UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 Ross Avenue
Dallas, Texas 75202-2733

July 7, 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7007 2560 0002 7737 3602

Mr. Randall P. Smith
Vice President/General Manager
Formosa Plastics Corporation and Formosa Hydrocarbons Company
P.O. Box 700
201 Formosa Dr.
Point Comfort, TX 77987

Subject: Notice and Finding of Violations

Dear Mr. Smith:

Enclosed is a Notice and Finding of Violations (Notice) issued to Formosa Plastics Corporation and Formosa Hydrocarbons Company (collectively, "the Company") pursuant to Section 113(a)(1) and (3) of the Clean Air Act, 42 U.S.C. § 7413(a)(1) and (3). In the Notice, the Environmental Protection Agency is notifying the Company of violations of the Texas State Implementation Plan, Code of Federal Regulations and the Title V permitting requirements at its plant in Point Comfort, Texas.

Please note Section E. of the Notice - Opportunity for Conference. As indicated in the Notice, any request to confer should be directed to Marcia E. Moncrieffe, Senior Enforcement Counsel, at (214) 665-7343.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: John Sadlier, Deputy Director
Office of Compliance & Enforcement
Texas Commission on Environmental Quality

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
FORMOSA PLASTICS CORPORATION AND FORMOSA HYDROCARBONS COMPANY	)	PROCEEDING PURSUANT TO SECTION 113 OF THE CLEAN AIR ACT
POINT COMFORT, TEXAS	)	

NOTICE AND FINDING OF VIOLATIONS

This Notice and Finding of Violations (Notice) is issued to Formosa Plastics Corporation ("Formosa") and Formosa Hydrocarbons Company ("FHC") (collectively, "the Company") for violations of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7401 *et seq.* Specifically, the Company violated the Texas State Implementation Plan ("SIP"), the Code of Federal Regulations ("CFR"), and/or the respective Title V permitting requirements for the facilities. Formosa is a corporation organized and existing under the laws of the State of Delaware and doing business in the State of Texas and FHC is a separate legal entity and a sister company of Formosa.

This action pertains to the Formosa facility located at 201 Formosa Texas Drive, Point Comfort Texas and the adjacent FHC facility located at 103 Fannin Road, Point Comfort, Texas. At all times relevant to this action, the Company owned and operated the facilities.

This Notice is issued pursuant to Sections 113(a)(1) and (3) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §§ 7413(a)(1) and (3). The authority to issue this Notice has been delegated to the Regional Administrator of EPA Region 6, and redelegated to the Director, Compliance Assurance and Enforcement Division, EPA Region 6.

A. STATUTORY AND REGULATORY BACKGROUND

1. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, each State must adopt and submit to EPA for approval, a SIP that provides for attainment and maintenance of the national ambient air quality standards ("NAAQS"). The State of Texas has adopted a SIP that has been approved by EPA. 40 C.F.R. Part 52, Subpart SS. The Texas SIP relevant provisions of 30 Texas Administrative Code ("TAC"). Chapter 116 – Control of Air Pollution by Permits for New Construction or Modification. 40 C.F.R. § 52.2270(c). Violations of a federally approved Texas SIP are federally enforceable pursuant to Sections 110 and 113 of the Act, 42 U.S.C. §§ 7410 and 7413.

2. Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), requires each State to develop and submit to EPA an operating permit program which meets the requirements of Title V. On November 30, 2001, EPA granted full approval to the Texas Title V operating permits program. 40 C.F.R. Part 70, Appendix A. Major stationary sources of air pollution and other sources covered by Title V are required to obtain an operating permit that includes emission limitations and such other conditions necessary to assure compliance with all applicable requirements of the Act. Sections 502(a) and Section 504(a) of the Act, 42 U.S.C. §§ 7661a(a) and 7661c(a).

3. The Title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as "applicable requirements"), but does require permits to contain monitoring, recordkeeping, reporting, and other requirements to assure compliance by sources with existing applicable requirements as found in 57 *Fed. Reg.* 32250, 32251 (July 21, 1992).

4. Under 40 C.F.R. § 70.1(b), "all sources subject to [Title V must] have a permit to operate that assures compliance by the source with all applicable requirements." Applicable requirements are defined in 40 C.F.R. § 70.2 to include "(1) any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the [Clean Air] Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [40 C.F.R. Part 52]."

