

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**REGION 5**

**IN THE MATTER OF**

**WISMARQ CORPORATION,**

**RESPONDENT**

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**DOCKET NO. EPA-5-99-113(a)-WI-5**

**STATUTORY AUTHORITY**

The following Order is issued pursuant to Sections 113(a) and 114 of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a) and 7414.

**REGULATORY BACKGROUND**

1. The Administrator of the United States Environmental Protection Agency (U.S. EPA) approved Wisconsin Administrative Code NR 422.06 on August 15, 1994, at 59 Fed. Reg. 41709, as part of the federally enforceable State Implementation Plan (SIP) for Wisconsin, pursuant to Section 110(a) of the Act, 42 U.S.C. §7410(a).
2. NR 422.06 (2) limits the emission of volatile organic compounds (VOCs) to 0.31 kilograms per liter of coating (2.6 pounds per gallon), excluding water, delivered to each coating applicator from prime and topcoat or single coat operations.
3. NR 422.04(2) states that the surface coating emission limitations shall be achieved by one of several options, including: (a) the application of low solvent content coating technology or (b) incineration or catalytic oxidation, provided that 90 percent of the non-methane (VOCs measured as total combustible carbon) which enter the incinerator or oxidation unit are oxidized to non-organic compounds.
4. Metal coil surface coating operations that are sources of VOC emissions, and are constructed, reconstructed or modified after January 5, 1981, become subject to the New Source Performance Standards for Metal Coil Surface Coating, set forth at 40 C.F.R., Subpart TT, §§ 60.460 - 60.466.
5. The regulation at 40 C.F.R. § 60.462 states that an owner or operator subject to this provision shall not cause to be discharged into the atmosphere more than 10 percent of the VOCs applied each calendar month.

6. Section 113(a) of the Act, 42 U.S.C. § 7413(a), states that whenever the Administrator of the U.S. EPA finds that any person has violated or is in violation of any requirement or prohibition of an applicable SIP, the Administrator shall notify that person and the State in which the plan applies of such finding.
7. Section 113(a) of the Act, 42 U.S.C. § 7413(a), authorizes the Administrator to issue an order requiring such person to comply with the requirements or prohibitions of an implementation plan.
8. Section 114(a) of the Act, 42 U.S.C. § 7414(a), authorizes the Administrator to require any person who owns or operates any emission source to establish and maintain records of emissions; install, use, and maintain equipment for the monitoring of such emissions; sample emissions; and provide other information relative to such emissions, as may be reasonably required.

### STATEMENT OF FACTS

9. Wismarq Corporation, a Wisconsin corporation, is the owner and operator of a metal coil coating line, Coating Line #1, which is a source of VOC emissions. Thus, it is subject to the requirements of the Wisconsin SIP set forth at NR 422.04(2) and 422.06(2).
10. Wismarq Corporation modified its coil coating Line # 1 in 1996 to incorporate an additional coating station. This modification made Line #1 subject to the New Source Performance Standards (NSPS) for metal coil surface coating, which are set forth at 40 C.F.R. Subpart TT, §§ 60.460 - 60.466. This regulation provides that an owner or operator subject to this provision shall not cause to be discharged into the atmosphere more than 10 percent of the VOCs applied each calendar month by its coating line.
11. On August 13, 1997, David Kee, Director, Air and Radiation Division, Region 5, issued a Notice of Violation and a Finding of Violation, pursuant to Section 113 of the Act, 42 U.S.C. § 7413, to Wismarq Corporation, alleging violation of Wisconsin SIP rules NR 422.04(2) and 422.06(2) and the New Source Performance Standards set forth at 40 C.F.R. § 60.462, based on the results of a stack test conducted on September 27, 1996. This stack test demonstrated that Wismarq was achieving a destruction efficiency of 65.8% at the incinerator serving Line #1. A copy of the Notice and Finding of Violation were sent to the State of Wisconsin.
12. Wismarq Corporation subsequently submitted the results of a stack test conducted on March 7, 1997, which purported to demonstrate that its incinerator destroyed VOCs with a 90.7 % destruction efficiency.
13. On September 26, 1997, U.S. EPA filed an administrative complaint against Wismarq, seeking penalties for the failure to comply with the Wisconsin SIP and the New Source Performance Standards between the September 27, 1996 and March 7, 1997 stack tests.
14. Subsequent to the filing of the administrative complaint, U.S. EPA discovered that the March 7, 1997 stack test was conducted pursuant to Reference Method 25A and that the VOC emissions during the test were at least 150 parts per million. However, U.S. EPA guidance entitled, "EPA's VOC test Methods 25 and

25A" dated October 25, 1993, instructs that Reference Method 25A is only acceptable in situations where VOC emissions are less than 50 parts per million. Reference Method 25 should be used in all other instances.

