



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

SEP 28 2004

REPLY TO THE ATTENTION OF
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Todd Werstler, Owner
Tower Industries, LLC
2101 S. Ninth Street SW
Massillon, Ohio 44647

Re: *In the Matter of Tower Industries' Ninth Street
Facility, Massillon, Ohio
Administrative Consent Order*

Dear Mr. Werstler:

Enclosed is a copy of the executed Administrative Consent Order regarding the above captioned case.

If you have any questions regarding this Order, please contact Cynthia Kawakami, Associate Regional Counsel at (312) 886-0564 or Sheila Desai, Environmental Engineer at (312) 353-4150.

Sincerely yours,

A handwritten signature in cursive script that reads "William L. MacDowell".

William L. MacDowell, Chief
Air Enforcement and Compliance Assurance Section MN/OH

Enclosure

cc: Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency

Dan Aleman, Administrator
Air Pollution Control Division
Canton City Health Department

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
Tower Industries, LLC) **Administrative Consent Order**
Massillon, Ohio)
) **EPA-5-04-113(a) OH-05**
)
Proceeding Under)
Section 113(a)(1)(A) and)
(a)(3) of the Clean Air Act,)
42 U.S.C. §§ 7413(a)(1)(A))
and (a)(3))

I. AUTHORITY

1. The Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, is issuing this Order to Tower Industries, LLC (Tower) under Sections 113(a)(1)(A) and (a)(3) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(1)(A) and (a)(3).

II. STATUTORY AND REGULATORY BACKGROUND

National Emission Standards for Hazardous Air Pollutants

2. Section 112 of the Act, 42 U.S.C. § 7412, provides that the Administrator of U.S. EPA may promulgate regulations establishing National Emission Standards for Hazardous Air Pollutants (NESHAP).
3. Pursuant to Section 112 of the Act, the Administrator promulgated 40 C.F.R. Part 63, Subpart WWWW (40 C.F.R. §§ 63.5780 through 63.5935), the NESHAP for Reinforced Plastic Composites Production. 68 Fed. Reg. 76 (April 21, 2003) ("Subpart WWWW regulations").
4. 40 C.F.R. § 63.5785(a) provides that the Subpart WWWW regulations are applicable to any person who owns or operates a reinforced plastic composites production facility that is located at, or is part of, a major source of Hazardous Air Pollutants (HAP) emissions.
5. 40 C.F.R. § 63.5785(a) provides that reinforced plastic composites production is limited to, operation in which

reinforced and/or nonreinforced plastic composites or plastic molding compounds are manufactured using thermoset resins and/or gel coats that contain styrene to produce plastic composites.

6. Section 112 of the Act, 42 U.S.C. § 7412, defines a "major source of HAP" as a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year from all emission sources at the plant site.
7. 40 C.F.R. § 63.5790(a) provides that the Subpart WWWW regulations apply to each new or existing affected source at a reinforced plastic composites production facility.
8. 40 C.F.R. § 63.5795(a) defines a "new affected source" as a reinforced plastic composites production facility for which construction commenced after August 2, 2001, and no other reinforced plastic composites production affected source exists at that site.
9. 40 C.F.R. § 63.5800 requires that a new source subject to Subpart WWWW regulations which is a major source at startup must demonstrate compliance upon startup or by April 21, 2003, whichever is later.
10. 40 C.F.R. § 63.5805(c) requires that a new source subject to Subpart WWWW regulations must meet the organic HAP emissions limits of 33.6% highest organic HAP content for a compliant resin and 44.0% highest organic HAP content for a compliant gel coat.
11. 40 C.F.R. § 63.5905 requires that a new affected source subject to Subpart WWWW regulations must submit all applicable notifications in 40 C.F.R. § 63.9(b)(4) and (5).
12. 40 C.F.R. § 63.9(b)(4) requires the owner or operator of a new or reconstructed affected source for which an application for approval of construction is required under 63.5(d) to provide the following information in writing to the Administrator:
 - a. A notification of intention to construct a new major affected source with the application for approval of construction, and

- b. A notification of the actual date of startup of the source, delivered or postmarked within 15 calendar days after that date.
13. 40 C.F.R. § 63.5910 requires that an affected source must submit semiannual compliance reports according to the requirements in 40 C.F.R. § 63.5910(b).
14. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that the Administrator of U.S. EPA may issue an order requiring compliance to any person who has violated or is violating the NESHAP regulations.
15. The Administrator has delegated his authority under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), to the Director of the Air and Radiation Division.

Ohio State Implementation Plan

16. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to develop, and submit to U.S. EPA for approval, a State Implementation Plan ("SIP") for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards ("NAAQS") in each air quality control region within such state.
17. Section 110(a)(2) of the Act, 42 U.S.C. § 7410(a)(2), provides that each SIP must include a permit program to regulate the modification, construction and operation of any stationary source of air pollution. Pursuant to Section 113(a) and (b) of the Act, 42 U.S.C. § 7410(a) and (b), upon U.S. EPA approval, SIP requirements are federally enforceable by U.S. EPA.
18. The State of Ohio promulgated OAC Rule 3745-31-02(A) that provides that no person shall cause, permit, or allow the installation of a new source of air pollutants, or the modification of an air contaminant source, without first obtaining a Permit to Install from the director.
19. The State of Ohio promulgated OAC Rule 3745-31-01 that defines a major Maximum Achievable Control Technology ("MACT") source as any process or production unit that, in and of itself, has the potential to emit ten tons per year or more of any single hazardous air pollutant or twenty-five tons per year or more of any combination of hazardous air pollutants.