5. Texas defines "applicable requirement" in relevant part, to include "[30 TAC] Chapter 116 . . . (relating to Control of Air Pollution by Permits for New Construction or Modification) and any term or condition of any preconstruction permit". 30 TAC § 22.10(2)(H). Therefore, any term or condition of a preconstruction permit issued pursuant to a federally approved provision of Chapter 116 included in a Title V permit is federally enforceable.

B. PRELIMINARY ALLEGATIONS

6. The Company is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

7. In November 2003 and February 2004, teams of EPA inspectors and engineers from Region 6 and the National Enforcement Investigation Center, along with representatives of the State of Texas, conducted an inspection of the Company's facilities (the Inspection).

C. FINDING OF VIOLATIONS

8. Paragraphs 1 – 7 are realleged and incorporated by reference.

Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry

9. Pursuant to 40 C.F.R. § 60.480, the Company operates an affected facility since it produces polyvinyl chloride and commenced construction after January 5, 1981. 40 C.F.R. Part 60, subpart VV is therefore applicable to Formosa's operation, specifically the Purification Unit (PPU), the High Density Polyethylene II Plant (HDPE II), the FHC, the High Density Polyethylene I (HDPE), the Linear Low Density Polyethylene (LLDPE), the Marine Traffic (MT), the Polypropylene (PPVOC), the Olefins II (OLII), the Polypropylene II (PPII), and the Olefins units.

10. Pursuant to 40 C.F.R. § 60.482-7(a), each valve shall be monitored monthly to detect leaks by the methods specified in 40 C.F.R. § 60.485(b) and shall comply with 40 C.F.R. §§ 60.482-7(b) through (e), except as provided in 40 C.F.R. §§ 60.482-7(f), (g), and (h) and 40 C.F.R. §§ 60.483-1, 2, and 40 C.F.R. § 60.482-1(c).

11. Pursuant to 40 C.F.R. § 60.482-7(c)(2), if a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months. 40 C.F.R. § 60.482-7(b) defines a leak to be an instrument reading that measures a reading of 10,000 ppm or greater.

12. Pursuant to 40 C.F.R. § 60.482-7(d)(1), when a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after the leak is detected, except as provided in 40 C.F.R. § 60.482-9.

13. Pursuant to 40 C.F.R. § 60.482-7(d)(2), a first attempt at repair shall be made no later than five calendar days after each leak is detected.

14. Pursuant to 40 C.F.R. §§ 60.482-6(a)(1) and (2), each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in 40 C.F.R. § 60.482-1(c). The cap, blind flange, plug or a second valve shall seal the open end at all times except during operations requiring process fluid through the open-ended valve or line.

15. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, each state shall, after reasonable notice and public hearings, adopt and submit to the administrator, a SIP which provides for implementation, maintenance, and enforcement of the national primary and secondary NAAQS in such state.

16. In accordance with Section 110 of the CAA, 42 U.S.C. § 7410, on June 17, 1998, the State of Texas adopted regulations Title 30 TAC §§ 116.115 and 116.116(b) that became effective July 8, 1998. 30 TAC §§ 116.115 and 116.116(b) were approved by EPA (67 FR 58697) on September 18, 2002, and became federally enforceable on October 18, 2002.

17. In accordance with Section 110 of the CAA, 42 U.S.C. § 7410, on November 20, 2002, the State of Texas adopted regulations Title 30 TAC §§ 116.115 and 116.116(b)) that became effective December 11, 2002. These particular versions of 30 TAC §§ 116.115 and 116.116(b) were approved by EPA (67 FR 64543) on November 14, 2003, and became federally enforceable on December 15, 2003.

18. Pursuant to 30 TAC § 116.115(c) of the Texas SIP (General and Special Conditions), the permit holders shall comply with all special conditions contained in the permit document.

19. Pursuant to 30 TAC § 116.116(b) of the Texas SIP, on December 17, 2002, the Texas Commission on Environmental Quality ("TCEQ"), issued to Formosa an Air Preconstruction Permit and Amendments (Permit Numbers 19166 and PSD-TX-760M6) for its High Density Polyethylene I Plant and Traffic units.

