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In the Matter of Alleged Violations of
Articles 19 and 71 of the New York State
Environmental Conservation Law; Parts
200, 201, 202, 211 and 212 of Title 6
of the Official Compilation of Codes,
Rules and Regulations of the State of
New York, and Registration Number
6-4012-0013/02000, by

CO 6-20051018-64
RULING OF THE
ADMINISTRATIVE
LAW JUDGE:
RESPONDENT'S MOTION
FOR A MORE DEFINITE
STATEMENT and an
EXTENSION OF TIME
TO ANSWER

HOOSIER MAGNETICS, INC.,

Respondent.

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Background

Department of Environmental Conservation (DEC or Department) staff issued a notice of hearing and complaint to the respondent, Hoosier Magnetics, Inc., dated July 21, 2006. In these pleadings, staff alleges that the respondent violated the Environmental Conservation Law (ECL) and Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) by: exceeding emission limitations in regulation and by the terms of the applicable Air Facility Registration (AFR); by failing to comply with monitoring, record-keeping and reporting requirements; by making physical or operational changes to plant equipment resulting in exceedances of emission limitations set under the applicable cap in the AFR; by emitting, without authorization, hydrochloric acid (HCl); by failing to carry out required stack testing; by failing to maintain and or operate facility emission control devices; and by creating a public nuisance in the surrounding residential community. In its complaint, staff seeks an order imposing penalties, revoking the respondent's AFR, directing the cessation of operations at the facility pending the issuance of either a Title V or Air State Facility Permit and directing implementation of a number of operational and record keeping procedures.

By motion dated August 3, 2006, respondent has moved by its attorneys, Gilberti Stinziano Heintz & Smith, P.C., Kevin C. Murphy, Joshua H. Heintz, John F. Klucsik, of counsel, for a more definite statement and an extension of time to answer. On August 9, 2006, the Department's Office of Hearings and Mediation Services (OHMS) received staff's opposition to respondent's motion. Representing staff in these proceedings is Michelle Crew, Associate Counsel of DEC's Division of Environmental

Enforcement. Chief Administrative Law Judge James T. McClymonds assigned this matter to Administrative Law Judge (ALJ) Helene G. Goldberger.

Respondent submitted a reply dated August 16, 2006 to the OHMS and on August 21, 2006, staff submitted a letter in response. I do not find that this motion requires these additional submissions and I am not considering them in making this ruling.

Positions of the Parties

The respondent argues in its motion that the complaint fails to provide dates, times and emission sources of alleged violations and fails to identify the specific statute, regulation or term in the AFR that has allegedly been violated. The respondent maintains that the complaint fails to provide a factual basis for the violations alleged and that certain paragraphs are "unintelligible." Accordingly, the respondent concludes that the complaint is so deficient that Hoosier Magnetics, Inc. is unable to frame an answer to the allegations. In addition, given the length of the complaint, the respondent requests thirty days from the decision on this motion or service of an amended complaint to answer.

Staff responds that the complaint meets the standards set forth in 6 NYCRR Part 622. Specifically, DEC counsel argues that the respondent selectively cited from the complaint and that the pleading read in its entirety provides the detailed history of the compliance issues at the facility along with dates of inspections, dates of communications between staff and the respondent, and dates of specific acts of violation. Staff also cites to the paragraphs in the complaint that provide the statutory and regulatory provisions upon which staff bases its complaint. In addition to the complaint, attached to the staff's opposition are a number of documents including orders on consent that relate to the specific allegations in the complaint.

Discussion

Section 622.3(a)(1) provides that "[t]he complaint must contain: (i) a statement of the legal authority and jurisdiction under which the proceeding is to be held; (ii) a reference to the particular sections of the statutes, rules and regulations involved; and (iii) a concise statement of the matters asserted." Section 622.4(e) provides that a "respondent may move for a more definite statement of the complaint within 10 days of completion of service on the grounds that the complaint is so vague or

ambiguous that respondent cannot reasonably be required to frame an answer."

I find that staff's complaint meets the requirements of 6 NYCRR § 622.3(a)(1) and deny respondent's motion based upon the following.

Paragraphs 1 - 12 of respondent's motion are a selection of paragraphs from the complaint. When the complaint is examined in its entirety, the reader finds that the staff has laid out its allegations in a logical and clear manner. The complaint begins (¶¶ 1 - 24) with a description of the parties, the nature of the respondent's business including information on the emissions and emissions control equipment, the regulatory background, and a general description of the community in which the facility is located. The next section of the complaint (¶¶ 25 - 54) lays out the regulatory structure that governs this facility and includes specific citations to all the regulations which the staff has concluded respondent Hoosier Magnetics, Inc. has violated. In paragraphs 55 - 125, staff lays out a very detailed description of the staff's version of the compliance history of the facility. The remainder of the complaint provides staff's specific causes of action.

In paragraph 1 of respondent's motion, the respondent appears to be complaining that staff has used different terms to express its claims that Hoosier Magnetics, Inc. has committed a violation. I do not find the staff's choice of words such as "violate," "in violation of," "violated," etc. to be confusing or ambiguous.

Respondent then goes on to quote a number of paragraphs from the complaint that allege violations of various regulations. However, what is unclear is what exactly the respondent finds problematic with these statements. For example, in paragraph 2 of the opposition papers, the respondent cites to paragraph 127 of the complaint.

127. "Emissions of particulate matter at the Hoosier Facility violate the 0.050 grains/dscf standard applicable under 6 NYCRR 212.4(c) and the terms of the Hoosier AFR."

