



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

SEP 04 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Meghan Watt
Edina Site Responsible Care Leader
FilmTec Corporation
5400 Dewey Hill Road
Edina, MN 55439

Re: Notice and Finding of Violation
Dow Water & Process Solutions d/b/a FilmTec Corporation, Edina, Minnesota

Dear Ms. Watt:

The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation and Finding of Violation (NOV/FOV) to Dow Water & Process Solutions doing business as FilmTec Corporation (FilmTec) under Sections 113(a)(1) and (a)(3) of the Clean Air Act (the Act), 42 U.S.C. §§ 7413(a)(1) and (a)(3). We find that FilmTec is violating the Prevention of Significant Deterioration of Air Quality requirements for areas in attainment of National Ambient Air Quality Standards and its Title V Permit at its facility in Edina, Minnesota.

Section 113 of the Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply, and the steps you will take to prevent future violations. In order to make the conference more productive, we encourage you to submit information responsive to the NOV/FOV to us prior to the conference date.

Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Dakota Prentice. You may call him at (312) 886-6761 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Czerniak". The signature is fluid and cursive, with a large initial "G" and a long, sweeping tail.

George T. Czerniak
Director
Air and Radiation Division

Enclosure

cc: Katie Koelfgen, Manager, Land and Air Compliance, MPCA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
Dow Water & Process Solutions)	NOTICE OF VIOLATION and
d/b/a FilmTec Corporation)	FINDING OF VIOLATION
Edina, Minnesota)	
)	
Proceedings Pursuant to)	EPA-5-15-MN-04
Clean Air Act, 42 U.S.C.)	
§§ 7401 et seq)	

NOTICE AND FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Notice of Violation and Finding of Violation (NOV/FOV) under Sections 113(a)(1) and (a)(3) of the Clean Air Act (the Act), 42 U.S.C. §§ 7413(a)(1) and (a)(3). EPA finds that Dow Water & Process Solutions doing business as FilmTec Corporation (FilmTec) is violating the Prevention of Significant Deterioration of Air Quality requirements for areas in attainment of National Ambient Air Quality Standards at its Edina, Minnesota, facility (the Facility) as follows:

Statutory and Regulatory Authority

1. All terms in the following numbered paragraphs shall have their ordinary meaning, unless such terms are defined in the Act, 42 U.S.C. §§ 7401 to 7671(q), or Volume 40 of the Code of Federal Regulations, in which case such statutory or regulatory definitions shall apply.

Prevention of Significant Deterioration of Air Quality Requirements

2. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration (PSD) of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the National Ambient Air Quality Standards (NAAQS). These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. See 42 U.S.C. § 7470. These provisions are referred to as the Clean Air Act's "PSD Program."
3. Part C of Title I of the Act and the implementing regulations, at 40 C.F.R. § 52.21, prohibit a major stationary source from constructing a modification without first obtaining a PSD permit. If the modification is major in that it will result in a significant net increase in emissions of a regulated pollutant, and if the source is located in an area

which has achieved the NAAQS for that pollutant, Part C and its implementing regulations further require, among other things, that a source subject to PSD regulations install best available control technology (BACT).

4. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt regulations implementing the PSD Program as part of the State Implementation Plan (SIP) for maintaining the NAAQS.
5. A state may comply with Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, by having its own PSD regulations approved by EPA as part of its SIP, provided that the state PSD regulations are at least as stringent as those set forth at 40 C.F.R. § 51.166.
6. Pursuant to 40 C.F.R. § 52.21(a), if a state does not have PSD regulations that EPA has approved and incorporated into its SIP, EPA may incorporate the federal PSD regulations set forth at 40 C.F.R. § 52.21 into the SIP.
7. On August 7, 1980, EPA disapproved Minnesota's PSD program. Accordingly, EPA incorporated the federal PSD regulations of 40 C.F.R. § 52.21 (except for paragraph (a)(1)) into the Minnesota SIP at 40 C.F.R. § 52.1234. 45 *Fed. Reg.* 52741 (August 7, 1980), as amended at 53 *Fed. Reg.* 18985 (May 26, 1988). EPA delegated to the Minnesota Pollution Control Agency (MPCA) the authority to review and process PSD permit applications, and to implement the federal PSD program. 46 *Fed. Reg.* 9580. (Jan. 29, 1981).
8. The PSD regulations set forth in 40 C.F.R. § 52.21 apply to, among other things, “any project at an existing ‘major stationary source’” in an attainment or unclassifiable area. 40 C.F.R. § 52.21(a)(2)(i).
9. “Major Stationary Source” for the purpose of PSD means any stationary source which emits, or has the potential to emit, 250 tons per year (tpy) or more of a regulated NSR pollutant. 40 C.F.R. § 52.21(b)(1)(i)(b).
10. “Regulated NSR Pollutant” for the purpose of PSD means any pollutant for which a national ambient air quality standard has been promulgated and includes any pollutant identified as a constituent or precursor for a pollutant for which a national ambient air quality standard has been promulgated. 40 C.F.R. § 52.21(b)(50)(i)(b).
11. Volatile organic compounds (VOCs) are identified as precursors to ozone in all attainment and unclassifiable areas, and are therefore regulated NSR pollutants. 40 C.F.R. § 52.21(b)(50)(i)(b)(1).
12. “Major modification” means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source. 40 C.F.R. § 52.21(b)(2)(i).