20. Pursuant to 30 TAC § 116.116(b) of the Texas SIP, on October 16, 2002, the TCEQ issued to Formosa an Air Preconstruction Permit and Amendments (Permit Numbers 19200 and PSD-TX-760M5) for its Polypropylene II Plant.

21. Pursuant to 30 TAC § 116.116(b) of the Texas SIP, on November 2, 2002, the TCEQ issued to Formosa an Air Preconstruction Permit and Amendments (Permit Numbers 19168 and PSD-TX-760M6) for its OLEFINS I unit.

22. Pursuant to 30 TAC § 116.116(b) of the Texas SIP, on January 27, 2004, the TCEQ issued to Formosa an Air Preconstruction Permit and Amendments (Permit Numbers 7699 and PSD-TX-226M6) for its Vinyl Chloride Monomer (VCM) and PVC units.

23. Pursuant to 30 TAC § 116.116(b) of the Texas SIP, on November 19, 2003, the TCEQ confirmed that Formosa's Air Preconstruction Permit and Amendments (Permit Numbers 20203 and PSD-TX-760M6) for Formosa's LLDPE unit was renewed and approved on October 9, 2003.

24. Pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), whenever on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator after a thirty-day notice may bring a civil action in accordance with Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

25. Pursuant to Permit Numbers 19166 and PSD-TX-760M6; 19200 and PSD-TX-760M5, 7699 and PSD-TX-226M6; 20203 and PSD-TX-760M6; and 19168 and PSD-TX-760M6, Special Conditions H, damaged or leaking valves, flanges, compressor seals, and pump seals found to be emitting VOC in excess of 500 ppmv or found by visual inspection to be leaking, shall be tagged, and replaced or repaired. Every reasonable effort shall be made to repair a leaking component, as specified in this paragraph, within 15 days after the leak is found. If the repair of a component would require a unit shutdown, the repair may be

delayed until the next scheduled shutdown. All leaking components which cannot be repaired until a scheduled shutdown shall be identified for such repair by tagging.

26. During the Inspection, the inspectors reviewed Formosa's Valve Monitoring Events by Quarter. Based upon the facility's monitoring record, the inspectors concluded that from January 2000 through November 2003, Formosa failed to monitor approximately 5,670 valves in the PPU and in HDPE II units. Formosa has not provided EPA with any documentation to demonstrate that any of the aforementioned exceptions applied to the PPU and the HDPE II units. Formosa violated 40 C.F.R. § 60.482-7(a) by failing to monitor monthly approximately 5,670 valves.

27. A review of Formosa's Monthly Remonitoring Summary record, from January 1999 through August 2003, shows recorded leak readings of 10,000 ppm or greater for 42 valves. Nine of the valves are located at the FHC unit; two each in the HDPE, HDPE II and LLDPE units; one each in the MT and PPVOC units; four each in the OLII, PPII, PPU units and the remaining 13 in the OLEFINS unit. The Monthly Remonitoring Summary record also shows that on 62 separate occasions, Formosa did not monitor valves until a leak was undetected for two successive months. Formosa has therefore violated 40 C.F.R. 60.482-7(c)(2) by failing to comply with the monitoring standards set forth for valves in gas/vapor service and in light liquid service.

28. During the Inspection, the inspectors identified 66 valves in the LLDPE and HDPE units that were not monitored since the third quarter of 2002. Formosa violated 40 C.F.R. § 60.482-7(a) by not monitoring its valves monthly.

29. During the Inspection in November 2003, the inspectors monitored 3,300 valves in seven process units located at the Formosa facility. In February 2004, the inspectors remonitored three of the previous seven process units, monitoring 49 valves. The inspectors following Method 21 found 77 valves leaking greater than 500 ppm, resulting in a leak rate of 2.18 %. Formosa reported a leak rate of .47 % for its monitoring conducted May through August 2003, which is considerably lower than the leak rate calculated by the inspectors. Formosa has therefore violated its PSD Permits by not accurately following Method 21.

30. In reviewing Formosa's LDAR record-keeping databases, the inspector documented 52 valves that had a leak reading of more than 500 ppm from September 1999 through November 2003. Twenty-six of these valves had a leak reading of more than 10,000 ppm during the same time period. In discussions with Formosa, Formosa submitted written documentation explaining the status of the 52 valves: 23 of the violations are beyond the statute of limitation; 20 are in compliance; and nine are outstanding. Formosa has therefore violated its PSD Permits, the SIP, and 40 C.F.R.§ 60.482-7(d)(2), by not attempting a first repair no later than five calendar days after each leak is detected.