In paragraph 47, *et seq.*, the complaint provides a description of the regulatory requirements with respect to particulate emissions. In paragraph 110, staff sets forth that "[t]he May 2005 stack tests reflect that the Facility has particulate emissions levels from calciner 1 of 0.1333 grains/dscf, and from calciner 2 of 0.0698 grains/dscf." Thus, staff has set forth its

factual assertions along with the regulation allegedly violated as well as the time of the event.

For paragraph 129 of the complaint, which relates to alleged violations of PM-10 limitations, the complaint provides in ¶¶ 31-32 the regulatory requirements for emissions of this pollutant. The pleading provides in ¶ 109 that the May 2005 stack tests revealed a potential to emit of over 50 tons per year. Again, staff has met the pleading requirements.

As Department counsel notes, with respect to paragraph 131, the reference to "emissions of opacity . . ." while inartful, can be readily interpreted as meaning opacity emissions that violate the cited regulations and applicable AFR. The complaint provides the legal and factual bases for this allegation in ¶¶ 54, 111, and 122.

Concerning ¶ 133 of the complaint, staff sets forth in ¶¶ 42, 44, 66, 67, 68, 69, 93, 94, 95, 96, 97, 98, 117, 118, 119, 120, and 121 the factual and regulatory background related to this cause of action.

Respondent quotes ¶ 134 of the complaint concerning allegations regarding the Hoosier Magnetic's entitlement to its AFR. Legal and factual support for this allegation can be found in ¶¶ 8, 9, 12, 13, 16, 17, 25 - 54, 71, 84, 86 - 87, 90, 91, 121, and 125.

Paragraphs 39, 42(g), and 91 provide the regulatory and factual background for staff's allegations in its fifth cause of action regarding ". . . physical and/or operation change that resulted in an increase in the actual emissions at the Facility . . ." Complaint, ¶ 136.

In its motion, Hoosier Magnetics complains that staff's allegations in ¶¶ 139 and 140 do not meet the requirements of Part 622. This is staff's seventh cause of action relating to respondent's alleged unauthorized emission of HCl at the facility. In the complaint, staff explains that HCl is used by the respondent "as a catalyst for the reaction of iron oxide with strontium or barium carbonate." Complaint, ¶ 7. In ¶¶ 15 - 17 of the complaint, staff states that although the facility emits tetrachloride, chloroform, and hydrochloric acid, only the first two hazardous air pollutants (HAPs) are identified in the facility's AFR. In paragraph 17, staff references the regulatory limits set forth in 6 NYCRR § 201-7.3(e)(4) for these HAPs. In ¶¶ 30, 34 and 38 of the complaint, the pleading states that HAPs are subject to the permitting requirements of Part 201, the

regulatory limitations of 6 NYCRR § 201-7.3 and the identification requirements of 6 NYCRR § 201-4.4. In paragraphs 71 and 72 staff states that the September 21, 2001 stack test revealed that Hoosier was emitting HCl but that the test was inadequate to accurately measure the emissions of this pollutant. In paragraph 82 of the complaint, staff cites to the respondent's application to modify its AFR based upon trace emissions of HCl. In paragraphs 84, 86, 87, and 88, staff describes the alleged failing of the respondent to provide information regarding this HAP.

Respondent cites to ¶ 142 of the complaint with respect to staff's allegation that the facility failed to comply with stack test requirements to support its claim that the complaint is insufficiently pled. In paragraph 45 of the complaint, the staff cites to 6 NYCRR § 202-13(a) as the legal basis for stack test requirements. Paragraphs 102 - 108 and 112 provide the factual bases for staff's cause of action.

Concerning ¶ 144 of the complaint which is staff's eighth cause of action alleging that the respondent failed to maintain its emission control devices, the complaint contains the legal and factual bases in ¶¶ 42(e), 43, 99, 100, and 123, in addition to the many paragraphs alleging excessive emissions.

Respondent also argues that in ¶ 146 -- DEC staff's ninth cause of action that alleges that the respondent has operated the facility so as to constitute a violation of 6 NYCRR § 212.2 -- the public nuisance standard is insufficiently pled. The complaint is replete with allegations regarding citizen complaints as well as staff observations of thick fog, emissions that cause a chemical taste and smell, deposition of red particulate in and around residences, and throat and eye irritations. Complaint, ¶¶ 55 - 57, 63, 77 - 79, 113 - 116, 122.

The remaining paragraphs that the respondent finds lacking are ¶¶ 148 - 150 of the complaint. These allegations are a general statement by staff of the respondent's history of noncompliance and staff's request for penalties. The entire complaint lays the bases for these concluding paragraphs. I see no grounds for respondent's complaint regarding staff's citation of ECL § 71-2103(3). It is quite standard. In addition, staff has laid out its recommendations to the Commissioner for specific compliance measures.

Respondent also asks for 30 days to respond to the complaint based upon its "length and complexity." The respondent will have had the complaint for over 30 days by the time it receives this

ruling. Accordingly, I don't believe another 30 days is warranted.

Conclusion

Staff's complaint meets the standards of Part 622 because it sets forth in sufficient detail the factual and legal bases for its allegations. To the extent that the respondent seeks more detail with respect to any allegation, that information can be gained in the course of discovery. However, the staff has met the basic requirements of Part 622 in this pleading.

With respect to respondent's request for an extension of time to respond to the complaint, by this time, the respondent has had sufficient time to review the complaint and should be in a position to answer shortly.

Ruling

Respondent Hoosier Magnetics, Inc.'s motion for a more definite statement is denied. Respondent is directed to answer the complaint by September 8, 2006.

Dated: Albany, New York
August 24, 2006

_____/s/_____
Helene G. Goldberger
Administrative Law Judge

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