

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:	)	Docket No.
	)	Proceeding to Assess
Perstorp Polyols, Inc.	)	Administrative penalties
Toledo, Ohio	)	under section 113(d) of
	)	the Clean Air Act,
_____	)	42 U.S.C. Section 7413(d)

COMPLAINT  
AND  
NOTICE OF OPPORTUNITY FOR HEARING ON  
PROPOSED ADMINISTRATIVE ORDER ASSESSING PENALTIES

This is an action for the assessment of a civil administrative penalty brought against Perstorp Polyols, Inc. ("Perstorp" or "Respondent") pursuant to Sections 113(d) of the Clean Air Act ("Act"), 42 U.S.C. §§ 7413(d), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits" ("Consolidated Rules"), 40 C.F.R. Part 22, for violations of Section 112 of the Act, 42 U.S.C. § 7412, and the regulations promulgated thereunder setting forth the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry ("Hazardous Organic NESHAP" or "HON"), 40 C.F.R. Part 63, Subpart G.

THE PARTIES

1. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency ("U.S. EPA"), Region 5, Chicago, Illinois.

2. The Respondent is Perstorp Polyols Inc., which operates a synthetic organic chemical manufacturing facility in Toledo, Ohio.

**STATUTORY AND REGULATORY BACKGROUND**

3. On April 22, 1994, pursuant to Section 112 of the Act, U.S. EPA published as a final rule, the National Emission Standards for Organic Hazardous Air Pollutants (HAPs) from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater ("the HON"), found at 40 C.F.R. Part 63, Subpart G, 59 Fed. Reg. 19468.
4. The Federal regulation found at 40 C.F.R. § 63.152(b) provides that each owner or operator of a source subject to this subpart shall submit a Notification of Compliance Status within 150 calendar days after the compliance dates specified in § 63.100 of subpart F of this part.
5. The Federal regulation found at 40 C.F.R. § 63.152(b) (1) provides that the notification shall include the results of any emission point group determinations, performance tests, inspections, continuous monitoring system performance evaluations, values of monitored parameters established during performance tests, and any other information used to demonstrate compliance or required to be included in the Notification of Compliance Status under § 63.110(h) for regulatory overlaps, under § 63.117 for process vents § 63.122 for storage vessels, § 63.129 for transfer operations, § 63.146 for process wastewater, and § 63.150 for emission points included in an emissions average.

6. The Federal regulation found at 40 C.F.R. § 63.116(c) provides that except as provided in paragraphs (a) and (b) of this section, an owner or operator using a control device to comply with the organic HAP concentration limit or percent reduction efficiency requirements in § 63.113(a) (2) of this subpart shall conduct a performance test using the procedures in paragraphs (c) (1) through (c) (4) of this section. The organic HAP concentration and percent reduction may be measured as either total organic HAP or as TOC minus methane and ethane according to the procedures specified.
7. Section 112(I) (3) (A) of the Act, 42 U.S.C. § 7412(I) (3) (A), prohibits any person from operating a source in violation of any emissions standard, limitation, or regulation promulgated under Section 112.

**GENERAL ALLEGATIONS**

8. Perstorp owns and operates a synthetic organic chemical manufacturing facility located at 600 Matzinger Road, Toledo, Ohio.
9. Perstorp is a "person" as defined at 42 U.S.C. § 7602.
10. Perstorp's facility contains four process units which are subject to the HON regulations. These units manufacture formaldehyde, pentaerythritol (PE), trimethylolpropane (TMP), and sodium formate.
11. On April 30, 1998, David Kee, Director, Air and Radiation Division, Region 5, issued a Finding of Violation, pursuant to Section 113 of the Act, 42 U.S.C. § 7413, to Perstorp, alleging violations of the Federal regulations set forth at 40 C.F.R. §§ 63.152(b), 63.152(b) (1), 63.116(c), and 63.113(a) (2).

12. Although not required for violations of Section 112 of the Act, Perstorp was offered an opportunity to meet with the U.S. EPA to discuss the Finding of Violation. A conference was held on May 28, 1998, in U.S. EPA's Region 5 office in Chicago, Illinois.

