



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
MAY 18 2016

REPLY TO THE ATTENTION OF:

ELECTRONIC TRANSMITTAL VIA EMAIL

Heidi B. (Goldstein) Friedman
Partner
Thompson Hine, LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114-1291

MM-05-2016-0005

Re: Emerald Performance Materials, LLC, Akron, Ohio, Consent Agreement and Final
Order, Docket Nos. CERCLA-05-2016-0007 EPCRA-05-2016-0014 RCRA-05-2016-0011

Dear Ms. Friedman:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on MAY 18 2016.

Please have your client pay the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) civil penalty in the amount of \$10,191 in the manner prescribed in paragraph 116, and reference your check with the billing document number 2751630B007 and the docket number CERCLA-05-2016-0007.

Please have your client pay the Resource Conservation and Recovery Act (RCRA) and the Emergency Planning and Community Right-to-Know Act (EPCRA) civil penalty in the amount of \$89,809 in the manner prescribed in paragraph 115, and reference your check with the docket numbers EPCRA-05-2016-0014 RCRA-05-2016-0011. Also, enclosed is a Notice of Securities and Exchange Commission Registrant's Duty to Disclose Environmental Legal Proceedings.

JUN 27 2016

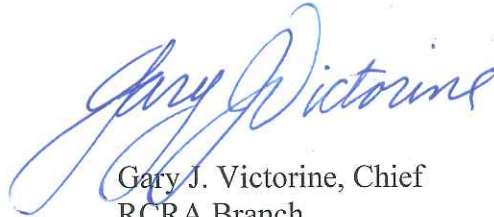
Your client's payments are due on _____.

If you have question about CERCLA or EPCRA, please feel free to contact James Entzinger, at (312) 886-4062. If you have questions about RCRA, please feel free to contact Brian Kennedy, at (312) 353-4383. Please direct any legal questions to Robert Guenther, Associate Regional Counsel, at (312) 886-0566. Thank you for your assistance in resolving this matter.

Sincerely,



Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section



Gary J. Victorine, Chief
RCRA Branch

Enclosure

cc: Ms. Cindy DeWulf, Co-Chairperson (w/ enclosure)
Ohio EPA – SERC
Post Office Box 1049
Columbus, Ohio 43216-1049

Ms. Sima Merick, Co-Chairperson (w/ enclosure)
State Emergency Response Commission
Ohio Emergency Management Agency
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Columbus, Ohio 43235-2206

Jeff Beattie (w/ enclosure)
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Post Office Box 1049
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Mitch Matthews (w/ enclosure)
Ohio EPA
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Mr. Kevin A. Cherney (w/ enclosure)
Environmental Health, Safety and Security Manager
Emerald Performance Materials, LLC
240 West Emerling Avenue
Akron, Ohio 44301 (certified)

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5 RCRA-05-2016-0011

CERCLA-05-2016-0007

IN THE MATTER OF: EMERALD PERFORMANCE MATERIALS, LLC, AKRON, OHIO, U.S. EPA ID No.: OHD000817361, RESPONDENT.) MM-05-2016-0005) EPCRA-05-2016-0014) Proceeding to Commence and Conclude) an Action to Assess Civil Penalties) Under Section 3008(a) of the Resource) Conservation and Recovery Act;) Section 325(b)(2) of the Emergency) Planning and Community Right-to-know) Act; and Section 109(b) of the) Comprehensive Environmental Response,) Compensation and Liability Act
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CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under section 3008(a) of the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a); section 325(b)(2) of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11045(b)(2); section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9609(b); and sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. part 22.

2. Complainants are the Director of the Land and Chemicals Division and the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the State of Ohio pursuant to section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is Emerald Performance Materials, LLC, a corporation doing business in the State of Ohio.

5. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Without admitting fault or liability, Respondent consents to the terms of this CAFO, including the assessment of the civil penalties specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

STATUTORY AND REGULATORY PROVISIONS

RCRA REQUIREMENTS

10. U.S. EPA has promulgated regulations, codified at 40 C.F.R. parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste or used oil, pursuant to sections 3001 – 3007, 3013 and 3014, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927, 6934 and 6935.

11. Pursuant to section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions.

Any violation of regulations promulgated pursuant to subtitle C (sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in section 3008 of RCRA, 42 U.S.C. § 6928.

