



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

FEB 03 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

Brad Malatesta, Founder and Chief Executive Officer
Clean Water Limited
300 Cherokee Drive
Dayton, Ohio 45417

and

Aaron Firstenberger, Esquire
Strip, Hoppers, Leithart, McGrath, and Terlecky
575 South Third Street
Columbus, Ohio 43215

and

Mr. Kenneth Leachman, President
Insight Business Solutions LLC
1463 Brianmeadow Drive
Columbus, Ohio 43235

Re: Notice and Finding of Violation
Clean Water Limited
Dayton, Ohio

Dear Mr. Malatesta:

The U.S. Environmental Protection Agency is issuing the enclosed Notice and Finding of Violation (NOV/FOV) to Clean Water Limited (you) and Insight Business Solutions (Receiver) under Sections 113(a)(1) and (a)(3) of the Clean Air Act, 42 United States Code (U.S.C.) §§ 7413(a)(1) and (a)(3). We find that you and the Receiver are violating the requirements of the Ohio State Implementation Plan, the General Provisions to 40 Code of Federal Regulations Part 63, and the National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations at your Dayton, Ohio facility.

Section 113 of the Clean Air Act, 42 U.S.C. § 7413, 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.

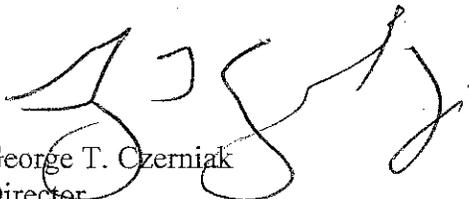
We are offering you and the Receiver an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you and the Receiver an opportunity to

present information on the specific findings of violation, any efforts you and the Receiver have taken to comply, and the steps you and the Receiver will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you and the Receiver to submit to us information responsive to the NOV/FOV prior to the conference date.

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

The EPA contact in this matter is Kevin Vuilleumier. You and the Receiver may call him at (312) 886-6188 to request a conference. You and the Receiver 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,



George T. Czerniak
Director
Air and Radiation Division

Enclosure

cc: Chris Kahn, Frost Brown Todd LLC
Mark Welch, Morris Anderson
Todd Blankfort, Hunting Dog Capital II LLC
Scott Ellis, Perma-Fix Environmental Services Inc.

Jenny Marsee, Regional Air Pollution Control Agency

conditions, constitute violations of Section 110 of the Clean Air Act (the Act or CAA), 42 United States Code (U.S.C.) § 7410. Violations of the General Provisions of 40 C.F.R. Part 63 and 40 C.F.R. Part 63, Subpart DD constitute violations of Section 112 of the Act, 42 U.S.C. § 7412.

Regulatory Requirements

Ohio SIP

1. Section 108(a)(1) of the Act, 42 U.S.C. § 7408(a)(1) (A-C), requires the Administrator to publish, and from time to time revise, a list of air pollutants which, in the Administrator's judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.
2. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator to promulgate national primary and secondary ambient air quality standards (NAAQS) to protect the public health and welfare.
3. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to the Administrator for approval a state implementation plan (SIP) that provides for the attainment and maintenance of the NAAQS.
4. The federally approved Ohio SIP requirements relevant to this NOV/FOV are as follows:
 - a. No person shall cause, permit, or allow the installation of a new source of air pollutants, or cause, permit, or allow the modification of an air contaminant source without first applying for and obtaining a permit to install (PTI) from the Director. Ohio Administrative Code (OAC) Rule 3745-31-02(A)(1), effective March 10, 2003. 68 Federal Register (Fed. Reg.) 2909.
 - b. The transferee of any PTI shall assume personally the responsibilities of the original permit holder-transferor. OAC Rule 3745-31-02(A)(3), effective March 10, 2003. 68 Fed. Reg. 2909.

