UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 22 2016

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lee R. Hammen
Thilmany Mill Manager
Expera Specialty Solutions
600 Thilmany Road
Kaukauna, WI 54130

Re: Administrative Order EPA-5-16-113(a)-WI-01

Dear Mr. Hammen:

Enclosed is an executed original of the Administrative Consent Order regarding the above captioned case. If you have any questions about the Order, please contact me at (312) 886-6797.

Sincerely,

Sarah Marshall
MI/WI Air Enforcement Section Chief

Enclosure

cc: Nicole Cantello/C-14J
Bill Baumann/WDNR
Imelda Stamm/WDNR

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**EPA-5-16-113(a)-WI-01**
	)	
Expera Specialty Solutions	)	**Proceeding Under Sections**
Kaukauna, Wisconsin	)	**113(a) & 114(a)(1) of the Clean Air Act, 42 U.S.C.**
	)	**§§ 7413(a) & 7414(a)(1**

Agreed Administrative Consent Order and Information Request

1. The Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5, is issuing this Administrative Consent Order (Order) and Information Request to Expera Specialty Solutions (Expera) under Sections 113(a) and 114(a)(1) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a) and 7414(a)(1).
2. Expera's agreement to implement the Enhanced Fugitive Dust Program set forth in this Order is voluntary and is undertaken in lieu of installing ambient particulate matter monitors at the Facility as requested by a Section 114 Information Request issued on March 13, 2015. However, the actions that Expera has agreed to take under this Order are not voluntary but have been ordered by EPA pursuant to Sections 113(A) and 114(a)(1) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a) and 7414(a)(1).
3. By entering into this Order, Expera does not admit it is in violation of the CAA. Furthermore, Expera's entry into this Order does not constitute and shall not be deemed a waiver or admission of any kind, including, without limitation, a waiver of any defense, legal or equitable, to any allegation that Expera is or may be in violation of the CAA.

Statutory and Regulatory Background

4. The CAA is 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. Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1).

5. Section 108(a) of the CAA, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such "criteria" pollutant, Section 109 of the CAA, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) to protect the public health and welfare.

6. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan (SIP) that provides for the implementation, maintenance, and enforcement of the NAAQS. Section 110 also requires that each SIP contain adequate provisions prohibiting any source within the state from emitting any air pollutants in amounts which will interfere with attainment or maintenance of the NAAQS or cause significant deterioration of air quality in any other state. See 40 C.F.R. Part 52.

7. Upon EPA approval, SIP requirements are federally enforceable under Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1).

8. On March 9, 1983, EPA approved NR 154.11 as part of the federally-enforceable Wisconsin SIP. 48 *Fed. Reg.* 9860 (March 9, 1983). NR 154.11 became federally effective on April 18, 1983. Wisconsin has since recodified NR 154.11 at NR 415.

9. NR 154.11(1) of the federally-enforceable Wisconsin SIP [NR 415.03] states that no person shall cause, allow, or permit particulate matter (PM) to be emitted into the ambient air which substantially contributes to exceeding of an air standard, or creates air pollution.
10. NR 154.11(2)(a) [NR 415.04] of the federally-enforceable Wisconsin SIP states that no person shall cause, allow, or permit any materials to be handled, transported, or stored without taking precautions to prevent PM from becoming airborne. Such precautions shall include, but not be limited to, application of asphalt, oil, water, suitable chemicals, or plastic covering on dirt roads, material stockpiles, and other surfaces which can create airborne dust, provided such application does not create a hydrocarbon, odor, or water pollution problem.
11. On January 18, 1995, EPA approved definitions in NR 400 as part of the federally-enforceable Wisconsin SIP. 60 *Fed. Reg.* 3538 (January 18, 1995). NR 400 became federally effective on February 17, 1995.
12. NR 400.02(69) [NR 400.02(123)] of the federally-enforceable Wisconsin SIP and Section 302(e) of the CAA, 42 U.S.C. § 7602(e), define "person," as, among other things, any corporation.
13. NR 400.02(66) [NR 400.02(118)] of the federally-enforceable Wisconsin SIP defines "particulate matter" as any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.
14. NR 400.02(10) [NR 400.02(24)] of the federally-enforceable Wisconsin SIP defines "ambient air" as the portion of the atmosphere external to buildings and to which the general public has access.

15. NR 400.02(5) [NR 400.02(16)] of the federally-enforceable Wisconsin SIP defines "air pollution" as the presence in the atmosphere of one or more air contaminants in such quantities and of such duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property.

