

ATTACHMENT 5

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

IN THE MATTER OF:

Packaging Corporation of America, Inc.

Wallula, Washington,

Respondent

NOTICE OF VIOLATION

I. AUTHORITIES

1. Pursuant to Section 113(a) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a), the United States Environmental Protection Agency ("EPA"), through the Director of the Enforcement and Compliance Assurance Division, upon the basis of available information, hereby issues the following Notice of Violation ("NOV") to Packaging Corporation of America, Inc. ("Respondent"). The NOV alleges violations of the CAA at the pulp and paper mill owned and operated by Respondent in Wallula, Washington ("PCA Mill").

2. The Administrator of EPA has delegated the authority to issue NOV's to the Regional Administrator, who has further delegated the authority to the Director of the Enforcement and Compliance Assurance Division, EPA, Region 10.

II. APPLICABLE STATUTES AND REGULATIONS

3. The Clean Air Act establishes a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

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National Emissions Standards for Hazardous Air Pollutants

4. Section 112(c) and (d) of the CAA require EPA to publish a list of categories of “stationary sources” of hazardous air pollutants (“HAPs”), and to promulgate regulations establishing emission standards for “major sources” within those categories. 42 U.S.C. § 7412(c) and (d). These standards are known as the National Emissions Standards for Hazardous Air Pollutants (“NESHAP”) for Source Categories (also referred to as “MACT” standards), and are codified at 40 C.F.R. Part 63.

5. Section 112 of the CAA defines “major source” 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, more than 10 tons per year of any single HAP or 25 tons per year or more of any combination of HAPs. 42 U.S.C. § 7412(a)(1).

6. “Stationary source” under Section 112 has the same meaning as the term has under Section 111(a) of the CAA. 42 U.S.C. § 7412(a)(3).

7. EPA has promulgated general provisions for the Part 63 NESHAP at 40 C.F.R. Part 63, Subpart A (“NESHAP General Provisions”), which contain general provisions that apply as specified in the relevant NESHAP. 40 C.F.R. § 63.1(a)(4)(i).

8. HAPs are defined at 40 C.F.R. § 63.2 to mean pollutants listed in, or pursuant to, Section 112(b) of the CAA. Methanol is a HAP. 42 U.S.C. § 7412(b).

9. “New source” is defined as a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under Section 112

establishing an emission standard applicable to such source. 42 U.S.C. § 7412(a)(4); see also 40 C.F.R. § 63.2.

10. “Existing source” is defined as any stationary source other than a new source. 42 U.S.C. § 7412(a)(10); see also 40 C.F.R. § 63.2.

11. Pursuant to 40 C.F.R. § 63.4(a), no “owner or operator” shall operate any “affected source” in violation of an applicable NESHAP, except under an extension of compliance or exemption from compliance as provided in that section or in CAA Section 112(i)(4), 42 U.S.C. § 7412(i)(4).

12. An “affected source” is defined as a “collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the [CAA].” 40 C.F.R. § 63.2.

13. Pursuant to Section 112(d) of the CAA, on April 15, 1998, EPA promulgated the NESHAP for the Pulp and Paper Industry, codified as Subpart S of the MACT standards (40 C.F.R. §§ 63.440-459) (“NESHAP Subpart S”). NESHAP Subpart S applies to the owner and operator of processes that produce pulp, paper, or paperboard; that are located at a plant site that is a “major source;” and that use the following processes and materials: (1) kraft, soda, sulfite, or semi-chemical pulping processes using wood; or (2) mechanical pulping processes using wood; or (3) any process using secondary or non-wood fibers. 40 C.F.R. §§ 63.440 and 63.441.

14. The NESHAP General Provisions that apply to Subpart S are specified in 40 C.F.R. Part 63, Subpart S, Table 1, and include the definitions in 40 C.F.R. § 63.2, and the prohibition in 40 C.F.R. § 63.4(a).

15. NESHAP Subpart S requires, inter alia, that each Low Volume High Concentration (“LVHC”) system that is at an existing affected source using a kraft pulping process to “be enclosed and vented into a closed vent system and routed to a control device” that meets the requirements specified in 40 C.F.R. § 443(d), 40 C.F.R. § 63.443(a)(1)(i) and (c).

16. “LVHC system” is defined at 40 C.F.R. § 63.441 as “the collection of equipment including the digester, turpentine recovery, evaporator, steam stripper systems, and any other equipment serving the same function as those previously listed.”

