



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

FEB 25 2005

REPLY TO THE ATTENTION OF

(AE-17J)

**CERTIFIED MAIL RETURN**  
**RECEIPT REQUESTED**

Derrick Hagerman, President  
Wabash Environmental Technologies, L.L.C.  
1331 South First Street  
Terre Haute, Indiana 47802

Re: Wabash Environmental Technologies, L.L.C.  
Administrative Order

Dear Mr. Hagerman:

The enclosed Order is issued pursuant to Section 113(a)(3) and 114(a)(1) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a)(3) and 7414(a)(1), for Wabash Environmental Technologies' (Wabash) failure to submit a complete Title V Operating permit application, and failure to comply with the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Off-Site Waste and Recovery Operations (OSWRO) at 40 C.F.R. Part 63, Subpart DD, Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

The U.S. EPA contact in this matter is Joseph Ulfig. Please contact him at (312) 353-8205 if you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Brent Marable".

Brent Marable, Chief  
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: David McIver, Chief  
Air Section  
Office of Enforcement

George Needham, Director  
Vigo County Air Pollution Control

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:** )  
 )  
Wabash Environmental ) **Administrative Order**  
Technologies L.L.C. )  
 ) **EPA-5-05-113(a)-IN-06**  
Proceeding Under Sections )  
113(a)(3) and 114(a)(1) of the )  
Clean Air Act, 42 U.S.C. )  
§§ 7413(a)(3) and 7414(a)(1) )  
\_\_\_\_\_ )  
 )

**Administrative Order**

1. The Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, is issuing this Order to Wabash Environmental Technologies L.L.C. ("Wabash"), under Sections 113(a)(3) and 114(a)(1) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a)(3) and 7414(a)(1).

**Statutory and Regulatory Background**

2. Title V of the Act, 42 U.S.C. § 7661 et seq., established an operating permit program for major sources of air pollution. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), provides that each state must submit to the Administrator of U.S. EPA a permit program meeting the requirements of Title V.
3. Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), the Administrator promulgated regulations, codified at 40 C.F.R. Part 70, providing for the establishment of a Title V permitting program.
4. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), states that it is unlawful for any person to operate a major source or a source subject to standards or regulations under Section 112 of the Act, except in compliance with a permit issued by the permitting authority under Title V of the Act.
5. Section 112(a)(1) of the Act defines major source as any stationary source or group of stationary sources located

within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

6. Section 503(a) of the Act, 52 U.S.C. § 7662(c), states that any source specified in Section 502(a), in this case a major source or a source subject to a regulation under section 112 of the Act, shall become subject to a permit program, and required to have a permit on the latter of the following dates: (1) the effective date of a permit program applicable to the source; or (2) the date such source becomes subject to section 502(a).
7. U.S. EPA promulgated final interim approval of the Indiana Title V program on November 14, 1995 (60 Fed. Reg. 57188), and the program became effective on December 14, 1995. The Indiana Title V program was granted final full approval by U.S. EPA, effective November 30, 2001. See 40 C.F.R. Part 70, Appendix A.
8. Section 503(c) of the Act, 52 U.S.C. § 7662(c), states that no later than 12 months from the date on which the source becomes subject to an approved permit program, any person required to have a permit shall submit to the permitting authority a compliance plan and application for a permit.
9. The regulation at 40 C.F.R. § 70.5(a) requires that each source subject to part 70 shall submit a timely application within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.
10. The regulation at 40 C.F.R. § 70.7(b) prohibits a source, which is subject to 40 C.F.R. Part 70, from operating except in compliance with a permit issued under a 40 C.F.R. Part 70 program.
11. 40 C.F.R. § 70.5(a)(2) provides, among other things, that information required under 40 C.F.R. § 70.5(c) must be sufficient to evaluate the subject source and its application and to determine all applicable requirements.
12. 40 C.F.R. § 70.5(c) provides, among other things, that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement.
13. Under Section 112 of the Act, the Administrator promulgated the NESHAP for Off-Site Waste and Recovery Operations

(OSWRO) at 40 C.F.R. §§ 63.680 through 63.698. The NESHAP for OSWRO applies to Wabash's wastewater treatment facility.