c. The director shall issue a PTI based on the information appearing in the application, or information gathered by or furnished to the Ohio Environmental Protection Agency (OEPA), or both if the director determines that the installation or modification and operation of the air contaminant source will: (1) Not prevent or interfere with the attainment or maintenance of applicable ambient air standards; (2) Not result in a violation of any applicable laws, including but not limited to: emission standards adopted by the OEPA and the National Emission Standards for Hazardous Air Pollutants adopted by the Administrator of the EPA pursuant to Section 112 of the Act; and (3) Employ the best available technology. OAC Rule 3745-31-05(A)(1-3), effective March 10, 2003. 68 Fed. Reg. 2909.

d. The director may impose special terms and conditions as are appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of environmental quality. Special terms and conditions necessary to ensure compliance with requirements mandated by the Act or regulations promulgated by the administrator thereunder, shall be federally enforceable and designated as such in the PTI. OAC Rule 3745-31-05(D), effective March 10, 2003. 68 Fed. Reg. 2909.

e. No person shall cause, permit, or allow the installation or modification of any new source that is, or will be, part of a facility required to obtain a Title V permit, without first obtaining a PTI from the director. OAC Rule 3745-31-02(A)(1)(a), effective March 22, 2013. 78 Fed. Reg. 11748.

f. The director shall issue a PTI based on the information appearing in the application, information gathered by or furnished to OEPA, or both, if the director determines that the installation, modification, or operation of the air contaminant source will:

(1) not prevent or interfere with the attainment or maintenance of applicable ambient air quality

standards; (2) not result in a violation of any applicable laws including, but not limited to: emission standards adopted by OEPA and National Emission Standards for Hazardous Air Pollutants adopted by the administrator of the EPA pursuant to Section 112 of the Act and the regulations promulgated thereunder; and (3) employ best available technology (BAT). OAC Rule 3745-31-05(A)(1-3), effective March 22, 2013. 78 Fed. Reg. 11748.

g. The director may impose special terms and conditions as are appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of environmental quality. Special terms and conditions necessary to ensure compliance with requirements mandated by the Act, which include regulations promulgated by the administrator thereunder, shall be federally enforceable. Federally enforceable terms and conditions will be designated as such through terms and conditions of a final PTI issued under this chapter.

OAC Rule 3745-31-05(D)(1)(a), effective March 22, 2013. 78 Fed. Reg. 11748.

National Emission Standards for Hazardous Air Pollutants for Source Categories

5. Section 112(b) of the Act, 42 U.S.C. § 7412(b), provides a list of hazardous air pollutants (HAP) developed by Congress and modified in accordance with the Act.

6. Section 112(c)(1) of the Act, 42 U.S.C. § 7412(c)(1), requires the Administrator publish, and from time to time revise, if appropriate, a list of source categories and subcategories of major sources and area sources of the pollutants listed pursuant to Section 112(b).

7. Section 112(d) of the Act, 42 U.S.C. § 7412(d), requires the Administrator promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of HAP listed for regulation.

8. Section 112(d)(10) of the Act, 42 U.S.C. § 7412(d)(10), states emission standards or other regulations promulgated under Section 112(d) of the Act shall be effective upon promulgation.
9. The Administrator published an initial list of categories and subcategories of major sources and area sources in accordance with Section 112 of the Act, 42 U.S.C. § 7412, on July 16, 1992. 57 Federal Register (Fed. Reg.) 31576-31596.
10. The initial list of categories and subcategories includes solid waste treatment, storage, and disposal facilities. 59 Fed. Reg. 31593.
11. The Administrator published the General Provisions of 40 C.F.R. Part 63 on December 29, 1992, as amended. 59 Fed. Reg. 61992.
12. The General Provisions are codified at 40 C.F.R. Part 63, Subpart A (General Provisions or Subpart A).
13. The Administrator proposed emission standards for the Solid Waste Treatment, Storage, and Disposal Facility source category and changed the title of the source category to Off-Site Waste and Recovery Operations on October 13, 1994. 59 Fed. Reg. 51913.
14. The Administrator published a revision of the initial list of categories and subcategories of major sources and area sources that includes Off-Site Waste and Recovery Operations on June 4, 1996. 61 Fed. Reg. 28204.
15. The Administrator promulgated the National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations (40 C.F.R. Part 63, Subpart DD, or the OSWRO MACT) on July 1, 1996, as amended. 61 Fed. Reg. 34158.

