

**Iowa Department of Natural Resources  
Environmental Protection Commission**

---

**ITEM**

**9**

**DECISION**

**TOPIC**

**Referrals to the Attorney General**

---

The Director requests the referral of the following to the Attorney General for appropriate legal action. Litigation reports have been provided to the commissioners and are confidential pursuant to Iowa Code section 22.7(4). The parties have been informed of this action and may appear to discuss this matter. If the Commission needs to discuss strategy with counsel on any matter where the disclosure of matters discussed would be likely to prejudice or disadvantage its position in litigation, the Commission may go into closed session pursuant to Iowa Code section 21.5(1)(c).

- Gregory Manufacturing Company (Fort Madison) – Air Quality

Edmund J. Tormey, Chief  
Legal Services Bureau

October 23, 2009

# LITIGATION REPORT

**Prepared by: Kelli Book**  
**Date: October 26, 2009**

## **I. Summary**

The DNR seeks referral of Gregory Manufacturing Company (Gregory Manufacturing) to the Attorney General's Office for appropriate enforcement action, due to air quality violations at its Fort Madison facility. This referral includes the primary violation of failing to comply with the emission limit established by 40 Code of Federal Regulations (CFR) 63, Subpart MMMM, *National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Surface Coating of Miscellaneous Metal Parts & Products*. The Subpart MMMM emission limit for this facility is 2.6 lbs organic Hazardous Air Pollutant (HAP)/gallon solids. Gregory Manufacturing continues to operate over three and a half times the allowable limit. Other violations in this referral include: (1) failure to comply with the notification and reporting requirements of Subpart MMMM; (2) failure to submit Title V Operating Permit reports in a timely manner; (3) failure to submit accurate Title V Operating Permit reports; and (4) failure to comply with the Title V Operating Permit #02-TV-029. In addition to the current violations Gregory Manufacturing has an extensive history of air quality violations.

## **II. Alleged Violator**

Gregory Manufacturing Company

Mike Walker, President  
2512 Henry Ladyn Drive  
Fort Madison, Iowa 52627

Wm. Scott Power, Registered Agent  
321 N. 3<sup>rd</sup> Street, P.O. Box 1046  
Burlington, Iowa 52601

## **III. Description of Facility**

Gregory Manufacturing is located in Fort Madison, Iowa and produces steel racks and garbage dumpster containers. Gregory Manufacturing is a Title V facility and emission units at the facility include paint booths, a priming paint booth, several sites for production welding, and solvent cleaning. Several emission units at the facility used in the surface coating of the metal parts are considered to be subject to 40 CFR 63, Subpart MMMM and Gregory Manufacturing is considered an existing source under the regulations.

## **IV. Alleged Violations**

### **a. Facts**

#### **40 CFR 63, Subpart MMMM<sup>1</sup>**

The United States Environmental Protection Agency promulgates all NESHAP standards, including Subpart MMMM, to reduce emissions of HAPs. HAPs are those pollutants that are known or suspected of causing cancer or other serious health effects. Subpart MMMM establishes emission standards for miscellaneous metal parts and products surface coating facilities. Subpart MMMM also established requirements to demonstrate initial and continuous compliance with the emission limits.

In the case of Gregory Manufacturing, one of the main HAPs it emits is xylene. Short term inhalation exposure of mixed xylene can result in irritation of the eyes, nose, and throat, gastrointestinal effects, and neurological effects. Long term inhalation exposure of mixed xylene can result in headaches, dizziness, fatigue, tremors and loss of coordination. Other long term impacts include effects on respiratory and cardiovascular systems and the kidneys.

On January 2, 2004, 40 CFR 63, Subpart MMMM was finalized. On January 2, 2005, existing sources subject to Subpart MMMM were required to submit an initial notification acknowledging the facility is subject to the regulations and that the facility is aware of the compliance date. Gregory Manufacturing failed to submit the initial notification.

<sup>1</sup> DNR has adopted by reference Subpart MMMM at 567 Iowa Administrative Code 23.1(4)"cm".

**LITIGATION REPORT**  
**GREGORY MANUFACTURING COMPANY**  
**November 2009 EPC Meeting**

---

On March 1, 2008, sources were required to submit the Subpart MMMM Notification of Compliance Status covering the initial compliance period of January 2, 2007 through January 31, 2008. Gregory Manufacturing failed to submit the Notification of Compliance Status.