16. NR 400.02(2) [NR 400.02(12)] of the federally-enforceable Wisconsin SIP states that "air contaminant" is defined in NR 144.30(1) [Wis. Stat. 285.01(1)], which defines it as dust, fumes, mist, liquid, smoke, other PM, vapor, gas, odorous substances, or any other combination thereof but shall not include uncombined water vapor.

17. The Administrator of EPA may require any person who owns or operates an emission source to, among other things, establish and maintain records; make reports; install, use, and maintain monitoring equipment; and submit compliance certification under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Air and Radiation Division, Region 5.

Definitions

18. "Building Time" shall refer to the period of time that begins upon Expera receiving deliveries of Coal for purposes of constructing the Winter Coal Pile and ending upon the completion of building the Winter Coal Pile. The building of the Winter Coal Pile shall occur between September and December.

19. "Coal" shall mean either coal or the blend of coal and petroleum coke combusted at the facility. Coal is used as a fuel in Expera's process and may become airborne.

20. "Facility" shall mean the Expera facility located at 600 Thilmany Road, Kaukauna, Wisconsin.

21. "Freezing Operating Conditions" shall mean when ambient air temperatures are at or below 32 degrees Fahrenheit as recorded at the Outagamie County Regional Airport, W6390 Challenger Drive, Appleton, WI 54914 or are forecast to be at or below 32 degrees Fahrenheit.

22. "Fugitive Dust" shall mean any solid particulate matter that becomes airborne by natural or human-made activities in the Storage Pile Area.

23. "Operating Permit" shall mean the WDNR issued Part 70 Operating Permit, currently Number 445031180-P12, or any successor permit.

24. "Storage Pile Area" shall mean the area on the northwest side of the Facility, containing the Winter Coal Pile and the Working Coal Pile, as identified in Appendix A- Map of the Expera Facility, including Proposed Wind Fence Location.

25. "U.S. EPA" shall mean the United States Environmental Protection Agency.

26. "WDNR" shall mean the Wisconsin Department of Natural Resources.

27. "Wind Fence" shall refer to an engineered fabric fence structure, designed for wind reduction to reduce Fugitive Dust.

28. "Winter Coal Pile" shall mean the Coal storage pile constructed by the Facility to ensure the availability of usable coal during winter conditions.

29. "Working Coal Pile" shall mean coal designated for short term storage such as daily use, weekends, and holidays.

Findings

30. Expera owns a kraft pulp and paper mill facility in Kaukauna, Wisconsin.

31. Expera stores Coal at its facility in a Winter Coal Pile and a Working Coal Pile.

32. On November 16, 2011, WDNR issued Expera a Title V Operating Permit.

33. On March 19, 2015, EPA sent a Section 114 Information Request to the Facility which contained two sections: a document request section, which Expera responded to on March 27, 2015, May 19, 2015 and June 8, 2015, and a section related to ambient air monitoring requirements. This Order completely supersedes the air monitoring requirements contained in the March 19, 2015 Information Request, Appendix B, Paragraphs 15-34, except as noted in Paragraph 34.b, below. Expera complied with the document request section of the March 19, 2015 Information Request.

Enhanced Fugitive Dust Program

34. After September 15, 2016, Expera shall not accept any deliveries of petroleum coke at the facility unless either:

    a. Expera has completed construction of a Wind Fence adjacent to the Storage Pile Area in the area set forth in Appendix A- Map of the Expera Facility, including Proposed Wind Fence Location; or

    b. Expera temporarily installs at least one continuous Federal Equivalent Method (FEM) real-time particulate matter (PM_{10}) monitor and at least one Federal Reference Method (FRM) PM_{10} filter-based monitor operating every third day, as detailed in Appendix B to this Order.

35. Expera shall meet the following project milestones for Wind Fence construction:

    a. Issuance of purchase order to Wind Fence vendor by June 1, 2016, except as noted in Paragraph 36;

    b. Begin construction by August 1, 2016, except as noted in Paragraph 36;

    c. Finish construction of the Wind Fence by no later than September 15, 2016, except as noted in Paragraph 40. For each milestone completion listed in Paragraph 35,

Expera shall provide confirmation in writing and corresponding documentation to EPA, at the address referenced in Paragraph 50 within 10 days after completion of the milestone.

36. If Wind Fence project milestone dates for Paragraphs 35a or 35b are not met, Expera will notify EPA of the delay within 10 days.

