

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

WAUKESHA COUNTY

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 11-CX-____

WISMARQ CORPORATION,
a domestic business corporation
930 Armour Road
Post Office Box 47
Oconomowoc, Wisconsin 53066-0047,

Defendant.

Complex Forfeiture: 30109

THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(d).

COMPLAINT

The State of Wisconsin, by Attorney General J.B. Van Hollen and Assistant Attorney General Steven Tinker, brings this action against Wismarq Corporation at the request of the Wisconsin Department of Natural Resources and alleges as follows:

1. The plaintiff is a sovereign state of the United States of America with its principal offices at the State Capitol in Madison, Wisconsin. The plaintiff has enacted Wis. Stat. ch. 285 statutes governing sources of air contaminant emission so as to prevent and reduce air pollution, and its Department of Natural Resources (DNR) administers regulations in Wis. Admin. Code chs. NR 400 to 499 as authorized by Wis. Stat. § 285.11 to enhance the quality, management and protection of the state's air resources.

2. Defendant Wismarq Corporation (Wismarq) is a domestic business corporation in the State of Wisconsin that owns and operates a metal coating facility ("the facility") specializing in steel and aluminum coating services. The facility is located at 930 Armour Road, Oconomowoc, Waukesha County, Wisconsin 53066-0047.

3. Wismarq was issued Air Management Operation Permit # 268016210-P10 ("the permit") by the DNR on September 12, 2007, and Wis. Stat. § 285.60(7) requires that Wismarq meet the specific air pollution control conditions listed in the permit.

4. Part I, A., 2., b., (6), (b) of the permit states that if Wismarq uses incineration to achieve compliance with the federal Volatile Organic Compound (VOC) New Source Performance Standard (NSPS) emission limitation, Wismarq shall conduct a compliance emission test of the incinerator and coating line's VOC capture system every twenty-four months, to determine the coating line's VOC capture efficiency, the incinerator's VOC destruction efficiency, and the average combustion temperature of the incinerator during the time the test was being performed. Each biennial test shall be performed within ninety days of the anniversary date of the most recent compliance emission test that is accepted by DNR.

5. DNR Air Management Engineer George Volpentesta conducted an inspection of the facility on January 30, 2008, and Wismarq's chief executive officer and registered agent, Charles Terrizzi, told him he wanted to delay the incinerator emission test until Wismarq installed a single, new incinerator to replace the current incinerators. Terrizzi did not ask for a formal extension of the deadline and none was authorized.

6. On March 4, 2008, Terrizzi told Volpentesta that the incinerator would be installed by the end of April 2008 and that the testing would occur soon thereafter.

7. The facility began use of the single incinerator in May of 2008.

8. Wismarq used a coating line VOC capture system and two incinerators to reduce VOCs to non-organic compounds until May 2008 when they installed one new incinerator to replace the two old ones. They conducted a compliance emission test of the new incinerator on March 26, 2009, ten months after installation, and three years and five months after the last emission test which was conducted on October 19, 2005.

9. Part I, A., 3.1., f., (g) of the permit requires the facility to prepare semi-annual compliance reports verifying that the facility is in compliance with the conditions of its permit, for January 1 through June 30, and for July 1 through December 31. The facility is required to postmark or hand-deliver the reports to DNR no later than July 31 and January 31 each year. The reports must identify the hazardous air pollutant (HAP) compliance options Wismarq used for each coating operation during the reporting period. If there are deviations from the standards during the reporting period, the report must provide detailed information on each deviation.

10. During an inspection on September 11, 2009, Volpentesta asked Wismarq for a copy of the semi-annual HAP compliance report for January 1 through June 30, 2009. The permit requires that the report be postmarked or delivered to DNR no later than July 31, 2009.

11. DNR requested the report numerous times before issuing a Letter of Noncompliance on October 30, 2009. DNR did not receive the January 1-June 30, 2009, report until January 19, 2010.

12. Wismarq failed to submit their semi-annual compliance report for July 1-December 31, 2010, by its due date of January 30, 2011, and has yet to file it with the DNR.