13. “Net emissions increase” means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:
(a) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 40 C.F.R. § 52.21(a)(2)(iv); and
(b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. 40 C.F.R. § 52.21(b)(3)(i).
14. “Significant emissions increase” means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant. 40 C.F.R. § 52.21(b)(40).
15. “Significant” means, in reference to a net emissions increase of VOCs, or the potential of a source to emit VOCs, that would equal or exceed 40 tpy. 40 C.F.R. § 52.21(b)(23)(i).
16. Pursuant to 40 C.F.R. § 52.21(a)(2)(iii), “[n]o new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) of this section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.”
17. Pursuant to 40 C.F.R. § 52.21(j)-(r), to construct a “major modification” in an attainment area, a “major stationary source” subject to the PSD Program must, among other things:
(1) meet all applicable emissions limitations under the SIP, along with any standards of performance under 40 C.F.R. Parts 60 and 61; (2) perform an analysis of source impacts; (3) perform air quality modeling and analysis; (4) obtain a PSD permit; and (5) install and apply Best Available Control Technology (BACT) control devices for each regulated NSR pollutant for which the modification would result in a significant net emissions increase.
18. “Best available control technology” means an emissions limitation reflecting the maximum degree of reduction of each regulated NSR pollutant which the permitting authority determines is achievable for a facility on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs. 40 C.F.R. § 52.21(b)(12).
19. Pursuant to 40 C.F.R. § 52.21(r)(1), any owner or operator who constructs or operates a source or modification not in accordance with its PSD application, or who commences construction without applying for and receiving an approved PSD permit, shall be subject to an enforcement action.
20. Pursuant to 40 C.F.R. § 52.23, any person failing to comply with an approved regulatory provision of a SIP, including the PSD Program, is subject to an enforcement action under Section 113 of the Act, 42 U.S.C. § 7413.

Title V Program

21. Title V of the Act, 42 U.S.C. §§ 7661-7661f, established an operating permit program for major sources of air pollution.

22. In accordance with Section 502(b) of the Act, 42 U.S.C. § 7661a(b), EPA promulgated regulations establishing the minimum elements of a Title V permit program to be administered by any air pollution control agency. See 57 Fed. Reg. 32295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.
23. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), provides that each state must submit to the EPA a permit program meeting the requirements of Title V.
24. On December 4, 2001, EPA provided full and final approval for the State of Minnesota Title V operating permit program. See 40 C.F.R. Part 70, Appendix A. 66 Fed. Reg. 62967.
25. A source required to have a Title V permit can accept conditions to avoid being subject to a new source review program under part C (Prevention of Significant Deterioration of Air Quality). These permits are known as Federally Enforceable State Operating Permits (FESOP). Rule 7007.0100(25)
26. On May 2, 1995, EPA approved Minnesota's FESOP program. 60 Fed. Reg. 21447.
27. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.
28. Pursuant to 40 C.F.R. § 70.6(b)(1), all terms and conditions contained in a Title V permit are enforceable by EPA.
29. Pursuant to 40 C.F.R. § 70.5(b), "Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to the release of a draft permit."