14. The NESHAP, at 40 C.F.R. § 63.683, requires the owner or operator of each affected off-site material management unit to meet the requirements of either (b)(1)(i), (b)(1)(ii), or (b)(1)(iii).
15. Under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), the Administrator of U.S. EPA may issue an order requiring compliance to any person who has violated or is violating the NESHAP regulations. The Administrator has delegated this authority to the Director of the Air and Radiation Division.
16. The Administrator of U.S. EPA may require any person who owns or operates an emission source to make reports; install, use and maintain monitoring equipment; sample emissions; provide information required by the Administrator under Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Air and Radiation Division.

### **Findings**

17. Wabash owns and operates a facility located at 1331 South First Street, Terre Haute, Indiana (the "facility").
18. At the time of initial startup of the Wabash facility in November 2000, Wabash had a potential to emit greater than 10 tons per year of methanol, a hazardous air pollutant (HAP), as defined at 40 C.F.R. § 63.2.
19. Wabash's facility receives "off-site material" as defined at 40 C.F.R. § 63.680(b).
20. Wabash's facility is subject to the NESHAP for OSWRO under 40 C.F.R. § 63.680(2)(iii), because it is a waste management operation that treats wastewater that is an off-site material and the operation is both of the following: the operation is subject to regulation under section 402 of the Clean Water Act but is not owned by a "state" or "municipality," and the treatment of wastewater is the predominant activity performed at the plant site.
21. In November of 2000, Wabash began operating a biological wastewater treatment operation, which includes the following: containers, a transfer system, and nine tanks,

including an equalization tank, a neutralization tank, two aeration tanks, two secondary clarifiers, an aerobic digester and a scum collection tank. The aforementioned units are "off-site material management units," as defined at 40 C.F.R. § 63.681, associated with the wastewater treatment operation.

22. The wastewater treatment facility is subject to the NESHAP for OSWRO and is an "affected source," as defined in 40 C.F.R. § 63.680(c)(1).
23. Wabash submitted an application for a Part 70 Operating Permit to the Indiana Department of Environmental Management (IDEM) for its wastewater treatment facility. The application failed to provide sufficient information related to the modifications of the soy and protein blending facility, natural gas boilers, waste treatment plant and the Zeranol pharmaceutical producing operation to allow IDEM to evaluate the source and its application and to determine all applicable requirements as required by 40 C.F.R. § 70.5(a)(2) and (c).
24. On December 9, 2003, U.S. EPA issued to Wabash a Finding of Violation alleging that Wabash failed to provide sufficient information related to the modifications of the soy and protein blending facility, natural gas boilers, waste treatment plant and the Zeranol pharmaceutical producing operation to allow IDEM to evaluate the source and its Title V permit application and to determine all applicable requirements as required by 40 C.F.R. § 70.5(a)(2) and (c).
25. On April 21, 2004, U.S. EPA issued to Wabash a Finding of Violation alleging that Wabash violated the NESHAP for OSWRO by failing to, *inter alia*: 1) control the air emissions from the containers upon initial startup, as required by 40 C.F.R. § 63.688(b); 2) control, upon initial startup, the air emissions from the transfer system that the facility employs using one of the transfer systems specified in 40 C.F.R. § 63.689(c)(1) through (3); and 3) meet either Level 1 or Level 2 control, pursuant to 40 C.F.R. § 63.685, upon initial startup of the equalization tank, neutralization tank, two aeration tanks, two secondary clarifiers, aerobic digester and scum collection tank.
26. On January 20, 2004, representatives of Wabash and U.S. EPA discussed the December 9, 2003 Finding of Violation.
27. On May 18, 2004, representatives of Wabash and U.S. EPA discussed the April 21, 2004 Finding of Violation.

28. On December 17, 2004, the Commissioner of the Indiana Department of Environmental Management (IDEM) issued to Mr. Hagerman and Wabash a Notice of Unlawful Acts and Order to Cease and Desist Unlawful Acts. This Order states that wastewater entering the facility is receiving minimal, if any, treatment. It also currently bars Wabash from accepting any wastewater into its facility until certain conditions are met.
29. In January 2005, Wabash began the installation of covers on some of the facility's tanks. U.S. EPA has informed Wabash that these covers are not compliant with Level 2 control, pursuant to 40 C.F.R. § 63.685, because they do not meet the definition of a "fixed roof," as defined in 40 C.F.R. § 63.681.