16. The Administrator completed the residual risk and technology review for the OSWRO MACT as well as finalized certain amendments and clarification to the OSWRO MACT on March 18, 2015. 80 Fed. Reg. 14248.

17. The General Provisions state if a relevant standard has been established under this part, the owner or operator of an affected source must comply with the provisions of that standard and of this subpart. 40 C.F.R. § 63.1(c)(1).

18. The General Provisions, at 40 C.F.R. § 63.2, define the following terms that are relevant to this NOV/FOV:

a. Affected Source: for the purpose of Part 63, is the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the Act.

b. Major Source: 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 considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP.

c. Malfunction: any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

d. Monitoring: the collection and use of measurement data or other information to control the operation of a process or pollution control device or to verify a work practice standard relative to assuring compliance with applicable requirements.

e. Owner or operator: Any person who owns, leases, operates, controls or supervises a stationary source.

f. Stationary Source: Any building, structure, facility, or installation which emits or may emit any air pollutant.

19. The OSWRO MACT states the provisions of Subpart DD apply to the owner and operator of a plant site that (1) is a major source of HAP emissions and (2) has one or more operations that receives off-site materials (as defined by the OWSRO MACT), and (3) the operations that receives the off-site materials is one of the waste management operations or recovery operations specified in 40 C.F.R. § 63.680(a)(2)(i-vi). 40 C.F.R. § 63.680(a)(1-2).

20. The OSWRO MACT defines affected sources, as the entire group of off-site material management units, process equipment associated with the process vents, and equipment components associated with the operation. 40 C.F.R. § 63.680(c)(1-3).

21. The OSWRO MACT states the emission limitations set forth in Subpart DD and the emission limitations referred to in Subpart DD shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. 40 C.F.R. § 63.680(g)(1).

22. The OSWRO MACT states the owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during times when emissions are being routed to such items of equipment. 40 C.F.R. § 63.680(g)(2).

23. The OSWRO MACT, at 40 C.F.R. § 63.681, defines the following terms which are relevant to this NOV/FOV.

a. Closed-vent system: A system that is not open to the atmosphere and is composed of hard-piping, ductwork, connections, and, if necessary, fans, blowers, or other flow-inducing devices that conveys gas or vapor from an emission point to a control device.

b. Control device: Equipment used for recovering, removing, oxidizing, or destroying organic vapors. Examples of such equipment include but are not limited to carbon adsorbers, condensers, vapor incinerators, flares, boilers, and process heaters.

c. Off-site material management unit: A tank, container, surface impoundment, oil-water separator, organic-water separator, or transfer system used to manage off-site material.

d. Plant site: All contiguous or adjoining property that is under common control including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

24. The OSWRO MACT also defines deviations, for purposes of reporting and compliance with the OSWRO MACT, at 40 C.F.R. §§ 63.683(f)(1-6) and 63.695(e)(4).

25. The OSWRO MACT states that for each off-site material management unit that is part of an affected source, the owner or operator must control air emissions from each unit in accordance with the applicable standards specified in 40 C.F.R. §§ 63.685 and 63.689 of Subpart DD. 40 C.F.R. § 63.683(b)(1)(i).

26. At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment in a manner consistent with safety and good air pollution control practices for minimizing emissions.

Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source. 40 C.F.R. § 63.6(e)(1) and 40 C.F.R. § 63.683(e).

27. Owners or operators controlling air emissions from a tank using Tank Level 2 controls must use a fixed roof tank vented through a closed vent system (CVS) to a control device in accordance with the requirements of 40 C.F.R. § 63.685(g). 40 C.F.R. § 63.685(d)(3).

28. The owner or operator must control air emissions from each oil-water separator and organic-water separator by using a fixed roof that is vented through a CVS to a control device. 40 C.F.R. § 63.686(b)(2).

