



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AUG 30 2019

REPLY TO THE ATTENTION OF

Tom Willis, Director of Health, Environmental and Safety
ChemDesign Products Inc.
2 Stanton Street
Marinette, Wisconsin 54143

Re: Finding of Violation
ChemDesign Products Inc.
Marinette, Wisconsin

Dear Mr. Willis:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to ChemDesign Products Inc. under Section 113(a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(3). We find that you are violating the National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources, 40 C.F.R. Part 63, Subpart VVVVVV, at your Marinette, Wisconsin 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 FOV. 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 FOV 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 Alexandra Letuchy and Albana Bega. You may call them at (312) 886-6035 or (312) 353-4789 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,



for Michael D. Harris
Acting Director
Enforcement and Compliance Assurance Division

Enclosure

cc: Maria Hill, Chief, Wisconsin Department of Natural Resources

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

ChemDesign Products Inc.
Marinette, Wisconsin

Proceedings Pursuant to
Section 113(a)(1) of the
Clean Air Act, 42 U.S.C.
§ 7413(a)(1)

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) **FINDING OF VIOLATION**
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) **EPA-5-19-WI-06**
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FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Finding of Violation under Section 113(a)(3) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3). EPA finds that ChemDesign Products Inc. ("ChemDesign") is violating the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Chemical Manufacturing Area Sources at 40 C.F.R. Part 63, Subpart VVVVVV, as follows:

Statutory and Regulatory Background

National Emission Standards for Hazardous Air Pollutants

1. Section 112 of the Act, 42 U.S.C. § 7412(c), requires the EPA to promulgate a list of all categories and subcategories of new and existing "major sources" of hazardous air pollutants (HAPs), and establish emissions standards for the categories and subcategories. These emission standards are known as the National Emission Standards for Hazardous Air Pollutants (NESHAPs). The EPA codified these standards at 40 C.F.R. Parts 61 and 63.

2. Federal regulations at 40 C.F.R. Part 63, Subpart A, contain the general provisions for the NESHAP.

3. "Major source" is defined as "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants." 42 U.S.C. § 7412(a)(1).

4. "Area source" means "any stationary source of hazardous air pollutants that is not a major source as defined in this part." 42 U.S.C. § 7412(a)(2).

5. "Stationary source" is defined as "any building, structure, facility, or installation, which emits or may emit any air pollutant." 42 U.S.C. § 7411(a)(3).

6. "Hazardous air pollutant" is defined as "any air pollutant listed in or pursuant to" Section 112(b) of the Act. 42 U.S.C. § 7412(a)(6).

7. Section 112(i)(3) of the Act, 42 U.S.C. § 7412(i)(3), prohibits any person subject to a NESHAP from operating a source in violation of a NESHAP after its effective date. See also 40 C.F.R. §§ 61.05 and 63.4.

8. Federal regulations at 40 C.F.R. § 63.9(h)(2)(ii) require submission of a Notification of Compliance Status “before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in the relevant standard.”

NESHAP for Chemical Manufacturing Area Sources

9. On October 29, 2009, EPA promulgated the NESHAP for Chemical Manufacturing Area Sources, codified at 40 C.F.R. Part 63, Subpart VVVVVV (“NESHAP VVVVVV”). 74 Fed. Reg. 56008. NESHAP VVVVVV establishes emission standards, requirements to demonstrate initial and continuous compliance with emission limits, operating limits, work practice standards, and recordkeeping requirements associated with chemical manufacturing area sources. 40 C.F.R. § 63.11494.

10. Federal regulations at 40 C.F.R. § 63.11494(a) state, in part, that “you are subject to this subpart if you own or operate a chemical manufacturing process unit (CMPU) that meets the conditions specified in paragraphs (a)(1) and (2) of this section.”

11. The condition specified at 40 C.F.R. § 63.11494(a)(1) states that “[t]he CMPU is located at an area source of hazardous air pollutant (HAP) emissions.”