15. U. S. EPA's September 1998 discovery that the March 7, 1997 stack test was performed pursuant to Method 25A was communicated to Wismarq Corporation on or about September 17, 1998, and was later confirmed in a conversation with Administrative Law Judge Thomas W. Hoya, who was serving as a mediator between the parties.
16. U.S. EPA and Wismarq Corporation decided to resolve the issue of the reference method to be used through the issuance of this Order requiring additional testing, and through the settlement of the administrative complaint issued by U.S. EPA under the terms set forth in the accompanying consent agreement and consent order (CACO), which complements this Order.

### ORDER

After thorough investigation of all relevant facts, taking into account the seriousness of the violations and efforts made by Wismarq Corporation to comply with applicable regulations, it is determined that the actions hereby ordered and agreed to are reasonable and meet the requirements of Sections 113(a)(1) and 114 of the Act, 42 U.S.C. §§7413(a) and 7414.

THEREFORE, IT IS HEREBY AGREED AND ORDERED THAT:

17. As of the effective date of this Order, the metal coil coating line #1, and the associated incinerator at the Wismarq Corporation facility in Oconomowoc, Wisconsin shall be operated to maintain continuous compliance with Wisconsin SIP rules NR 422.04(2) and 422.06(2) and the New Source Performance Standards set forth at 40 C.F.R. , Subpart TT, §§ 60.460 - 60.466.
18. In order to maintain compliance, Wismarq shall implement the following measures:
  - (a) Within 120 days of the effective date of this Order, Wismarq shall conduct a destruction efficiency test on the incinerator serving coating Line #1 that meets the following requirements:
    - (i) The test shall be conducted using U.S. EPA Reference Methods 1-4 and 25 for VOC emissions. These methods can be found at 40 C.F.R. Part 60, Appendix A.
    - (ii) The emission tests shall be conducted while operating with VOC content coatings which are representative of Line #1's normal operation, since its modification in 1996.
    - (iii) Each emission test shall consist of three runs, with each run being a minimum of 60 minutes, during which coating Line #1 is operating at maximum capacity, in terms of line speed and throughput, for the representative coating(s).

- (iv) Any other VOC emission test runs, conducted or attempted, at any time after entry of this Order through the date of the submittal of the results, shall be documented and included in the final report.
  
- (v) A test protocol shall be submitted to WDNR and U.S. EPA at least 45 days prior to the test. This protocol shall reflect all of the testing conditions required by this Order and shall include notification of the scheduled test date. U.S. EPA and WDNR shall be notified as soon as possible of any and all changes in the planned test date, but no later than 15 days prior to the date the test will actually be run. Personnel designated by the Agencies shall be permitted to observe all testing, ask questions of testing personnel, and make whatever records, including photographs and tape recordings (upon notification), as are deemed necessary by the agency personnel. The testing protocol shall, at a minimum, include the following:
  - a. Name and VOC content of coating(s) used during the testing;
  - b. Material Safety Data Sheets for coating(s) used during testing;
  - c. Sampling port locations and dimensions of cross-section;
  - d. Sampling point description; and,
  - e. Brief description of sampling procedures, including equipment and diagram.
  
- (vi) The results of all emission testing shall be submitted in a bound report to U.S. EPA and WDNR within 30 days after completion of the testing, for U.S. EPA's review pursuant to the provisions of Paragraph 24 of this Order. The report shall contain the following minimum information:
  - a. Emission results, including sample calculations;
  - b. Name and VOC content of coating(s) used during the testing;
  - c. Material Safety Data Sheets for coating(s) used during testing;
  - d. Sampling port locations and dimensions of cross-section;
  - e. Sampling point description;
  - f. Brief description of sampling procedures, including equipment and diagram;
  - g. Description of sampling procedures (planned and accidental) that deviated from any standard method;
  - h. Brief description of analytical procedures;
  - i. Description of analytical procedures (planned and accidental) that deviated from any standard method;
  - j. Raw field data (original, not computer printouts); and,
  - k. Related correspondence.