20. The State of Ohio promulgated OAC Rule 3745-31-01 that defines a MACT determination as any combination of emission limitations, work practices, raw material specifications, throughput limitations, source design characteristics, and air pollution donctrol devices that achieve the level of hazardous air pollutant control required by paragraph (E) of rule 3745-31-28 of the Administrative Code.
21. The State of Ohio promulgated OAC Rule 3745-31-28 that provides that no person shall cause, permit, or allow the actual construction or reconstruction of any process or production unit that is a major MACT source without first applying for and obtaining a MACT determination from the director unless specifically exempted under paragraph (C) of rule 3745-31-28 of the Administrative Code.
22. On October 31, 1980, U.S. EPA approved OAC 3745-31 as part of the federally enforceable Ohio SIP. See 45 Fed. Reg. 72119. See also 45 Fed. Reg. 82927 (December 17, 1980), 58 Fed. Reg. 47214 (September 8, 1993), 61 Fed. Reg. 17669 (April 22, 1996), and 68 Fed. Reg. 1366 (January 10, 2003).
23. 40 C.F.R. § 52.23 provides, among other things, that failure to comply with any approved regulatory provision of a SIP, or with any limitation or condition contained within a permit issued under an EPA-approved program that is incorporated into the SIP, shall render the person so failing to comply in violation of a requirement of the SIP and subject to an enforcement action under Section 113 of the Act, 42 U.S.C. § 7413.
24. Section 113(a)(1)(A) of the Act, 42 U.S.C. § 7413(a)(1)(A), provides that the Administrator of U.S. EPA may issue an order requiring compliance to any person who has violated or is violating a SIP.
25. The Administrator has delegated his authority under Section 113(a)(1)(A) of the Act, 42 U.S.C. § 7413(a)(1)(A), to the Director of the Air and Radiation Division.

III. FINDINGS

General

26. On December 8, 2003, U.S. EPA conducted an inspection of Tower's facility, located at 2101 S. Ninth Street SW,

Massillon, Ohio (the "Ninth Street facility").

27. Tower is in the business of manufacturing solid surface kitchen and bathroom fixtures using surface gel coat spraying and casting processes.
28. Tower commenced construction of the Ninth Street facility in November 2003, and began operations at that facility on December 8, 2003.
29. Tower's Ninth Street facility is a reinforced plastic composites production facility.
30. Tower's Ninth Street facility is a new affected source of reinforced plastic composites.
31. Tower's Ninth Street facility has the potential to emit at least 40.22 tons per year of HAP of which 36.56 tons per year is for styrene, alone.
32. Tower's Ninth Street facility is a major source of HAP.

Subpart WWWW Regulatory Requirements

33. On or about December 8, 2003, the date of startup of operations at the Ninth Street facility, Tower did not demonstrate compliance with Subpart WWWW regulations, as was required by 40 C.F.R. § 63.5800 for a new source of reinforced plastic composites that was a major source of HAP.
34. In its manufacturing processes, Tower used solid surface casting resin with an organic HAP content of 36%; marble casting resin with an organic HAP content of 35%; and clear production gel coat with an organic HAP content of 48.507%.
35. Tower's solid surface casting resin, marble casting resin, and clear production gel coat, used in production, exceeded the organic HAP emissions limits as prescribed by 40 C.F.R. § 63.5805(c).
36. Tower did not submit a notification of intention to construct a new major-emitting source such that the source becomes a major-emitting affected source with the application for approval of construction, as was required by 40 C.F.R. §§ 63.9(b)(4)(i) and 63.5905.

37. Tower did not submit a notification of the actual date of startup of the source, delivered or postmarked within 15 calendar days after that date, as was required by 40 C.F.R. §§ 63.9(b)(4)(v) and 63.5905.
38. Tower did not submit a compliance report for the period of December 8, 2003 to December 31, 2003, which, as required by 40 C.F.R. § 63.5910(b), was to be submitted and postmarked or delivered to U.S. EPA no later than January 31, 2004.

SIP Requirements

MACT Determination

39. Tower did not obtain a MACT determination prior to actual construction or reconstruction of any process or production unit that is a major MACT source, as was required by OAC Rule 3745-31-28. See also 40 C.F.R. § 52.23.

Permit Requirements

40. Tower did not submit a PTI application prior to constructing its Ninth Street facility and did not obtain a PTI prior to commencing operations at the Ninth Street facility, as were required by OAC Rule 3745-31-02(A). See also 40 C.F.R. § 52.23.