On September 30, 2008, sources were required to submit the Subpart MMMM semi-annual report covering the period from February 1, 2008 through June 30, 2008. Gregory Manufacturing failed to submit the semi-annual report.

On October 31, 2008, DNR issued a Notice of Violation letter to Gregory Manufacturing for failing to submit the Notification of Compliance Status and the semi-annual report covering the period from February 1, 2008 through June 30, 2008. These reports were required to be submitted no later than November 30, 2008. On November 21, 2008, representatives from DNR and Gregory Manufacturing discussed the Subpart MMMM calculations. Gregory Manufacturing was granted an extension until the end of 2008 to submit the reports.

On December 30, 2008, Gregory Manufacturing submitted a compliance status report indicating the organic HAP emissions for calendar year 2007 were 12.60 lbs organic HAP/gallon of solids. Subpart MMMM requires that a source limit organic HAP emissions from general use coatings to no more than 2.6 lbs organic HAP/gallon of solids during each 12 month compliance period. Compliance with this provision is determined on a 12 month rolling total. On January 8, 2009, DNR issued a Notice of Violation letter to Gregory Manufacturing for exceeding the Subpart MMMM emission limit. The letter required Gregory Manufacturing to submit a compliance plan detailing the steps the facility intended to take to come into compliance with Subpart MMMM by February 9, 2009. The facility was also required to submit the rolling 12-month organic HAP emissions for each month of 2008. In a prior telephone conversation between DNR and facility personnel, the facility personnel stated the facility had not performed the monthly calculations for 2008. On February 3, 2009, Gregory Manufacturing submitted a compliance plan stating it was working with its paint supplier to find a new paint and cleaning solvent to meet the Subpart MMMM requirements. The compliance plan also indicated that Gregory Manufacturing would submit monthly compliance reports.

On March 3, 2009, Gregory Manufacturing submitted a monthly compliance report to DNR. The rolling 12-month organic HAP emission rate for February 2008 through January 2009 was 9.95 organic HAP/gallon of solids. The rolling 12-month organic HAP emission rate for March 2008 through February 2009 was 9.82 lbs organic HAP/gallon of solids.

On April 27, 2009, Gregory Manufacturing submitted a monthly compliance report to DNR. The rolling 12-month organic HAP emission rate for April 2008 through March 2009 was 9.76 lbs organic HAP/gallon of solids.

On May 6, 2009, DNR issued Gregory Manufacturing a renewal to its Title V Operating Permit. The renewal included a compliance plan detailing how Gregory Manufacturing would come into compliance with Subpart MMMM. The compliance plan required Gregory Manufacturing to submit monthly reports to the DNR until the facility achieves compliance with the Subpart MMMM emission limit. The reports were to include the rolling 12-month organic HAP emission rate calculated for the previous month and an update on the steps being taken to bring the facility into compliance with the Subpart MMMM emission limit.

On May 27, 2009, Gregory Manufacturing submitted a monthly compliance report to DNR. The rolling 12-month organic HAP emission rate for May 2008 through April 2009 was 9.72 lbs organic HAP/gallon of solids. The letter also indicated that the next step for the facility was a trial for a new HAP-free high solids primer and top-coat.

On June 22, 2009, Gregory Manufacturing submitted a monthly compliance report to DNR. The rolling 12-month organic HAP emission rate for June 2008 through May 2009 was 9.62 lbs organic HAP/gallon of solids. The letter indicated that the trial for the new HAP-free paint was scheduled for June 26, 2009.

On July 27, 2009, Gregory Manufacturing submitted a monthly compliance report to DNR. The rolling 12-month organic HAP emission rate for July 2008 through June 2009 was 9.65 lbs organic HAP/gallon of solids.

**LITIGATION REPORT**  
**GREGORY MANUFACTURING COMPANY**  
**November 2009 EPC Meeting**

---

The letter stated that the June trial of the new paint resulted in slower drying times than desired. The facility was working to address the concern and was planning a larger trial of the new paint.

