

2. The State of Wisconsin has enacted statutes in Wis. Stat. ch. 285 governing sources of air contaminant emissions to prevent and reduce air pollution. DNR administers regulations and issues permits pursuant to these statutes.

3. Defendant ChemDesign Products, Inc., (ChemDesign) is a foreign business corporation with its principal office at 2 Stanton Street, Marinette, Wisconsin 54143. Its registered agent is Corporation Service Company, located at 33 East Main Street, Suite 610, Madison, Wisconsin 53703.

4. ChemDesign is a toll manufacturer of chemical intermediates, which involves receiving raw materials and using these materials to manufacture chemicals for other companies. It manufactures chemicals for markets including agriculture, polymer additives, surfactants for seeding, and specialty and fine chemicals.

5. At all times relevant to the allegations in this Complaint, ChemDesign owned and operated a toll chemical manufacturing facility located at 2 Stanton Street, Marinette, Wisconsin 54143 (Facility).

BACKGROUND FACTS

6. On January 5, 2015, DNR issued ChemDesign Air Pollution Control Operation Permit 438008340-F20 (the Permit), and it was in effect pursuant to Wis. Stat. § 285.62(8)(b) during the time of the alleged violations.

7. Pursuant to Wis. Stat. § 285.60(7), at all times relevant to the allegations in this Complaint, ChemDesign was required to comply with all the terms and conditions of the Permit.

8. The Permit required the Facility to use wet scrubbers to control air emissions from three processes and its treatment of wastewater. The Permit required Scrubber S38 to control air emissions from Process P38 in Facility Building 38; Scrubbers P51 and P52 to control air emissions from Process P52 in Facility Building 52; and Scrubber S69 to control air emissions from Process P69 in Facility Building 69.

9. On October 21, 2020, DNR submitted a Letter of Inquiry (LOI) to ChemDesign, seeking “[a]ll calculations, spreadsheets and/or other data used to derive the air emissions throughput values for all pollutants reported in” ChemDesign’s Annual Air Emissions Inventory for calendar years 2015 through 2020.

10. On February 8, 2021, ChemDesign responded by providing a spreadsheet to DNR of its calculated emissions (ChemDesign’s Calculated Emissions Spreadsheet).

11. ChemDesign’s Calculated Emissions Spreadsheet reported the Facility’s emissions of certain Volatile Organic Compounds (VOCs) and Hazardous Air Pollutants (HAPs) in 2016, 2017, 2018, and 2019.

12. ChemDesign's Calculated Emissions Spreadsheet also employed factors in its emissions calculations related to ChemDesign's use of scrubbers to reduce the Facility's reported annual emissions from at least 2016 through 2019, also known as "Scrubber Efficiency[ies]," for several of its buildings.

13. For example, for 2016, 2017, 2018, and 2019, ChemDesign's Calculated Emissions Spreadsheet derived the Facility's emissions for the VOC and HAP Chlorobenzene by reducing certain Facility stack emissions from Buildings 38 and 52 by 25% due to scrubbers.

14. On March 3, 2021, ChemDesign submitted an Air Permit Next Business Day Deviation Report to DNR (March 2021 Deviation Report).

15. The March 2021 Deviation Report indicated that stack testing conducted by ChemDesign on a scrubber from Building 52 sometime in June or July 2020 documented higher actual VOC emissions from Process P52 than ChemDesign had originally calculated for the same process.

16. ChemDesign hired the company Terracon, which duplicated the stack tests in December 2020 and concluded that VOC emissions from Process 52 were greater than 8.0 tons per month on a rolling 12-month average.

17. On April 26, 2021, DNR issued ChemDesign a Notice of Violation (NOV) alleging that ChemDesign violated the Permit by determining its total VOC and federal HAP emissions (emissions of regulated air pollutants under

the federal Clean Air Act) by accounting for reductions from control devices without testing data substantiating the reductions.

18. The NOV further indicated that the Facility violated the Permit by exceeding its emissions limitations for total VOCs and federal HAPs and failing to provide an accurate emissions inventory for 2016 through 2019.

19. The NOV requested all data on total VOC and federal HAP emissions from ChemDesign for January 1, 2015, through March 30, 2021, without accounting for emissions reductions from an air pollution collection or control device.

20. On May 13, 2021, ChemDesign provided DNR a spreadsheet containing the Facility's raw emissions data from January 1, 2015, through March 30, 2021.

21. On May 18, 2021, DNR held an Enforcement Conference (EC) with ChemDesign representatives.

22. At the EC, ChemDesign representatives indicated that they believed that emissions tests from 1994 demonstrated the emission reductions claimed in ChemDesign's Calculated Emissions Spreadsheet.

23. On June 9, 2021, ChemDesign provided DNR the following documents: 1) "*Stack Test*, Permit 91-RV-097, performed on December 6, 1994" (1994 Test Results) and 2) "*SpecialtyChem Products Corporation: Air Sampling Survey*," dated December 1, 1998 (1998 Survey).

24. The 1994 Test Results did not include stack test data for the Facility's scrubbers or any other control device, and it only included emissions test data for Hydrogen Chloride (HCl) and Sulfur Dioxide.

25. The 1998 Survey contained testing data on the scrubbers at the Facility on October 13 and 14, 1998, and included results for several pollutants, including VOCs.

