



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

SEP 21 2004

REPLY TO THE ATTENTION OF
AE-17J

VIA CERTIFIED MAIL - RETURN RECEIPT

Thomas A. Trebonik
Perma-Fix of Dayton, Inc.
300 South West End Avenue
Dayton, OH 45427

Re: Perma Fix of Dayton, Inc. - Notice of Administrative Compliance Order

Dear Mr. Trebonik:

The United States Environmental Protection Agency (U.S. EPA) is issuing the enclosed Administrative Compliance Order (ACO) to Perma-Fix of Dayton, Inc. (Perma Fix). We find that you have violated Section 112, 114, and 501 *et seq.*, of the Clean Air Act, 42 U.S.C. § 7412, 7414, and 7661 *et seq.*, at your Dayton, Ohio facility and the order will require your immediate compliance.

We are offering you an opportunity to confer with us about the findings of violations alleged in the ACO. 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. You may have your facility's technical and management personnel attend the conference to discuss compliance measures and commitments. You may also have an attorney represent you at this conference.

The U.S. EPA contact in this matter is Brian Dickens. You may call him at (312) 886-6073 to request and schedule a conference. You should make the request as soon as possible, but no later than 10 calendar days after you receive this letter. We should hold any conference within 30 calendar days of your receipt of this letter. Please note that the ACO will become effective after the Parties have had an opportunity to confer. If you do not make such requests within the specified time, the ACO will then become effective pursuant to paragraph 64 of the ACO.

Sincerely,



Stephen Rothblatt, Director
Air and Radiation Division

Enclosure

cc:

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

John Paul, Director
Regional Air Pollution Control Agency
Montgomery County Health Department
451 West Third Street
P.O. Box 972
Dayton, OH 45422

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)
)
) **Administrative Order**
Perma-Fix of Dayton, Inc.)
Dayton, Ohio) **EPA-5-04-113(a)-OH-03**
)
)
Proceeding Under Sections)
113(a)(3) and 114(a)(1) of the)
Clean Air Act, 42 U.S.C.)
§§ 7413(a)(3) and 7414(a)(1))

Administrative Order

1. The Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, is issuing this Order to Perma-Fix of Dayton, Inc. (Perma-Fix), under Sections 113(a)(3) and 114(a)(1) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a)(3) and 7414(a)(1).

Statutory and Regulatory Background

2. The National Emission Standards for Hazardous Air Pollutants (NESHAP) from Off-Site Waste and Recovery Operations (OSWRO), effective July 1, 1996, apply to the owner or operator of a plant site that:
 - (a) is a major source of hazardous air pollutant (HAP) emissions as defined in 40 C.F.R. § 63.680(a)(1);
 - (b) receives "off-site material" as defined in 40 C.F.R. §§ 63.680(b) and 63.681; and
 - (c) has located at the site a waste management operation or recovery operation as specified in 40 C.F.R. § 63.680(a)(2), and defined in § 63.681.
3. The NESHAP at 40 C.F.R. § 63.683(b)(1) establish control requirements for off-site material management units that are part of an affected source. The NESHAP at 40 C.F.R. §§ 63.681 and 63.680(c)(1) define "off-site material management unit" and "affected source," respectively.
4. An off-site material management unit that is part of an affected source must meet the requirements of either 40 C.F.R. §§ 63.683(b)(1)(i), (ii), or (iii). An owner or

operator complying with 40 C.F.R. § 63.683(b)(1)(i) must control air emissions from each off-site material management unit in accordance with the applicable standards specified in 40 C.F.R. §§ 63.685 through 63.689.