On August 25, 2009, Gregory Manufacturing submitted a monthly compliance report to DNR. The rolling 12-month organic HAP emission rate for August 2008 through July 2009 was 9.60 lbs organic HAP/gallon of solids.

On September 25, 2009, Gregory submitted a monthly compliance report to DNR. The rolling 12-month organic HAP emission rate for September 2008 through August 2009 was 9.56 lbs organic HAP/gallon of solids.

The following chart is a summary of the monthly compliance reports on the organic HAP emission rate.

<b>Time Frame</b>	<b>Gregory Manufacturing's Emission Rate (organic HAP/gallon of solids)</b>	<b>Allowable Emission Rate (organic HAP/gallon of solids)</b>
Calendar Year 2007	12.60	2.6
February 2008 – January 2009	9.95	2.6
March 2008 – February 2009	9.82	2.6
April 2008 – March 2009	9.76	2.6
May 2008 – April 2009	9.72	2.6
June 2008 – May 2009	9.62	2.6
July 2008 – June 2009	9.65	2.6
August 2008 – July 2009	9.60	2.6
September 2008 – August 2009	9.56	2.6

**Title V Operating Permit**

On December 16, 2002, Gregory Manufacturing was issued Title V Operating Permit #02-TV-029. DNR issued Gregory Manufacturing a five year permit renewal on May 6, 2009 and an administrative modification to add a payment plan on July 23, 2009 (#02-TV-029R1-M001).

Section IV. General Conditions, Paragraph G5 of the Title V Operating Permit requires that by March 31 and September 30 of each year, the permittee shall submit a report of any monitoring required under the permit for the 6 month periods of July 1 to December 31 and January 1 to June 30, respectively. All instances of deviations from permit requirements must be clearly identified in the reports.

On September 30, 2008, the semi-annual report for the period of January 1 to June 30 was due. Gregory Manufacturing submitted the semi-annual report on October 6, 2008. On October 31, 2008, DNR issued a Notice of Violation letter to Gregory Manufacturing for failing to timely submit the semi-annual report.

On April 30, 2009, DNR issued a Notice of Violation letter to Gregory Manufacturing for failing to submit an accurate 2008 annual compliance certification. Gregory Manufacturing had submitted its 2008 annual compliance certification and the annual compliance certification was incomplete because a previous Notice of Violation letter was not included. On April 21, 2009, DNR received a complete and accurate compliance certification from Gregory Manufacturing.

**b. Law**

**40 CFR 63.3890(b)(1)** requires that existing sources for facilities subject to Subpart Mmmm must limit organic HAP emissions from general use coatings to no more than 2.6 lbs/gallon solids used during each 12-month compliance period. Gregory Manufacturing has not been in compliance with the emission limit of this provision and continues to operate without meeting the emission limit. They are currently operating at least three and a half times the allowable limit. The above-mentioned facts indicate a continuous violation of this provision.

**LITIGATION REPORT**  
**GREGORY MANUFACTURING COMPANY**  
**November 2009 EPC Meeting**

---

**40 CFR 63.3910(b)** requires that existing sources subject to Subpart Mmmm submit an initial notification by January 2, 2005. Gregory Manufacturing failed to submit this report. The above-mentioned facts indicate a violation of this provision.

**40 CFR 63.3910(c)** requires that facilities subject to Subpart Mmmm submit a notification of compliance status, covering the initial compliance period, January 2, 2007 through January 31, 2008 by March 1, 2008. Gregory Manufacturing failed to submit this report. The above-mentioned facts indicate a violation of this provision.

**40 CFR 63.3920(a)** requires that facilities subject to Subpart Mmmm submit a semi-annual report covering the period from February 1 through June 30 by September 30. The report for the period from February 1, 2008 through June 30, 2008 was due September 30, 2008. Gregory Manufacturing failed to submit this report. The above-mentioned facts indicate a violation of this provision.

**567 IAC 22.108(9)"a"** requires the Title V permittee to comply with all conditions of the Title V Operating Permit. Gregory Manufacturing failed to demonstrate compliance with Section IV; General Conditions; G5 – Semi-Annual Monitoring Report (Pursuant to 567 IAC 22.108(5)) that requires by March 31 and September 30 of each year, the permittee to submit a report of any monitoring required under the permit for the 6 month periods of July 1 to December 31 and January 1 to June 30, respectively. Gregory Manufacturing failed to timely submit its Semi-Annual Monitoring Report for the first half of 2008. The above-mentioned facts indicate a violation of this provision.