**COUNT I - 40 C.F.R. § 63.152(b)**

13. Paragraphs 1. through 12. are realleged herein by reference.
14. According to 40 C.F.R. § 63.152(b), a facility shall submit a Notification of Compliance Status within 150 calendar days after April 22, 1997, (September 19, 1997) the compliance date specified in 40 C.F.R. § 63.100.
15. On November 19, 1997, U.S. EPA received Perstorp's Notification of Compliance Status.
16. Perstorp's failure to submit a Notification of Compliance Status by September 19, 1997 is a violation of 40 C.F.R. § 63.152(b) and of Section 112(I) (3) (A) of the Act, 42 U.S.C. § 7412(I) (3) (A).

**COUNT II - 40 C.F.R. § 63.152(b) (1)**

17. Paragraphs 1. through 16. are realleged herein by reference.
18. According to 40 C.F.R. § 63.152(b) (1), a facility shall submit a Notification of Compliance Status containing the results of any emission point group determinations, performance tests, inspections, continuous monitoring system performance evaluations, values of monitored parameters established during performance test, and any other information used to demonstrate compliance under §§ 63.110(h), 63.117, 63.121, or 63.129.

19. On November 19, 1997, U.S. EPA received Perstorp's three page Notification of Compliance Status containing only the equipment types for each HON process unit and the method of compliance for the listed equipment.
20. Perstorp submitted more information during the May 28, 1998, 113 conference and with the performance test results on August 10, 1998 and December 8, 1998.
21. Perstorp's failure to submit a complete Notification of Compliance Status is a violation of 40 C.F.R. § 63.152(b) (1) and of Section 112(I) (3) (A) of the Act, 42 U.S.C. § 7412(I) (3) (A).

**COUNT III - 40 C.F.R. § 63.116(c)**

22. Paragraphs 1. through 21. are realleged herein by reference.
23. According to 40 C.F.R. § 63.116(c), a facility shall conduct performance tests using Method 18 on the control devices. In order to comply with 40 C.F.R. § 63.113(a) (2) of Subpart G, Perstorp had to conduct and submit results of a Method 18 performance test on the control devices by September 19, 1997.
24. On June 24, 26, and August 26, 1997, Perstorp conducted a performance test on the Formaldehyde Manufacturing Unit's (P802) catalytic incinerator, using Method 25. U.S. EPA received a copy of the results during the January 26, 1998 inspection of the facility by U.S. EPA.
25. On June 2, and 3, 1998, Perstorp conducted a performance test on the Formaldehyde Manufacturing Unit's (P802) catalytic incinerator, using Method 18. U.S. EPA received the test results on August 10, 1998. The

test results showed the incinerator reduced the total organic HAP emissions by 98 weight percent or below a concentration of 20 parts per million by volume.

26. Perstorp's failure to conduct performance tests using Method 18 by September 19, 1997 is a violation of 40 C.F.R. § 63.116(c) and of Section 112(I) (3) (A) of the Act, 42 U.S.C. § 7412(I) (3) (A).

**COUNT IV - 40 C.F.R. § 63.116(c)**

27. Paragraphs 1. through 26. are realleged herein by reference.
28. According to 40 C.F.R. § 63.116(c), a facility shall conduct performance tests using Method 18 on the control devices. In order to comply with 40 C.F.R. § 63.113(a) (2) of Subpart G, Perstorp had to conduct and submit results of a Method 18 performance test on the control devices by September 19, 1997.
29. On June 24, 1997, Perstorp conducted a performance test on the Trimethylolpropane (P801) and Pentaerythritol (P803) Manufacturing Units' shared catalytic incinerator, using Method 25. U.S. EPA received a copy of the results during the January 26, 1998 inspection of the facility by U.S. EPA.
30. On November 4, 1998, Perstorp conducted a performance test on the Trimethylolpropane (P801) and Pentaerythritol (P803) Manufacturing Units' shared catalytic incinerator, using Method 18. U.S. EPA received the results on December 8, 1998. The test results showed the incinerator reduced the total organic HAP emissions by 98 weight percent or below a concentration of 20 parts per million by volume.