29. Pursuant to 40 C.F.R. § 63.693(b)(1-5), the owner or operator must meet the following requirements for each CVS and control device used to comply with the OSWRO MACT:

- a. Use a CVS that meets the requirements of 40 C.F.R. § 63.693(c);
- b. Use a control device that meets the requirements of 40 C.F.R. § 63.693(d-h), as applicable to the type and design of the control device selected for compliance;
- c. Whenever gases or vapors containing HAP are routed from a tank through a CVS connected to a control device used to comply with the requirements of 40 C.F.R. § 63.685(b), the control device must be operating;
- d. The owner or operator must inspect and monitor each CVS in accordance with the requirements in 40 C.F.R. § 63.695(c) and comply with the applicable recordkeeping requirements in 40 C.F.R. § 63.696, and the applicable reporting requirements in 40 C.F.R. § 63.697; and

e. The owner or operator must monitor the operation of each control device in accordance with the requirements specified in 40 C.F.R. § 63.693(d-h) as applicable to the type and design of the control device selected by the owner or operator to comply with the provisions of the OSWRO MACT.

30. Pursuant to 40 C.F.R. § 63.693(f), a vapor incinerator control device used to comply with the OSWRO MACT must destroy the total organic compounds (TOC), less methane and ethane, or destroy HAP contained in the vent stream entering the vapor incinerator either (1) by 95 percent or more, on a weight-basis, or (2) achieve a total incinerator outlet concentration of TOC or HAP that is less than or equal to 20 parts per million by volume (ppmv) on a dry basis corrected to three percent oxygen.

31. The owner or operator must demonstrate that the vapor incinerator achieves the performance specification requirements of 40 C.F.R. § 63.693(f)(1) by conducting either a performance test or a design analysis. 40 C.F.R. § 63.693(f)(2).

32. The owner or operator must monitor the operation of each vapor incinerator used to comply with the OSWRO MACT in accordance with the requirements of 40 C.F.R. § 63.695(e). 40 C.F.R. § 63.693(f)(3)(i-iv).

33. Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities, the owner or operator must operate the continuous monitoring system at all times the affected source is operating. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. 40 C.F.R. § 63.695(a)(5).

34. For each control device required under 40 C.F.R. § 63.693, the owner or operator must ensure that each control device operates properly by monitoring it in accordance with the requirements at 40 C.F.R. § 63.695(e)(1-3), as follows:

a. A continuous parameter monitoring system must be used to measure the operating parameter or parameters specified for the control device in 40 C.F.R. § 63.693(d-h).

b. Using the data recorded by the monitoring system, the owner or operator must calculate the daily average value for each monitored operating parameter for each operating day.

c. For each monitored operating parameter, the owner or operator must establish a minimum operating parameter value or a maximum operating parameter value, as appropriate, to define the range of conditions at which the control device must be operated to continuously achieve the applicable performance requirements specified in 40 C.F.R. § 63.693(b)(2). If the owner or operator conducts a performance test to demonstrate control device performance, then the minimum or maximum operating parameter value must be established based on values measured during the performance test.

35. For each deviation, except when the deviation occurs during periods of non-operation of the unit or the process that is vented to the control device (resulting in cessation of HAP emissions to which the monitoring applies), the owner or operator failed to apply control in a manner that achieves the required operating parameter limits. Failure to achieve the required operating parameter limits is a violation of OSWRO MACT. 40 C.F.R. § 63.695(e)(5).

Enforcement

36. Failure to comply with any provisions of this part, or with any approved regulatory provision of a State implementation plan, or with any permit limitation or condition contained within a permit issued under an EPA approved program that is incorporated into the State

implementation plan, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Act. 40 C.F.R. § 52.23. See 39 Fed. Reg. 33512, September 18, 1974, as amended at 54 Fed. Reg. 27285, June 28, 1989.

37. Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirements or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of violation is issued, the Administrator may, without regard to the period of violation: (A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit, (B) issue an administrative penalty order in accordance with subsection (d), or (C) bring a civil action in accordance with Section 113(b) of the Act. 42 U.S.C. § 7413(a)(1).

38. Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of any other requirement or prohibition of Title I of the Act, the Administrator may: (A) issue an administrative penalty order in accordance with subsection (d), (B) issue an order requiring such person to comply with such requirement or prohibition, (C) bring a civil action in accordance with subsection (b) or section 305, or (D) request the Attorney General to commence a criminal action in accordance with subsection (c). 42 U.S.C. § 7412(a)(3).

Factual Background

39. CWL owns an off-site waste and recovery operation located at 300 Cherokee Drive, Dayton, Ohio (facility).
40. The facility processes industrial and oily wastewater from off-site sources.
41. The facility is currently in a court ordered receivership with Insight Business Solutions LLC (Receiver) who is in financial and operational control of the assets, real property, personal property, and business of OGM Limited.
42. The Receiver is currently in operational and financial control of the facility.
43. The facility is a Stationary Source as defined under Section 112 of the Act and 40 C.F.R. Part 63, Subpart A.
44. The facility is a Major Source as defined under Section 112 of the Act and 40 C.F.R. Part 63, Subpart A.
45. The facility has one or more Affected Sources as defined under Section 112 of the Act, the General Provisions, and the OSWRO MACT.
46. The facility has one or more air contaminant sources as defined by the Ohio SIP.
47. The facility applied for and obtained the following PTIs from OEPA:
 - a. P0105924 (Issued November 2, 2010)
 - b. P0108357 (Issued August 9, 2011)
 - c. P0112126 (Issued February 27, 2013)
 - d. P0109690 (Issued February 27, 2013)
 - e. P0113106 (Issued May 9, 2013)
 - f. P0113574 (Issued July 1, 2013)

48. The facility controls air emissions from the following Emissions Units and Emissions Unit Groups using a fixed roof connected to a CVS which vents emissions to a Regenerative Thermal Oxidizer (RTO).

- a. Oil/Water Separators (PTI P0105924).
- b. Tanks, Level 2 (PTI P0105924).
- c. P039 (PTI P0108357).
- d. Centrifuges 2 through 4 (PTI P0112126).
- e. Tanks, Level 2 Control (PTI P0109690).
- f. P045 (PTI P0113106).
- g. P041 (PTI P0113574).

49. The CVS is designed to operate at a pressure below atmospheric pressure.

50. The CVS is equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the CVS when the control device is operating.

51. A pressure monitor for the CVS is installed at a location immediately upstream of the RTO fan.

52. The pressure monitor for the CVS installed immediately upstream of the RTO fan, combined with a data acquisition system, continuously monitors and records the pressure inside the CVS at this location.

53. The RTO is designed to destroy total organic compound (TOC) emissions, minus methane and ethane, contained in the vent stream entering the vapor incinerator by 95 percent or more, on a weight basis.

54. The RTO is equipped with at least one continuous monitoring device that measures and records the daily average combustion temperature of the RTO.

55. The facility conducted performance testing of the RTO on November 22 and 25, 2013 (2013 performance test).

56. The 2013 performance test demonstrated the RTO destroyed the TOC, less methane and ethane, contained in the vent stream entering the vapor incinerator by 95 percent or more, on a weight basis.

57. The 2013 performance test demonstrated the CVS maintained a pressure below atmospheric pressure.

58. The average minimum operating temperature of the RTO during the 2013 performance test was 1,556° F.

59. The average pressure within the CVS during the 2013 performance test was negative 0.70 inches of water column.

60. The facility is required to submit quarterly deviation reports and semi-annual reports to the Regional Air Pollution Control Agency (RAPCA).

61. The quarterly deviation reports include the following information:

a. Any deviation (excursion) from required emission limitations, operational restrictions, and control device operating parameter limitations that have been detected by the testing, monitoring, and recordkeeping requirements specified in the permits;

b. The probable cause of such deviations; and

c. Any corrective actions or preventative measures which have been or will be taken.

62. The facility submitted quarterly deviation reports to RAPCA covering the following reporting periods:

- a. Second Quarter, 2015 (April through June, 2015), and
- b. Third Quarter, 2015 (July through September, 2015).