**567 IAC 22.108(15)** requires the submittal of a compliance certification sufficient to ensure compliance with the terms and conditions of the Title V Operating Permit. Gregory Manufacturing failed to include a previous Notice of Violation letter in its certification. The above-mentioned facts indicate a violation of this provision.

**V. Past History**

Gregory Manufacturing has a long history of air quality violations resulting in several Notice of Violations letters and an Administrative Consent Order. Below is a summary of the previous air quality concerns at Gregory Manufacturing.

July 2, 2008: Administrative Consent Order #2008-AQ-16 was entered into between DNR and Gregory Manufacturing. Gregory Manufacturing failed to maintain 12 month rolling total records for three permitted emission units. Condition 13 of Air Quality Construction Permits #98-A-1161, #98-A-1162, and #98-A-1163-S1 required that the facility maintain 12 month rolling total records for the facility wide usage of coatings and for the facility wide usage of solvent. Additionally, the facility's Title V Operating Permit required that the facility maintain 12 month rolling total records for the facility usage of coatings and for the facility wide usage of solvent. During routine air quality inspections in 2006 and 2008, DNR Field Office 6 discovered the records were not being maintained, violating the facility's construction permits, the facility's Title V Operating Permit, and the DNR's regulations. Among other requirements stated in the consent order, Gregory Manufacturing was required to comply with all construction permit and Title V permit recordkeeping requirements and to pay an administrative penalty in the amount of \$2,500.00.

September 11, 2005: DNR Field Office 6 received a complaint alleging that paint from Gregory Manufacturing was being released through the stack and coating vehicles in the parking lot. DNR Field Office 6 investigated the complaint and observed that the filters were properly installed and there was no evidence of overspray on the vehicles. In a letter dated September 25, 2005, DNR Field Office 6 summarized the visit and reminded Gregory Manufacturing that it must properly maintain all control equipment as required by 567 IAC 24.2(1). On October 5, 2005, DNR Field Office 6 received another complaint alleging that paint from Gregory Manufacturing was getting on vehicles in the parking lot. DNR Field Office 6 investigated the complaint and noted that the dry filters had not been installed properly and were allowing some overspray paint to be discharged. On October 26, 2005, DNR Field Office 6 issued a Notice of Violation letter to Gregory Manufacturing for failing to maintain the control equipment, a violation of 567 IAC 24.2(1).

**LITIGATION REPORT**  
**GREGORY MANUFACTURING COMPANY**  
**November 2009 EPC Meeting**

---

April 7, 2005: DNR Air Quality issued a Notice of Violation letter to Gregory Manufacturing for late submittal of the Title V Annual Compliance Certification, a violation of 567 IAC 22.108.

January 27, 2000: DNR Field Office 6 conducted a routine air quality compliance inspection at Gregory Manufacturing. DNR Field Office 6 noted that the annual material usage was being kept on a calendar year basis rather than on the required 12 month rolling total basis, a violation of the air quality construction permits. On February 9, 2000, DNR Field Office 6 sent a letter to Gregory Manufacturing requiring that it start to implement the proper recordkeeping. Gregory Manufacturing submitted a copy of 12 month rolling average records to DNR Field Office 6 on March 20, 2000.

July 24, 1998: DNR Air Quality issued a Notice of Violation letter to Gregory Manufacturing for failing to submit Title V Permit fees for emission year 1997, a violation of 567 IAC 22.106.

July 21, 1998: DNR Field Office 6 conducted a routine air quality compliance inspection at Gregory Manufacturing and discovered that the paint booths at the facility had been constructed prior to obtaining construction permits. On July 23, 1998, DNR Field Office 6 issued a Notice of Violation letter to Gregory Manufacturing for failing to obtain construction permits prior to the construction and operation of the paint booths, a violation of 567 IAC 22.1(1).

**VI. Witnesses**

Dennis Thielen, DNR Air Quality Compliance environmental specialist senior, will be available during the EPC meeting to answer additional questions.