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**THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STERICYCLE INC.,

Defendant.

Case No. 1:21-cv-00012-JNP

COMPLAINT

Judge Jill N. Parrish

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

NATURE OF THE ACTION

1. This is a civil action against Stericycle, Inc. (“Stericycle” or “Defendant”) pursuant to Section 113(b) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(b).
2. Plaintiff seeks civil penalties for alleged violations of the Act’s program to regulate solid waste incineration units as set forth in Section 129 of the Act, 42 U.S.C. § 7429, and the regulations promulgated thereunder, and the Act’s program for Federal operating permits as set forth at Title V of the Act, 42 U.S.C. §§ 7661–7661f, and the regulations promulgated thereunder.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b).
4. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because the violations alleged in this Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district.

NOTICE

5. Notice of the commencement of this action has been given to the State of Utah as required under Section 113(b) of the Act, 42 U.S.C. § 7413(b).

DEFENDANT

6. Stericycle is a Delaware corporation headquartered in Lake Forest, Illinois and licensed to do business in the State of Utah. Stericycle provides business services that include medical and pharmaceutical waste management.

7. At all times relevant to this Complaint, Stericycle owned and operated a hospital, medical, and infectious waste incinerator (“HMIWI”) located at 90 North 1100 West, North Salt Lake, Utah (the “Facility”).

8. Stericycle is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

Emission Guidelines for Existing HMIWI

9. Section 129 of the Act, 42 U.S.C. § 7429, requires EPA to establish performance standards and other requirements pursuant to Section 111, 42 U.S.C. § 7411, for certain categories of solid waste incineration units. The performance standards must include guidelines for existing incineration units. 42 U.S.C. § 7429(b)(1).

10. A “solid waste incineration unit” means a “distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public.” 42 U.S.C. § 7429(g)(1).

11. States with existing solid waste incineration units are required to submit to the EPA for approval plans to implement and enforce the guidelines. 42 U.S.C. § 7429(b)(2). Within two years of promulgating guidelines for existing sources, EPA is required to develop and implement a federal plan for existing units in states without an approved state plan.

12. In 1997, the EPA promulgated standards of performance for new HMIWI and emission guidelines for existing HMIWI. 62 Fed. Reg. 48,348 (Sept. 15, 1997). Emission guidelines for existing HMIWI are codified at 40 C.F.R. Part 60, Subpart Ce. Emission

guidelines for existing HMIWI apply to facilities for which construction was commenced on or before June 20, 1996. 40 C.F.R. § 60.32e(a)(1).

13. The EPA approved the State of Utah's HMIWI plan ("Utah HMIWI Plan") on June 22, 2000. 65 Fed. Reg. 38,732. Utah's HMIWI Plan is codified in the Utah Administrative Code at r.307-220 and r.307-222 and incorporates federal emission guidelines for existing sources at Subpart Ce.

14. Effective December 7, 2009, the EPA amended the Subpart Ce requirements and lowered the NOx emission limit for large HMIWI to 140 ppmv based on a three-run average. 74 Fed. Reg. 51,368 (Oct. 6, 2009). After the EPA promulgated the 2009 amendments to Subpart Ce, states were required to submit amended state plans for approval. *Id.* at 51,374. On May 13, 2013, the EPA amended the federal plan for HMIWI, codified at 40 C.F.R. Part 62, Subpart HHH, to incorporate the 2009 amendments to Subpart Ce. 78 Fed. Reg. 28,052. The revised federal plan went into effect on June 12, 2013 for any state that did not have an approved amended plan as of October 6, 2011, which included the State of Utah. *Id.* at 28,056. Plaintiffs allege violations of the NOx emission limit prior to June 12, 2013.

15. Before June 12, 2013, the NOx emission limit for existing HMIWI in Utah was 250 ppmv based on a three-run average as measured in accordance with EPA Method 7. Utah Admin. Code r. 307-222-4 (requiring compliance with emission limitations at 40 C.F.R. Part 60, Subpart Ce).

16. HMIWI may comply with applicable emission limits by setting operating parameters that ensure a HMIWI will not exceed the limit. Operating parameters are established through performance tests, which consist of a "minimum of three test runs conducted under

representative operating conditions.” 40 C.F.R. §§ 60.37e(a), 60.56c(b)(1). Operating parameters for HMIWI may include, among other things, the “charge rate,” which is generally the amount of waste fed into the incinerator expressed as pounds per hour.

17. Emission guidelines at 40 C.F.R. Part 60, Subpart Ce also establish reporting requirements, including the requirement to report annually “[a]ny use of the bypass stack, the duration, reason for malfunction, and corrective action taken.” 40 C.F.R. § 60.38e(a) (requiring compliance with 40 C.F.R. § 60.58c(d)); *see also* Utah Admin. Code r. 307-222-3 (requiring compliance with reporting provisions at 40 C.F.R. § 60.58c(d)).