12. Pursuant to section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and promulgated at 54 Fed. Reg. 27170 (June 28, 1989), the Administrator of U.S. EPA granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective June 30, 1989. The state regulation OAC 3745-65-31 is part of the federally-authorized program for the State of Ohio.

13. The State of Ohio is not authorized to implement the requirements of 40 C.F.R. part 265 subparts BB and CC. Consequently, U.S. EPA solely implements the provisions of those subparts in Ohio.

14. Under section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of subtitle C of RCRA according to section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. part 19, U.S. EPA may assess a civil penalty of up to \$37,500 per day for each violation of subtitle C of RCRA that occurred after January 12, 2009.

CERCLA AND EPCRA REQUIREMENTS

15. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

16. Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), requires the owner or operator of a facility to immediately provide notice, as described in section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of a hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used or stored and such release requires notice under section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

17. Under section 304(b) of EPCRA, 42 U.S.C. § 11004(b), the owner or operator of a facility must give notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), immediately after the release to the state emergency planning commission (SERC) for any state likely to be affected by the release and to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release.

18. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the government's response to an emergency and pose serious threats to human health and the environment.

19. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA section 103 or EPCRA section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R.

part 19 increased these statutory maximum penalties to \$37,500 per day of violation for violations occurring after January 12, 2009.

FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

RCRA VIOLATIONS

20. Respondent was and is a “person” as defined by OAC 3745-50-10(98), 40 C.F.R. § 260.10, and section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

21. Respondent is the “owner” or “operator,” as those terms are defined under OAC 3745-50-10(93), (94) [40 C.F.R. § 260.10]¹, of a facility located at 240 West Emerling Avenue, Akron, Ohio (facility).

22. Respondent’s facility consists of land and structures, other appurtenances, and improvements on the land used for treating, storing or disposing of hazardous waste.

23. Respondent’s facility is a “facility” as that term is defined at 40 C.F.R. § 260.10 and OAC 3745-50-10(46).

24. Respondent’s facility produces and markets advanced specialty chemicals for a range of food and industrial applications.

25. Respondent’s processes at the facility produce several solid wastes and hazardous wastes identified or listed in OAC 3745-51-30 to 3745-51-35 or cause a hazardous waste to become subject to regulation under OAC Rules 3745-50 to 3745-270 [40 C.F.R. parts 260-270].

26. Respondent is a “generator,” as that term is defined in OAC 3745-50-10(53) [40 C.F.R. § 260.10].

27. Respondent produced more than 1,000 kilograms (2,205 pounds) of hazardous waste each calendar month relevant to this CAFO, and was a large quantity generator.

¹ For the purposes of this document and for convenient reference, federal corollaries to enforceable Ohio hazardous waste program requirements are provided in brackets.

28. Respondent is subject to the regulations promulgated pursuant to subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, or the analogous Ohio regulations as part of the applicable state hazardous waste management program for the State of Ohio, or both.

29. At all times relevant to this CAFO, neither EPA nor the State of Ohio had issued a permit to Respondent to treat, store, or dispose of hazardous waste at the facility.

30. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at the facility.

31. On July 16-18, 2013, representatives of Complainants inspected Respondent's facility to determine compliance with the requirements of RCRA, CERCLA, EPCRA and regulations promulgated under those statutes.

32. On March 7, 2014, Complainants issued a Notice of Violation (NOV) to Respondent alleging that Respondent had violated the RCRA requirements set forth herein based on Respondent's July 16-18, 2013 inspection of the facility.

33. On April 10, 2014, Respondent responded to the NOV and advised that it has corrected all of the issues identified in the NOV at that time.

34. On October 9, 2015, Complainants issued a Notice of Intent to Bring Administrative Action Against Respondent alleging violations of RCRA, EPCRA and CERCLA as set forth herein.

35. Upon filing of the executed CAFO with the Regional Hearing Clerk, Complainants will no longer consider Respondent to be a significant non-complier under RCRA for the violations resolved in the CAFO.

Count I: Failure to Conduct Monthly Leak Detection

36. According to 40 C.F.R. § 262.34(a), a generator may accumulate hazardous waste for up to 90 days without obtaining a hazardous waste storage permit if it satisfies the conditions of the exemption contained in that rule. If it does not meet the conditions, it may be considered an operator of a hazardous waste storage facility and must apply for a permit to operate as such under 40 C.F.R. §§ 270.1(c), 271.10(a) and 270.13.

