



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

MAY 06 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William Ramus
Emerald Performance Materials, LLC
240 West Emerling Avenue
Akron, Ohio 44301

Dear Mr. Ramus:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket number CAA-05-2013-0021 with Emerald Performance Materials, LLC. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on MAY 06 2013.

Pursuant to paragraph 60 of the CAFO, Emerald Performance Materials, LLC must pay the civil penalty within 30 days of the date the CAFO is filed. Emerald Performance Materials, LLC payment must include the docket number CAA-05-2013-0021.

Please direct any questions regarding this case to Padmavati Bending at (312) 353-8917.

Sincerely,

A handwritten signature in black ink that reads "Sara Breneman".

Sara J. Breneman
Chief
Air Enforcement and Compliance Assurance Branch

Enclosure

cc: Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Padmavati Bending/C-14J
Laura Miracle/Akron Regional Air Quality Management District

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

| | | |
|---|---|---|
| In the Matter of: |) | Docket No. CAA-05-2013-0021 |
| |) | |
| Emerald Performance Materials, LLC |) | Proceeding to Assess a Civil Penalty |
| Akron, Ohio, |) | Under Section 113(d) of the Clean Air Act, |
| |) | 42 U.S.C. § 7413(d) |
| Respondent. |) | |
| |) | |

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Emerald Performance Materials, LLC (Emerald), a corporation doing business in Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

RECEIVED
APR 10 2013
EPA REGION 5
CIVIL PENALTY

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 110 of the Act, 42 U.S.C. § 7410, requires each State to adopt and submit a plan which provides for the implementation, maintenance, and enforcement of any national primary or secondary standard established pursuant to Section 109 of the Act, 42 U.S.C. § 7409. These plans are required to include enforceable emissions limitations, control measures, schedules for compliance, emissions monitoring requirements and permit programs for new and modified sources.

10. 40 C.F.R. § 52.23 provides that failure to comply with any approved regulatory provision of a State Implementation Plan (SIP) or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the SIP, shall render the person failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Act.

11. The State of Ohio operating permit program was granted approval on August 15, 1995, with an effective date of October 1, 1995 (60 Fed. Reg. 42045; 40 C.F.R. Part 70, App. A).

12. The regulation at 40 C.F.R. § 70.6(b)(1) specifies that all terms and conditions in a permit issued under a Part 70 program, including any provisions designed to limit a source's potential to emit, are enforceable by the EPA under the Act.

13. Effective September 5, 1996, EPA promulgated regulations governing the National Emission Standards for Hazardous Air Pollutants for Group I Polymer and Resins in 40 C.F.R. Part 63, Subpart U. See 62 Fed. Reg. 46925 (September 5, 1996).

14. Subpart U applies to a group of one or more elastomer product process units (EPPU) and associated equipment, as listed in 40 C.F.R. § 63.480(a)(4), that is not part of a new affected source, as defined in 40 C.F.R. § 63.480(a)(3), that is manufacturing the same primary product and that is located at a plant site that is a major source.

15. 40 C.F.R. § 63.2 defines “major source” as, for pollutants other than radionuclides, 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, in the aggregate, 10 tons per year (tpy) or more of any HAP which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule.

16. 40 C.F.R. § 63.502 lists the equipment leak and heat exchange system provisions for Subpart U, by stating, “the owner or operator of each affected source, shall comply with the requirements of Subpart H.”

17. Effective April 22, 1994, EPA promulgated regulations governing the National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks in 40 C.F.R. Part 63, Subpart H. 59 Fed. Reg. 19568 (April 22, 1994).

18. 40 C.F.R. § 63.160, in Subpart H, sets applicability and designation of sources and states that the Subpart applies to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or closed vent systems

required by Subpart H that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 C.F.R. Part 63 that references Subpart H.

19. 40 C.F.R. § 63.174, in Subpart H, lists the standards for connectors in gas/vapor service and in light liquid service, but stating the owner or operator of a process unit subject to Subpart H shall monitor all connectors in gas/vapor and light liquid service.

20. 40 C.F.R. § 63.161 defines connectors to mean flanged, screwed, or other joined fittings used to connect two pipe lines or a pipe line and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, glass, or glass-lined as described in 40 C.F.R. § 63.174(h) of this Subpart.

21. 40 C.F.R. § 63.174(a)(1) states “connectors shall be monitored to detect leaks by the method specified in § 63.180(b) of this Subpart.”

22. 40 C.F.R. § 63.180(b) states that “Monitoring shall comply with Method 21 of 40 C.F.R. Part 60, Appendix A.”

23. 40 C.F.R. Part 60, Appendix A, Method 21 states that it applies to the determination of volatile organic compound (VOC) “leaks from process equipment. These sources include, but are not limited to, valves, flanges and other connections, pumps and compressors, pressure relief devices, process drains, opened-ended valves, pumps and compressor deals systems degassing vents, accumulator vessel vents, agitator deals, and access door seals.”