31. Perstorp's failure to conduct performance tests using Method 18 by September 19, 1997 is a violation of 40 C.F.R. § 63.116(c) and of Section 112(I) (3) (A) of the Act, 42 U.S.C. § 7412(I) (3) (A).

**COUNT V - 40 C.F.R. § 63.113(a) (2)**

32. Paragraphs 1. through 31. are realleged herein by reference.
33. According to 40 C.F.R. § 63.113(a) (2), a facility shall reduce emissions of total organic HAPs by 98 weight percent or to a concentration of 20 parts per million by volume (ppmv).
34. On February 24 and 25, 1998, Perstorp conducted a performance test on the Formaldehyde Manufacturing Unit's (P001) thermal incinerator, using Method 18. The results indicated the outlet concentration was 51.9 ppmv. U.S. EPA received the results on April 9, 1998.
35. Perstorp's failure to reduce emissions of total organic HAPs by 98 weight percent or to a concentration of 20 parts per million by volume is a violation of 40 C.F.R. § 63.113(a) (2) and of Section 112(I) (3) (A) of the Act, 42 U.S.C. § 7412(I) (3) (A).

**COUNT VI - 40 C.F.R. § 63.116(c)**

36. Paragraphs 1. through 35. are realleged herein by reference.
37. According to 40 C.F.R. § 63.116(c), a facility shall conduct performance tests using Method 18 on the control devices. In order to comply with 40 C.F.R. § 63.113(a) (2) of Subpart G, Perstorp had to conduct and submit results of a Method 18 performance test on the control devices by September 19, 1997.

38. On June 2, and 3, 1998, Perstorp conducted a performance test on the Formaldehyde Manufacturing Unit's (P001) thermal incinerator, using Method 18. U.S. EPA received the test results on August 10, 1998. The test results showed the incinerator reduced the total organic HAP emissions by 98 weight percent or below a concentration of 20 parts per million by volume.
39. Perstorp's failure to conduct performance tests using Method 18 by September 19, 1997 is a violation of 40 C.F.R. § 63.116(c) and of Section 112(I) (3) (A) of the Act, 42 U.S.C. § 7412(I) (3) (A).

**NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

40. Pursuant to Section 113(d) (1) of the Act, 42 U.S.C. § 7413(d) (1), the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, the Administrator of the U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation, up to a total of \$220,000, for violations of requirements under the Act. The proposed civil penalty herein has been determined under those authorities in accordance with Section 113(e) (1) of the Act, 42 U.S.C. § 7413(e) (1), which requires the Complainant to take the following factors into consideration in determining the amount of penalty assessed under Section 113: the size of the Respondent's business; the economic impact of the penalty on the business; Respondent's full compliance history and good faith efforts to comply; the duration of the violations alleged in the Complaint as established by credible evidence (including evidence other than the

applicable test method); payment by Respondent of penalties previously assessed for the same alleged violations; the economic benefits of noncompliance; and the seriousness of the alleged violations.

41. Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), the Administrator and the Attorney General have jointly determined that this matter is appropriate for an administrative penalty action, and have authorized U.S. EPA to request a penalty in excess of the statutory maximum of \$220,000. Moreover, the Administrator and the Attorney General have authorized U.S. EPA to include in this administrative penalty action, violations which allegedly began more than 12 months prior to filing of this administrative action.
42. After consideration of the factors set forth at Section 113(e) (1) of the Act, based upon the facts and circumstances alleged in this Complaint, U.S. EPA hereby proposes to issue to Respondent a Final Order Assessing Administrative Penalties assessing a penalty in the amount of **\$275,473.00**. This proposed penalty was calculated under Section 113(e) of the Act, with specific reference to the Clean Air Act (CAA) Stationary Source Penalty Policy (Penalty Policy). The Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors set forth above to particular cases. A copy of the Penalty Policy is attached hereto as Exhibit A.
43. The proposed penalty of \$275,473.00 reflects a presumption of Respondent's ability to pay the penalty and to continue in business

based on the size of its business and the economic impact of the proposed penalty on its business.