13. Part I, A., 3.4., 1). of the permit limits individual federal HAP emissions from the facility to 1,666.67 pounds per month averaged in any twelve consecutive months, and combined emissions of federal HAPs to 4,166.67 pounds per month averaged in any twelve consecutive months. The compliance method found in Part I, A., 3.4., 2)., 2. states:

The permittee shall collect and record the following information for the facility:

- (a) A unique name or identification number for each coating, thinner and other solvents used in the facility;
- (b) The content of VOC and HAPs in each coating, thinner and other solvents used in the facility; Monthly records of VOC emissions, individual federal HAP and the total combined federal HAPs emissions from the facility. Emissions of VOC and federal HAPs shall be determined based on actual usage of VOC and federal HAP in the VOC and federal HAP containing materials.

14. During the September 11, 2009, inspection Volpentesta requested records of the facility's HAP emissions for January 1 through December 30, 2008. Wismarq did not provide him with the documentation during the visit.

15. Between September 11 and October 30, 2009, Volpentesta requested the information several times over the phone.

16. On October 30, 2009, Volpentesta sent a Letter of Noncompliance and again requested the information.

17. On November 9, 2009, Volpentesta sent an email to Terrizzi requesting the information.

18. On November 16, 2009, Volpentesta left a phone message on Terrizzi's voice mail asking for the information.

19. DNR sent a Notice of Violation to Wismarq on December 8, 2009, for failing to provide this information.

20. DNR held an enforcement conference with representatives of Wismarq on January 14, 2010. None of the information required under Part I, A., 3.1., f., (g) and Part I, A., 3.4., 2), 2. was brought to the enforcement conference. The information was not sent to DNR until January 19, 2010.

21. Part I, C., c. of the permit states:

Compliance Certification

- (1) The permittee shall submit an annual certification of compliance with the requirements of this permit to the Wisconsin Department of Natural Resources, Southeast Region Air Program and the Air and Radiation Division of the U.S. EPA.
- (2) The time period to be addressed by the report is January 1 to December 31 period which precedes the report.
- (3) The report shall be submitted to the Wisconsin Department of Natural Resources, Southeast Region Air Program - Waukesha Service Center, 141 NW Barstow St., Room 180, Waukesha, WI, Phone 262-574-2155 and to Compliance Data - Wisconsin, Air and Radiation Division, U.S. EPA, 77 W. Jackson, Chicago, IL 60604 within 45 days after the end of each reporting period.

(4) The information included in the report shall comply with the requirements of Part II Section N of this permit.

(5) Each report shall be certified by a responsible official as to the truth, accuracy and completeness of the report.

22. On May 19, 2011, Volpentesta emailed Jerry Neubert, Plant Manager, and Terrizzi requesting the annual compliance certification.

23. On July 12, 2011, in a phone conversation with Neubert, Volpentesta again requested the annual compliance certification.

24. Wismarq has failed to submit their annual compliance certification for January through December, 2010, which was due February 15, 2011.

FIRST CLAIM: FAILURE TO CONDUCT VOC EMISSION TESTS

25. Part I, A., 2., b., (6), (b) of the permit states that if Wismarq uses incineration to achieve compliance with the federal VOC NSPS emission limitation, Wismarq shall conduct a compliance emission test of the incinerator and coating line's VOC capture system every twenty-four months, to determine the coating line's VOC capture efficiency, the incinerator's VOC destruction efficiency, and the average combustion temperature of the incinerator during the time the test was being performed. Each biennial test shall be performed within ninety days of the anniversary date of the most recent compliance emission test that is accepted by DNR.

26. Wismarq violated Wis. Stat. § 285.60(7) and Part I, A., 2., b., (6), (b) of the permit by failing to conduct a compliance emission test of its incinerators and coating

line's VOC capture system every twenty-four months between January 19, 2008, until March 26, 2009.