17. “Digester system” is defined at 40 C.F.R. § 63.441 as “each continuous or batch digester used for the chemical treatment of wood or non-wood fibers. The digester system equipment includes associated flash tank(s), blow tank(s), chip steamer(s) not using fresh steam, blow heat recovery accumulator(s), relief gas condenser(s), prehydrolysis unit(s) preceding the pulp washing system, and any other equipment serving the same function as those previously listed. The digester system includes any of the liquid streams or condensates associated with batch or continuous digester relief, blow, or flash steam processes.”

18. The control device used to reduce total HAP emissions from the LVHC system must reduce total HAP by using a boiler, lime kiln, or recovery furnace and introducing the HAP emissions stream with the primary fuel or into the flame zone; by reducing total HAP emissions by 98 percent, or ore by weight; by meeting other specified requirements. 40 C.F.R. § 63.443(d).

Requirements for Title V Operating Permits

19. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and the implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including “major sources” as defined in 42 U.S.C. § 7661(2).

20. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that, after the effective date of any permit program approved or promulgated under Title V of the CAA, it shall be unlawful for any person to operate a major source and certain other sources, except in compliance with a permit issued by a permitting authority under Title V of the CAA.

21. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), and 40 C.F.R. § 70.6(a) require that each Title V permit contain enforceable emission limitations and standards and such other conditions as are necessary to assure compliance with all requirements of the CAA.

22. Washington’s Title V operating permit program was granted full approval by EPA on August 13, 2001, (66 Fed. Reg. 42439). Washington’s Title V operating permit program is codified at Washington Administrative Code (“W.A.C.”) 173-401-100 et seq., otherwise known as “Chapter 401” of the Washington Title V operating permit program.

23. Violations of Title V program requirements and permits are subject to federal enforcement under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

GENERAL FINDINGS

24. Respondent is incorporated in Delaware as Packaging Corporation of America, Inc., and is licensed to do business in Washington.

25. Respondent is and has been at all relevant times the “owner” and “operator” of the PCA Mill within the meaning of the CAA, and NESHAP Subpart S. See 40 C.F.R. § 63.2.

26. The PCA Mill produces pulp from wood by cooking (digesting) wood chips in a water solution of sodium hydroxide and sodium sulfide at high temperature and pressure. The PCA Mill thus uses a “kraft pulping” process as that term is defined in 40 C.F.R. § 63.441 to produce pulp, paper, or paperboard within the meaning of 40 C.F.R. § 63.440(a).

27. The digestion process creates pulp along with gaseous byproducts that include volatile organic HAPs (e.g., methanol, acrolein, acetaldehyde, toluene, hexane, and formaldehyde) and Total Reduced Sulfur (“TRS”).

28. The PCA Mill is a “major source” as defined in Section 112 of the CAA, 42 U.S.C. § 7412(a) and 40 C.F.R. § 63.2, because it is a group of stationary sources that emits or has the potential to emit considering controls, in the aggregate, more than 10 tons per year of any single HAP or 25 tons per year or more of any combination of HAPs.

29. Respondent is currently operating the PCA Mill under a Title V operating permit issued by the Washington Department of Ecology (“Ecology”) on March 30, 2018, pursuant to Title V, Section 502 of the CAA, 42 U.S.C. § 7661a (the “PCA Title V Permit”).

30. The PCA Mill operates two digesters known as the #1 and #2 Messing and Durkee continuous digesters (“M&D Digesters”).

31. Each M&D Digester at the PCA Mill is a continuous digester used for the chemical treatment of wood or non-wood fibers, and is therefore part of a “digester system” as

defined in 40 C.F.R. § 63.441. Consequently, NESHAP Subpart S applies to each M&D Digester.

32. In addition, each M&D Digester is part of a “Low Volume, High Concentration” or LVHC System as defined in 40 C.F.R. § 63.441.

33. Condition N of the PCA Title V Permit requires Respondent to enclose and control all HAP emissions from each LVHC system (which includes M&D Digesters #1 and #2), as specified in Conditions N.1 through N.3.

34. Condition N.1 and N.2 of the PCA Title V Permit require that LVHC equipment systems (which includes M&D Digesters #1 and #2), must be enclosed and vented to a closed-vent system and routed to a control device that meets the requirements specified in Condition N.3. Conditions N.1 and N.2 cite to 40 C.F.R. § 63.443(c) as a basis for those conditions.