18. “After the effective date of any performance standard, emission limitation or other requirement promulgated pursuant to [Sections 129 and 111 of the Act], it shall be unlawful for any owner or operator of any solid waste incineration unit to which such standard, limitation or requirement applies to operate such unit in violation of such limitation, standard or requirement or for any other person to violate an applicable requirement of this section.” 42 U.S.C. § 7429(f)(3).

Title V Operating Permits

19. Each source subject to Section 129 performance standards must operate pursuant to a permit issued under Section 129 and Title V of the Act. 42 U.S.C. § 7429(e).

20. States must submit permitting programs to the EPA for approval. 42 U.S.C. § 7661a(d). Permits issued under EPA-approved programs must contain emission limitations and standards, including operational requirements and limitations that ensure compliance with all applicable requirements, as well as any monitoring, recordkeeping, and reporting under applicable requirements. 40 C.F.R. § 70.6.

21. The EPA approved the State of Utah's Title V operating permit program effective July 10, 1995. 60 Fed. Reg. 30,192 (June 8, 1995).

22. After the effective date of EPA's approval of a Title V operating permit program, "it shall be unlawful for any person to violate any requirement of a permit issued under [Title V], or to operate [a facility required to obtain a permit] except in compliance with a permit issued by a permitting authority under [Title V]." 42 U.S.C. § 7661a.

23. All terms and conditions in a permit issued under an EPA-approved program are enforceable by the EPA unless the permitting authority designates as not being federally enforceable any terms or conditions included in the permit that are not required under the Act or any of its applicable requirements. 40 C.F.R. § 70.6(b).

GENERAL ALLEGATIONS

24. Defendant conducted two test runs to determine compliance with applicable NOx emission limits on December 27, 2011, and six test runs on December 28, 2011.

25. The two test runs on December 27, 2011, and the first three test runs on December 28, 2011, exceeded the applicable NOx emission limit in 40 C.F.R. Part 60, Subpart Ce, as incorporated in the Utah HMIWI Plan.

26. The last three test runs on December 28, 2011, were below the applicable NOx emission limit in 40 C.F.R. Part 60, Subpart Ce, as incorporated in the Utah HMIWI Plan.

27. The last three test runs on December 28, 2011, involved the incineration of waste that was not characteristic of the Facility's waste stream and therefore were not "conducted under representative operating conditions," 40 C.F.R. §§ 60.37e(a), 60.56c(b)(1).

28. The State of Utah did not accept the December 27 and 28, 2011 test runs as a valid performance test because Defendant did not average the results of all test runs.

29. Defendant did not conduct a compliant performance test until April 2013.

30. Based on the December 2011 test runs, from December 2011 to May 6, 2013, Defendant could not comply with applicable NOx emission limits when incinerating waste characteristic of the Facility's waste stream at a charge rate of more than 1550 pounds/hour.

FIRST CLAIM FOR RELIEF
(Violations of NOx Emission Limit in 40 C.F.R. Part 60, Subpart Ce, as Incorporated in the Utah HMIWI Plan)

31. Plaintiff realleges and incorporates Paragraphs 1 through 30 as if fully set forth herein.

32. The Facility includes a "solid waste incineration unit" as that term is defined by Section 129 of the Act, 42 U.S.C. § 7429(g)(1).

33. The Facility was constructed prior to June 20, 1996.

34. The Facility is subject to 40 C.F.R. Part 60, Subpart Ce, as incorporated in Utah's HMIWI Plan.

35. On at least 152 days between September 14, 2012, and May 6, 2013, the maximum charge rate at the Facility was 1551 pounds/hour or higher.

36. When operating at a charge rate of 1551 pounds/hour or higher, Defendant violated the NOx emission limit in 40 C.F.R. Part 60, Subpart Ce, as incorporated in Utah's HMIWI Plan, and Section 129(f)(3) of the Act, 42 U.S.C. § 7429(f)(3).

37. Under Section 113(b) of the Act, 42 U.S.C. § 7413(b), Defendant is liable for civil penalties of up to \$37,500 per day for each violation of Subpart Ce.

SECOND CLAIM FOR RELIEF
**(Failure to Submit Data from NO_x Performance Test in Violation
of Title V Operating Permit)**

38. Plaintiff realleges and incorporates Paragraphs 1 through 37 as if fully set forth herein.

39. From February 19, 2009, to September 28, 2015, Defendant was subject to the conditions of the Facility's Title V Operating Permit, No. 1100055002 (hereinafter "Title V Permit"), issued by the State of Utah under an EPA-approved operating permit program.

40. Defendant's Title V permit required that Stericycle semi-annually report: "If a performance test was conducted during the reporting period, the results of that test." Title V Permit, Special Provisions, § II.B.3.c.3(a)6).

41. Defendant failed to report the December 27, 2011, test runs in its March 2012 semi-annual report.

42. Defendant's failure to report test runs was a violation of condition II.B.3.c.3(a)(6) of its Title V Permit and Section 502 of the Act, 42 U.S.C. § 7661a.