44. Respondent shall pay the assessed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and shall deliver it, with a transmittal letter identifying the name of the case and docket number of this Complaint to:

U.S. Environmental Protection Agency, Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent shall also include on the check the name of the case and the docket number. Respondent simultaneously shall send copies of the check and transmittal letter to:

Margaret Sieffert (AE-17J)  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

and,

Karl Karg (C-14J)  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

45. The penalty proposed in this Complaint has been developed based on the best information available to U.S. EPA at this time, and may be adjusted if the Respondent establishes bonafide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.

**OPPORTUNITY TO REQUEST A HEARING**

46. Section 113(d) (2) of the Act, 42 U.S.C. § 7413(d) (2), requires the Administrator of U.S. EPA to provide to any person against whom the Administrator proposes to assess a penalty an opportunity to request a hearing on the proposed penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint or to contest the appropriateness of the amount of the proposed penalty. In order to request a hearing, you must specifically make such request in your Answer, as discussed in Paragraphs 47 through 51 below.
47. The hearing which you request regarding the Complaint will be held and conducted in accordance with the provisions of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, as amended by 57 Fed. Reg. 4316 (1992), a copy of which is attached hereto as Exhibit B.

**ANSWER**

48. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within twenty (20) calendar days of your receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays and Federal holidays shall be included, except when a

time period expires on such day, in which case the deadline shall be extended to the next business day.

49. Your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge regarding a particular factual allegation which you cannot admit, deny or explain, in which case the allegation will be deemed denied. Your Answer shall also specifically state:
  - a. The circumstances or arguments which you allege constitute grounds for a defense;
  - b. The facts that you intend to place at issue; and
  - c. Whether you request a hearing discussed in Paragraphs 44 and 45, above.
50. Failure to respond to any factual allegation in this Complaint shall constitute an admission of the alleged fact.
51. You must send a copy of your Answer and any documents subsequently filed in this action to Karl A. Karg, Assistant Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Mr. Karg at (312) 886-7948.
52. If you fail to file a written Answer within twenty (20) calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order. Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing. 40 C.F.R. § 22.17. The civil penalty proposed herein shall become due and payable without further proceedings sixty

(60) days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. §§ 22.27 or 22.31.

**SETTLEMENT CONFERENCE**

53. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Margaret Sieffert, U.S. EPA, Region 5, Air and Radiation Division, Air Enforcement and Compliance Assurance Branch (AE-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Ms. Sieffert at (312) 353-1151.
54. Your request for an informal settlement conference does not extend the twenty (20) calendar day period during which you must submit a written Answer to this Complaint. You may simultaneously pursue the informal settlement conference and adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such a conference shall be embodied in a Consent Order. Your agreement to a Consent Order Assessing Administrative Penalties shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

55. Neither assessment nor payment of an administrative civil penalty shall affect your continuing obligation to comply with the CAA or any other Federal, State or local law or regulation.

2/22/99  
Date

  
Richard C. Karl, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

In the Matter of Perstorp Polyols, Inc.

Docket No.

CERTIFICATE OF SERVICE

I hereby certify that I filed the original of the foregoing Complaint and Notice of Opportunity for Hearing on Proposed Administrative Order (Order) Assessing Penalties against Perstorp Polyols, Inc. Docket No. \_\_\_\_\_ with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and have sent true and accurate copies of the Order along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, and a copy of the Penalty Policies (described in the Complaint) was sent via certified mail, return receipt requested to:

P 300 759 711

Certified Mail Number

CT Corporation System  
815 Superior Ave., NE  
Cleveland, Ohio 44114  
Registered Agent for  
Perstorp Polyols, Inc.

Anthony Sloma  
Safety, Health, and Environment Manager  
Perstorp Polyols, Inc.  
600 Matzinger Road  
Toledo, Ohio 43612-2695

P 300 759 712

Certified Mail Number

I also certify that a copy of the Order was sent by first class mail to:

William Garber, Acting Manager  
City of Toledo  
Division of Environmental Services  
348 South Erie Street  
Toledo, Ohio 43602-1633

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
Lazarus Government Center  
122 South Front Street  
Columbus, Ohio 43215

on the 24<sup>th</sup> Day of February, 1999

Shwanda Mayo  
Shwanda Mayo, Secretary  
ARD/AECAB/AECAS (MN/OH)