SECOND CLAIM: FAILURE TO SUBMIT COMPLIANCE REPORT

27. Part I, A., 3.1., f., (g) of the permit requires the facility to prepare semi-annual compliance reports verifying that the facility is in compliance with the conditions of its permit, for January 1 through June 30, and for July 1 through December 31. The facility is required to postmark or hand-deliver the reports to DNR no later than July 31 and January 31 each year.

28. Wismarq violated Wis. Stat. § 285.60(7) and Part I, A., 3.1., f., (g) of the permit by failing to submit its January 1- June 30, 2009, semi-annual compliance report from July 31, 2009, until January 19, 2010, and its July 1-December 31, 2010, semi-annual compliance report.

THIRD CLAIM: FAILURE TO MEET RECORDKEEPING REQUIREMENTS

29. Part I, A., 3.4., 2), 2. of the permit states:

The permittee shall collect and record the following information for the facility:

(a) A unique name or identification number for each coating, thinner and other solvents used in the facility;

(b) The content of VOC and HAPs in each coating, thinner and other solvents used in the facility; Monthly records of VOC emissions, individual federal HAP and the total combined federal HAPs emissions from the facility. Emissions of VOC and federal HAPs shall be determined based on actual usage of VOC and federal HAP in the VOC and federal HAP containing materials.

30. Wismarq violated Wis. Stat. § 285.60(7) and Part I, A., 3.4., 2), 2. of the permit when it did not collect, record, or report the required information on HAP emissions for January 1, 2008, to December 31, 2008, until January 19, 2010.

FOURTH CLAIM: FAILURE TO SUBMIT ANNUAL COMPLIANCE
CERTIFICATION

31. Part I, C., c. of the permit states:

Compliance Certification

- (1) The permittee shall submit an annual certification of compliance with the requirements of this permit to the Wisconsin Department of Natural Resources, Southeast Region Air Program and the Air and Radiation Division of the U.S. EPA.
- (2) The time period to be addressed by the report is January 1 to December 31 period which precedes the report.
- (3) The report shall be submitted to the Wisconsin Department of Natural Resources, Southeast Region Air Program - Waukesha Service Center, 141 NW Barstow St., Room 180, Waukesha, WI, Phone 262-574-2155 and to Compliance Data - Wisconsin, Air and Radiation Division, U.S. EPA, 77 W. Jackson, Chicago, IL 60604 within 45 days after the end of each reporting period.
- (4) The information included in the report shall comply with the requirements of Part II Section N of this permit.
- (5) Each report shall be certified by a responsible official as to the truth, accuracy and completeness of the report.

32. Wismarq violated Wis. Stat. § 285.60(7) and Part I, C., c. of the permit when it did not submit the required annual certification of compliance for January 1, 2010, to December 31, 2010, by February 15, 2011.

PENALTIES

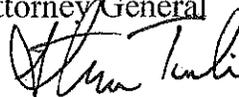
33. Under Wis. Stat. § 285.87(1) "any person who violates this chapter or any rule promulgated, any permit issued or any special order issued under this chapter shall forfeit not less than \$10 or more than \$25,000 for each violation. Each day of continued violation is a separate offense."

WHEREFORE, plaintiff asks the Court to enter judgment as follows:

1. Forfeitures as provided in Wis. Stat. § 285.87(1);
2. The 26% penalty surcharge provided for in Wis. Stat. § 814.75(18), the 10% environmental surcharge (for violations committed before July 1, 2009) and 20% environmental surcharge (for violations committed on or after July 1, 2009) provided for in Wis. Stat. § 814.75(12), the \$25.00 court costs pursuant to Wis. Stat. § 814.63(1), the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68.00 court support services surcharge pursuant to Wis. Stat. § 814.75(2), the 1% jail surcharge pursuant to Wis. Stat. § 814.75(14), and the \$21.50 justice information system surcharge pursuant to Wis. Stat. § 814.75(15); and
3. Such other relief as the Court may find just and appropriate.

Dated this 22nd day of December, 2011.

J.B. VAN HOLLEN
Attorney General



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