12. The condition specified at 40 C.F.R. § 63.11494(a)(2) states that the “HAP listed in Table 1 to this subpart (Table 1 HAP) are present in the CMPU, as specified in paragraph (a)(2)(i), (ii), (iii), or (iv) of this section.”

13. Federal regulations at 40 C.F.R. § 63.11494(a)(2)(i) state that “[t]he CMPU uses as feedstock, any material that contains quinoline, manganese, and/or trivalent chromium at an individual concentration greater than 1.0 percent by weight, or any other Table 1 HAP at an individual concentration greater than 0.1 percent by weight.”

14. Federal regulations at 40 C.F.R. § 63.11494(a)(2)(iii) state that “[h]ydrazine and/or Table 1 organic HAP other than quinoline are generated as byproduct and are present in the CMPU in any liquid stream (process or waste), continuous process vent, or batch process vent at an individual concentration greater than 0.1 percent by weight.”

15. Table 1 to NESHAP VVVVVV identifies “[m]ethylene chloride” as a HAP used to determine the applicability of NESHAP VVVVVV.

16. Federal regulations at 40 C.F.R. § 63.11502(b) define “chemical manufacturing process,” in part, as “all equipment which collectively functions to produce a product or isolated intermediate. A process includes, but is not limited to any, all, or a combination of reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment which are used to produce a product or isolated intermediate.”

17. Federal regulations at 40 C.F.R. § 63.11494(b) state the following: “A CMPU includes all process vessels, equipment, and activities necessary to operate a chemical manufacturing process that produces a material, or a family of materials described by North American Industry Classification System (NAICS) code 325. A CMPU consists of one or more unit operations and any associated recovery devices. A CMPU also includes each storage tank, transfer operation, surge control vessel, and bottoms receiver associated with the production of such NAICS code 325 materials.”

18. Federal regulations at 40 C.F.R. § 63.11494(d)(1) state, “[a]n affected source is an existing source if you commenced construction or reconstruction of the affected source before October 6, 2008.”

19. Federal regulations at 40 C.F.R. § 63.11494(f) state, “[i]f you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart no later than March 21, 2013.”

20. Federal regulations at 40 C.F.R. § 63.11495(a)(3) state, “[y]ou must conduct inspections of process vessels and equipment for each CMPU in organic HAP service or metal HAP service, as specified in paragraphs (a)(3)(i) through (v) of this section, to demonstrate compliance with paragraph (a)(1) of this section and to determine that the process vessels and equipment are sound and free of leaks. Alternatively, except when the subject CMPU contains metal HAP as particulate, inspections may be conducted while the subject process vessels and equipment are in volatile organic compounds (VOC) service, provided that leaks can be detected when in VOC service.

(i) Inspections must be conducted at least quarterly.

(ii) For these inspections, detection methods incorporating sight, sound, or smell are acceptable. Indications of a leak identified using such methods constitute a leak unless you demonstrate that the indications of a leak are due to a condition other than loss of HAP. If indications of a leak are determined not to be HAP in one quarterly monitoring period, you must still perform the inspection and demonstration in the next quarterly monitoring period.

(iii) As an alternative to conducting inspections, as specified in paragraph (a)(3)(ii) of this section, you may use Method 21 of 40 C.F.R. Part 60, Appendix A-7, with a leak definition of 500 ppmv to detect leaks. You may also use Method 21 with a leak definition of 500 ppmv to determine if indications of a leak identified during an inspection conducted in accordance with paragraph (a)(3)(ii) of this section are due to a condition other than loss of HAP. The procedures in this paragraph (a)(3)(iii) may not be used as an alternative to the inspection required by paragraph (a)(3)(ii) of this section for process vessels that contain metal HAP as particulate.

(iv) Inspections must be conducted while the subject CMPU is operating.