5. The NESHAP at 40 C.F.R. § 63.685(b) establish emission control requirements for "tanks" that are off-site material management units, as that term is defined in 40 C.F.R. § 63.681. Tanks must meet either Level 1 or Level 2 control depending on the tank's size and the off-site material's maximum hazardous air pollutant vapor pressure, according to Table 3 and Table 4 of 40 C.F.R. § 63, subpart DD.
6. Owners or operators controlling air emissions from tanks using Level 1 controls are required to equip tanks with a fixed roof and closure devices, or vent emissions through a closed-vent system to a control device, as prescribed in 40 C.F.R. §§ 63.685(c)(2)(i) and 63.902(b), or 40 C.F.R. § 63.685(c)(2)(ii), respectively.
7. Owners or operators controlling air emissions using Level 2 controls from a tank that is not equipped with a floating roof or that is not pressurized, are required to vent emissions through a closed-vent system to a control device, as prescribed in 40 C.F.R. § 63.685(d)(3).
8. The NESHAP at 40 C.F.R. § 63.693(f)(2) require owners or operators using vapor incinerator control devices to demonstrate that the control device achieves performance requirements of 40 C.F.R. § 63.693(f)(1) by either conducting a performance test or design analysis.
9. The NESHAP at 40 C.F.R. § 63.680(f) provide that certain general provisions of 40 C.F.R. part 63, subpart A, apply to subpart DD OSWRO facilities. Table 2 of 40 C.F.R. part 63, subpart DD specifies which subpart A requirements an OSWRO facility must meet.
10. The NESHAP at 40 C.F.R. § 63.7(a)(2), made applicable by Table 2 of 40 C.F.R. part 63, subpart DD, require the owner or operator to conduct and submit results of any performance test required under 40 C.F.R. part 63, subpart DD, within 180 days after initial startup.
11. The NESHAP at 40 C.F.R. § 63.6(e)(3), made applicable by Table 2 of 40 C.F.R. part 63, subpart DD, require owners or operators to develop and implement a Startup, Shutdown, and Malfunction Plan.

12. The NESHAP at 40 C.F.R. § 63.695(c), require the owner or operator of a closed-vent system to monitor the closed-vent system for leaks upon initial startup and annually to demonstrate the closed-vent system operates with no defects or no detectable organic emissions.
13. The NESHAP at 40 C.F.R. § 63.695(e), require the owner or operator to monitor, calculate daily average values, and establish a minimum or maximum value for each monitored operating parameter to define the range of conditions at which the control device must be operated to continuously achieve applicable performance requirements.
14. The NESHAP at 40 C.F.R. § 63.680(e)(2), specifies that the owner or operator of an affected source that commenced construction or reconstruction on or after October 13, 1994, must achieve compliance with the provisions of 40 C.F.R. part 63, subpart DD, on or before July 1, 1996, or upon initial startup of operations, whichever date is later as provided in 40 C.F.R. § 63.6(b).
15. The NESHAP general provisions at 40 C.F.R. § 63.6(c)(5) specify that an unaffected area source that becomes a major source shall have a period of time to comply with the standard that is equivalent to the compliance period for existing sources specified in the relevant standard. The compliance period for existing sources for the NESHAP from OSWRO was three years and seven months, 68 Fed. Reg 38950, July 20, 1999.
16. Section 502 of the Act, 42 U.S.C. § 7661a, published 57 FR 32295, July 21, 1992, prohibits an owner or operator of a major source from operating without a permit issued pursuant to Title V of the Act. The State of Ohio Title V operating permit program was granted approval from U.S. EPA on August 15, 1995, with an effective date of October 1, 1995. 60 Fed. Reg. 42045.

Findings

17. Perma-Fix owns and operates a facility located at 300 South West End Avenue, Dayton, Ohio.
18. The Perma-Fix facility in Dayton, Ohio emits hazardous air pollutants (HAP) as defined at 40 C.F.R. § 63.2.