31. In reviewing Formosa's LDAR record-keeping databases, the inspector documented 68 valves that had a leak reading of over 500 ppm from January 1999 through November 2003. Fifty-three of these valves had a leak reading of more than 10,000 ppm during the same time period. In discussions with Formosa, Formosa submitted written documentation explaining the

status of the 68 valves: nine of the violations are beyond the statute of limitation; 53 are in compliance; and six are outstanding. Formosa has violated its PSD Permits, the SIP, and 40 C.F.R. § 60.482-7(d)(1), by not repairing a detected leak as soon as practicable, but no later than 15 calendar days after the leak is detected.

32. During the Inspection, the inspectors observed and documented one open-ended line in the HDPE unit. The open-ended line was not closed with a cap, blind flange, plug, or a second valve. Formosa has not provided EPA with evidence of an applicable exception. Formosa has therefore violated 40 C.F.R. §§ 60.482-6(a)(1) and (2) by not closing its open-ended line.

National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

33. Pursuant to 40 C.F.R. § 63.160(a), valves that are intended to operate in organic hazardous air pollutant service for 300 hours or more during the calendar year within a source are subject to the provisions of a specific subpart in 40 C.F.R. Part 63, that references subpart H.

34. Pursuant to 40 C.F.R. §§ 63.162-6(a)(1) and (2), each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in 40 C.F.R. § 60.482-1(c). The cap, blind flange, plug or a second valve shall seal the open end at all times except during operations requiring process fluid through the open-ended valve or line.

35. Pursuant to 40 C.F.R. § 63.168(b), the owner or operator of a source subject to 40 C.F.R. Part 63, subpart H, shall monitor all valves, except as provided in 40 C.F.R. § 63.162(b) of subpart H and 40 C.F.R. §§ 63.168 (h) and (I) at the intervals specified in 40 C.F.R. § 63.168(c) and (d) and shall comply with all other provisions of 40 C.F.R. § 63.168, except as provided in 40 C.F.R. §§ 63.171, 63.177, 63.178, and 63.179.

36. 40 C.F.R. § 63.168(d) sets forth the intervals that the owner or operator shall monitor valves for leaks using the calculation for percent leaking valves as determined by 40 C.F.R. § 63.168(e).

37. Pursuant 40 C.F.R. § 63.168(e)(2), percent leaking valves shall be calculated as a rolling average for two consecutive monitoring periods for monthly, quarterly, or a semiannual monitoring program.

38. Formosa monitors its valves on a monthly basis. A review of Formosa's semiannual reports from January 17, 2001 to July 24, 2003, shows that Formosa had not calculated its percent leaking valves as a rolling average for two consecutive monitoring periods. Formosa therefore has violated 40 C.F.R. § 63.168(e)(2).

National Emission Standards for Benzene Waste

39. The provisions of 40 C.F.R. Part 61, subpart FF are applicable to owners and operators of chemical manufacturing plants, coke byproduct recovery plants, and petroleum

refineries. Formosa operates a chemical manufacturing plant and is therefore subject to the requirements of 40 C.F.R. Part 61, subpart FF.

40. Pursuant to 40 C.F.R. § 61.357(d)(1), if the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr (11 ton/yr), then the owner or operator shall submit to the EPA Administrator within 90 days after January 7, 1993, unless a waiver of compliance is granted, or by the date of initial startup for a new source with an initial startup after the effective date, a certification that the equipment necessary to comply with these standards has been installed and that the required initial inspections or tests have been carried out in accordance with 40 C.F.R. Part 61, subpart FF.

41. Formosa in 2000 and 2001 (Reported Total Annual Benzene (TAB)) showed TAB values that exceeded 10 Mg/yr, 10.68 Mg/yr of TAB for the Olefins II unit which was brought on line in June 2001 and 30.18 Mg/yr of TAB for both OLEFINS process units. Formosa was therefore required to submit to the Administrator a certification that the equipment necessary to comply with the standards had been installed and that the required initial inspections or test had been carried out in accordance with 40 C.F.R. Part 61, subpart FF.