37. Expera shall develop a performance demonstration plan for the Wind Fence to be included in the revised permit application required under Paragraph 48. The performance demonstration plan will include the use of EPA Method 22 visual observations done weekly at the property line of the Facility for one year following completion of the Wind Fence. *See* Map in Appendix A. The Wind Fence performance demonstrations shall be done to ensure the Wind Fence mitigates Fugitive Dust. Frequency and duration of observations may be increased by the Wisconsin Department of Natural Resources during the submission and approval process required by Paragraph 48. Records of the performance demonstration plans for the Wind Fence will be retained according to a schedule determined with the Wisconsin Department of Natural Resources.

38. Expera shall develop a Wind Fence inspection procedure to be included in the revised permit application as required under Paragraph 48. The Wind Fence inspection shall be done to ensure proper operation of the Wind Fence. Maintenance records of the Wind Fence will be retained according to a schedule determined with the Wisconsin Department of Natural Resources. Inspections of the Wind Fence shall occur twice a month. Any necessary, corrective actions identified during the inspection shall be executed as soon as practicable. If the Wind Fence repairs shall take longer than 10 days, Expera shall keep a record of the repair process and justification for the repair time.

39. Expera shall submit a report to EPA by October 15, 2016, certifying that by September 15, 2016, it has either completed construction of the Wind Fence as set forth in Paragraph 34.a or it has ceased receipt of petroleum coke until such time construction of the Wind Fence is completed or, as set forth in Paragraph 34.b ambient air quality monitors are installed.

40. If construction of the Wind Fence occurs after September 15, 2016, Expera will notify EPA, within 30 days, when construction is complete; notifications related to the installation of ambient air monitors are addressed in Appendix B.

41. Expera shall not store Coal in the Winter Coal Pile at the Facility during the months of June through August, commencing as of the effective date of this Order.

42. Expera shall limit the size of the Winter Coal Pile to six thousand (6,000) tons. Expera shall document and maintain records of the maximum size of the Winter Coal Pile.

43. Except as provided in Paragraph 44, Expera shall limit the Winter Coal Pile Building Time to six (6) weeks. Expera shall document and maintain records of the Building Time start and end date for the Winter Coal Pile.

44. In the event that Expera is unable to complete construction of the Winter Coal Pile within 6 weeks due to circumstances beyond its control, such as availability of Coal from its supplier, Expera will complete construction as soon as possible. During the term of this Order, Expera will report any delays in construction of the Winter Coal Pile to EPA. Provided that construction of the Winter Coal Pile is completed in accordance with the notifications provided to EPA, Expera will be in material compliance with this Order for purposes of Paragraphs 49 and 57 below.

45. Expera shall apply a polymer sealant to the Winter Coal Pile, as soon as practicable, at the end of the Building Time.

46. The Working Coal pile is permitted year round but limited to not exceed 2,600 tons.

47. Expera shall continue its practice of using a sweeper vacuum, as needed, in the Storage Pile Area and on the entrance/exit to the Storage Pile Area, except during periods of sufficient precipitation (rain or snow) or Freezing Operating Conditions.

48. Within three (3) months of the effective date of this Order, Expera shall submit a revised permit application to WDNR requesting the incorporation of the Definitions set forth in Paragraphs 18-29 and the Enhanced Fugitive Dust Program set forth in Paragraphs 34-47 into its Operating Permit. During the life of this Order, any notifications related to delays in constructing the Winter Coal Pile under Paragraph 44 will also be made to EPA..

49. If WDNR has not issued the final permit (incorporating the provisions of this Order as described in Paragraph 48) within 11 months of the effective date this Order, Expera shall notify EPA pursuant to Paragraph 50. Within 2 weeks prior to termination of this Order, Expera shall submit a report to EPA certifying that it has met the requirements of Paragraphs 34 through 48 during the term of this Order.

50. Expera shall send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

General Provisions

51. Expera consents to the terms of this Order and shall not contest the basis or validity of this Order. Expera waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that it may have with respect to any issue of fact or law

set forth in this Order, including any right of judicial review of this Order under 42 U.S.C. § 7607(b)(1) or 5 U.S.C. §§ 701-706.

52. The parties agree nothing in this Order shall be deemed an admission of fact or issue of law by Expera.

53. If during the term of this Order both parties concur that it is appropriate, specific terms of the Enhanced Fugitive Dust Program may be revised in writing signed by an authorized representative of EPA and Expera.

