



REGIONAL AIR POLLUTION CONTROL AGENCY

Serving Clark, Darke, Greene, Miami, Montgomery & Preble Counties
117 South Main Street, Dayton, Ohio 45422-3280
(937) 225-4435 – Fax: (937) 225-3486

www.rapca.org

March 7, 2012

Certified Mail

Brad M. Malatesta, President
Clean Water Ltd.
2480 Jackson Pike
Columbus, OH 43223

NOTICE OF VIOLATION (Non-HPV)

Summary: Clean Water Ltd. Operates a Title V facility at 300 Cherokee Drive in Dayton, Ohio. Clean Water Ltd. has been in receipt of a highly odiferous refinery oil which has caused a dramatic increase in odor complaints and has led to a nuisance condition in the neighborhood. Enforcement orders may be issued in the future to resolve this violation.

Dear Mr. Malatesta:

The Regional Air Pollution Control Agency (RAPCA) received seventeen complaints from February 14 through March 6, 2012 regarding strong odors being emitted from the Clean Water Ltd. (CWL) facility (Ohio EPA ID: 0857751312) located at 300 Cherokee Dr, Dayton, Ohio, 45417. RAPCA investigated the complaints and met with CWL representatives on February 22 and March 1, 2012. The cause of the odors was determined to be a refinery oil with a higher than normal hydrogen sulfide (H₂S) content.

RAPCA documented moderate to strong odors associated with the refinery oil in the vicinity of CWL on February 22, 23, 26, 28, and March 1 and 2. RAPCA has determined that all of the seventeen complaints received by RAPCA and/or the NEC/CWL odor hotline were made in response to the high H₂S content refinery oil. On March 1, 2012, CWL provided RAPCA with documentation indicating that at least 58,060 gallons of the high sulfur refinery oil was accepted from February 13-20 and that at least two additional shipments were accepted the week of February 5-9.

CWL agreed to the terms and conditions of the Consent Decree that became effective on February 12, 2008; subsequently, many of these terms became applicable requirements of the Permit to Install (PTI) P0105924 which became effective on November 2, 2010. The following outlines some of the requirements of the CD and the PTI that specifically deal with the actions CWL shall

take to ensure compliance with the permit limitations, Subpart DD and to avoid excessive odors off-site:

- CWL shall implement and follow a Material Acceptance Standard Operating Procedure (SOP) manual (see PTI term B.8.)
 - The purpose of the Material Acceptance SOP is to implement on-going measures to minimize and reduce odors from all emissions units at the facility by restricting the types of materials accepted and handled at the facility, in order to ensure that excessive odors will not occur off-site (see CD paragraph 33)
- Develop and implement a community response plan that includes investigation procedures for responding to air pollution complaints (see PTI term B.10.)
 - To ensure timely complaint response, the complaint hotline was established as a result of the NEC/CWL agreement dated October 14, 2008 (see paragraph 2)

The following summarizes how CWL failed to meet the above outlined requirements:

- The off-site odors observed by RAPCA and the excessive number of citizen complaints received are evidence that highly odorous materials were accepted at the plant. As such, CWL's Material Acceptance SOP manual is deficient and/or was not implemented sufficiently to prevent excessive off-site odors.
- CWL was not aware of the complaints made to the hotline after the close of business on February 17 through the morning of February 21. As a result, CWL failed to respond to the complaints in a timely manner. While CWL explained the issue was with CWL's email server, this is a clear indication that the complaint procedures in place are not adequate.

The lack of proper implementation of the Material Acceptance SOP and/or because the procedure is deficient led to CWL accepting at least nine shipments of refinery oil with a high concentration of the odorous compound - hydrogen sulfide (H₂S). This in combination with the inadequate complaint response procedures in place resulted in CWL's failure to respond and to take corrective actions in a timely manner. These deficiencies and/or lack of proper implementation of the plans required by the CD and PTI P0105924 are violations of the CD, PTI P0105924, and the Ohio Revised Code (ORC) 3704.05.

In addition, RAPCA has determined this odor episode associated with the high H₂S content refinery oil caused and is continuing to cause an air pollution nuisance, including possible adverse health effects, in violation of Ohio Administrative Code (OAC) rule 3745-15-07, Montgomery County Combined General Health District Air Pollution Control Regulations (MCCGHDAPCR) 3745-15-07, PTI P0105924, and Ohio Revised Code (ORC) 3704.05.

Clean Water Ltd.

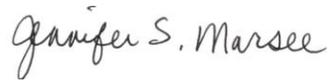
March 7, 2012

Page 3

In order to resolve the violations cited above, RAPCA requires that CWL submit a corrective action plan that will address this situation and prevent it from re-occurring in the future. The plan shall include, but is not limited to: (1) control the odor while developing and implementing a plan and schedule for the removal of the remaining refinery oil (containing the high H₂S concentration) from CWL as expeditiously as possible, (2) revising the Complaint Handling Plan to ensure timely response to all complaints, (3) revising the Material Acceptance SOP manual to address deficiencies and to ensure there will be no future acceptance of highly odiferous material, and (4) provide training to assure that all employees are trained in these procedures to reduce excessive off-site odors. Acceptance of the corrective action plan does not constitute a waiver of Ohio EPA's and RAPCA's authority to seek civil penalties as provided in section 3704.06 and 3707.49 of the Ohio Revised Code. The determination whether to pursue such penalties will be made by Ohio EPA and RAPCA at a later date.

If you have any question regarding this matter, please contact Jefferis R. Canan at (937) 225-5934, or me at (937) 496-7540.

Sincerely,



Jennifer S. Marsee
Supervisor, Abatement Unit
Regional Air Pollution Control Agency

Cc: John Paul, RAPCA
Jefferis Canan, RAPCA
Michael Matis, PHDMC
William MacDowell, U.S. EPA
Tom Kalman, Ohio EPA