



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

**FEB 22 2013**

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Bruce Weiss  
President  
Pyramid Paving and Contracting Company  
1010 Adams Street  
Bay City, Michigan 48732

**Re: Notice and Finding of Violation**  
Pyramid Paving and Contracting Company  
Essexville, Michigan

Dear Mr. Weiss:

The U.S. Environmental Protection Agency is issuing the enclosed Notice and Finding of Violation (NOV/FOV) to Pyramid Paving and Contracting Company (you or Pyramid). We find that you are violating Section 111(e) of the Clean Air Act (CAA), 42 U.S.C. § 7411(e), and the Michigan State Implementation Plan (SIP) at your Essexville, Michigan facility.

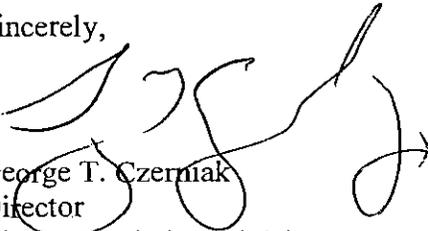
We have several enforcement options under Section 113(a)(1) and (3) of the CAA, 42 U.S.C. § 7413(a)(1) and (3). These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you the opportunity to present information on the specific findings of violation, the efforts you have taken to comply, and the steps you will take to prevent future violations.

Please plan for your facility's 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 Roshni Brahmhatt. You may call her at 312.886.6793 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,



George T. Czerniak  
Director  
Air and Radiation Division

Enclosure

cc: Chris Hare, MDEQ  
Tom Hess, MDEQ



6. On July 25, 1977 and as amended on April 10, 1986, pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated the NSPS for Hot Mix Asphalt Facilities, codified at 40 C.F.R. Part 60, Subpart I. (42 Fed. Reg. 27936, and as amended at 51 Fed. Reg. 12325)
7. Pursuant to 40 C.F.R. § 60.90(b), the provisions set forth at 40 C.F.R. Part 60, Subpart I, apply to each hot mix asphalt facility that commences construction or modification after June 11, 1973.
8. Pursuant to 40 C.F.R. § 60.92(a)(1), the owner or operator, on and after the date on which the performance test required to be conducted by § 60.8 is completed, shall not discharge or cause the discharge into the atmosphere from any affected facility any gases which contain particulate matter in excess of 90 mg/dscm (0.04 gr/dscf).
9. Pursuant to 40 C.F.R. § 60.92(a)(2), the owner or operator, on and after the date on which the performance test required to be conducted by § 60.8 is completed, shall not discharge or cause the discharge into the atmosphere from any affected facility any gases which exhibit 20 percent opacity, or greater.
10. Pursuant to 40 C.F.R. § 60.93(b), the owner or operator shall determine compliance with the particulate matter standards in § 60.92 by using Method 5 to determine the particulate matter concentration and Method 9 and the procedures in 40 C.F.R. § 60.11 to determine opacity.
11. Violations of the NSPS regulations promulgated under Section 111 of the CAA are subject to enforcement under Section 113(a)(3) of the CAA.

#### **Regulatory Authority – Michigan SIP and Permit to Install**

12. On May 6, 1980, EPA approved Michigan Air Pollution Control Commission Rule R336.1201 (Michigan Rule 201), pertaining to Permits to Install, as part of the federally enforceable SIP for Michigan. (45 Fed. Reg. 29790)
13. Michigan Rule 201 states that a person shall not install, construct, reconstruct, relocate or alter any process, which may be a source of an air contaminant, until a permit is issued by the commission. This shall be known as a permit to install and shall cover construction, reconstruction, and alteration of equipment where such is involved. A person planning to install, construct, reconstruct, relocate, or alter any process shall apply to the commission for a permit to install.
14. Michigan Department of Environmental Quality issued Permit to Install No. 260-81B (PTI) to the facility on May 19, 1997.
15. Special Condition #13 of the PTI states, "The particulate emission from the asphalt plant not exceed 13.1 pounds per hour nor 0.04 grains per dry standard cubic foot of exhaust gases."