63. The quarterly deviation reports submitted to RAPCA for second quarter 2015 and third quarter 2015 identify one or more of the following deviations:

- a. Periods when gases or vapors containing HAP were routed from a tank through a CVS connected to the RTO used to comply with the requirements of 40 C.F.R. § 63.685(b), but the RTO was not operating;
- b. Periods when the average value of a monitored parameter (RTO temperature), based on the data averaging period for compliance specified in 40 C.F.R. § 63.695, failed to meet a term or condition that is adopted to implement an applicable requirement of the OSWRO MACT;
- c. Periods when the daily average value of a monitored operating parameter (RTO temperature) was less than the minimum operating parameter established in accordance with the requirements of 40 C.F.R. § 63.695(e)(3);
- d. Periods when the daily average value, as defined in 40 C.F.R. § 63.695(e)(2), for the combustion temperature measured within the RTO, when emissions units controlled by the RTO were in operation, was less than the average minimum temperature established during the most recent emissions test that demonstrated compliance with applicable regulations;
- e. Periods when the daily average value for the pressure measured inside the CVS at the location immediately upstream of the RTO fan, when the emissions units controlled by the

RTO were in operation, was less than the minimum differential pressure established during the most recent emissions test that demonstrated compliance with applicable regulations.

Violations

Unauthorized shut-down of the RTO (OSWRO MACT/PTI Requirements)

64. The owner or operator of the facility failed to operate the RTO at all times during which gases or vapors containing HAP were routed from a tank through a closed vent system connected to a control device used to comply with the OSWRO MACT. This is a violation of multiple terms and conditions of the permits identified in paragraph 47 (as established in accordance with OAC Rule 3745-31-05(A)(3)), the Ohio SIP, 40 C.F.R. § 63.693(b)(3), and the Act.

a. The quarterly deviation reports submitted to RAPCA for second quarter 2015 and third quarter 2015 show a total of 4,181 minutes during which the RTO was not operating while gases or vapors containing HAP were routed from a tank through the CVS to the RTO.

b. The quarterly deviation reports submitted to RAPCA for second quarter 2015 and third quarter 2015 show that, of the 4,181 minutes during which the RTO was not operating, 2,390 minutes were due to semi-annual preventative (routine) maintenance activities.

c. The quarterly deviation reports submitted to RAPCA for second quarter 2015 and third quarter 2015 show the remaining 1,791 minutes during which the RTO was not operating while gases or vapors containing HAP were routed from a tank through the CVS to the RTO, were due to unknown causes or causes that were not routine maintenance activities.

Temperature deviations (OSWRO MACT Requirements)

65. The owner or operator of the facility failed to apply control in a manner that achieves the required operating parameter limits in violation of 40 C.F.R. § 63.693(f)(1)(i)(A) and the Act.

a. The quarterly deviation reports submitted to RAPCA for second quarter 2015 and third quarter 2015 show a total of nine days (12,960 minutes) during which the 24-hour average daily operating temperature of the RTO was below the minimum operating temperature established during the 2013 performance test.

b. Each of the nine days during which the 24-hour average daily operating temperature of the RTO was below the minimum operating temperature established during the 2013 performance test is a deviation pursuant to 40 C.F.R. § 63.685(d)(1-5) and 40 C.F.R. § 63.695(e)(4)(i).

c. Pursuant to 40 C.F.R. § 63.695(e)(5), for each deviation, the owner or operator failed to comply with the required operating parameters for the RTO. Failure to achieve the required operating parameter limits is a violation of the OSWRO MACT.

Failure to meet ninety-five percent destruction efficiency (OSWRO MACT Requirements).

