



REGION 5

CHICAGO, IL 60604

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Brian Westerfield
Concrete Sealants Inc.
9325 State Route 201
Tipp City, Ohio

Re: Notice of Violation and Finding of Violation
Concrete Sealants Inc.
Tipp City, Ohio

Dear Brian Westerfield:

The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation (NOV) to Concrete Sealants Inc. (you) under Sections 113(a)(1) and (a)(3) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(1) and (a)(3). We find that you are violating Title V program requirements and the Ohio State Implementation Plan at your Tipp City, Ohio facility.

Section 113 of the Clean Air Act 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 an opportunity to confer with us about the violations alleged in the NOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the NOV prior to the conference date.

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 contacts in this matter are Dakota Prentice and Brianna Fenzl. You may call them at (312) 886-6761 and (312) 886-1960, respectively, or email them at prentice.dakota@epa.gov or fenzl.brianna@epa.gov 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,

Nathan Frank
Supervisor, Air Enforcement and Compliance Assurance
Section (IL/IN)

Enclosure

1. EPA Small Business Resource Information Sheet

cc: Joshua Koch, Manager
Division of Air Pollution Control
Ohio Environmental Protection Agency
joshua.koch@epa.ohio.gov

Jenny Marsee, Unit Supervisor
Regional Air Pollution Control Agency
Public Health Dayton & Montgomery County
marseejs@rapca.org

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:	)	
Concrete Sealants Inc.	)	NOTICE OF VIOLATION AND
Tipp City, Ohio	)	FINDING OF VIOLATION
Proceedings Pursuant to	)	
Sections 113(a)(1) and (a)(3) of the	)	EPA-5-24-OH-11
Clean Air Act, 42 U.S.C.	)	
§§ 7413(a)(1) and (a)(3)	)	

NOTICE OF VIOLATION AND FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Notice of Violation and Finding of Violation under Sections 113(a)(1) and (a)(3) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(1) and (a)(3). EPA finds that Concrete Sealants Inc. (ConSeal) is violating Title V program requirements and the Ohio State Implementation Plan (SIP), as follows:

Statutory and Regulatory Background

CAA Title V Permit Program

1. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, established an operating permit program for major sources of air pollution.
2. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that it is unlawful for any person to, among other things, operate a major source subject to Title V except in compliance with the Title V permit after the effective date of any permit program approved or promulgated under Title V of the CAA.
3. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), EPA promulgated regulations establishing the minimum elements of a Title V permit program to be administered by any air pollution control agency. See 57 Fed. Reg. 32295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.
4. On September 12, 2001, EPA granted full approval to Ohio's CAA Title V permit program, set forth in 40 C.F.R. Part 70 Appendix A.
5. 40 C.F.R. § 70.1(b) provides that "[a]ll sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements."
6. 40 C.F.R. § 70.2 defines "major source" as including, but not limited to, any stationary source that directly emits, or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation.
7. 40 C.F.R. § 70.2 defines "regulated air pollutant" as including, "...any volatile organic compounds [VOCs]".

8. 40 C.F.R. § 70.5(a) provides that “[f]or each part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this section.”
9. 40 C.F.R. § 70.5(a)(1)(i) states “[a] timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.”
10. 40 C.F.R. § 70.7(b) states, “Except as provided in the following sentence, § 70.4(b)(12)(i), and paragraphs (e) (2)(v) and (3)(v) of this section, no part 70 source may operate after the time that it is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under a part 70 program.”

Ohio SIP

11. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan that provides for the implementation, maintenance, and enforcement of primary and secondary National Ambient Air Quality Standards (NAAQS) in the state. Upon approval by EPA, the plan becomes a part of the applicable SIP for the state.
12. On May 10, 2010, EPA approved Ohio Administrative Code (OAC) Rule 3745-15-01 and 3745-15-05 as part of the federally enforceable SIP for Ohio. 75 Fed. Reg. 25770.
13. OAC Rule 3745-15-05(A)(3) defines “air contaminant source” as each separate operation or activity that results or may result in the emission of any air contaminant.
14. OAC Rule 3745-15-05(A)(2) defines “air contaminant” as particulate matter, dust, fumes, gas, mist, radionuclides, smoke, vapor, or odorous substances, or any combination thereof, but does not include water by itself.
15. OAC Rule 3745-15-05(B) states, “Except as provided in paragraphs (C), (D) and (H) of this rule and division (B) of section 3704.011 of the Revised Code, any air contaminant source is exempt from Chapter 3704 of the Revised Code and rules adopted thereunder, unless the potential emissions of any one of the following exceeds ten pounds per day: particulate matter, sulfur dioxide, nitrogen oxides, organic compounds, carbon monoxide, lead or any other air contaminant.”
16. OAC Rule 3745-15-05(C) continues the list of what is not exempt from the rule, noting at Chapter 3745-15-05(C)(5) circumstances when the source emits more than one ton per year of any hazardous air pollutants (HAP) or combination of HAPs.
17. On June 25, 2015, EPA approved OAC Rule 3745-31-02 as part of the federally enforceable SIP for Ohio. 80 Fed. Reg. 36477.
18. OAC Rule 3745-31-02(A)(1)(a) states, “Except as provided in rule 3745-31-03 of the Administrative Code, rule 3745-31-30 of the Administrative Code, or paragraph (A)(3) of this rule, no person shall cause, permit, or allow any of the following: (a) Installation or modification