**GENERAL PROVISIONS**

19. All submissions and notifications to U.S. EPA under this Order shall be sent to the address listed in Paragraph 22.
20. Nothing contained in this Order shall affect the responsibility of Wismarq to comply with all applicable Federal, State or local laws or regulations, including Section 303 of the Act, 42 U.S.C. § 7603.
21. Nothing in this Order shall be construed to restrict, in any way, U.S. EPA's authority under Section 114 of the Act, 42 U.S.C. § 7414.
22. The provisions of this Order shall apply to and be binding upon Wismarq, its officers, directors, agents, servants, employees and any successor(s) in interest. Wismarq shall give written notice of this Order to any successor(s) in interest prior to transfer of ownership, and shall simultaneously send a copy of such written notice to:  
  
Chief, Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard (AE-17J)  
Chicago, Illinois 60604-3590
23. The information required to be maintained or submitted pursuant to this Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 *et seq.*
24. U.S. EPA may approve, disapprove, require revisions to, or modify the report submitted for Agency review pursuant to this Order. If U.S. EPA requires revisions, Respondent shall submit a revised report within 7 business days of receipt of U.S. EPA's notification of required revisions.
25. If the report submitted pursuant to this Order demonstrates that Respondent is not compliant with either Wisconsin SIP rules NR 422.04(2) and 422.06(2) or the New Source Performance Standards set forth at 40 C.F.R. § 60.462, Respondent shall submit a Schedule of Compliance, which shall detail any and all actions that Respondent shall take to return to compliance with applicable regulatory standards, and the dates by which it proposes to do so. Respondent shall include in its Schedule of Compliance an additional destruction efficiency test that meets the requirements of Paragraph 18 of this Order, which demonstrates compliance with Wisconsin SIP rules NR 422.04(2) and 422.06(2) and the New Source Performance Standards set forth at 40 C.F.R. § 60.462.
26. If the report submitted pursuant to this Order demonstrates noncompliance with the regulatory provisions cited in the preceding paragraph, Respondent may be subject to additional enforcement action pursuant to Sections 113 and 114 of the Act, 42 U.S.C. §§ 7413 (a) and 7414.

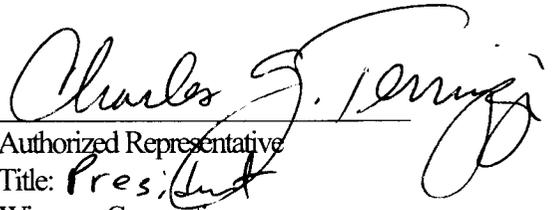
27. This Order is effective on the date of signature by the Director, of the Air and Radiation Division, and shall terminate upon Respondent's receipt of written notice from U.S. EPA that the Agency accepts that the results of the stack test to be conducted pursuant to this Order demonstrate compliance, as of the test date, with Wisconsin SIP rules NR 422.04(2) and 422.06(2) and the New Source Performance Standards set forth at 40 C.F.R. § 60.462.

Date 12/3/98



Steven Rothblatt, Acting Director  
Air and Radiation Division

Date 11/30/98



Authorized Representative  
Title: President  
Wismarq Corporation

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 )  
WISMARQ CORPORATION, ) DOCKET NO. 5-CAA-019-1997  
 )  
RESPONDENT )  
 )

CONSENT AGREEMENT AND CONSENT ORDER

Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, instituted this civil administrative proceeding for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7413(d), and Sections 22.01(a)(2) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. Part 22.

I. PRELIMINARY STATEMENT

1. Respondent, Wismarq Corporation, is a Wisconsin corporation with a place of business at 930 Armour Road, Oconomowoc, Wisconsin, 53066.

2. The Complainant instituted this civil administrative proceeding for the assessment of a civil penalty by concurrently

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issuing and filing an Administrative Complaint and Notice of Opportunity for Hearing on Proposed Order Assessing a Penalty ("Complaint") against Respondent on September 26, 1997.

3. The Complaint alleges that the Respondent violated Section 113 of the Act, 42 U.S.C. § 7413, through its failure to comply with Wisconsin Regulation NR 422.06, approved by U.S. EPA on August 15, 1994 and part of the federally enforceable Wisconsin State Implementation Plan (SIP).

4. The Complaint also alleges that Wismarq modified its coating line, thus making it subject to the New Source Performance Standards (NSPS) for metal coil surface coating set forth at 40 C.F.R. Part 60, Subpart TT, Standards of Performance for Metal Coil Surface Coating, 40 C.F.R. § 60.462 (NSPS Subpart TT), and that Wismarq failed to comply with the NSPS applicable to its operation.