#### **Compliance Program**

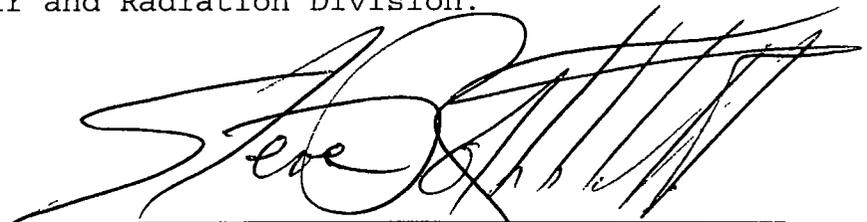
30. Wabash shall submit to U.S. EPA the same information required by IDEM in the Notice of Unlawful Acts and Order to Cease and Desist Unlawful Acts.
31. Prior to the resumption of operations, Wabash shall submit a complete Title V Operating permit application that includes the following:
  - A. Wabash's choice of method for compliance with the OSWRO NESHAP, namely 40 C.R. F. § 63.683(b)(1)(i), (ii) or (iii).
  - B. Wabash's future operating protocol for assuring the biological treatment capability of the facility. This protocol should be incorporated into the facility's Startup, Shutdown, and Malfunction Plan.
  - C. Wabash's specific screening criteria for determining whether to accept wastewater for treatment. This screening criteria should be incorporated into the facility's Startup, Shutdown, and Malfunction Plan.
32. Wabash may not operate until issuance of the Title V permit and in compliance with that permit.
33. Wabash shall submit all information under an authorized signature certifying that the information is true and complete to the best knowledge of the certifying official after due inquiry. Knowingly providing false information, in response to this Order, may be actionable under section 113(c)(2) of the Act, and 18 U.S.C. §§ 1001 and 1341.
34. Wabash shall send all information required by this Order to:

Attention: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604.

**General Provisions**

35. This Order does not affect Wabash's responsibility to comply with other local, state, and federal laws and regulations.
36. This Order does not restrict U.S. EPA's authority to enforce Section 112 of the Act, or any other section of the Act.
37. Nothing in this Order limits U.S. EPA's authority to seek appropriate relief, including penalties under Section 113 of the Act, 42 U.S.C. § 7413, for Wabash's violations of the OSWRO NESHAP.
38. Failure to comply with this Order may subject Wabash to penalties of up to \$32,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413.
39. The terms of this Order are binding on Wabash, its assignees and successors. Wabash must give notice of this Order to any successors in interest, prior to transferring ownership, and must simultaneously verify to U.S. EPA, at the above address, that Wabash has given the notice.
40. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.
41. U.S. EPA may use any information submitted under this Order in an administrative, civil or criminal action.
42. This Order is effective on the date of signature by the Director of the Air and Radiation Division.

2/25/2005  
Date

  
\_\_\_\_\_  
Stephen Rothblatt, Director  
Air and Radiation Division

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent the Administrative Order, EPA Order No. EPA-5-05-113(a) IN-06, by Certified Mail, Return Receipt Requested, to:

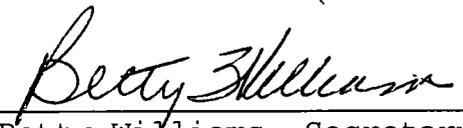
Derrick Hagerman, President  
Wabash Environmental Technologies, L.L.C.  
1331 South First Street  
Terre Haute, Indiana 47802

I also certify that I sent a copy of the Administrative Order, EPA Order No. EPA-5-05-113(a) IN-06, by First Class Mail to:

David McIver, Chief  
Air Section  
Office of Enforcement  
Indiana Department of Environmental Management  
100 North Senate, Room 1001  
Indianapolis, Indiana 46206-6015.

George Needham, Director  
Vigo County Air Pollution Control  
103 South Third Street  
Terre Haute, Indiana 47807

on the 25<sup>th</sup> day of February 2005.

  
\_\_\_\_\_  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 70010320000602952621