24. 40 C.F.R. Part 60, Appendix A, Method 21, § 8.3.1, states that proper execution of Method 21 includes sampling “the interface where leakage is indicated until the maximum meter reading is obtained.” Also, “if the maximum observed meter reading is greater than the leak definition in the applicable regulation, record and report the results as specific in the regulation reporting requirements.”

25. 40 C.F.R. § 63.180(b)(5) states “[m]onitoring shall be performed when the equipment is in organic HAP service, in use with an acceptable surrogate volatile organic compound which is not an organic HAP, or is in use with any other detectable gas or vapor.”

26. 40 C.F.R. § 63.174(a)(2) states “if an instrument reading greater than or equal to 500 parts per million is measured, a leak is detected.”

27. 40 C.F.R. § 63.181(b)(10) states “For any leaks detected as specified in §§ 63.163 and 63.164; §§ 63.168 and 63.169; and §§ 63.172 through 63.174 of this subpart, a weatherproof and readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment.”

28. 40 C.F.R. § 63.181(d) requires records of the leak to be maintained for 2 years.

29. 40 C.F.R. § 63.182(d)(2)(ix) states that the periodic report required by 40 C.F.R. § 63.182(a) shall include “the number of connectors for which leaks were detected as described in § 63.174(a) of this Subpart, the percent of connectors leaking, and the total number of connectors monitored.”

30. 40 C.F.R. § 63.182(d)(2)(xi) states that the periodic report required by 40 C.F.R. § 63.182(a) shall also include “the number of connectors for which leaks were not repaired as required in § 63.174(d) of this Subpart, identifying the number of those that are determined nonrepairable.”

31. 40 C.F.R § 63.174(b)(3) states after conducting the initial survey required by § 63.174(b)(1) or § 63.174(b)(2), the owner or operator shall perform all subsequent monitoring of connectors at the frequencies specified in paragraphs § 63.174(b)(3)(i) through (b)(3)(v), except as provided in paragraph § 63.174(c)(2).

32. 40 C.F.R. § 63.1025(c)(2) states, “When determining monitoring frequency for each process unit or valve subgroup subject to monthly, quarterly, or semiannual monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last two monitoring periods.”

33. 40 C.F.R. § 63.174(b)(3)(iii) states “If the owner or operator of a process unit in a biennial leak detection and repair program calculates less than 0.5 percent leaking connectors from the 2-year monitoring period, the owner or operator may monitor the connectors one time every 4 years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 20 percent of the connectors each year until all connectors have been monitored within 4 years.”

34. Section B.4. of the facility’s Title V permit identifies specific emissions units subject to 40 C.F.R. Part 63, Subpart U.

35. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

36. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United

States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

37. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

38. Emerald owns and operates the facility located at 240 West Emerling Avenue, Akron, Ohio 44301 (Facility).

39. Emerald manufactures organic chemicals, specifically reactive liquid polymers, latex, and polymer resins.

40. Emerald uses styrene, butadiene, and acrylonitrile, which are all HAPs listed under Section 112(b) of the Act, 42 U.S.C. § 7412(b).

41. Emerald is a “major source” for HAP.

42. Emerald owns and operates EPPU’s and associated equipment that is considered an affected source under Subpart U.

43. Emerald currently operates its facility under Title V Clean Air Act Permit Program Permit No. P0102593 issued by the Ohio Environmental Protection Agency on December 19, 2008, as required by Title V of the Federal Clean Air Act of 1990.

44. According to Section B, Number 4, of Emerald’s Title V Permit, Emerald is subject to 40 C.F.R. Part 63, Subpart U, which became effective on September 5, 1996.

45. On July 12, 2011, Emerald submitted a Subpart U semi-annual periodic report confirming the facility is applying the Leak, Detection, and Repair (LDAR) program defined in 40 C.F.R. 63, Subpart H.

46. On January 4, 2008, Emerald submitted a semi-annual report that detailed the initial survey of connectors at the facility and indicated a less than 0.5% leak rate and that under 40 C.F.R. § 63.174(b)(3)(ii), the facility elected to monitor connectors only once every 2 years. The facility had monitored in 2001 and 2003 and results indicated less than 0.5% leaking connectors. Based on the results, and under 40 C.F.R. § 63.174(b)(3)(ii), connectors were next monitored in 2007.

47. On January 4, 2008, Emerald submitted a semi-annual report for the time period of May 16, 2007 through November 15, 2007, showing zero detected leaking connectors out of 433 inspected connectors in the Latex area. The report also showed 0 detected leaking connectors out of 68 connectors inspected in the Reactive Liquid Polymer area. All connectors in both areas were inspected resulting in a less than 0.5% leak rate. The leak rate was reported as 0%.

48. Semi-annual reports submitted by Emerald in 2009, 2010 and 2011 show no connectors monitored in 2008, 2009 or 2010.

49. On September 20, 2011, EPA conducted an unannounced inspection of the facility for compliance with Subpart U, particularly the requirements of the LDAR program and Subpart H.

50. During the inspection, EPA conducted LDAR monitoring per EPA Reference Method 21 in the Reactive Liquid Polymer area.

51. During the inspection, EPA detected 4 leaking connectors out of 373 inspected connectors, a 1.07% leak rate, for the Reactive Liquid Polymer area.