16. Special Condition #15 of the PTI states, "Applicant shall not operate the asphalt plant unless the fabric filter collector is installed and operating properly."
17. Special Condition #19 of the PTI states, "Applicant shall not operate the asphalt plant for more than 12 hours per day or 2,160 hours per year. A written log of the hours of operation shall be kept on file for a period of at least two years and made available to the Air Quality Division upon request."
18. Special Condition #21 of the PTI requires that within 60 days after achieving the maximum production rate, but not later than 180 days after the commencement of trial operation, NSPS requires verification of particulate and visible emission rates from the asphalt plant by testing, at owner's expense, in accordance with 40 C.F.R. Part 60, Subparts A and I.
19. Special Condition #20 of the PTI states, "Applicant shall not operate the asphalt plant unless the program for continuous fugitive emissions control for all plant roadways, the plant yard, all material storage piles, and all material handling operations specified in Appendix A has been implemented and is maintained. Applicant shall also observe the visible emissions from the asphalt daily. If the visible emissions greater than normal occur, applicant shall inspect the fabric filter collector immediately."
20. Appendix A, Part I.B of the PTI states, "The baghouse will be inspected monthly during the construction season for broken or fallen bags, holes in bags, bag tension and bag condition. A copy of all of these types of problems found during these inspections shall be maintained by our plant operators. They shall also keep a log identifying all of the following: (1) the name of the component and the problem found with it; (2) the date the problem was found; (3) the estimated date of repair based on delivery of materials to do the repair; and (4) the actual date repairs were made.
21. Appendix A, Part I.C of the PTI states, "A visual inspection of the exhaust stack will be done on a daily basis. Should an extreme amount of particulate be visible to the eye, an immediate response shall be taken as listed above in Paragraph B. The log shall be updated accordingly as stated above."
22. Appendix A, Part II.E of the PTI states, "The plant roads shall be maintained to prevent fugitive dust. This includes patching the asphalt roads when potholes appear, sweeping the paved surfaces when dust accumulates, using water to suppress the dust prior to sweeping, and/or applying liquid calcium chloride to the unpaved surfaces during the extremely dry periods of the operating season to hold down the dust.
23. Appendix A, Part II.F of the PTI states, "The plant roads will be brined or chlorided at least monthly to prevent dust from being raised by vehicles, the loaders, or the wind."

24. Appendix A, Part II.G of the PTI states, "The dust suppressant required by Paragraph F shall be applied at least prior to the beginning of each asphalt paving season and monthly thereafter throughout the paving season. Records of when the chloride or brine is applied shall be kept in the plant log book and is available for review by MDEQ staff."
25. Appendix A, Part IV.A of the PTI states, "All vehicles that are filled with aggregate either entering or leaving the plant site be constructed or loaded so as to prevent their contents from dropping, sifting, leaking, blowing off or otherwise escaping the body of the truck. Those vehicles shall also be loaded so that, no part of the load making contact with any sideboard or side panel of its rear enclosure shall be within six inches of the top of the port of the enclosure contacted, unless the load is covered firmly with a secured canvas or similar type of covering."
26. Pursuant to 40 C.F.R. § 52.23, failure to comply with any provisions of this part, or with any approved regulatory provision of a SIP, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated in the SIP, 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 CAA. (39 Fed. Reg. 33512, amended at 54 Fed Reg. 27285)

### **Findings of Fact**

27. Pyramid owns and operates a hot mix asphalt facility (facility) at 1503 Pine Avenue, Essexville, Michigan.
28. The facility is an affected facility as that term is defined at 40 C.F.R. § 60.2.
29. The facility is a hot mix asphalt facility as the term is defined at 40 C.F.R. § 60.91(a).
30. The facility was modified with the installation of a parallel flow drum mixer in April 1997.
31. The facility is subject to the provisions of 40 C.F.R. Part 60, Subparts A and I.
32. On August 14, 2012, EPA conducted an inspection of the facility (the inspection).
33. During the inspection, the operator informed EPA that the baghouse is inspected once every spring.
34. During the inspection, the operator informed EPA that the exhaust stack is not checked daily for visible emissions.

35. During the inspection, EPA saw a truck being loaded. EPA observed fugitive emissions from the loading of the truck. The distance between the opening at the bottom of the silo and the top of the truck was more than six inches. The truck was not covered firmly with a secured canvas or similar type of covering.
36. On October 24, 2012, EPA issued an information request pursuant to Section 114 of the CAA to Pyramid. On November 27, 2012, Pyramid submitted information in response to the information request (Pyramid's response).
37. Pyramid's response indicated that there has not been any emission testing conducted at the facility from January 1997 to the date of its response.
38. Pyramid's response indicated that the facility does not keep a log identifying maintenance issues at the baghouse.
39. Pyramid's response indicated that the facility does not keep a log of problems identified during visual inspections of the exhaust stack.
40. Pyramid's response indicated that there were 8 days of 133 total operating days in year 2011 and 15 days of 62 total operating days in year 2012 when the hours of operation exceeded 12 hours per day.
41. Pyramid's response indicated there are purchases of calcium chloride. It did not include information sufficient to show that the brine or chloride is at least applied prior to the beginning of each asphalt paving season and monthly thereafter.