19. Perma-Fix's facility receives "off-site material" as defined at 40 C.F.R. § 63.680(b).
20. Perma-Fix treats off-site material in equipment that is covered under Resource Conservation and Recovery Act permit number 05-57-0555 as a hazardous waste treatment, storage, and disposal facility. This operation is a waste management operation meeting the definition at 40 C.F.R. §§ 63.680(a)(2)(i) and 63.681.
21. Perma-Fix operates a recovery operation that re-refines used oil from off-site sources. The operation is regulated under 40 C.F.R. 279 subpart F - Standards for Used Oil Processors and Refiners. This operation is a waste management operation as defined at 40 C.F.R. §§ 63.680(a)(2)(vi) and 63.681.
22. Perma-Fix treats wastewater which is an off-site material in an operation that is exempted from regulation as a hazardous waste treatment, storage, and disposal facility under 40 C.F.R. § 264.1(g)(6) or 265.1(c)(10). This operation is a waste management operation meeting the definition at 40 C.F.R. §§ 63.680(a)(2)(ii) and 63.681.
23. On November 17, 2000, Perma-Fix began operating its biological wastewater treatment plant (Bioplant), which is exempted from regulation as a hazardous waste treatment, storage, and disposal facility under 40 C.F.R. § 264.1(g)(6) or 40 C.F.R. § 265.1(c)(10). Tanks:
 T-901A, T-901B, T-901C,
 T-801D, T-801E,
 BioSBR, BioVDR,
 Activated Sludge Tank, and Utility Clarifier Tank
 are "off-site material management units" associated with the Bioplant.
24. Perma-Fix manages off-site wastewater in its Wastewater Treatment operation, which is exempted from regulation as a hazardous waste treatment, storage, and disposal facility under 40 C.F.R. § 264.1(g)(6) or 40 C.F.R. § 265.1(c)(10). Tanks:
 W5, W6,
 G1, G2, G3 (precipitation tanks),
 T1, T2, T602, T603, TW1,
 S71, Surge Tank,
 OR1 and OR2
 are "off-site material management units" associated with the Wastewater Treatment operation.

25. Perma-Fix manages used oil in its Used Oil Recycling operation, which is regulated under 40 C.F.R. 279 subpart F - Standards for Used Oil Processors and Refiners. Tanks:
S1-S7, S10-S13, and S22-S28 (18 tanks),
B1-4 (oil tanks),
W1, W2, W4 (raw oils tanks),
C-2,3,4 (raw oil tanks),
R1, R2,
P1, and P2 (oil tanks)
are "off-site material management units" associated with the Used Oil Recycling operation.
26. Perma-Fix manages off-site hazardous fuel in its Hazardous Fuel Bulking operation, which is covered under a Resource Conservation and Recovery Act permit. Containers and transfer systems associated with the Hazardous Fuel Bulking operation are "off-site material management units" associated with this operation.
27. The initial startup of Bioplant tanks T-801D, T-801E, BioSBR, BioVDR, Activated Sludge Tank, and Utility Clarifier Tank on November 17, 2000, resulted in the Perma-Fix plant site having a Potential to Emit greater than twenty-five (25) tons per year of hazardous air pollutants.
28. The Bioplant is an "affected source", as defined at 40 C.F.R. § 63.680(c)(1), that commenced construction after October 13, 1994, and must achieve compliance with the provisions of the NESHAP from OSWRO upon initial startup of operations on November 17, 2000, as provided in 40 C.F.R. § 63.6(b)
29. The Wastewater Treatment, Used Oil Recycling, and Hazardous Fuel Bulking operations are existing "affected sources", as defined at 40 C.F.R. § 63.680(c)(1), and must achieve compliance with the provisions of the NESHAP from OSWRO by June 17, 2004, which is three years and seven months from November 17, 2000.
30. Perma-Fix began construction of a regenerative thermal oxidizer in August 2002 and began operation on November 6, 2002. This regenerative thermal oxidizer is a vapor incinerator. A closed-vent system was simultaneously installed between Bioplant tanks BioSBR and BioVDR, and the vapor incinerator.
31. Perma-Fix failed to develop a Startup, Shutdown and Malfunction Plan for the Bioplant by November 17, 2000, as

required by 40 C.F.R. § 63.6(e)(3).