52. EPA issued a Notice and Finding of Violation (NOV/FOV) to Emerald on December 30, 2011.

53. The NOV/FOV alleged, among other things, that Emerald violated the following NESHAP requirements:

-
- a. Emerald failed to maintain the periodic reports required by 40 C.F.R. § 63.182(a);
 - b. Emerald failed to identify connectors with an instrument meter reading greater than 500 parts per million as a detected leak, as required by 40 C.F.R. § 63.174(a)(2);
 - c. Emerald failed to clearly identify leaking equipment with a tag, as required by 40 C.F.R. § 63.181(b)(10); and
 - d. Emerald failed to maintain the records of repairs and follow-up repairs, required by 40 C.F.R. § 63.174(d), for 2 years, pursuant to 40 C.F.R. § 63.181(d).

54. In response to the NOV/FOV, EPA and Emerald participated in a conference call on February 15, 2012. Both before and after this call, Emerald provided EPA with information and documentation of actions taken by Emerald to correct the issues identified in the NOV/FOV. The information and documentation provided by Emerald included a draft Leak Detection and Repair Compliance Manual that had been prepared for the facility, copies of new repair tags to be used on equipment subject to Subpart H, and documentation of revised leak repair procedures for equipment subject to Subpart H.

55. Emerald and EPA executed an Administrative Consent Order, EPA-5-12-113(a)-OH-4 which became effective on August 2, 2012.

56. EPA alleges that Emerald failed to maintain periodic reports required by 40 C.F.R. § 63.182(a).

57. EPA alleges that Emerald failed to identify connectors with an instrument meter reading greater than 500 parts per million as a detected leak, as required by 40 C.F.R. § 63.174(a)(2).

58. EPA alleges that Emerald failed to clearly identify leaking equipment with a tag, as required by 40 C.F.R. § 63.181(b)(10).

59. EPA alleges that Emerald failed to maintain the records of repairs and follow-up repairs, required by 40 C.F.R. § 63.174(d), for 2 years, pursuant to 40 C.F.R. § 63.181(d).

Civil Penalty

60. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, execution of an Administrative Consent Order, Emerald's cooperation, and Emerald's prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$90,070.

Within 30 days after the effective date of this CAFO, Respondent must pay a \$90,070 civil penalty by FedWire electronic funds transfer, payable to "Treasurer, United States of America," and send to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should
read: "D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name, the docket number of this CAFO and the billing document number.

61. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO and the billing document number to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Padmavati Bending (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

62. This civil penalty is not deductible for federal tax purposes.

63. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

64. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This

nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

65. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO. Compliance with the terms of this CAFO shall constitute full satisfaction of any liability of Respondent for Federal civil penalties for the violations alleged in this CAFO.

66. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

67. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws. Except as provided in paragraph 65, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

68. To the best of Respondent's knowledge, Respondent certifies that it is complying fully with the Clean Air Act.

69. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

70. The terms of this CAFO bind Respondent, its successors and assigns.

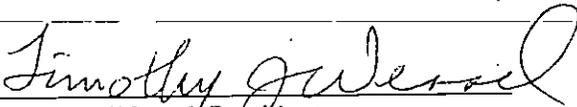
71. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

72. Each party agrees to bear its own costs and attorneys fees in this action.

73. This CAFO constitutes the entire agreement between the parties.

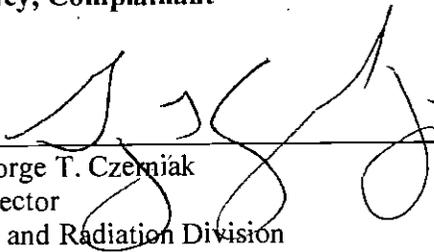
Emerald Performance Materials, LLC, Respondent

4/15/2013
Date


Timothy J. Wessel, President
Emerald Polymer Additives

United States Environmental Protection Agency, Complainant

5/1/13
Date

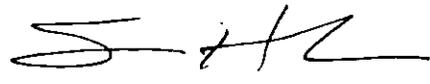

George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Emerald Performance Materials, LLC
Docket No. CAA-05-2013-0021

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5-2-13
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Emerald Performance Materials, LLC
Docket No. **CAA-05-2013-0021**

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number **CAA-05-2013-0021** with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

William Ramus
Emerald Performance Materials, LLC
240 West Emerling Avenue
Akron, Ohio 44301

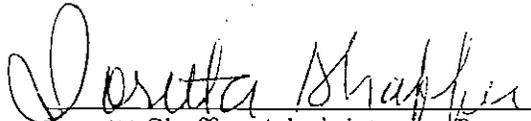
I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Laura Miracle
Akron Regional Air Quality Management District
CitiCenter-Suite 904
146 South High Street
Akron, Ohio 44308

On the 6 day of May 2013.


Loretta Shaffer, Administrative Program Assistant
PAS, AECAB

CERTIFIED MAIL RECEIPT
NUMBER:

7009 1680 0000 7667 5639

30 MAY 2013
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK (E-19J)
77 W. JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604