37. To maintain an exemption from the requirement to have an operating permit or interim status, a generator of hazardous waste subject to 40 C.F.R. part 265 subpart BB must, among other things, comply with requirements of subpart BB, including the requirements at 40 C.F.R. §§ 265.1052(a)(1) and 265.1057(a), that each pump and each valve in light liquid service must be monitored monthly to detect leaks by methods specified in the rule.

38. At all times relevant to this CAFO, Respondent operated hazardous waste equipment to which the regulations of subpart BB apply.

39. At all times relevant to this CAFO, Respondent operated hazardous waste tanks with pumps and valves in light liquid service.

40. Prior to July 16-18, 2013, Complainants allege Respondent had not performed monthly monitoring of pumps and valves associated with its hazardous waste tanks in light liquid service.

41. Complainants allege that Respondent's failure to comply with the conditions of 40 C.F.R. §§ 265.1052(a)(1) and 265.1057(a), that each pump and each valve in light liquid service must be monitored monthly to detect leaks by methods specified in the rule, subjects Respondent to the permit requirements of 40 C.F.R. §§ 270.1(c) and 270.10(a), (d), and 270.13.

42. Complainants allege that because Respondent failed to meet the applicable conditions for the generator exemption provided by 40 C.F.R. § 262.34(a)(1)(ii), Respondent became an operator of a hazardous waste treatment, storage and disposal facility.

43. Complainants allege that Respondent's storage of hazardous waste without a permit or interim status violated section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

**Count II: Failure to Maintain Hazardous Waste Storage
Area to Minimize Chance of Fire or Release of Hazardous Waste**

44. According to OAC 3745-52-34(A) [40 C.F.R. § 262.34(a)], a generator may accumulate hazardous waste for up to 90 days without obtaining a hazardous waste storage permit if it satisfies the conditions of the exemption contained in that rule. If it does not meet the conditions, it may be considered an operator of a hazardous waste storage facility and must apply for a permit to operate as such under OAC 3745-50-45(B), 3745-50-41(A) and 3745-50-43 [40 C.F.R. §§ 270.1(c), 271.10(a) and 270.13].

45. According to OAC 3745-52-34(A)(4) [40 C.F.R. § 262.34(a)(4)], to maintain an exemption from the requirement to have an operating permit or interim status, a generator of hazardous waste must, among other things, comply with requirements of OAC 3745-65-31 [40 C.F.R. § 265.31] requiring an owner or operator to maintain and operate a hazardous waste storage facility in a manner to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

46. On July 16-18, 2013, Complainants allege that there was waste designated as D001 ignitable hazardous waste pursuant to OAC 3745-51-03 [40 C.F.R. § 261.3] on the ground at the hazardous waste generation point in Respondent's Superlite production area.

47. Complainants allege that this waste represented a release of hazardous waste and resulted from Respondent's failure to operate and maintain its hazardous waste generation areas in a manner to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

48. Complainants allege that Respondent's failure to comply with OAC 3745-65-31, requiring Respondent to operate and maintain its hazardous waste generation areas in a manner to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water, subjects Respondent to the permit requirements of OAC 3745-50-45(B), 3745-50-41(A) and 3745-50-43 [40 C.F.R. §§ 270.1(c) and 270.10(a) and 270.13].

49. Complainants allege that because Respondent failed to meet the applicable conditions for the generator exemption provided by OAC 3745-52-34(A)(4) [40 C.F.R. § 262.34(a)(4)], Respondent became an operator of a hazardous waste treatment, storage and disposal facility.

50. Complainants allege that Respondent's storage of hazardous waste without a permit or interim status violated section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the requirements of OAC 3745-50-45(C), 3745-50-41(A) and 3745-50-43 [40 C.F.R. §§ 270.1(c) and 270.10(a) and 270.13].

Count III: Failure to Maintain Records

51. To maintain its exemption from the requirement to have an operating permit or interim status, a generator of hazardous waste must comply with 40 C.F.R. § 262.34(a)(1)(ii), which requires compliance with the air emission standards for equipment leaks of 40 C.F.R. part 265, subpart BB.