32. Perma-Fix failed to keep relevant records since November 17, 2000, for startup, shutdown and malfunction of the Bioplant, as required by 40 C.F.R. § 63.10(b)(2).
33. Perma-Fix failed to submit Startup, Shutdown and Malfunction Reports on a semiannual basis since January 30, 2001, as required by 40 C.F.R. §§ 63.697(a)(2) and 63.10(d)(5).
34. Perma-Fix failed to determine the maximum HAP vapor pressure for off-site material managed in tanks using Level 1 control associated with the Bioplant, Wastewater Treatment, and Used Oil Recycling prior to placing off-site material in each tank, as required by 40 C.F.R. § 63.685(c)(1).
35. Perma-Fix failed to control emissions from tanks T-901A, T-901B, T-901C since November 2001 by using Level 1 or Level 2 controls as required by 40 C.F.R. § 63.685(c)(2).
36. Perma-Fix failed to perform an initial performance test or design analysis on the vapor incinerator that controls emissions from Bioplant tanks BioSBR and BioVDR within 180 days of November 6, 2002, as required by 40 C.F.R. § 63.693(f)(2).
37. Perma-Fix failed to monitor its closed-vent system, installed for the purpose of controlling emissions from Bioplant tanks BioSBR and BioVDR, for leaks as required by 40 C.F.R. § 63.695(c)(1).
38. Perma-Fix failed to calculate daily average values for each monitored operating parameter used to monitor the vapor incinerator that controls emissions from Bioplant tanks BioSBR and BioVDR since November 6, 2002, as required by 40 C.F.R. § 63.695(e)(2).
39. Perma-Fix failed to submit semi-annual reports summarizing excursions of emissions from the vapor incinerator that controls emissions from Bioplant tanks BioSBR and BioVDR, as required by 40 C.F.R. § 63.697(b)(4).
40. Perma-Fix failed to record a description of planned routine maintenance performed on the vapor incinerator that controls emissions from Bioplant tanks BioSBR and BioVDR since November 2002, as required by 40 C.F.R. § 63.696(g).

41. Perma-Fix failed to submit an application to the State of Ohio for a Title V permit, as required by Section 502 of the Act, 42 U.S.C. § 7661a.

Compliance Program

42. Within six months from the effective date of this Order, unless otherwise specified below, Perma-Fix shall comply with all provisions of the NESHAP from Off-Site Waste and Recovery Operations at 40 C.F.R. Part 63, Subpart DD, and Section 502 of the Clean Air Act, 42 U.S.C. § 7661a, including, but not limited to, the following:
43. Perma-Fix shall develop and submit to U.S. EPA a Startup, Shutdown and Malfunction Plan for the Bioplant, Wastewater Treatment, Used Oil Recycling, and Hazardous Fuel Bulking operations as required by 40 C.F.R. § 63.6(e)(3).
44. Perma-Fix shall keep relevant records for startup, shutdown and malfunction of the Bioplant, Wastewater Treatment, Used Oil Recycling, and Hazardous Fuel Bulking operations, as required by 40 C.F.R. § 63.10(b)(2). These records shall be available to U.S. EPA upon request.
45. Perma-Fix shall submit Startup, Shutdown and Malfunction Reports as required by 40 C.F.R. §§ 63.697(a)(2) and 63.10(d)(5). The first report shall be submitted for the time period from six months from the effective date of this Order until the close of the calendar half. All subsequent reports shall be submitted as required by 40 C.F.R. § 63.10(d)(5).
46. Perma-Fix shall determine and submit to U.S. EPA the maximum HAP vapor pressure for off-site material managed in tanks using Level 1 controls associated with the Bioplant, Wastewater Treatment and Used Oil Recycling operations as required by 40 C.F.R. § 63.685(c)(1).
47. Perma-Fix shall control emissions from tanks associated with the Bioplant, Wastewater Treatment, and Used Oil Recycling operations, by using Level 1 or Level 2 controls as required by 40 C.F.R. § 63.685(c)(2). Perma-Fix shall submit to U.S. EPA a list of all off-site material management units subject to the NESHAP from OSWRO for these operations and the corresponding method of emission control that Perma-Fix is employing.