66. The owner or operator of the facility failed to meet a term or condition that was adopted to implement the ninety-five percent destruction efficiency requirement of the OSWRO MACT in violation of 40 C.F.R. § 63.693(f)(1)(i)(A) and the Act.

a. The quarterly deviation reports submitted to RAPCA for second quarter 2015 and third quarter 2015 show a total of nine days (12,960 minutes) during which the 24-hour average daily operating temperature of the RTO was below the minimum operating temperature established during the 2013 performance test.

b. Each of the nine days during which the 24-hour average daily operating temperature of the RTO was below the minimum operating temperature is considered a deviation from the ninety-five percent destruction efficiency requirement of the OSWRO MACT.

c. Pursuant to 40 C.F.R. § 63.695(e)(5), for each deviation, the owner or operator is deemed to have failed to have applied control in a manner that achieves the required operating parameter limits. Failure to achieve the required operating parameter limits is a violation of this standard.

Temperature and pressure deviations (PTI requirements and BAT).

67. The owner or operator of the facility violated the Ohio SIP by failing to comply with multiple terms and conditions of the permits identified in paragraph 47 that were issued under an EPA approved program that is incorporated into the Ohio SIP (see OAC Rules 3745-31-02 and 3745-31-05). The terms and conditions that were violated include: (1) the permittee shall meet the requirements of 40 C.F.R. Part 63, Subpart DD; (2) the acceptable daily average value for the combustion temperature measured within the RTO, when the emissions units controlled by the RTO are in operation, shall not be less than the average minimum temperature established during the most recent emissions test that demonstrated compliance; and (3) the acceptable daily average value of the pressure measured inside the CVS at the location immediately upstream of the RTO fan, when the emissions units controlled by the RTO are in operation, shall not be more than the pressure established during the most recent emissions test that demonstrated compliance with applicable regulations.

a. The quarterly deviation reports submitted to RAPCA for second quarter 2015 and third quarter 2015 show a total of nine days (12,960 minutes) during which the 24-hour average daily operating temperature of the RTO was below the minimum operating temperature established during the 2013 performance test and was not due to planned routine maintenance.

b. The quarterly deviation reports submitted to RAPCA for second quarter 2015 and third quarter 2015 show a total of 20 days (28,800 minutes) during which the 24-hour average daily value for the pressure measured inside the CVS at the location immediately upstream of the RTO fan, when the emissions units controlled by the RTO were in operation, failed to meet the pressure established during the 2013 performance test.

c. Pursuant to 40 C.F.R. § 52.23, failure to comply with any term or condition in 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 an applicable implementation plan and subject to an enforcement action under Section 113 of the Act. 42 U.S.C. § 7413.

Environmental Impact of Violations

68. Failure to adequately control, reduce, and minimize VOC through proper operation of the CVS and RTO at the facility increases public exposure to unhealthy VOC. It also can impact the ability of the affected area to attain and maintain national ambient air quality standards for ozone which are designed to protect the public health and welfare. Ozone contributes to respiratory problems and lung damage.

69. Failure to adequately control, reduce, and minimize HAP through proper operation of the CVS and RTO at the facility increases the public exposure to HAP. HAP, depending on the particular HAP to which the public is exposed, can cause a variety of public health problems as well as nuisance odor complaints.

Date

2/3/16


George T. Czerniak
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Kathy Jones, certify that I sent a Notice of Violation and Finding of Violation, No. EPA-5-16-OH-03, by Certified Mail, Return Receipt Requested, to:

Brad Malatesta, Founder and Chief Executive Officer
Clean Water Limited
300 Cherokee Drive
Dayton, Ohio 45417

and

Aaron Firstenberger, Esquire
Strip, Hoppers, Leithart, McGrath, and Terlecky
575 South Third Street
Columbus, Ohio 43215

7014 2870 0001 9577 8026

and

Mr. Kenneth Leachman, President
Insight Business Solutions LLC
1463 Brianmeadow Drive
Columbus, Ohio 43235

7014 2870 0001 9577 8040

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

Chris Kahn, Senior Associate
Frost Brown Todd LLC
301 East Fourth Street
Great American Tower Suite 3300
Cincinnati, Ohio 45202

Jenny Marsee,
Regional Air Pollution Control Agency
Montgomery County Health Department
117 South Main Street
Dayton, Ohio 45422

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

On the 3rd day of February 2016.

Kathy Jones

Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

7014 2870 0001 9577 8033