



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

REPLY TO THE ATTENTION OF:

**APR 08 2008**

**(AE-17J)**

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

David E. Giffin  
HSE Manager  
Emerald Performance Materials, LLC  
1550 County Road 1450 N.  
Henry, Illinois 61537

Re: Finding of Violation  
Emerald Performance  
Materials, LLC  
Henry, Illinois

Dear Mr. Giffin:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Emerald Performance Materials, LLC (you). We find that you are violating Section 112 of the Clean Air Act, 42 U.S.C. § 7412, at your Henry, Illinois facility.

We have several enforcement options under Section 113(a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(3). These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action.

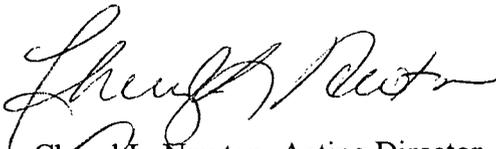
We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you the opportunity to present information on the specific findings of violation, the efforts you have taken to comply, and the steps you will take to prevent future violations.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Shilpa Patel. You may call her at (312) 886.0120 to request a conference. You should make the request within 10 calendar days following receipt of this

letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,



Cheryl L. Newton, Acting Director  
Air and Radiation Division

Enclosure

cc: Ray Pilapil, Manager, Illinois EPA

United States Environmental Protection Agency Region 5

IN THE MATTER OF: )  
)  
Emerald Performance Materials, LLC ) FINDING OF VIOLATION  
Henry, Illinois )  
) EPA-5-08-14-IL  
)  
Proceedings Pursuant to )  
the Clean Air Act, )  
42 U.S.C. §§ 7401 et seq. )

FINDING OF VIOLATION

The U.S. Environmental Protection Agency finds that Emerald Performance Materials, LLC (Emerald) is violating Section 112 of the Clean Air Act, 42 U.S.C. § 7412. Specifically, Emerald is violating the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Off-Site Waste and Recovery Operations at 40 C.F.R. Part 63, subpart DD as follows:

**Regulatory Authority**

Applicability

1. The NESHAP, at §63.680(a), states that the provisions of this subpart apply to the owner and operator of a plant site for which both of the conditions specified in paragraphs (a)(1) and (a)(2) of this section are applicable. If either one of these conditions does not apply to the plant site, then the owner and operator of the plant site are not subject to the provisions of this subpart.
2. The NESHAP, at § 63.680(a)(1), states the plant site must be a major source of hazardous air pollutant (HAP) emissions as defined in 40 CFR 63.2.
3. The NESHAP, at § 63.680(a)(2), states that the plant site must be one or more of operations that receives off-site materials as specified in paragraph (b) of this section and the operations is one of the following waste management operations or recovery operations as specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section.
4. The NESHAP, at § 63.680(a)(2)(ii), states that a waste management operation that treats wastewater which is an off-site material and the operation is exempted from regulation as a hazardous waste treatment, storage, and disposal facility under 40 CFR 264.1(g)(6) or 40 CFR 265.1(c)(10).

5. The Hazardous Waste Treatment, Storage and Disposal Facility regulations, at §264.1(g)(6) states the requirements of this part do not apply to: The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §260.10 of this chapter, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in §268.40 of this chapter, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in §264.17(b).
6. The Hazardous Waste Management regulation General Provisions, at §260.10, states that a wastewater treatment unit means a device which is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and receives and treats or stores an influent wastewater that is a hazardous waste as defined in §261.3 of this chapter, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in §261.3 of this chapter, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in §261.3 of this Chapter; and meets the definition of tank or tank system in §260.10 of this chapter.
7. The NESHAP, at §63.680(b), states the purpose of implementing this subpart, an off-site material is a material that meets all of the criteria specified in paragraph (b)(1) of this section but is not one of the materials specified in paragraph (b)(2) of this section.
8. The NESHAP, at §63.680(b)(1), states an off-site material is a material that meets all of the criteria specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section. If any one of these criteria does not apply to the material, then the material is not an off-site material subject to this subpart.
9. The NESHAP, at §63.680(b)(1)(i), states the material is a waste, used oil, or used solvent as defined in §63.681 of this subpart.
10. The NESHAP, at §63.681, states waste means a material generated from industrial, commercial, mining, or agricultural operations or from community activities that is discarded, discharged, or is being accumulated, stored, or physically, chemically, thermally, or biologically treated prior to being discarded or discharged.
11. The NESHAP, at 63.680(b)(1)(ii), states the waste, used oil, or used solvent is not produced or generated within the plant site, but the material is delivered, transferred, or otherwise moved to the plant site from a location outside the boundaries of the plant site.
12. The NESHAP, at 63.680(b)(1)(iii), states the waste, used oil, or used solvent contains one or more of the hazardous air pollutants (HAP) listed in Table 1 of this subpart based on the composition of the material at the point-of-delivery, as defined in §63.681 of this subpart.

