

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
Poly-Carb, Inc.)	FINDING OF VIOLATION
Cleveland, Ohio)	EPA-5-01-OH-01
)	
PROCEEDINGS PURSUANT TO)	
SECTION 183 OF THE CLEAN AIR)	
ACT, 42 U.S.C. § 7511b)	
_____)	

FINDING OF VIOLATION

The United States Environmental Protection Agency (U.S. EPA) hereby notifies the State of Ohio and Poly-Carb, Inc. (Poly-Carb) located at 33095 Bainbridge Road, Cleveland, Ohio, that the Administrator of the U.S. EPA finds Poly-Carb to have violated Section 183 of the Clean Air Act (Act), 42 U.S.C. § 7511b, and its implementing regulations at 40 C.F.R. Part 59, Subpart D.

REGULATORY BACKGROUND

1. Section 183(e) of the Act, 42 U.S.C. § 7511b(e), authorizes U.S. EPA to promulgate regulations establishing requirements regarding the manufacturing of architectural coatings which contain Volatile Organic Compounds (VOC), emissions from which have the potential to cause or contribute to ozone levels that violate the national ambient air quality standards.
2. On September 11, 1998, the Administrator of U.S. EPA promulgated regulations pursuant to 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.)
3. 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.

4. 40 CFR § 59.402(b) states that "[e]xcept 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."
5. 40 CFR § 59.408(b) states, in part, that "[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 September 13, 1999".
6. According to 40 C.F.R. § 59.401:
 - a. "Waterproofing sealer and treatment" means a coating formulated and recommended for application to a porous substrate for the primary purpose of preventing the penetration of water.
 - b. "Primer" means a coating formulated and recommended for application to a substrate to provide a firm bond between substrate and subsequent coating.
 - c. "Industrial maintenance coating" means a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats formulated and recommended for application to substrates exposed to one or more of the following extreme environmental conditions in an industrial, commercial or institutional setting:
 - (1) Immersion in water, wastewater, or chemical solutions (aqueous and nonaqueous solutions) or chronic exposure of interior surfaces to moisture condensation;
 - (2) Acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions;
 - (3) Repeated exposure to temperatures above 120° C (250° F);

- (4) Repeated (frequent) heavy abrasion, including mechanical wear and repeated (frequent) scrubbing with industrial solvents, cleansers, or scouring agents; or
- (5) Exterior exposure of metal structures or structural components.

Statement of Facts

- 7. Poly-Carb is the owner and operator of Poly-Carb, Inc. located at 33095 Bainbridge Road, Cleveland, Ohio.
- 8. Mark-124 is an architectural coating manufactured and distributed by Poly-Carb.
- 9. Mark-145 is an architectural coating manufactured and distributed by Poly-Carb.
- 10. According to information Poly-Carb provided to the U.S. EPA, in response to an information request dated June 20, 2000, Poly-Carb manufactured 13,780 gallons of Mark-124 and 2,302 gallons of Mark-145 between September 13, 1999 and June 23, 2000.
- 11. According to information Poly-Carb provided to the U.S. EPA, in response to an information request dated June 20, 2000, Mark-124 has maximum VOC content of 468 g/L and Mark-145 has a maximum VOC content of 588 g/L. Both products are listed by Poly-Carb as compliant with the "waterproofing sealers and treatments" category VOC limit of 600 g/L.
- 12. Under Table 1 of 40 C.F.R. Part 59, Subpart D, the "primers and undercoaters" category VOC limit is 350 g/L, and the "industrial maintenance coatings" limit is 450 g/L.

13. Poly-Carb's technical data sheet for Mark-73 states, "MARK-73 Ultrakote meets and exceeds all the requirements when tested per NCHRP-244 (Southern exposure) when used over MARK-124, an **epoxy primer.**" (Emphasis added)
14. Poly-Carb's technical data sheet for Mark-145 states, "MARK-145 is a two-component, high performance, pigmented, penetrating epoxy sealer which is designed to provide long term protection to concrete surfaces against freeze/thaw cycles, saltwater penetration and heavy traffic." It also states that the features of this coating are, in part: "provides excellent chemical resistance to common chemical spillage and excellent protection to surface from battery acids...higher abrasion due to the increased structural strength of the surface..."

Findings of Violation

15. Poly-Carb has printed labels and product data sheets which make representations that Mark-124 meets the definition of primers, and Mark-145 meets the definition of industrial maintenance coatings, under 40 C.F.R. § 59.401. Further, these products are identified by Poly-Carb as waterproofing sealers though they meet the definitions of a primer and an industrial maintenance coating, respectively. Each of these coatings must meet the VOC limit of the most stringent category into which it could fall.
16. Poly-Carb's Mark-124 exceeds the applicable VOC limit for primers. This is a violation of 40 C.F.R. § 59.402(a).
17. Poly-Carb's Mark-145 exceeds the applicable VOC limit for industrial maintenance coatings. This is a violation of 40 C.F.R. § 59.402(a).
18. Poly-Carb failed to submit an initial notification report prior to September 13, 1999. This is a violation of 40 CFR § 59.408(b).

Wherefore, the Administrator of the U.S. EPA, by authority duly delegated to the undersigned, hereby notifies Poly-Carb, Inc. and the State of Ohio that Poly-Carb, Inc. is in violation of the Clean Air Act and implementing regulations as set forth above.

11-13-00

Date



Bharat Mathur, Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Betty Williams, do hereby certify that a Finding of Violation pursuant to the Clean Air Act was sent by Certified Mail, Return Receipt Requested, to:

Dr. Anil Goel
POLY-CARB, INC.
33095 Bainbridge Road
Solon, Ohio 44139

I also certify that a copy of the Finding of Violation pursuant to the Clean Air Act was sent 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 Ave.
Cleveland, Ohio 44114

on the 13th day of November 2000.


Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RETURN RECEIPT: 7099 3400 0000 9592 1761