43. Under Section 113(b) of the Act, 42 U.S.C. § 7413(b), Defendant is liable for civil penalties of up to \$37,500 per day for each violation of its Title V Permit and Section 502 of the Act, 42 U.S.C. § 7661a.

THIRD CLAIM FOR RELIEF
**(Failure to Conduct Emission Testing for NO_x at Least Once Every Five Years in Violation
of Title V Operating Permit)**

44. Plaintiff realleges and incorporates Paragraphs 1 through 43 as if fully set forth herein.

45. Defendant's Title V Permit requires performance tests for NO_x every five years. Title V Permit, § II.B.3.c.1.A(b)(4). "All tests shall be conducted while the source is operating at the maximum production or combustion rate at which such source will be operated. During the tests, the source shall burn fuels or combustion of fuels, use raw materials, and maintain process conditions representative of normal operations" Title V Permit, § II.B.3.c.1.A(d).

46. Defendant was required to conduct a performance test for NO_x within five years of October 18, 2006.

47. Defendant did not conduct a performance test for NO_x that was "representative of normal operations" until April 10, 2013.

48. Defendant's failure to conduct a performance test for NO_x within five years of October 18, 2006, was a violation of condition II.B.3.c.1.A(b)(4) of its Title V Permit and Section 502 of the Act, 42 U.S.C. § 7661a.

49. Under Section 113(b) of the Act, 42 U.S.C. § 7413(b), Defendant is liable for civil penalties of up to \$37,500 per day for each violation of its Title V Permit and Section 502 of the Act, 42 U.S.C. § 7661a.

FOURTH CLAIM FOR RELIEF
(Failure to Report Highest Maximum Charge Rate in Violation of Title V Operating Permit)

50. Plaintiff realleges and incorporates Paragraphs 1 through 49 as if fully set forth herein.

51. Defendant's Title V permit required that Stericycle semi-annually report: "[t]he highest maximum operating parameter and the lowest minimum operating parameter, as

applicable, for each operating parameter recorded for the calendar year being reported.” Title V Permit, § II.B.3.c.3(a)(2).

52. In Defendant’s March 2011 semi-annual report, Defendant reported a maximum charge rate of 1934 pounds/hour.

53. According to data from the Facility, the maximum charge rate for the March 2011 reporting period was 2007.73 pounds/hour.

54. In Defendant’s March 2013 semi-annual report, Defendant reported a maximum charge rate of 1934 pounds/hour.

55. According to data from the Facility, the maximum charge rate for the March 2011 reporting period was 2145.23 pounds/hour.

56. In Defendant’s September 2013 semi-annual report for the period from January 16, 2013, to May 20, 2013, Defendant reported a maximum charge rate of 1550 pounds/hour.

57. According to data from the Facility, the maximum charge rate for the period from January 16, 2013, to May 20, 2013, was 1961 pounds/hour.

58. Each of Defendant’s failures to report the maximum charge rate was a violation of condition II.B.3.c.3(a)(2) of its Title V Permit and Section 502 of the Act, 42 U.S.C. § 7661a.

59. Under Section 113(b) of the Act, 42 U.S.C. § 7413(b), Defendant is liable for civil penalties of up to \$37,500 per day for each violation of its Title V Permit and Section 502 of the Act, 42 U.S.C. § 7661a.

FIFTH CLAIM FOR RELIEF

(Failure to Report Use of the Bypass Stack in Violation of Title V Operating Permit)

60. Plaintiff realleges and incorporates Paragraphs 1 through 59 as if fully set forth herein.

61. Defendant's Title V permit required that Stericycle semi-annually report: "[a]ny use of the bypass stack, the duration, reason for malfunction, and corrective action taken." Title V Permit § II.B.3.c.3(a)(8).

62. The bypass stack on the Facility was opened on 20 instances over 18 days between November 27, 2010, and April 5, 2013.

63. Defendant did not report each "use of the bypass stack, the duration, reason for malfunction, and corrective action taken" in its March 2011, September 2011, March 2012, September 2012, March 2013, and September 2013 semi-annual reports.

64. Each of Defendant's failures to report the use of the bypass stack was a violation of condition II.B.3.c.3(a)(8) of its Title V Permit and Section 502 of the Act, 42 U.S.C. § 7661a.

65. Under Section 113(b) of the Act, 42 U.S.C. § 7413(b), Defendant is liable for civil penalties of up to \$37,500 per day for each violation of its Title V Permit and Section 502 of the Act, 42 U.S.C. § 7661a.

PRAYER FOR RELIEF

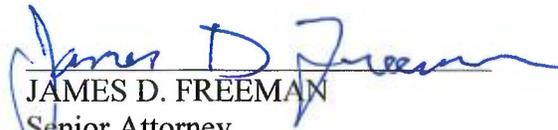
WHEREFORE, based on the above allegations, Plaintiff requests that this Court:

A. Assess a civil penalty against Stericycle for each violation of the applicable provisions of the Act and its implementing regulations, of up to \$37,500 per day;

B. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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