13. The NESHAP, at §63.681, states the point-of-delivery is the point at the boundary or within the plant site where the owner or operator first accepts custody, takes possession, or assumes responsibility for the management of an off-site material stream managed in a waste management operation or recovery operation specified in §63.680 (a)(2)(i) through (a)(2)(vi) of this subpart. The characteristics of an off-site material stream are determined prior to combining the off-site material stream with other off-site material streams or with any other materials.

#### Off-Site Waste NESHAP Requirements

14. The NESHAP, at §63.697(a)(1), states the owner or operator of an affected source must submit notices to the Administrator in accordance with the applicable notification requirements in 40 CFR §63.9 as specified in Table 2 of this subpart. For the purpose of this subpart, an owner or operator subject to the initial notification requirements under 40 CFR §63.9(b)(2) must submit the required notification on or before October 19, 1999.
15. The NESHAP, at §63.9(b)(2), states the owner or operator of an affected source that has an initial startup before the effective date of a relevant standard under this part shall notify the Administrator in writing that the source is subject to the relevant standard. The notification, which shall be submitted not later than 120 calendar days after the effective date of the relevant standard (or within 120 calendar days after the source becomes subject to the relevant standard), shall provide the following information:
  - (i) The name and address of the owner or operator;
  - (ii) The address (i.e., physical location) of the affected source;
  - (iii) An identification of the relevant standard or other requirement, that is the basis of the notification and the source's compliance date;
  - (iv) A brief description of the nature, size, design, and method of operation of the source and an identification of the types of emission points within the affected source subject to the relevant standard and types of hazardous air pollutants emitted; and
  - (v) A statement of whether the affected source is a major source or an area source.
16. The NESHAP, at §63.9 (c), states if the owner or operator of an affected source cannot comply with a relevant standard by the applicable compliance date for that source, or if the owner or operator has installed BACT or technology to meet LAER consistent with §63.6(i)(5) of this subpart, he/she may submit to the Administrator (or the State with an approved permit program) a request for an extension of compliance as specified in §63.6(i)(4) through §63.6(i)(6).

17. The NESHAP, at §63.697 (b)(2), states the owner or operator of an affected source must submit reports to the Administrator in accordance with the applicable reporting requirements in 40 CFR §63.10 as specified in Table 2 of this subpart.
18. The NESHAP, at §63.10(a)(2), states for affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extensions.
19. The NESHAP, at §63.10(a)(3), states if any State requires a report that contains all the information required in a report listed in this section, an owner or operator may send the Administrator a copy of the report sent to the State to satisfy the requirements of this section for that report.
20. The NESHAP, at §63.10(b)(1), states that the owner or operator of an affected source subject to the provisions of this part shall maintain files of all information (including all reports and notifications) required by this part recorded in a form suitable and readily available for expeditious inspection and review. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.
21. The NESHAP, at §63.10 (b)(3), states that if an owner or operator determines that his or her stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants regulated by any standard established pursuant to section 112(d) or (f), and that stationary source is in the source category regulated by the relevant standard, but that source is not subject to the relevant standard (or other requirement established under this part) because of limitations on the source's potential to emit or an exclusion, the owner or operator must keep a record of the applicability determination on site at the source for a period of 5 years after the determination, or until the source changes its operations to become an affected source, whichever comes first. The record of the applicability determination must be signed by the person making the determination and include an analysis (or other information) that demonstrates why the owner or operator believes the source is unaffected (e.g., because the source is an area source). The analysis (or other information) must be sufficiently detailed to allow the Administrator to make a finding about the source's applicability status with regard to the relevant standard or other requirement. If relevant, the analysis must be performed in accordance with requirements established in relevant subparts of this part for this purpose for particular categories of stationary sources. If relevant, the analysis should be performed in accordance with EPA guidance materials published to assist sources in making applicability determinations under section 112, if any. The requirements to determine applicability of a standard under §63.1(b)(3) and to record the results of that determination under paragraph (b)(3) of this section shall not by themselves create an obligation for the owner or operator to obtain a title V permit.

