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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 MULTISTAR INDUSTRIES, INC.,

11 Defendant.

NO. 2:21-CV-0262-TOR

ORDER GRANTING PLAINTIFF'S  
MOTION TO ENFORCE  
JUDGMENT

12  
13 BEFORE THE COURT is Plaintiff's Motion to Enforce Judgment (ECF No.  
14 105). This matter was submitted without oral argument. Defendant has not  
15 responded. The Court has reviewed the record and files herein and is fully  
16 informed. For the reasons discussed below, Plaintiff's Motion to Enforce  
17 Judgment (ECF No. 105) is GRANTED.

18 **BACKGROUND**

19 The Court granted the United States, on behalf of the Environmental  
20 Protection Agency ("EPA"), injunctive relief and related penalties against  
Multistar Industries, Inc. (Defendant) for various violations of the Clean Air Act,

ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE JUDGMENT ~ 1

1 under 42 U.S.C. § 7412(r) and 42 U.S.C. § 7413(b); the regulations promulgated at  
2 20 C.F.R. Part 68; the Emergency Planning and Community Right-to-Know Act  
3 (EPCRA) Section 312, 42 U.S.C. § 11022; and the regulations promulgated at 40  
4 C.F.R. Part 370 relating to activity at Defendant’s facility involving more than a  
5 threshold quantity of trimethylamine (“TMA”) as defined by 40 C.F.R. § 68.115.  
6 ECF No. 86 at 1–2, ¶ 1. Defendant has subsequently appealed the findings of this  
7 Court. ECF No. 100. The United States asserts that Defendant has not complied  
8 with the requirements of the Injunction and seeks its enforcement. ECF No. 105.

### 9 DISCUSSION

10 Federal Rule of Civil Procedure 62(c)(1) exempts injunctions from an  
11 automatic stay while an appeal is pending, unless otherwise ordered by a court.  
12 Here, Defendant has not appeared to either request a stay pending its appeal, nor in  
13 opposition to this motion to enforce the injunction. *See Lara v. Sec’y of Interior of*  
14 *U.S.*, 820 F.2d 1535, 1543 (9th Cir. 1987) (citing to F.R.C.P. 62(c)) (“The district  
15 court may issue orders pending appeal to enforce its judgment.”); *Hoffman for &*  
16 *on Behalf of N.L.R.B. v. Beer Drivers & Salesmen's Loc. Union No. 888, Int'l Bhd.*  
17 *of Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, 536 F.2d 1268, 1276  
18 (9th Cir. 1976) (finding that an appeal does not divest the district court of  
19 supervisory jurisdiction over an injunction); *Fong v. United States*, 300 F.2d 400,  
20 410 (9th Cir. 1962) (holding that filing an appeal, in isolation, did not supersede

1 the district court’s judgement). Defendant is bound by the terms of the injunction  
2 and is subject to the penalties therein for noncompliance. Specifically, Defendant  
3 has not filed a Risk Management Plan with U.S. Environmental Protection Agency  
4 (“EPA”), in violation of Paragraph 2. ECF No. 105 at 1–2; ECF No. 86 at 2, ¶ 2.

5 Failure to comply with the filing requirements results in the following penalties:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$400 .....	1st through 30th Day
\$800 .....	31st Day and beyond

9 *Id.* at 9, ¶ 18.<sup>1</sup>

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11 <sup>1</sup> Plaintiff makes reference to Paragraph 19 as the predetermined penalties the  
12 Court assessed for noncompliance with the terms of the injunction. ECF No. 105  
13 at 2. However, Paragraph 18 is applicable to the stage of noncompliance  
14 Defendant is currently in, as Paragraph 19 refers to Section II of the Order, which  
15 includes penalties that do not begin to accrue until January 31. ECF No. 86 at 5, ¶  
16 11 (“By July 31 and January 31 of each year after the entry of this Order for the  
17 next five (5) years, Defendant shall submit electronically (followed by a mailed  
18 copy) a semi-annual report for the preceding six months (January 1 to June 30 or  
19 July 1 to December 31) to the EPA and U.S. Department of Justice (DOJ) that  
20 identifies any noncompliance with the Order, including but not limited to

1 “Predetermined penalties . . . begin to accrue on the day after performance is  
2 due or the day a violation occurs, whichever is applicable, and shall continue to  
3 accrue until performance is satisfactorily completed or until the violation ceases.”  
4 *Id.* at 10, ¶ 21. The August 1, 2023, Injunction required Defendants to file its Risk  
5 Management Plan with the EPA within 60 days of the Order, on or before  
6 September 30, 2023. *Id.* at 2, ¶ 2. The EPA had received no communication from  
7 Defendant regarding the Risk Management Plan prior to filing the Motion to  
8 Enforce. ECF No. 105-1 at 2, ¶ 4. From October 1, 2023, through October 30,  
9 2023, Defendant incurred a penalty of \$400 a day, for a total \$12,000 for the first  
10 30 days. From October 31, 2023, until December 1, 2023, the day the Motion to  
11 Enforce was filed, Defendant incurred a penalty of \$800, for a total of \$25,600 for  
12 the 32 days of increased penalty. Defendant owes a total of \$37,600 to the United  
13 States for penalties incurred in noncompliance.

14 Should Defendant fail to pay the predetermined penalties, it will be liable for  
15 interest on the penalty pursuant to 28 U.S.C. § 1961, accruing from the day it  
16 became due. ECF No. 86 at 12, ¶ 26. Defendant must submit to the EPA a Risk  
17 Management Plan and is cautioned that further noncompliance will also result in  
18 \_\_\_\_\_  
19 Paragraphs 1 – 3, an explanation of the likely cause of and remedial steps taken or  
20 to be taken to address non-compliance . . .”).

1 additional sanctions.

2 **ACCORDINGLY, IT IS HEREBY ORDERED:**

3 1. Plaintiff's Motion to Enforce Judgment (ECF No. 105) is **GRANTED**.

4 Defendant is ordered to pay \$37,600 to the United States within **30 days**  
5 of this Order.

6 2. Pursuant to the Order Granting Injunction (ECF No. 86), Defendant shall  
7 send payment via FedWire Electronic Funds Transfer ("EFT") to the U.S.  
8 Department of Justice ("DOJ") account in accordance with instruction  
9 that have been provided to Defendant by the Financial Litigation Unit  
10 ("FLU") of the United States Attorney's Office for the Eastern District of  
11 Washington. Within the payment, Defendant must include the provided  
12 Consolidated Debt Collection System ("CDCS") number.

13 3. Defendant will send notice of payment stating that the payment is for  
14 predetermined penalties owed pursuant to the Order on Injunctive Relief  
15 in *United States v. Multistar Industries, Inc.*, Case No. 2:21-cv-0262-  
16 TOR, and include the CDCS Number, and the DOJ case number 90-5-2-  
17 1-12000/2 to the following:

18 a. The EPA at cinwd\_acctsreceivable@epa.gov or via postal mail at  
19 EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive,  
20 Cincinnati, Ohio 45268;

1           b. DOJ via email or postal mail; and

2           c. The EPA via email or postal mail.

3           4. Defendant is also ordered to produce a Risk Management Plan pursuant  
4           to the requirements of the ECF No. 86 within **7 days** of this Order or face  
5           further sanctions.

6           The District Court Executive is directed to enter this Order and furnish  
7           copies to counsel.

8           DATED January 8, 2024.



10           *Thomas O. Rice*  
11           THOMAS O. RICE  
12           United States District Judge