54. This Order does not affect Expera's responsibility to comply with other federal, state, and local laws.

55. This Order does not restrict EPA's authority to enforce Section 112 of the CAA, 42 U.S.C. § 7412, or any other section of the CAA.

56. Nothing in this Order limits EPA's authority to seek appropriate relief, including penalties, under Section 113 of the CAA, 42 U.S.C. § 7413, for any violations of the CAA identified at the Expera Facility.

57. Failure to materially comply with this Order may subject Expera to penalties of up to $37,500 per day for each violation under Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

58. The terms of this Order are binding on Expera, its assignees, and successors. Expera must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.

59. Expera may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R.

Part 2, Subpart B. If Expera fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the CAA, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined at 40 C.F.R. § 2.301.

60. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. Please submit the response to this Order without staples; paper clips and binder clips, however, are acceptable.

61. EPA may use any information submitted under this Order in an administrative, civil judicial or criminal action.

62. This Order is effective on the date of signature by the Director of the Air and Radiation Division. This Order will terminate one (1) year from the effective date, provided that Expera has materially complied with all terms of the Order throughout its duration.

APRIL 15, 2016
Date

Lee R. Hammen
Thilmany Mill Manager
Expera Specialty Solutions

4/21/16
Date

George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

APPENDICIES

Appendix A- Map of the Expera Facility, including Proposed Wind Fence Location

Appendix B – PM10 Monitoring Alternative

Appendix A

Map of the Expera Facility, including Proposed Wind Fence Location

Appendix B

PM_{10} Monitoring Alternative

If Expera elects to receive petroleum coke at the Facility after September 15, 2016 and it has not completed construction on the Wind Fence as set forth in Paragraph 34.a, it shall notify EPA in writing to the address listed in paragraph 20, below, and shall comply with the following before receiving any petroleum coke:

PM_{10} Monitors and Siting

1. Expera shall submit proposed monitoring site location(s) at the facility for EPA review and approval prior to establishing the monitoring site(s). Expera shall also submit to EPA a map showing the property lines of the facility, the locations of nearby residences and industrial properties, and proposed locations of the monitoring sites;

2. After EPA approval of the monitoring site location(s) specified in paragraph l, above Expera shall install, operate, and maintain at least one ambient monitoring site at the facility that shall contain at least one continuous Federal Equivalent Method (FEM) real-time particulate matter (PM_{10}) monitor and at least one Federal Reference Method (FRM) PM_{10} filter-based monitor operating every third day;

3. The monitoring site(s) and monitoring equipment shall conform with the following requirements

    a. The PM_{10} to real-time and filter-based instruments shall meet the specifications of FRM/FEM monitors on this list: www.epa.gov/ttn/amtic/files/ambient/criteria/reference-eguivalent-methodslist.pdf;

    b. Expera shall follow all monitoring, siting, and quality assurance criteria in 40 CFR Part 58, Appendix E;

    c. PM 10 concentrations from filter-based sampling shall be determined according to 40 CFR 50, Appendix J to Part 50 -"Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere;"

    d. All data collected shall be consistent with units in the National Ambient Air Quality Standards for PM_{10}; and

    e. A data logger shall be attached to the monitors to record readings from the continuous monitors.

4. Expera shall follow all monitoring, siting, and quality assurance criteria as detailed in 40 CFR Part 58, Appendix A "Quality Assurance Requirements for SLAMS, SPMs, and PSD Air Monitoring" and Appendix D "Network Design Criteria for Ambient Air Quality Monitoring."

5. Expera shall also follow the operating procedures identified in the Quality Assurance Handbook for Air Pollution Measurement Systems "Volume I: A Field Guide to Environmental Quality Assurance" and "Volume II: Ambient Air Quality Monitoring Program."

6. Expera shall be responsible for all operation and maintenance associated with the PM_{10} monitors. Maintenance shall include, at a minimum, the replacement of any equipment and cleaning on a schedule specified in the manufacturer's maintenance manual.

7. Expera shall order and pay for any necessary replacement parts, accessories, maintenance, etc.

8. Expera shall properly change the PM_{10} filters in all sampling devices.

9. Expera shall archive all filters from the PM_{10} filter-based instruments for at least 2 years;

10. Expera may apply to EPA to terminate the requirements of this Request, however, at least one year of information must be collected under this Request before such an application is made.