## Violations

### Applicability

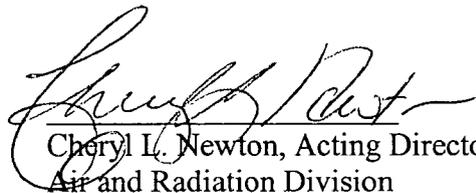
22. Emerald owns and operates a major source of hazardous air pollutants at 1550 County Road 1450 N, Henry, Illinois as required by §63.680(a)(1).
23. Emerald operates a waste management operation at 1550 County Road 1450 N, Henry, Illinois as required by § 63.680(a)(2)(ii). A waste management operation is defined as the collection of off-site material management units, process vents, and equipment components used at a plant site to manage an off-site material stream from the point-of-delivery to the point it is discharged from the plant site.
24. Emerald treats a wastewater stream which is an off-site material as required by § 63.680(a)(2)(ii).
25. Emerald's off-site material is a waste that is not produced or generated within the plant site, but the material is delivered, transferred, or otherwise moved to the plant site from a location outside the boundaries of the plant site. Additionally the waste is hazardous because it contains Vinyl Chloride, a hazardous air pollutants (HAP) listed in Table 1 of this subpart, based on the composition of the material at the point-of-delivery as required by §63.680(b).
26. Emerald's waste management operation is exempted from regulation as a hazardous waste treatment, storage, and disposal facility under 40 CFR 264.1(g)(6) or 40 CFR 265.1(c)(10), as required by § 63.680(a)(2)(ii). The waste management operation is exempt from TSDF regulations because Emerald is an owner or operator of a wastewater treatment unit as defined in §260.10 of this chapter. A wastewater treatment unit is defined as a part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and receives and treats an influent wastewater that is a hazardous waste as defined in §261.3 of this chapter, and; and meets the definition of tank or tank system in §260.10 of this chapter. Emerald is regulated under section 402 of the Clean Water Act, and receives and treats influent waste water with vinyl chloride concentrations defining it as a hazardous waste, and meets the definition of a tank system.

### Off-Site Waste NESHAP Requirements

27. Emerald failed to submit notices to the Administrator in accordance with the applicable notification requirements in 40 CFR §63.9 as specified in Table 2 of this subpart. For the purpose of this subpart, an owner or operator subject to the initial notification requirements under 40 CFR §63.9(b)(2) must submit the required notification on or before October 19, 1999 as required by §63.697(a)(1).

28. Emerald failed to notify the Administrator in writing that the source is subject to the relevant standard within 120 calendar days after the effective date of the relevant standard as required by §63.9(b)(2).
29. Emerald failed to request an extension of compliance if it could not comply with a relevant standard by the applicable compliance date for that source, or if the owner or operator has installed BACT or technology to meet LAER consistent with §63.6(i)(5) of this subpart as required by §63.9(c).
30. Emerald failed to submit reports to the Administrator in accordance with the applicable reporting requirements in 40 CFR 63.10 as specified in Table 2 of this subpart as required by §63.697 (b)(2).
31. Emerald failed to maintain files of all information (including all reports and notifications) required by this part recorded in a form suitable and readily available for expeditious inspection and review as required by §63.10 (b)(1).
32. Emerald failed to determine that its stationary source emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants regulated by any standard established pursuant to section 112(d) or (f), and that stationary source is in the source category regulated by the relevant standard, but that source is not subject to the relevant standard (or other requirement established under this part) because of limitations on the source's potential to emit or an exclusion.
33. Emerald has failed to keep a record of the applicability determination on site at the source for a period of 5 years after the determination or until the source changes its operations to become an affected source, whichever comes first.

Date: 4/8/08

  
Cheryl L. Newton, Acting Director  
Air and Radiation Division

CERTIFICATE OF MAILING

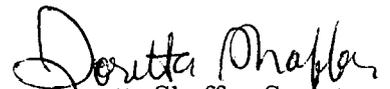
I, Loretta Shaffer, certify that I sent a Finding of Violation, No. EPA-5-08-IL-14, by Certified Mail, Return Receipt Requested, to:

David E Giffin  
HSE Manager  
Emerald Performance Materials, LLC  
1550 County Road 1450 N.  
Henry, Illinois 61537

I also certify that I sent copies of the Finding of Violation by first class mail to:

Ray Pilapil, Manager  
Bureau of Air  
Compliance and Enforcement Section  
Bureau of Air  
Illinois Environmental Protection Agency  
1021 North Grand Avenue  
Springfield, Illinois

on the 9 day of April, 2008.

  
Loretta Shaffer, Secretary  
AECAS, (OH/MN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0004 0187 6980