52. According to 40 C.F.R. § 265.1064(b)(1), a generator owning or operating hazardous waste tanks with equipment subject to subpart BB must record the approximate location, type of equipment, total organics in the hazardous waste stream, physical state and the method of compliance with subpart BB for each piece of equipment.

53. At all times relevant to this CAFO, Respondent operated hazardous waste equipment to which the regulations of subpart BB apply.

54. Complainants allege that on July 16-18, 2013, Respondent did not have the information required by 40 C.F.R. § 265.1064(b)(1) recorded for its hazardous waste equipment to which subpart BB applies.

55. Complainants allege that Respondent consequently failed to comply with the inspection and recordkeeping requirements of 40 C.F.R. § 265.1064(b)(1).

Count IV: Failure to Conduct Tank Inspections and Leak Detection

56. To maintain its exemption from the requirement to have an operating permit or interim status, a generator of hazardous waste must comply with 40 C.F.R. § 262.34(a)(1)(ii), which requires compliance with the tank system requirements of 40 C.F.R. part 265, subpart CC.

57. According to 40 C.F.R. § 265.1085(g)(3)(iii), a generator owning or operating tanks subject to subpart CC and who controls air pollutant emissions from the tanks by venting them to a control device must perform annual inspections of the closed vent system and air emission control equipment.

58. According to 40 C.F.R. § 265.1088(b)(4), a generator owning or operating tanks subject to subpart CC and who controls air pollutant emissions from the tanks by using a closed-vent system with a control device must perform annual leak detection and repair (LDAR) inspections of the closed vent system at least once every year.

59. At all times relevant to this CAFO, Respondent operated hazardous waste tanks subject to the requirements of subpart CC whose air pollutant emissions were vented from the tanks to a control device.

60. Complainants allege that prior to July 16-18, 2013, Respondent had not performed annual inspections of the closed vent system and its associated air emission control equipment which vented the tanks to a control device.

61. Complainants allege that prior to July 16-18, 2013, Respondent had not performed annual LDAR monitoring of the closed vent system which vented the tanks to a control device.

62. Complainants allege that Respondent consequently failed to comply with the inspection requirements of 40 C.F.R. §§ 265.1085(g)(3)(iii) and 40 C.F.R. § 265.1088(b)(4).

Count V: Failure to Monitor Organic Compounds to Determine Carbon Control Device Replacement Frequency

63. To maintain its exemption from the requirement to have an operating permit or interim status, a generator of hazardous waste must comply with 40 C.F.R. § 262.34(a)(1)(ii), which requires compliance with the tank system requirements of 40 C.F.R. part 265, subpart CC.

64. According to 40 C.F.R. §§ 265.1088(c)(3) and 265.1033(h), an owner or operator using a carbon adsorption system such as a carbon canister must replace the existing carbon in the control device with fresh carbon on a regular basis by using one of two procedures. One option allows an owner or operator to choose to monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated.

65. On April 10, 2014, Respondent indicated that it intended to comply with 40 C.F.R. § 265.1088(c)(3) by complying with 40 C.F.R. § 265.1033(h)(1), specifically by use of color-metric tubes as a visual indicator of breakthrough for its carbon adsorption system.

66. Prior to April 10, 2014, Respondent was not monitoring the concentration level of organic compounds in the exhaust vent stream on a regular schedule, as required by 40 C.F.R. §§ 265.1088(c)(3) and 265.1033(h).

67. Complainants allege that Respondent consequently failed to comply with the requirements of 40 C.F.R. §§ 265.1088(c)(3) and 265.1033(h).

Count VI: Failure to Develop and Implement an Inspection and Monitoring Plan

68. To maintain its exemption from the requirement to have an operating permit or interim status, a generator of hazardous waste must comply with 40 C.F.R. § 262.34(a)(1)(ii), which requires compliance with the tank system requirements of 40 C.F.R. part 265, subpart CC.

69. According to 40 C.F.R. § 265.1089, the owner or operator of air emission control equipment used to comply with subpart CC requirements must inspect and monitor the equipment to ensure the equipment is compliant with 40 C.F.R. §§ 265.1085 – 1088. The owner or operator must also develop and implement a written plan and schedule to perform the required inspections and monitoring.

70. At all times relevant to this CAFO, Respondent operated hazardous waste tanks whose air pollutant emissions are controlled according to the requirements of 40 C.F.R. §§ 265.1085 – 1088.