Findings and Notice of Violations and Contacts with Tower

41. On May 27, 2004, U.S. EPA issued to Tower a Finding of Violation and Notice of Violation alleging that Tower violated the Ohio SIP and the NESHAP for Reinforced Plastic Composites Production, among other things, as follows:
 - a. Tower failed to submit a PTI application and obtain a PTI prior to commencing construction of an air pollution emission source as required by OAC 3745-31-02 in the Ohio SIP.
 - b. Tower failed to obtain a MACT determination prior to actual construction or reconstruction of any process or production unit that is a major MACT source as required by OAC 3745-31-28 in the Ohio SIP.
 - c. Tower exceeded the organic HAP emissions limits as required by 40 C.F.R. § 63.5805(c) for its solid surface casting resin, its marble casting resin, and

its clear production gel coat.

- d. Tower failed to submit all applicable notifications as required by 40 C.F.R. § 63.5905(b)(4).
 - e. Tower failed to provide the Ohio EPA with its semiannual compliance report by January 31, 2004, as required by 40 C.F.R. § 63.5910.
42. On June 30, 2004, representatives of Tower and U.S. EPA met and discussed the May 27, 2004 Findings of Violation and Notice of Violation. Subsequently, both parties engaged in further discussion and agreed to resolve these violations without litigation, in accordance with the terms of this Agreed Order.

IV. COMPLIANCE PROGRAM

- 43. No later than one year of the effective date of this Order, Tower must achieve, demonstrate and maintain compliance with the NESHAP for reinforced plastic composites production at its Ninth Street, Massillon, Ohio facility.
- 44. No later than one month of the effective date of this Order, Tower must submit an initial notification report stating that it is subject to compliance with the Subpart WWWW regulations with regard to its operations at the Ninth Street facility.
- 45. No later than three months of the effective date of this Order, Tower must submit a complete PTI application to OEPA for its Ninth Street facility, to demonstrate compliance with OAC 3745-31-02.
- 46. No later than six months of the effective date of this Order, Tower must ensure that the solid surface casting resin, marble casting resin, and clear production gel coat used in its manufacturing operations at the Ninth Street facility meet the organic HAP emissions limits as required by 40 C.F.R. § 63.5805(c).
- 47. No later than seven months of the effective date of this Order, Tower must submit a report that demonstrates that it is using a compliant solid surface casting resin, marble casting resin, and clear production gel coat at the Ninth Street facility. The foregoing report must include the Material Safety Data Sheets for the new compliant resins and

gel coats.

48. By January 31, 2005, Tower must submit a semi-annual compliance report for operations at its Ninth Street facility that meets all applicable requirements set forth in the Subpart WWWW regulations for the period of July 1, 2004 to December 31, 2004.
49. By July 31, 2005, Tower must submit a semi-annual compliance report for operations at its Ninth Street facility that meets all applicable requirements set forth in the Subpart WWWW regulations for the period of January 1, 2005 to June 30, 2005.
50. Tower must send all reports 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

With copies to:

Canton City Health Department
 Air Pollution Control Division
 420 Market Avenue North
 Canton, Ohio 44702-1544

51. Tower must comply with all applicable requirements of the Subpart WWWW regulations to maintain compliance with this Order.

V. GENERAL PROVISIONS

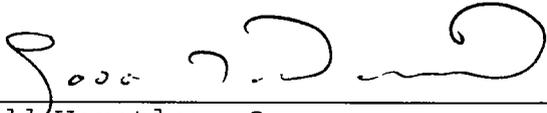
52. This Order does not affect Tower's responsibility to comply with other local, state, and federal laws and regulations.
53. This Order does not restrict U.S. EPA's authority to enforce Section 112 of the Act, or any other section of the Act.
54. Nothing in this Order limits U.S. EPA's authority to seek appropriate relief, including penalties under Section 113 of the Act, 42 U.S.C. § 7413, for Tower's violation of the NESHAP for Reinforced Plastic Composites Production.
55. Failure to comply with this Order may subject Tower to

penalties of up to \$32,500 per day for each violation under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 13, 2004).

56. The terms of this Order are binding on Tower, its assignees and successors. Tower 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 Tower has given the notice.
57. 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.
58. U.S. EPA may use any information submitted under this Order in an administrative, civil or criminal action.
59. Tower agrees to the terms of this Order.
60. This Order is effective on the date of signature by the Director of the Air and Radiation Division. This Order will expire one year from the effective date, if Tower has complied with all of its terms.

9-22-2004
Date

9/28/2004
Date



Todd Werstler, Owner
Tower Industries, LLC



Stephen Rothblatt, Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent the Administrative
Consent Order, EPA Order No. [EPA-5-04-113(a) OH-05], by
Certified Mail, Return Receipt Requested, to:

Todd Werstler, Owner
Tower Industries, LLC
2101 S. Ninth Street SW
Massillon, Ohio 44647

I also certify that I sent a copy of the Administrative
Consent Order, EPA Order No. [EPA-5-04-113(a) OH-05], by First
Class Mail to:

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

Dan Aleman, Administrator
Air Pollution Control Division
Canton City Health Department
420 Market Avenue North
Canton, Ohio 44702-1544

on the 28th day of September 2004.



Loretta Shaffer, Secretary
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 1558 5359