(v) No inspection is required in a calendar quarter during which the subject CMPU does not operate for the entire calendar quarter and is not in organic HAP

service or metal HAP service. If the CMPU operates at all during a calendar quarter, an inspection is required.”

21. Federal regulations at 40 C.F.R. § 63.11495(4) state that “[y]ou must repair any leak within 15 calendar days after detection of the leak, or document the reason for any delay of repair. For the purposes of this paragraph (a)(4), a leak will be considered “repaired” if a condition specified in paragraph (a)(4)(i), (ii), or (iii) of this section is met.”

22. Federal regulations at 40 C.F.R. § 63.11495(5) state that “[y]ou must keep records of the dates and results of each inspection event, the dates of equipment repairs, and, if applicable, the reasons for any delay in repair.”

23. Federal regulations at 40 C.F.R. § 63.11499(a) state that “[i]f the cooling water flow rate in your heat exchange system is equal to or greater than 8,000 gal/min and is not meeting one or more of the conditions in § 63.104(a), then you must comply with one of the requirements specified in Table 8 to this subpart.”

24. Table 8 to NESHAP VVVVVV, 1.a., states that for “[e]ach heat exchange system with a cooling water flow rate $\geq$ 8,000 gal/min and not meeting one or more of the conditions in § 63.104(a),” you must comply with “the monitoring requirements in § 63.104(c), the leak repair requirements in § 63.104(d) and (e), and the recordkeeping and reporting requirements in § 63.104(f).”

25. Federal regulations at 40 C.F.R. § 63.11501(b) provide a list of additional information that must be included in the Notification of Compliance Status.

26. Federal regulations at 40 C.F.R. § 63.11502(b) define equipment as “each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in or associated with a CMPU.”

Factual Allegation

27. ChemDesign owns and operates a chemical manufacturing facility at 2 Stanton Street in Marinette, Wisconsin (“Facility”).

28. ChemDesign operates a “chemical manufacturing process,” as defined at 40 C.F.R. § 63.11502(b), at the Facility to produce a NAICS code 325 material.

29. ChemDesign operates a CMPU, as defined in 40 C.F.R. § 63.11494(b), that uses methylene chloride at an individual concentration greater than 0.1 percent by weight.

30. According to the Toxics Release Inventory, the Facility has emitted less than 10 tons per year of any hazardous air pollutant and less than 25 tons per year of any combined hazardous air pollutants since at least 2013. ChemDesign’s federally enforceable operating Permit No. 438008340-F20 limits its facility-wide emissions of each HAP to less than 9.5 tons for each period of 12 consecutive months, and, of combined HAPs, to less than 24.5 tons for each period of 12 consecutive months.

31. On April 30, 2019, EPA conducted an unannounced CAA investigation of the Facility for compliance with the NESHAP VVVVVV (2019 Inspection).

32. During the 2019 Inspection, EPA discovered that the Facility has not complied with the NESHAP VVVVVV and requested that ChemDesign conduct an analysis of applicability and compliance requirements with the NESHAP VVVVVV.

33. On May 8, 2019, ChemDesign submitted to EPA a document titled, "Documentation and Evaluation of Applicability and Compliance Requirements for NESHAP VVVVVV," which states, among other things, that the Facility will need to implement a leak detection and repair program on process vessels, equipment, and small heat exchange systems associated with the CMPU. The document states that ChemDesign submitted an initial notification on February 25, 2010, but does not include any information on submission of the Notification of Compliance Status.

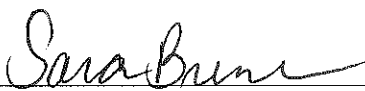
Violations

34. From at least May 2013 to May 2019, ChemDesign failed to comply with applicable leak detection monitoring requirements, leak repair requirements, and recordkeeping and reporting requirements, in violation of NESHAP VVVVVV at 40 C.F.R. §§ 63.11495 and 63.11499(a), and Table 8 to NESHAP VVVVVV, 1.a.