71. Complainants allege that on July 16-18, 2013, Respondent had neither prepared nor implemented a written plan to inspect and monitor its air emissions control equipment operated under 40 C.F.R. §§ 265.1085 – 1088, nor had it inspected or monitored that equipment.

72. Complainants allege that Respondent consequently failed to comply with the requirements of 40 C.F.R. § 265.1089.

CERCLA AND EPCRA VIOLATIONS

73. Respondent is a “person” as that term is defined under section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

74. Respondent is a “person” as that term is defined under section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

75. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 240 West Emerling Avenue, Akron, Ohio (facility).

76. At all times relevant to this CAFO, Respondent was in charge of the facility.

77. Respondent’s facility consists of a building or structures and sites or areas where a hazardous substance has been deposited, stored, disposed of, or placed or otherwise come to be located.

78. Respondent’s facility is a “facility” as that term is defined under section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

79. Respondent’s facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

80. Respondent’s facility is a “facility” as that term is defined under section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

81. 1,3-butadiene (CAS # 106-99-0) is a “hazardous substance” as that term is defined under section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

82. 1,3-butadiene has a reportable quantity of 10 pounds, as indicated in the tables associated with 40 C.F.R. § 302.4.

83. On July 16-18, 2013, representatives of Complainants inspected Respondent's facility to determine compliance with the requirements of RCRA, CERCLA, EPCRA and regulations promulgated under those statutes.

84. On July 19, 2013, Respondent provided Complainants with additional information regarding the July 14, 2013 reported release from the facility and the facility's response and further evaluation of the same.

85. On August 15, 2013, Respondent provided a written follow-up notification of the July 14, 2014 release to Complainants.

86. On October 17, 2013, Complainants sent Respondent a Request for Information pursuant to Section 104(e) of CERCLA, which Respondent responded to in a timely manner.

Count VII: Failure to Report Release to National Response Center

87. On July 14, 2013, at or about 1:00 a.m., a vapor ignition occurred at the batch flash tank resulting in a potential release of 1,3-butadiene from Respondent's facility (the release).

88. Respondent began investigating the potential release and discovered that a low pressure knock-out tank vent had opened and not reseated properly resulting in a release. Based on engineering calculations performed following the release, approximately 98 pounds of 1,3-butadiene leaked, emitted, or escaped into the ambient air.

89. In a 24-hour time period, the release of 1,3-butadiene exceeded 10 pounds.

90. The release is a "release" as that term is defined under section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

91. Respondent had knowledge of the release on July 14, 2013, at approximately 6:45 a.m. based on engineering calculations of the quantity of the release performed at that time.

92. The release was one for which notice was required under section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

93. Respondent notified the NRC of the release on July 14, 2013, at 7:10 a.m.

94. Complainants allege that Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

95. Complainants allege that Respondent's failure to immediately notify the NRC of the release is a violation of section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Count VIII: Failure to Report Release to SERC

96. The release is a "release" as that term is defined under section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

97. The release required notice under section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

98. Complainants allege that the release was likely to affect the State of Ohio.

99. At all times relevant to this Complaint, the Ohio Environmental Protection Agency was the SERC for the State of Ohio, under section 301(b) of EPCRA, 42 U.S.C. § 11001(b).

100. Respondent had knowledge of the release on July 14, 2013, at approximately 6:45 a.m., as stated in Count VII.

101. Respondent notified the SERC of the release on July 14, 2013, at 7:19 a.m.

102. Complainants allege that Respondent did not immediately notify the SERC as soon as Respondent had knowledge of the release.

103. Complainants allege that Respondent's failure to immediately notify the SERC of the release is a violation of section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count IX: Failure to Report Release to LEPC

104. The release is a "release" as that term is defined under section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

105. The release required notice under section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

106. Complainants allege that the release was likely to affect Summit County, Ohio.

107. At all times relevant to this Complaint, the Summit County Emergency Management Agency was the LEPC for Summit County, Ohio, under section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

108. Respondent had knowledge of the release on July 14, 2013, at approximately 6:45 a.m., as stated in Count VII.

109. Respondent notified the LEPC of the release on July 14, 2013, at 7:32 a.m.

110. Complainants allege that Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

111. Complainants allege that Respondent's failure to immediately notify the LEPC of the release is a violation of section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