5. The parties agree that resolution of this matter through entry of this Consent Agreement and Consent Order ("CACO") is an appropriate means of resolving this matter. The parties further agree that such resolution, along with the accompanying Administrative Order issued pursuant to Section 113(a)(4) of the CAA, is in full and complete settlement of the violations which are alleged in the Complaint as arising out of

those activities of Respondent at the Oconomowoc facility which are the subject of the Complaint.

## II. CONSENT AGREEMENT

Before taking any testimony, without adjudication of any issues of law or fact, the Complainant and Respondent consent to the entry of, and agree to comply with, the terms of this CACO.

6. For the purpose of this CACO, Respondent admits the jurisdictional allegations in the Complaint.

7. Respondent neither admits nor denies the specific factual allegations contained in the Complaint, other than as admitted or denied in its Answer to the Complaint.

8. Respondent consents to the assessment of the civil penalties provided in the Order below.

9. Respondent explicitly waives any and all rights pursuant to Section 113(d)(2) and (4) of the Act, 42 U.S.C. § 7413(d)(2) and (4), the Administrative Procedure Act, 5 U.S.C. §§ 551, et. seq., the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. Part 22, and common law, to request a hearing and to challenge the terms and conditions of this CACO.

10. U.S. EPA sought in its Complaint a proposed civil penalty of \$ 59,157. Through this CACO, U.S. EPA agrees to mitigate the proposed civil penalty in consideration of good

faith efforts to resolve this matter and cooperation in providing U.S. EPA with information during the pendency of this matter, the nature of the violations, and other relevant factors. U.S. EPA has determined that an appropriate civil penalty to settle this action against Respondent is in the total amount of \$24,000. Further, this penalty conforms with U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991, and the civil penalty provisions in Section 113(d) and (e) of the Act.

11. Respondent shall pay the United States a civil penalty in the amount of \$24,000, payable in 12 equal monthly installments, with the first installment due thirty (30) days of the date that U.S. EPA files a fully executed copy of this CACO with the Regional Hearing Clerk, and the final installment within thirteen (13) months of the effective date of this CACO.

12. The civil penalties hereunder shall be paid by certified or cashier's check or money order, payable to "Treasurer, United States of America," and mailed to:

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

A transmittal letter, indicating the name of, complete address, and the case docket number must accompany the payment. The case docket number shall also be included on the face of the check.

The Respondent shall send a copy of the check and transmittal letter to:

Regional Hearing Clerk  
United States Environmental Protection Agency,  
Region 5  
77 West Jackson Blvd. (MF-10J)  
Chicago, Illinois 60604-3590

Katherine Keith  
Air and Radiation Division  
United States Environmental Protection Agency,  
Region 5  
77 West Jackson Blvd. (AE-17J)  
Chicago, Illinois 60604-3590

Sherry L. Estes  
Office of Regional Counsel  
United States Environmental Protection Agency,  
Region 5  
77 West Jackson Blvd. (C-14J)  
Chicago, Illinois 60604

13. Respondent's failure to comply with any provision of this CACO may subject Respondent to a civil action pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), to collect any unpaid portion of the civil penalty, together with interest, handling charges, and nonpayment penalties as set forth in Paragraph 14 below. In any such collection action, the validity, amount, and appropriateness of the penalty assessed hereunder and the terms of this Order are not subject to review.

14. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3731, Respondent shall pay the following amounts if the civil penalty is not paid pursuant to the terms of this CACO:

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C.

§ 6621(a)(2) and shall begin to accrue the day after its due date, if Respondent fails to comply with the requirements of Paragraph 11.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid for each month that any portion of the assessed penalty is more than 30 days past due.

c. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay on a timely basis the full amount due under this CACO, including interest and handling charges, the Respondents shall pay the United States' enforcement and collection expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

15. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of Federal, State or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any Federal, State or local permit.

16. Respondent Wismarq certifies that it is now in compliance with the Act and the requirements of Wisconsin SIP Rule NR 422.06(2) and NSPS Subpart TT, set forth at 40 C.F.R. § 60.462.

17. Nothing in this CACO, nor in the accompanying Order, Docket No. 5 CAA-019-1997, shall relieve Respondent of its duty to comply with all applicable provisions of the Act and other Federal, State or local laws or statutes or shall restrict U.S. EPA's authority to seek compliance with all applicable provisions of the Act and other applicable laws or regulations.