48. Perma-Fix shall control emissions from containers and transfer systems associated with the Hazardous Fuel Bulking operation as required by 40 C.F.R. §§ 63.688(b) and 63.689(c). Perma-Fix shall submit to U.S. EPA a list of all off-site material management units subject to the NESHAP from OSWRO for this operation and the corresponding method of emission control that Perma-Fix is employing.
49. Perma-Fix shall perform an initial performance test on the vapor incinerator that controls emissions from tanks associated with the Bioplant, as required by 40 C.F.R. § 63.693(f)(2)(i), and shall submit the results to U.S. EPA. A performance test report shall be submitted according to 40 C.F.R. § 63.10(d)(2).
50. Perma-Fix shall monitor its closed-vent system installed for the purpose of controlling emissions from tanks associated with the Bioplant, Wastewater Treatment, and Used Oil Recycling operations tanks for leaks as required by 40 C.F.R. § 63.695(c)(1). Perma-Fix shall provide to U.S. EPA a narrative description of the method Perma-Fix will use to inspect and monitor this closed vent system.
51. Perma-Fix shall calculate and record daily average values for each monitored operating parameter used to monitor the vapor incinerator that controls emissions from tanks associated with the Bioplant, as required by 40 C.F.R. § 63.695(e)(2).
52. Perma-Fix shall submit semi-annual reports summarizing excursions of emissions from the vapor incinerator that controls emissions from tanks associated with the Bioplant, as required by 40 C.F.R. § 63.697(b)(4). The first report shall be submitted for the time period from six months from the effective date of this order until the close of the calendar half, as required by 40 C.F.R. § 63.10(d)(5).
53. Perma-Fix shall submit a Notice of Compliance Status, as required by 40 C.F.R. §§ 63.697(a)(1) and 63.9(h). This Notice does not need to include the information required by 40 C.F.R. § 63.9(h)(2)(i)(E).
54. Perma-Fix shall submit an application to the State of Ohio, with a copy to the U.S. EPA, for a Title V permit, as required by Section 502 of the Act, 42 U.S.C. § 7661a.

55. Perma-Fix shall send all information required by this Order to:

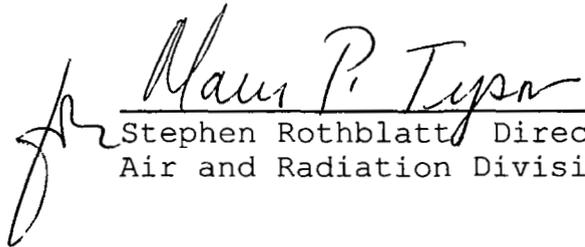
Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604.

General Provisions

56. This Order does not affect Perma-Fix's responsibility to comply with local, state, and Federal laws and regulations.
57. This Order does not restrict U.S. EPA's authority to enforce Section 112 of the Act, or any other section of the Act.
58. Nothing in this Order limits U.S. EPA's authority to seek appropriate relief, including penalties under Section 113 of the Act, 42 U.S.C. § 7413, for Perma-Fix's violations of the Clean Air Act.
59. This Order is an interim enforcement action and is not the final resolution of past violations. This Order does not resolve Perma-Fix's liability, including liability for any penalties, for the violations cited herein.
60. Failure to comply with this Order may subject Perma-Fix to penalties of up to \$32,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413.
61. The terms of this Order are binding on Perma-Fix, its assignees and successors during the period it is effective. Perma-Fix must give notice of this Order to any successors in interest, prior to transferring ownership, and must simultaneously verify to U.S. EPA, at the above address, that Perma-Fix has given the notice.
62. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.
63. U.S. EPA may use any information submitted under this Order in an administrative, civil or criminal action.

64. This Order shall be effective on the date immediately after the Parties have conferred pursuant to Section 113(a)(4) of the Act, or alternatively, if no conference is requested or held by Perma Fix within the time specified in the Notice of Administrative Compliance Order enclosed herewith, this Order shall take effect after the lapse of such time.

9/21/04
Date



Stephen Rothblatt Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent the Administrative Order, EPA Order No. **EPA-5-04-113(a)-OH-03**, by Certified Mail, Return Receipt Requested, to:

Timothy Keegan, President
Perma-Fix of Dayton, Inc.
300 South West End Avenue
Dayton, Ohio 45427

I also certify that I sent a copy of the Administrative Order, EPA Order No. **EPA-5-04-113(a)-OH-03**, by First Class Mail to:

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

John Paul, Director
Regional Air Pollution Control Agency
Montgomery County Health Department
451 West Third Street
P.O. Box 972
Dayton, Ohio 45422

on the 21st day of September 2004.


Loretta Shaffer, Secretary
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 1558 5472