of any new source that is, or will be, part of a facility, as defined in Chapter 3745-77 of the Administrative Code, and that is required to obtain a Title V permit under Chapter 3745-77 of the Administrative Code, without first obtaining a permit-to-install from the director.”

19. OAC Rule 3745-31-03(B) documents exemptions from permit-to-install or PTIO requirements.
20. OAC Rule 3745-31-05(A)(3)(a) provides for a PTIO, “[t]he director shall issue a permit-to-install or PTIO, on the basis of the information appearing in the application, or information gathered by or furnished to the Ohio environmental protection agency, or both, if the director determines that the installation, modification or operation of the air contaminant source will... [among other requirements not applicable here]: (3) Employ BAT [Best Available Technology], when applicable, in accordance with the following: (a) BAT shall be evaluated, determined and required in either the initial permit-to-install or PTIO issued for an air contaminant source or when a modification of the air contaminant source results in the issuance of a permit-to-install or PTIO.”

Relevant Factual Background

21. ConSeal owns and operates a concrete sealants manufacturing facility at 9325 OH-201, Tipp City, Ohio (the Facility).
22. The Facility’s operations include various process units, which are air contaminant sources, including six mixers, used in butyl rubber manufacturing.
23. EPA conducted a CAA inspection at the Facility on March 29, 2023 (the Inspection).
24. At the Inspection, ConSeal representatives were not aware of any operating permits issued by the Ohio EPA Division of Air Pollution Control.
25. On December 7, 2023, EPA issued an information request pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, to ConSeal (Information Request).
26. The Information Request required ConSeal, among other things, to calculate the Facility’s potential-to-emit (PTE) for criteria pollutants and HAPs, as well as to document its air permitting history.
27. Information provided by ConSeal, responsive to the Information Request, stated the VOC PTE for the Facility was 136.5 tons per year (TPY) and the total HAP PTE for the Facility was 4.1 TPY.
28. ConSeal stated in a letter to EPA dated, March 15, 2024, “Upon review of the Facility’s potential-to-emit calculations, ConSeal determined that there are emissions units that trigger Ohio construction permitting requirements pursuant to Ohio Administrative Code (“OAC”) 3745-31.”
29. Since ConSeal did not obtain PTIOs for the air contaminant sources at the Facility, BAT was neither evaluated, nor implemented for these sources, and therefore BAT was not employed at the facility in accordance with OAC Rule 3745-31-05(A)(3).

30. In response to the Information Request, ConSeal was unable to identify any correspondence with Ohio EPA regarding air permit requirements or exemptions for operations at the Facility.

Violations

31. The Facility is a major source for VOCs and did not apply for or obtain a Title V Permit from Ohio EPA Division of Air Pollution Control, in violation of 40 C.F.R. §§ 70.1(b), 70.5(a), and 70.7(b).
32. The Facility failed to obtain PTIOs for any equipment not exempt from permitting requirements pursuant to OAC 3745-31-05(B) and (C), in violation of the OAC at 3745-31-02(A)(1)(a).
33. The Facility failed to implement BAT for any air contaminant source in violation of OAC at 3745-31-05(A)(3)(a).

Environmental Impact of Violations

34. These violations have caused or can cause excess emissions of VOCs.
35. VOCs are photochemical oxidants associated with several detrimental health effects, which include birth defects and cancer, as well as environmental and ecological effects. In the presence of sunlight, VOCs are influenced by a variety of meteorological conditions and have the ability to create photochemical smog. VOCs react with oxygen in the air to produce ground-level ozone.
36. Breathing ozone contributes to a variety of health problems including chest pain, coughing, throat irritation, and congestion. It can worsen bronchitis, emphysema, and asthma. Ground-level ozone also can reduce lung function and inflame lung tissue. Repeated exposure may permanently scar lung tissue.

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division