FilmTec's Title V Permit

30. FilmTec operates under Title V Permit issued by the MPCA, Air Emission Permit No. 05301149 first issued on August 16, 2004, and most recently modified on November 23, 2011 (Title V Permit).
31. The Title V Permit limits the total facility emissions of VOC to 235.0 tpy using a 12-month Rolling Sum.
32. FilmTec is required to submit an annual Compliance Certification within 31 days after the end of each calendar year documenting all deviations experienced during the preceding year, pursuant to Table 2 of the Title V Permit.

Relevant Factual Background

33. FilmTec owns and operates water filtration membrane manufacturing plants at its Facility in Edina, Minnesota.
34. The Facility includes membrane manufacturing lines at two separate buildings located at 5400 Dewey Lane and 7200 Ohms Lane. They are considered one facility by MPCA for permitting purposes.
35. The Facility is located in Hennepin County, which has been designated as an attainment area for the federal ozone standard at all times relevant to this NOV/FOV.
36. EPA conducted an inspection of the Facility on June 11, 2014, to assess compliance with the Act.
37. EPA submitted an information request to the Facility under Section 114 of the Act, dated February 10, 2015 (2015 Information Request).
38. FilmTec provided a response to the 2015 Information Request on May 4, 2015.
39. FilmTec's response indicated that it had conducted engineering studies at the "dryer" and "dip tank" portions of the membrane production process at various points in time.
40. The engineering studies identified significantly larger VOC emission factors than had been represented to MPCA and larger than the emission factors used for purposes of calculating annual emissions from the Facility. The results of these engineering studies were not provided to MPCA.
41. FilmTec submitted a permit application to MPCA, dated April 15, 2011 (2011 Permit Application) for the installation of, among other things, a new membrane production line (Line 600).
42. Beginning in 2012, the Facility emitted more than 250 tpy of VOCs.
43. The Facility is a "major stationary source," as that term is defined at 40 C.F.R. § 52.21(b)(1)(i)(b), because it has emitted VOCs in excess of 250 tons per year.
44. The addition of Line 600 results in a "significant net emission increase," as defined in 40 C.F.R. § 52.21(b), of VOC emission from the Facility.
45. Construction of Line 600 began in or around 2014 without the issuance of a construction permit under PSD or any of the required elements under 40 C.F.R. § 52.21(j)-(r).
46. FilmTec submitted Annual Compliance Certification Reports to MPCA for calendar years 2012, 2013, and 2014 that do not identify deviations for exceeding the Facility's VOC limit of 235 tpy.

Alleged Violations

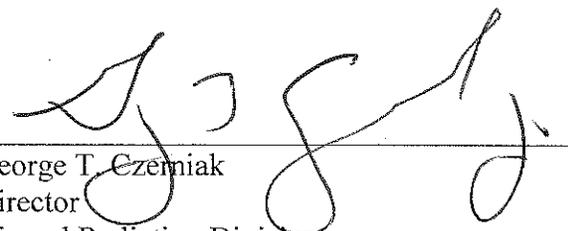
- 47. FilmTec has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), 40 C.F.R § 52.21(a)(2)(iii), and 40 C.F.R. § 52.21(j), (k), (l), (m), and (r), by commencing construction of a major modification at the Facility without first applying for and obtaining the required pre-construction PSD permit, conducting a BACT analysis, conducting a source impact analysis, performing air quality modeling and analysis, and installing and operating BACT-level controls for VOCs at Line 600.
- 48. FilmTec has violated and continues to violate provisions of its Title V Permit by exceeding 235 tpy of VOC emissions, calculated as a 12-month Rolling Sum.
- 49. FilmTec has violated and continues to violate 40 C.F.R. § 70.5(b) by failing to provide accurate emission data for its membrane production lines.

Environmental Impact of Violations

- 50. These violations have caused or can cause excess emissions of VOC, which contribute to ground level ozone. Ground level ozone irritates the human respiratory system and reduces lung function.

Date

9/4/13


George T. Czerniak
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, _____, certify that I sent a Notice of Violation and Finding of Violation, No. EPA-5-15-MN-04, by Certified Mail, Return Receipt Requested, to:

Meghan Watt, Edina Site Responsible Care Leader
FilmTec Corporation
5400 Dewey Hill Road
Edina, Minnesota 55439

I also certify that I sent copies of the Finding of Violation by first-class mail to:

Katie Koelfgen
Manager, Land and Air Compliance
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

On the 9th day of September 2015.

for Kathy Jones
Loretta Shaffer, Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7014 2870 0001 9580 4770