Wind Speed and Direction Monitoring

11. Expera shall install a meteorological tower at a location representative of local wind conditions. At a minimum, the meteorological tower must continuously measure and record wind speed and wind direction at one-hour intervals throughout the entire ambient monitoring period. Expera shall correlate 1-hr and 24-hr ambient PM_{10} measurements with wind speed and wind direction data to determine source direction and the effects of wind speed on PM_{10} concentrations. The meteorological tower must also include calibrated ambient temperature and pressure instrumentation for purposes of determining corrected (actual) PM_{10} concentrations as recorded by the monitors. Expera shall maintain and/or submit reports and records in accordance with the paragraphs 12-20, below.

12. With respect to the meteorological monitoring site, Expera shall follow the Quality Assurance Handbook for Air Pollution Measurement Systems Volume IV: Meteorological Measurements Version 2.0 (Final) found at: http://www.epa.gov/ttnamtillfiles/ambient/met/Volume%20IV_Meteorological_Measurements.pdf.

13. The internal clocks of all PM_{10} analyzers, data loggers, and the wind speed and wind direction data logger shall be synchronized to within 60 seconds of each other (local time and not adjusted for Daylight Savings Time) and shall be checked against a calibrated reference clock at least once every 30 days. Instrument clocks that are more or less than 60 seconds from the reference clock shall be reset to within 60 seconds of the reference clock. Each of these inconsistencies and each reset time shall be noted in the study log.

14. Expera shall be responsible for maintenance associated with the meteorological tower on a schedule specified in the manufacturer's maintenance manual. Expera shall order and pay for any necessary replacement parts, accessories, maintenance, etc.

General Requirements Applicable to All Requests

15. Within 30 days of EPA approval of the monitoring site(s) or such other date agreed to by EPA and Expera, Expera shall submit a Quality Assurance Project Plan (QAPP) to EPA. The guidance document for writing a QAPP is "EPA Guidance for Quality Assurance Project Plans," EPA QA/G-5,
EP A/600/R-92/009- December 2002. The guidance is available at:
http://www.epa.gov/QUAL1TY/qs-docs/g5-final.pdf.

16. Expera shall provide EPA access to the monitoring site(s) and respond to any inquiries regarding monitor siting, operations, or maintenance. In the event that an inspector or auditor identifies problems, Expera shall take appropriate corrective actions. Any changes made to monitor siting, operations, or maintenance shall be approved by EPA prior to the change.

17. Expera shall keep a daily log and' monthly reports of the following information:

    a. Each site visit and operator activities;

    b. Any monitoring system downtime (date, time, duration, and reason) along with any corrective actions taken;

    c. Any possible interferences observed by the operator such as nearby construction or demolition; and

    d. Any calibration data provided by the manufacturer or performed by Expera.

18. Hourly data from each monitor and meteorological monitoring site, and 24-hour data from gravimetric monitors shall be downloaded as ASCII comma-delimited files and provided to EPA on CD and by email every month. The files should have a single "header" row, with all following rows being individual records, and all columns being a single variable according to the header row. All filter analysis data, including any specification data shall also be provided;

19. Monthly reports specified in paragraph 18, above, shall be submitted to EPA for a period of one year. Each report is due within 14 days of the end of the month being reported. At the end of the one year time frame, Expera may seek termination or modification of this request.

20. Expera shall submit all documents due under this request and the monthly reports to smith.molly@epa.gov, cantello.nicole@epa.gov, r5airenforcement@epa.gov, and:

Attn: Compliance Tracker, AE-171
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

CERTIFICATE OF MAILING

I, Kathy Jones, certify that I sent the Agreed Administrative Consent Order Number EPA-5-16-113(a)-WI-01 by certified mail, return receipt requested, to:

Lee R. Hammen
Thilmany Mill Manager
Expera Specialty Solutions
600 Thilmany Road
Kaukauna, WI 54130

I also certify that I sent a copy of the Agreed Administrative Consent Order Number EPA-5-16-113(a)-WI-01 by first-class mail to:

Thomas P. McElligott
Quarles and Brady LLP
411 E. Wisconsin Ave, Suite 2400
Milwaukee, WI. 53202

Bill Baumann
Section Chief, Compliance and Enforcement
Wisconsin Department of Natural Resources
PO Box 7921
Madison, Wisconsin 53707

Imelda Stamm
Supervisor, South Air Team
Wisconsin Department of Natural Resources
625 E. County Road Y, Suite 700
Peshtigo, Wisconsin 54157

on the 22nd day of April, 2016.

Kathy Jones

Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7011 1150 0000 2640 8558