35. ChemDesign failed to submit a Notification of Compliance Status, in violation of NESHAP Subpart A at 40 C.F.R. § 63.9(h)(2)(i) and NESHAP VVVVVV at 40 C.F.R. § 63.11501(b).

Date

8-30-19



for

Michael D. Harris

Acting Director

Enforcement and Compliance Assurance Division

U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources 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.

Office of Small and Disadvantaged Business Utilization (OSDBU)

www.epa.gov/aboutepa/about-office-small-and-disadvantaged-business-utilization-osdbu

EPA's OSDBU advocates and advances business, regulatory, and environmental compliance concerns of small and socio-economically disadvantaged businesses.

EPA's Asbestos Small Business Ombudsman (ASBO)

www.epa.gov/resources-small-businesses/asbestos-small-business-ombudsman or 1-800-368-5888

The EPA ASBO serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

Small Business Environmental Assistance Program

<https://nationalsbeap.org>

This program provides a "one-stop shop" for small businesses and assistance providers seeking information on a wide range of environmental topics and state-specific environmental compliance assistance resources.

EPA's Compliance Assistance Homepage

www.epa.gov/compliance

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

Compliance Assistance Centers

www.complianceassistance.net

EPA sponsored 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

Automotive Recycling

www.ecarcenter.org

Automotive Service and Repair

www.ccar-greenlink.org or 1-888-GRN-LINK

Chemical Manufacturing

www.chemalliance.org

Construction

www.cicacenter.org

Education

www.campuserc.org

Food Processing

www.fpeac.org

Healthcare

www.hercenter.org

Local Government

www.lgean.org

Surface Finishing

<http://www.sterc.org>

Paints and Coatings

www.paintcenter.org

Printing

www.pneac.org

Ports

www.portcompliance.org

Transportation

www.tercenter.org

U.S. Border Compliance and Import/Export Issues

www.bordercenter.org

EPA Hotlines and Clearinghouses

www.epa.gov/home/epa-hotlines

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Examples include:

Clean Air Technology Center (CATC) Info-line

www.epa.gov/catc or 1-919-541-0800

Superfund, TRI, EPCRA, RMP, and Oil Information Center

1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or 1-734-214-4100

National Pesticide Information Center

www.npic.orst.edu or 1-800-858-7378

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

<http://nrc.uscg.mil> or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC) -

www.epa.gov/p2/pollution-prevention-resources#ppic or 1-202-566-0799

Safe Drinking Water Hotline -

www.epa.gov/ground-water-and-drinking-water/safe-drinking-water-hotline or 1-800-426-4791

Toxic Substances Control Act (TSCA) Hotline

tsc hotline@epa.gov or 1-202-554-1404

Small Entity Compliance Guides

<https://www.epa.gov/reg-flex/small-entity-compliance-guides>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

Regional Small Business Liaisons

www.epa.gov/resources-small-businesses/epa-regional-office-small-business-liaisons

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

State Resource Locators

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)

<https://nationalsbeap.org/states/list>

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

EPA's Tribal Portal

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/enforcement/small-businesses-and-enforcement

EPA's Audit Policy

www.epa.gov/compliance/epas-audit-policy

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).

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.

CERTIFICATE OF MAILING

I certify that I sent a Notice of Violation, No. EPA-5-19-WI-06, by Certified Mail, Return

Receipt Requested, to:

Tom Willis, Director of Health,
Environmental and Safety
ChemDesign Products Inc.
2 Stanton Street
Marinette, Wisconsin 54143

I also certify that I sent copies of the Notice of Violation by email to:

Maria Hill, Chief
Compliance, Enforcement, and Emission Inventory Section
Air Management Program
Environmental Protection Division
Wisconsin Department of Natural Resources

On the 9/4/19 day of September 2019.

Kathy Jones

Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7019 0140 0000 6722 3727