

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF )  
 )  
Poly-Carb, Inc. ) ADMINISTRATIVE ORDER  
Cleveland, Ohio )  
 ) EPA-5-01-113(a) OH-03  
Proceeding Under Section )  
113(a)(3) and 114(a) of the )  
Clean Air Act, 42 U.S.C. )  
§§ 7413(a)(3) and 7414(a) )

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**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 Poly-Carb, Inc. (Poly-Carb), under Sections 113(a)(3) and 114(a) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a)(3) and 7414(a).

**Statutory and Regulatory Authority**

2. Section 183(e) of the Act, 42 U.S.C. § 7511b(e), authorizes U.S. EPA to promulgate national volatile organic compound (VOC) emissions standards for architectural coatings that have the potential to contribute to ozone levels that violate the national ambient air quality standards (NAAQS) for ozone.

3. On September 11, 1998, the Administrator of U.S. EPA promulgated national regulations under Section 183(e) of the Act, 42 U.S.C. § 7511b(e). 63 Fed. Reg. 48848. These regulations are codified at 40 C.F.R. Part 59, Subpart D (40 C.F.R. §§ 59.400 through 59.413, and Appendix A).

4. Section 183(e)(6) of the Act states, "Any regulation established under this subsection shall be treated, for purposes of enforcement of this chapter, as a standard under section 7411 of this title and any violation of such regulation shall be treated as a violation of a requirement of section 7411(e) of this title."

5. 40 C.F.R. § 59.402(a) requires, in part, that each manufacturer and importer of any architectural coating subject to this subpart shall ensure that the VOC content of the coating does not exceed the applicable limit in table 1 of this subpart.

6. 40 C.F.R. § 59.402(b) states, "Except as provided in paragraph (c) of this section, if anywhere on the container of any architectural coating, or any label or sticker affixed to the container, or in any sales, advertising or technical literature supplied by the manufacturer or importer or anyone acting on their behalf, any representation is made that indicates that the coating meets the definition of more than one of the coating categories listed in table 1 of this subpart, then the most restrictive VOC content limit shall apply."

7. 40 C.F.R. § 59.401 states, "Primer means a coating formulated and recommended for application to a substrate to provide a firm bond between the substrate and subsequent coatings."

8. 40 C.F.R. § 59.401 states, "Undercoater means a coating formulated and recommended to provide a smooth surface for subsequent coatings."

9. 40 C.F.R. § 59.408(b) states, in part, "[e]ach manufacturer and importer of any architectural coating subject to the provisions of this subpart shall submit an initial notification report no later than the applicable compliance date specified in § 59.400. . .", specifically, no later than September 13, 1999.

10. 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 a requirement of Section 111 of the Act, 42 U.S.C. § 7411.

11. Under Section 114(a) of the Act, 42 U.S.C. § 7414(a), the Administrator may require any persons who is subject to any requirement of the Act to provide information required by the Administrator. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

**Findings**

12. Poly-Carb, 33095 Bainbridge Road, Cleveland, Ohio, is a manufacturer of architectural coatings subject to 40 C.F.R. Part 59, Subpart D.

13. Poly-Carb manufactures Mark-124, a two-component, epoxy-based coating.

14. Mark-124 is a primer and undercoater as defined in 40 C.F.R. § 59.401, when manufactured for use with an epoxy or polyurethane topcoat.

15. Mark-124 must comply with the VOC emission limit of 350 grams per liter, as set forth in 40 C.F.R. Part 59, Subpart D, table 1.

16. Poly-Carb owns or operates an "emission source" within the meaning of Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1).

17. On November 13, 2000, U.S. EPA issued a Finding of Violation to Poly-Carb alleging that Poly-Carb was in violation of 40 C.F.R. Part 59, Subpart D.

18. On December 4, 2000, Poly-Carb met with U.S. EPA to discuss the violations alleged in the November 13, 2000 Finding of Violation.

19. Poly-Carb continues to manufacture Mark-124, a primer and undercoater, with a VOC limit in exceedance of 350 grams per liter.

**Compliance Program**

20. Poly-Carb shall comply with, and maintain continuous compliance with, all requirements of 40 C.F.R. Part 59, Subpart D. Specifically, Poly-Carb shall manufacture Mark-124, and all products for use as primers and undercoaters, with a VOC limit of 350 grams per liter.

21. On or before July 31, 2001, Poly-Carb shall submit the first of six semi-annual reports to:

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

These reports shall include the following: a list of all products subject to 40 C.F.R. Part 49, Subpart D, manufactured in the previous semi-annual period; each product's VOC content limit and category; the results of any 40 C.F.R. Part 60, Appendix A, Method 24 testing conducted on any Poly-Carb products in the previous semi-annual period; and the estimated amount of any annual exceedance fees to be paid for manufacturing of products in the previous semi-annual period.

#### General Provisions

22. This Order does not affect Poly-Carb's responsibility to comply with other local, state, and federal laws and regulations.

23. This Order does not restrict U.S. EPA's authority to enforce Sections 113 and 114 of the Act, or any other section of the Act.

24. 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 Poly-Carb's violations of Section 111 of the Act.

25. Failure to comply with this Order may subject Poly-Carb to penalties of up to \$27,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413.

26. The terms of this Order are binding on Poly-Carb, its assignees and successors. Poly-Carb shall give notice of this Order to any successors in interest, prior to transferring ownership, and shall simultaneously verify to U.S. EPA, at the address in paragraph 21, that Poly-Carb has given such notice.

27. Under 40 C.F.R. Part 2, Subpart B, Poly-Carb is entitled to assert a business confidentiality claim covering any part of the submitted information which is not emission data or necessary to determine emission data. Failure to assert such a claim makes the submitted information available to the public without further notice. Information subject to a business confidentiality claim may be available to the public only to the extent set forth in 40 C.F.R. Part 2, Subpart B.

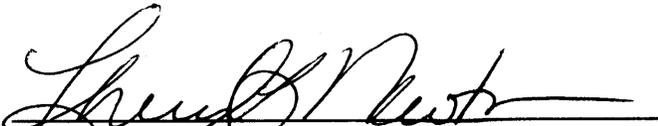
28. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

29. U.S. EPA may use any information submitted under this Order in an administrative, civil, or criminal action.

30. Section 113(a)(4) of the Act, 42 U.S.C. § 7413(a)(4), states that an Order shall not take effect until the person to whom it is issued has had an opportunity to confer with U.S. EPA about the alleged violation. Therefore, U.S. EPA is giving Poly-Carb an opportunity to confer with U.S. EPA concerning this Order. Poly-Carb may schedule a conference with U.S. EPA by calling Shaun Burke at (312) 353-5713 within three days of Poly-Carb's receipt of this Order.

31. This Order is effective seven calendar days following Poly-Carb's receipt of this Order.

3/23/01  
Date

  
Cheryl Newton, Acting Director  
Air and Radiation Division

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent the Administrative Order, EPA Order No. EPA-5-01-113(a)OH-03 Certified Mail, Return Receipt Requested, to:

Dr. Anil Goel, President  
Poly-Carb, Inc.  
33095 Bainbridge Road  
Cleveland, Ohio 44139

I also certify that I sent a copy of the Administrative Order, EPA Order No. EPA-5-01-113(a)OH-03 by First Class Mail to:

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216-1049

Mark Vilem, Project Coordinator  
Department of Public Health and Welfare  
Division of the Environment  
1925 St. Clair Avenue  
Cleveland, Ohio 44114

on the 25<sup>th</sup> day of March 2001.

  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9591 9065