CIVIL PENALTIES

112. Pursuant to section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainants determined that an appropriate civil penalty to settle the RCRA counts of this action is \$69,426. In determining the penalty amount, Complainants took into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, and the nature,

circumstances, extent and gravity of the violations. Complainants also considered Respondent's cooperation in settling this matter and U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

113. Complainants have determined that an appropriate civil penalty to settle this action is \$10,191 for the CERCLA violation. In determining the penalty amount, Complainants considered the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainants also considered Respondent's cooperation in resolving this matter and U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

114. Complainants have determined that an appropriate civil penalty to settle this action is \$20,383 for the EPCRA violations. In determining the penalty amount, Complainants considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainants also considered Respondent's cooperation in resolving this matter and U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

115. Within 30 days after the effective date of this CAFO, Respondent must pay \$89,809 as a combined civil penalty for the RCRA and EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note the following: *In re: Emerald Performance Materials, LLC*, and the docket number of this CAFO.

116. Within 30 days after the effective date of this CAFO, Respondent must pay a \$10,191 civil penalty for the CERCLA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. EPA
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

The check must also note the following: *In re: Emerald Performance Materials, LLC*, the BD number (to be assigned upon filing of this document with the Regional Hearing Clerk) and docket number of this CAFO.

117. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address and the case docket numbers, must accompany the payment. Respondent must send a copy of the checks and transmittal letter, by U.S. mail or email, to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

James Entzminger (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Brian Kennedy (LR-8J)
RCRA Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert S. Guenther (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

118. These civil penalties are not deductible for federal tax purposes.

119. If Respondent does not timely pay any of these civil penalties, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. Respondent agrees that the validity, amount and appropriateness of these civil penalty are not reviewable in a collection action.

120. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

GENERAL PROVISIONS

121. Respondent certifies that it is complying fully with applicable requirements of RCRA, 42 U.S.C. §§ 6901 – 6939e, the regulations at 40 C.F.R. §§ 260.1 – 279.82 and the federally-authorized Ohio corollaries to the federal regulations. Respondent further certifies its compliance with applicable requirements of section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and the regulations promulgated under those statutory provisions.

122. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this filed CAFO by e-mail at the following valid e-mail addresses: guenther.robert@epa.gov (for Complainants) and heidi.friedman@thompsonhine.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

123. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

124. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

125. This CAFO does not affect Respondent's responsibility to comply with the requirements of RCRA, CERCLA, EPCRA and other applicable federal, state and local laws and regulations.

126. This CAFO is a "final order" for purposes of U.S. EPA's RCRA Civil Penalty Policy and EPCRA/CERCLA Enforcement Response Policy.

127. The terms of this CAFO bind Respondent, its successors, and assigns.

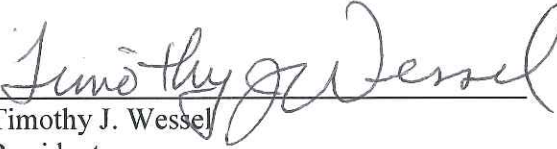
128. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

129. Each party agrees to bear its own costs and attorney's fees in this action.

130. This CAFO constitutes the entire agreement between the parties.

Emerald Performance Materials, LLC, Respondent


4-21-2016
Date



Timothy J. Wessel
President
Emerald Polymer Additives, Inc.


United States Environmental Protection Agency, Complainants

5/10/2016
Date




Margaret M. Guerriero
Director
Land and Chemicals Division

05/02/2016
Date



M. Cecilia Moore, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

5/4/2016
Date



Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Emerald Performance Materials, LLC MM-05-2016-0005
Docket No. CERCLA-05-2016-0007 EPCRA-05-2016-0014
RCRA-05-2016-0011



Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5/12/2014
Date

Robert A. Kaplan
Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5



In the matter of: Emerald Performance Materials, LLC MM-05-2016-0005

Docket Number: CERCLA-05-2016-0007 EPCRA-05-2016-0014

RCRA-05-2016-0011


CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on May 18, 2016 this day in the following manner to the addressees:

Copy by e-mail to
Attorney for Complainants: Robert Guenther
guenther.robert@epa.gov

Copy by email to
Attorney for Respondent: Heidi Friedman
Heidi.Friedman@Thompsonhine.com

Copy by e-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: May 18, 2016


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5