#### **Violations – NSPS**

42. Pyramid failed to timely conduct a performance test at the facility, in violation of 40 C.F.R. § 60.8(a). Pyramid's failure to achieve compliance with the provisions of 40 C.F.R. Part 60, Subpart A, constitutes a violation of 40 C.F.R. Part 60, Subpart I.
43. Pyramid failed to determine compliance with the particulate matter standards in 40 C.F.R. §§ 60.92(a)(1), 60.92(a)(2), and 60.93(b).
44. Pyramid's violations of the 40 C.F.R. Part 60, Subparts A and I, are subject to enforcement under Section 113(a)(3) of the CAA.

#### **Violations – Michigan SIP and Permit to Install**

45. Pyramid failed to timely conduct a performance test at the facility, in violation of Permit No. 260-81B, Special Condition #21.
46. Pyramid failed to determine compliance with the particulate matter standards, in violation of Permit No. 260-81B, Special Condition #13.

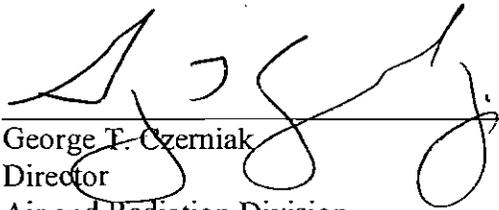
47. Pyramid operated the asphalt plant without determining whether the fabric filter collector was operating properly, in violation of Permit No. 260-81B, Special Condition #15.
48. Pyramid failed to operate the asphalt plant for less than 12 hours per day, in violation of Permit No. 260-81B, Special Condition #19.
49. Pyramid operated the asphalt plant without determining whether the program for continuous fugitive emissions control for all plant roadways, the plant yard, all material storage piles, and all material handling operations specified in Appendix A, had been implemented and maintained. Pyramid failed to also perform visual inspection of the exhaust stack daily, in violation of Permit No. 260-81B, Special Condition #20.
50. Pyramid's PTI violations are subject to enforcement under Section 113(a)(1) of the CAA. 40 C.F.R. § 52.23.

**Environmental Impact of Violations**

51. These violations have caused or can cause excess emissions of particulate matter. Particulate matter, especially fine particulates, contains microscopic solids or liquid droplets, which can get deep into the lungs and cause serious health problems. Particulate matter exposure contributes to:
  - irritation of the airways, coughing, and difficulty breathing;
  - decreased lung function;
  - aggravated asthma;
  - chronic bronchitis;
  - irregular heartbeat;
  - nonfatal heart attacks; and
  - premature death in people with heart or lung disease

Date

2/22/13

  
George T. Czerniak  
Director  
Air and Radiation Division

**CERTIFICATE OF MAILING**

*Elizabeth Rosado*  
I, ~~Loretta Shaffer~~, certify that I sent a Notice and Finding of Violation, No. EPA-5-13-MI-05, by Certified Mail, Return Receipt Requested, to:

Bruce Weiss  
Pyramid Paving and Contracting Company  
1010 Adams Street  
Bay City, Michigan 48732

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

Chris Hare, District Coordinator  
Michigan Department of Environmental Quality  
Air Quality Division  
401 Ketchum Street, Suite B  
Bay City, Michigan 48708

Tom Hess, Chief  
Michigan Department of Environmental Quality  
Air Quality Division  
P.O. Box 30260  
Lansing, Michigan 48909

On the 25 day of February 2013.

