Bell. The NOV alleged violations of 35 Ill. Admin. Code 212.316(d) and 212.301.

EPA's Section 114 Monitor Requests

35. On March 4, 2015, EPA issued a request under Section 114 of the CAA to S.H. Bell ("Section 114 Request").

36. Among other things, the Section 114 Request required S.H. Bell to install, operate, and maintain PM₁₀ air monitors ("PM₁₀ Air Monitors") and PM₁₀ filter-based samplers ("PM₁₀ Filter-Based Samplers") at the Facility. PM₁₀ Air Monitors measure the real-time concentration of PM₁₀ in the air. PM₁₀ Filter-Based Samplers collect samples of the PM₁₀ material in the air for analyzing.

37. Request No. 2 required S.H. Bell to submit proposed monitoring site locations for the PM₁₀ Air Monitors and PM₁₀ Filter-Based Sampler within 30 days of receipt of the Section 114 Request for EPA review and approval.

38. Request No. 4 required S.H. Bell to install, operate, and maintain the monitors within 30 days of EPA's approval of S.H. Bell's proposed monitoring locations.

39. Requests Nos. 2-10 set forth various requirements related to the installation, operation, and maintenance of the monitors.

40. S.H. Bell received the Section 114 Request on March 9, 2015.

41. By letter dated April 10, 2015, S.H. Bell responded to the Section 114 Request. S.H. Bell objected to the Section 114 Request's monitoring requirements, stating: "S.H. Bell objects to this Request as it is not reasonably relevant to determining compliance with or uncovering a violation of a limit or standard directly applicable to this Facility."

42. S.H. Bell has repeatedly refused to submit proposed monitoring site locations and install PM₁₀ Air Monitors or PM₁₀ Filter-Based Samplers.

43. In repeated attempts to obtain S.H. Bell's compliance, EPA met with S.H. Bell and sent additional letters and electronic communications. EPA explained that the requested monitors were relevant to the lawful purpose of carrying out its responsibilities under the CAA, including determining S.H. Bell's compliance with the Illinois SIP and the S.H. Bell Permit.

44. EPA sent the Section 114 Request to determine S.H. Bell's compliance with: (a) 35 Ill. Admin. Code 201.141's prohibition against polluting at a level that will prevent the attainment or maintenance of the NAAQS; (b) 35 Ill. Admin. Code 201.141's prohibition on "air pollution;" and (c) the prohibition in 35 Ill. Admin. Code 212.301 and Condition Number 9 of S.H. Bell's Permit on visible PM emissions crossing the property line.

45. On July 15, 2015, EPA sent S.H. Bell a letter explaining the need for the monitors and EPA's position that S.H. Bell was in violation of Section 114 of the CAA for failing to install the required monitors pursuant to the Section 114 Request.

46. On December 8, 2015, EPA performed another inspection at the Facility and observed visible PM pollution crossing the property line in violation of 35 Ill. Admin. Code 212.301 and Condition Number 9 of S.H. Bell's Permit.

47. S.H. Bell has continued to refuse to install the PM₁₀ Air Monitors or PM₁₀ Filter-Based Samplers.

First Claim for Relief

Violation of Section 114 of the CAA – Refusal to Install Required Monitors

48. Paragraphs 1 through 47 are realleged and incorporated by reference.

49. S.H. Bell is a “person who owns or operates [an] emission source,” as set forth in Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1).

50. EPA issued the Section 114 Request pursuant to its lawful, statutory authority under Section 114 of the CAA, 42 U.S.C. § 7414.

51. The Section 114 Request requires S.H. Bell to install, operate, and maintain PM₁₀ Air Monitors and PM₁₀ Filter-Based Samplers at the Facility.

52. The Section 114 Request was issued for the lawful purposes of carrying out EPA’s responsibilities under the CAA, including determining whether S.H. Bell is in violation of the Illinois SIP or the S.H. Bell Permit.

53. The monitoring requirements of the Section 114 Request are reasonable and relevant to such lawful purposes.

54. By failing to comply with the Section 114 Request, S.H. Bell violated the CAA. Unless restrained by an Order of the Court, these violations of the Act are likely to continue.

55. As described in Paragraph 26, S.H. Bell is liable for civil penalties of up to \$37,500 per day for each violation occurring on or before November 2, 2015, and up to \$93,750 per day for each violation occurring after November 2, 2015.

Second Claim for Relief

Violations for Excess Opacity

56. Paragraphs 1 through 47 are realleged and incorporated by reference.

57. 35 Ill. Admin. Code 212.316(d) and Condition Number 2(c) of the S.H. Bell Permit limit opacity from any storage pile to 10 percent, to be measured four feet from the pile surface.

58. On May 19, 2014, opacity from a storage pile at the Facility measured 12.7%, in excess of the 10% limit in 35 Ill. Admin. Code 212.316(d) and Condition Number 2(c) of the S.H. Bell Permit.

59. On May 19, 2014, opacity from another storage pile at the Facility measured 10.4%, in excess of the 10% limit in 35 Ill. Admin. Code 212.316(d) and Condition Number 2(c) of the S.H. Bell Permit.

60. By having opacity from storage piles of more than 10%, S.H. Bell violated the Illinois SIP, the S.H. Bell Permit, and the CAA. Unless restrained by an Order of the Court, these violations of the Act are likely to continue.

61. As described in Paragraph 26, S.H. Bell is liable for civil penalties of up to \$37,500 per day for each violation occurring on or before November 2, 2015.

Third Claim for Relief

Violations for Visible PM Emissions Crossing the Facility's Property Line

62. Paragraphs 1 through 47 are realleged and incorporated by reference.

63. 35 Ill. Admin. Code 212.301 and Condition Number 9 of S.H. Bell's Permit prohibit S.H. Bell from causing or allowing the emission of visible fugitive PM to cross beyond the property line of the Facility.

64. On May 20, 2014, and December 8, 2015, S.H. Bell caused or allowed the emission of visible fugitive PM beyond the property line of the Facility.

65. By having visible fugitive PM pollution pass beyond the property line of the Facility, S.H. Bell violated the Illinois SIP, the S.H. Bell Permit, and the CAA. Unless restrained by an Order of the Court, these violations of the Act are likely to continue.

66. As described in Paragraph 26, S.H. Bell is liable for civil penalties of up to \$37,500 per day for each violation occurring on or before November 2, 2015, and up to \$93,750 per day for each violation occurring after November 2, 2015.

Prayer for Relief

WHEREFORE, Plaintiff the United States of America respectfully requests that this Court provide the following relief:

1. A preliminary and/or permanent injunction ordering S.H. Bell to comply with the monitoring requirements of the Section 114 Request;
2. A permanent injunction enjoining S.H. Bell from further violations of the CAA, the Illinois SIP, and the S.H. Bell Permit;
3. A judgment assessing civil penalties against S.H. Bell and in favor of the United States of up to \$37,500 per day for each violation of the CAA;
4. An award to the United States of its respective costs and disbursements in this action; and
5. Such other relief as this Court deems appropriate.

Respectfully submitted,

For the United States of America

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