35. Condition N.3 of the PCA Title V Permit states that the control device used to reduce total HAP emissions from each LVHC equipment system (which includes M&D Digesters #1 and #2), must be one of the control devices specified in that condition and must meet certain specified requirements. Condition N.3 cites to 40 C.F.R. § 63.443(d)(4) as a basis for that condition.

36. Because the M&D Digesters at the PCA Mill are part of the LVHC system, they are not included within the definition of “clean condensate alternative affected source” and are not subject to Respondent’s Clean Condensate Alternative plan. See 40 C.F.R. § 63.447(a)(1).

37. EPA conducted an inspection of the PCA Mill on September 19, 2018.

38. During the September 2018 inspection, the EPA inspector observed that not all emissions from M&D Digester #1 were routed to a control device meeting the requirements of 40 C.F.R. §§ 63.443(d) and Section N of the PCA Title V Permit. Specifically, the EPA inspector observed that some digester gases were vented from the rotary valve feeding M&D Digester #1 to a secondary relief line, which in turn was routed either directly to the surge bin associated with M&D Digester #1, or first to the metering screw associated with M&D Digester #1 and then to the surge bin. The surge bin has a vent which exhausts directly to atmosphere.

39. During the September 2018 inspection, M&D #2 had been shut down and the digester and associated venting, including the secondary relief line on the rotary valve of the M&D Digester #2, had been partially disassembled, with some areas around the inlet rotary valve and associated process equipment obscured by construction sheeting.

40. According to the piping and instrumentation diagram provided by Respondent to the EPA inspector during the inspection, M&D Digester # 2 had the same configuration with respect to emissions from its rotary valve as the inspector observed for M&D Digester # 1: some digester gases were vented from the rotary valve feeding M&D Digester #2 to a secondary relief line, which in turn was routed either directly to the surge bin associated with M&D Digester #2, or first to the metering screw associated with M&D Digester #2 and then to the surge bin. This surge bin also had a vent which exhausted directly to atmosphere.

41. Therefore, based on information and belief, prior to being temporarily shut down in 2018, not all emissions from M&D Digester #2 were routed to a control device meeting the requirements of 40 C.F.R. §§ 63.443(d) and Section N of the PCA Title V Permit.

III. VIOLATIONS

Failure to Enclose and Route the M&D Digesters to a Control Device

42. From 2001 to at least September 2018, not all gases from M&D Digester #1 at the PCA Mill were enclosed and vented into a closed-vent system and routed to a control device meeting the requirements specified in 40 C.F.R. § 63.443(d) and Condition N of the PCA Title V Permit.

43. From 2001 to at least September 2018, not all gases from M&D Digester #2 at the PCA Mill were enclosed and vented into a closed-vent system and routed to a control device meeting the requirements specified in 40 C.F.R. § 63.443(d) and Condition N of the PCA Title V Permit.

44. The failure to enclose and vent into a closed-vent system and route to a control device meeting the requirements specified in 40 C.F.R. § 63.443(d) and Condition N of the PCA Title V Permit all emissions from M&D Digesters # 1 and 2, as set forth in the Paragraphs 42 and 43, violates Section 112(d) of the CAA, 42 U.S.C. § 7412, and NESHAP Subpart S, 40 C.F.R. § 63.443(a)(1)(i), 63.443(c) and 63.443(d), as well as Section 502(a) of the CAA, 42 U.S.C. § 7661(a), and Condition N of the PCA Title V Permit.

IV. ENFORCEMENT

45. Violations of the CAA may result in a civil administrative or judicial action for an injunction or civil penalties as provided in Section 113(b) and 113(d)(1) of the CAA, 42 U.S.C. § 7413(b) and 7413(d)(1), and 40 C.F.R. § 19.4, as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c).

46. Section 113 of the CAA authorizes EPA to issue an order requiring any person that is in violation of the CAA, including an approved State, Tribal, or Federal Implementation Plan or any regulations or permits promulgated under the CAA, to comply with the requirements of the CAA, Implementation Plan, regulations, or permits.

47. This Notice of Violation does not waive or limit EPA's right to any remedy available to it under the CAA.

48. This Notice of Violation shall be effective immediately upon issuance.

Issued this 8th day of August 2019.



Edward J. Kowalski, Director
Enforcement and Compliance Assurance Division