42. 40 C.F.R. § 61.355 (b) requires that an owner or operator, for purposes of calculating the TAB, determine the annual waste quantity at the point of generation, unless otherwise provided in 40 C.F.R. §§ 61.355 (b)(1), (2), (3), and (4), by one of the methods given in 40 C.F.R. §§ 61.355 (b)(5) through (b)(7).

43. Pursuant to 40 C.F.R. § 61.341, point of generation means the location where the waste stream exits the process unit component or storage tank prior to handling or treatment in an operation that is not an integral part of the production process or in the case of waste management units that generate new wastes after treatment, the location where the waste stream exits the waste management unit component.

44. Pursuant to 40 C.F.R. § 61.356(e), an owner or operator using a treatment process or wastewater treatment system unit in accordance with 40 C.F.R. § 61.348, shall maintain for life the documents listed in 40 C.F.R. § 61.356(e)(1) through (4).

45. Pursuant to 40 C.F.R. § 61.356(e)(1), an owner or operator shall prepare a statement signed and dated, certifying that the unit is designed to operate at the documented performance level when the waste stream entering the unit is at the highest waste stream flow rate and the benzene content expected to occur. The owner or operator is required to keep a copy of this certification for the life of the unit.

46. Pursuant to 40 C.F.R. §§ 61.356(e)(2) and (3), if an owner or operator uses engineering calculations or performance tests to determine treatment process or wastewater treatment system unit performance, the owner or operator shall maintain specific documentation of either approach as is set forth in 40 C.F.R. §§ 61.356(e)(2) and (3).

47. Pursuant to 40 C.F.R. § 61.356(h), an owner or operator shall maintain a record for each test of no detectable emissions required by 40 C.F.R. §§ 61.343 through 61.347 and 61.349. 40 C.F.R. § 61.356(h) requires specific information to be included in the record.

48. During the Inspection, the inspectors made repeated requests for a copy of the appropriate Olefins II certification and Formosa did not have a copy to give the inspectors. In subsequent discussions with Formosa, Formosa provided EPA with a copy of what seems to be a certification dated May 30, 2001. The copy was not accompanied by a cover letter date to the Administrator. To date, EPA has no evidence that the certification was submitted to the Administrator by the date of initial startup. Formosa violated 40 C.F.R. § 61.357(d)(1) by not submitting to the Administrator a certification that the equipment necessary to comply with the standards had been installed and that the required initial inspections or tests had been carried out in accordance with 40 C.F.R. Part 61, subpart FF.

49. In observing Formosa's operation of its Spent Caustic System, the inspectors concluded that Formosa was not obtaining its samples at the point of generation in violation of 40 C.F.R. § 61.355 (b).

50. During and subsequent to the Inspection, the inspectors requested, from Formosa, records for the design flow criteria for the Zimpro oxidizers and steam strippers. Formosa did not provide the records to the inspectors and has therefore violated 40 C.F.R. §§ 61.356(e)(2) or (3).

51. The inspectors also requested a copy of the certification, which documents that the treatment units are designed to operate at the documented performance level when the waste stream entering the unit is at the highest waste stream flow rate and benzene content expected to occur. Formosa did not provide a copy of the certification for the Olefins I and II units in violation of 40 C.F.R. § 61.356(e)(1).

52. In reviewing Formosa's fugitive monitoring logs, the inspectors observed that information required by the regulations were not listed on the log. For example, the log did not include test dates, background levels measured during the test, and the maximum concentration indicated by the instrument reading measured for each potential leak interface. Formosa has therefore violated 40 C.F.R. § 61.356(h).21.

D. ENFORCEMENT

Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of Title V of the Act, including

a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under Title V, the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

E. OPPORTUNITY FOR CONFERENCE

The Company may, upon request, confer with EPA. The conference will enable the Company to present evidence bearing on the finding of violations, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. The Company has a right to be represented by counsel. A request for a conference must be made within ten (10) days of receipt of this Notice, and the request for a conference or other inquiries concerning the Notice should be made in writing to:

Marcia E. Moncrieffe
Senior Enforcement Counsel (6RC-EW)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

If you have any questions, please feel free to call Ms. Moncrieffe at (214) 665-7343.

F. EFFECTIVE DATE

This Notice shall become effective immediately upon issuance.

Dated: 7-7-09

John Blevins
Director
Compliance Assurance and
Enforcement Division