*Elizabeth Rosado*  
for Loretta Shaffer  
AECAB, Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7669 5138

## U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources, including workshops, training sessions, hotlines, websites and guides, to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### EPA's Small Business Websites

Small Business Environmental Homepage - [www.smallbiz-enviroweb.org](http://www.smallbiz-enviroweb.org)

Small Business Gateway - [www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)

EPA's Small Business Ombudsman - [www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888

### EPA's Compliance Assistance Homepage

[www.epa.gov/compliance/assistance/business.html](http://www.epa.gov/compliance/assistance/business.html)

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

### EPA's Compliance Assistance Centers

[www.assistancecenters.net](http://www.assistancecenters.net)

EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

### Agriculture

[www.epa.gov/agriculture/](http://www.epa.gov/agriculture/)

### Automotive Recycling

[www.ecarcenter.org](http://www.ecarcenter.org)

### Automotive Service and Repair

[www.ccar-greenlink.org](http://www.ccar-greenlink.org) or 1-888-GRN-LINK

### Chemical Manufacturing

[www.chemalliance.org](http://www.chemalliance.org)

### Construction

[www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911

### Education

[www.campuserc.org](http://www.campuserc.org)

### Food Processing

[www.fpeac.org](http://www.fpeac.org)

### Healthcare

[www.hercenter.org](http://www.hercenter.org)

### Local Government

[www.lgean.org](http://www.lgean.org)

### Metal Finishing

[www.nmfrc.org](http://www.nmfrc.org)

### Paints and Coatings

[www.paintcenter.org](http://www.paintcenter.org)

### Printed Wiring Board Manufacturing

[www.pwbrc.org](http://www.pwbrc.org)

### Printing

[www.pneac.org](http://www.pneac.org)

### Ports

[www.portcompliance.org](http://www.portcompliance.org)

### U.S. Border Compliance and Import/Export Issues

[www.bordercenter.org](http://www.bordercenter.org)

### Hotlines, Helplines and Clearinghouses

[www.epa.gov/epahome/hotline.htm](http://www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

### Antimicrobial Information Hotline

[info-antimicrobial@epa.gov](mailto:info-antimicrobial@epa.gov) or  
1-703-308-6411

### Clean Air Technology Center (CATC) Info-line

[www.epa.gov/ttn/catc](http://www.epa.gov/ttn/catc) or 1-919-541-0800

### Emergency Planning and Community Right-To-Know Act

[www.epa.gov/superfund/resources/infocenter/epcra.htm](http://www.epa.gov/superfund/resources/infocenter/epcra.htm) or 1-800-424-9346

### EPA Imported Vehicles and Engines Public Helpline

[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or  
734-214-4100

### National Pesticide Information Center

[www.npic.orst.edu/](http://www.npic.orst.edu/) or 1-800-858-7378

### National Response Center Hotline - to report oil and hazardous substance spills

[www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802

### Pollution Prevention Information Clearinghouse (PPIC)

[www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or  
1-202-566-0799

### Safe Drinking Water Hotline

[www.epa.gov/safewater/hotline/index.html](http://www.epa.gov/safewater/hotline/index.html) or 1-800-426-4791

### Stratospheric Ozone Protection Hotline

[www.epa.gov/ozone](http://www.epa.gov/ozone) or 1-800-296-1996

## **Toxic Substances Control Act (TSCA) Hotline**

[tsc hotline@epa.gov](mailto:tsc hotline@epa.gov) or 1-202-554-1404

## **Wetlands Information Helpline**

[www.epa.gov/owow/wetlands/wetline.html](http://www.epa.gov/owow/wetlands/wetline.html) or 1-800-832-7828

## **State and Tribal Web-Based Resources**

### **State Resource Locators**

[www.envcap.org/statetools](http://www.envcap.org/statetools)

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

### **State Small Business Environmental Assistance Programs (SBEAPs)**

[www.smallbiz-enviroweb.org](http://www.smallbiz-enviroweb.org)

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits. The website is a central point for sharing resources between EPA and states.

### **EPA's Tribal Compliance Assistance Center**

[www.epa.gov/tribalcompliance/index.html](http://www.epa.gov/tribalcompliance/index.html)

The Center provides material to Tribes on environmental stewardship and regulations that might apply to tribal government operations.

### **EPA's Tribal Portal**

[www.epa.gov/tribalportal/](http://www.epa.gov/tribalportal/)

The Portal helps users locate tribal-related information within EPA and other federal agencies.

### **EPA Compliance Incentives**

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

#### **EPA's Small Business Compliance Policy**

[www.epa.gov/compliance/incentives/smallbusiness/index.html](http://www.epa.gov/compliance/incentives/smallbusiness/index.html)

This Policy offers small businesses special incentives to come into compliance voluntarily.

#### **EPA's Audit Policy**

[www.epa.gov/compliance/incentives/auditing/auditpolicy.html](http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html)

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

### **Commenting on Federal Enforcement Actions and Compliance Activities**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247), or go to their website at [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

### **Your Duty to Comply**

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*