18. This document constitutes an "enforcement response" as that term is used in the Clean Air Act Civil Penalty Policy for the purposes of determining Respondent's "full compliance history" as addressed in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

19. Nothing in this Consent Agreement and Consent Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this Consent Agreement and Consent Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by Complainant, and it is the responsibility of Respondent to comply with such laws and regulations.

20. The provisions of this CACO shall be binding on the Respondent, its officers, directors, employees, agents, servants, authorized representatives, successors and assigns.

21. Each party shall bear its own costs, fees and disbursements in this action.

22. The Respondent certifies that it is duly authorized to execute this CACO and that the parties signing this CACO on Respondent's behalf are duly authorized to bind Respondent to the terms of this document.

23. The parties agree to issuance of the accompanying Order, Docket No. SCAA-019-1997 and this Consent Order.

24. With respect to the Complaint filed in this matter, this CACO and the accompanying Order, Docket No. SCAA 019-1997 issued pursuant to 113(a)(4) of the Clean Air Act, constitute the entire agreement between the parties.

In the Matter of: Wismarq Corporation, Docket No. 5-CAA-019-1997

Hereby Stipulated, Agreed, and Approved for Entry:

U.S. Environmental Protection  
Agency, Complainant

Date: \_\_\_\_\_

12/3/98

By: \_\_\_\_\_



Steve Rothblatt, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (AE-17J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Wismarq Corporation  
Respondent

Date: \_\_\_\_\_

11/30/98

By: \_\_\_\_\_



Wismarq Corporation  
930 Armour Road  
Oconomowoc, Wisconsin 53066.

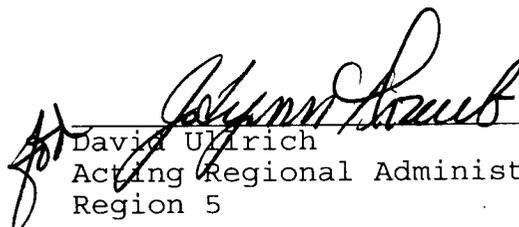
In the Matter of: Wismarq Corporation, Docket No. 5-CAA-019-1997

CONSENT ORDER

The Respondent, Wismarq Corporation, is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement and Consent Order, effective immediately upon filing of this Consent Agreement and Consent Order with the Regional Hearing Clerk. This Order disposes of this matter against the Respondent pursuant to 40 C.F.R. § 22.18(c).

Date:

December 4, 1998

  
\_\_\_\_\_  
David Ulrich  
Acting Regional Administrator  
Region 5

In the Matter of Wismarq Corporation, Respondent  
Docket No. 5-CAA-019-1997

**Notice of Filing and Certificate of Service**

I certify that a Consent Agreement and Consent Order and an accompanying agreed Administrative Order, both dated December 4, 1998, were sent this day in the following manner to the addressees listed below:

Original Sent by Certified Mail  
and Copy by Telefax to:  
#P188570381

Edward J. Kuhlman  
Administrative Law Judge  
U.S. Environmental Protection Agency  
401 M Street, SW  
Mail Code 19001  
Washington, DC 20460  
202 - 565-0044 (telefax)

By Certified Mail to  
Respondent:  
#P188570382

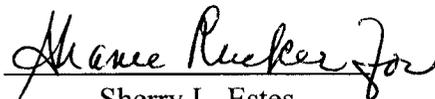
Charles G. Terrizzi, President  
Wismarq Corporation  
930 Armour Road  
Oconomowoc, Wisconsin 53066

By Certified Mail to  
Attorneys for Respondent:  
#P188570383

Donald P. Gallo, Esquire  
Pamela L. Gergens, Esquire  
Michael, Best & Friedric, LLP  
100 E. Wisconsin Avenue, Suite 3300  
Milwaukee, WI 53202

I have further caused the originals of the above-referenced Consent Agreement and Consent Order and accompanying agreed Administrative Order to be filed in the office of the Regional Hearing Clerk, U.S. EPA, Region 5, 77 W. Jackson Street, Chicago, Illinois 60604 on the date below.

Dated this 4 day of December, 1998.



Sherry L. Estes  
Assistant Regional Counsel  
U.S. EPA, Region 5  
77 W. Jackson, C-14J  
Chicago, Illinois 60604  
(312) 886-7164

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REGIONAL HEARING CLERK  
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