26. ChemDesign never submitted the 1998 Survey to DNR prior to June 9, 2021.

27. ChemDesign's Calculated Emissions Spreadsheet included calculations showing the Facility's scrubbers reduced emissions for VOCs such as Methanol that were not evaluated in the 1998 Survey.

28. ChemDesign's Calculated Emissions Spreadsheet included calculations showing the Facility's scrubbers reduced emissions for VOCs from 2016 through 2019 by an amount that did not match the reductions demonstrated by scrubbers in the 1998 Survey.

29. The 1998 Survey showed an increase in emissions for several VOCs when employing scrubbers.

30. The 1998 Survey was conducted without following the procedures set forth in Wis. Admin. Code § NR 439.07.

31. ChemDesign has not submitted any test data to DNR showing that the Facility's scrubbers achieved the reductions for HAPs and VOCs from 2016 through 2019 as indicated ChemDesign's Calculated Emissions Spreadsheet.

32. In a letter to DNR dated February 23, 2022, ChemDesign indicated that it had fixed the cause of its exceedances of total VOCs emissions that it reported on March 3, 2021, by adding a gas recirculation loop to process isohehexane.

EXCEEDANCE VIOLATIONS

VIOLATION ONE: EXCEEDANCES OF PERMIT LIMITATION FOR VOCS

33. Condition I.A.1.a.(1)(a) of the Permit provides that for Stack S38/Processes P38 and P62, Stacks S51 and S52/Process P52, and Stack S69, Process P69, "[t]he permittee may not allow [VOC] emissions in excess of 8.0 tons per month, averaged over the previous 12 consecutive months."

34. Condition I.A.1.b.(2) of the Permit provides that "[f]or the purpose of determining VOC emissions, the permittee may not take into account emission reductions from the operation of any collection or control device, unless the permittee has emissions testing data documenting the percent reduction" meeting all the criteria set forth in Condition I.A.1.b.(2)(a)–(c).

35. For 24 months, from April to December 2019 (inclusive); January to December 2020 (inclusive); and January to March 2021 (inclusive); ChemDesign's total VOC emissions for Stack S38/Processes P38 and P62,

Stacks S51 and S52/Process P52, and Stack S69, Process P69 exceeded 8 tons per month, as calculated by the average of the previous consecutive 12 months.

36. None of the emissions testing data that ChemDesign submitted to DNR to document emissions reductions from the operation of the Facility's collection or control devices, including its scrubbers, meets all the criteria set forth in Condition I.A.1.b.(2)(a)–(c).

37. On March 3, 2021, ChemDesign submitted to DNR an Air Permit Next Day Deviation Report admitting that the Facility's VOC emissions exceeded 8 tons per month on a rolling 12-month average from at least July 2020.

38. ChemDesign did not fix the source of these emission exceedances until November 3, 2021, when the installed process change was brought online.

39. ChemDesign violated Condition I.A.1.a.(1)(a) of the Permit for at least 24 months from April 2019 through March 2021, by emitting VOCs in excess of 8.0 tons per month, averaged over the previous 12 consecutive months.

**VIOLATION TWO: EXCEEDANCES OF PERMIT LIMITATION FOR
INDIVIDUAL FEDERAL HAPS**

40. Condition I.A.3.a.(1)(a) of the Permit provides that “[f]acility-wide emissions of each [f]ederal HAP may not exceed 9.5 tons for each period of 12 consecutive months.”

41. Condition I.A.3.b.(2) of the Permit provides that “[f]or the purpose of determining each [f]ederal HAP, the permittee may not take into account emission reductions from the operation of any collection or control device, unless the permittee has emissions testing data documenting the percent reduction” meeting all the criteria set forth in Condition I.A.3.b.(2)(a)–(d).

42. For 46 months, from July to December 2016 (inclusive); January to December 2017 (inclusive); January to December 2018 (inclusive); January to December 2019 (inclusive); and January to April 2020 (inclusive); ChemDesign’s emissions of HCl exceeded 9.5 tons per month, as calculated by the average of the previous consecutive 12 months.

43. HCl is a federal HAP.

44. None of the emissions testing data that ChemDesign submitted to DNR to document emissions reductions from the operation of the Facility’s collection or control devices, including its scrubbers, meets all of the criteria set forth in Condition I.A.3.b.(2)(a)–(d).

45. ChemDesign violated Condition I.A.3.a.(1)(a) of the Permit for at least 46 months from July 2016 to April 2020, by emitting HCl in excess of 9.5 tons, averaged over the previous 12 consecutive months.

**VIOLATION THREE: EXCEEDANCES OF PERMIT LIMITATION FOR
TOTAL FEDERAL HAPS**

46. Condition I.A.3.a.(1)(b) of the Permit provides that “[t]otal facility-wide emissions of all [f]ederal HAPs combined may not exceed 24.5 tons for each period of 12 consecutive months.”

47. For 38 months from July to December 2016 (inclusive); January to September 2017 (inclusive); December 2017; January to July 2018 (inclusive); March to December 2019 (inclusive); and January to May 2020 (inclusive); ChemDesign’s emissions of total HAPs exceeded 24.5 tons per month, as calculated by the average of the previous consecutive 12 months.

48. None of the emissions testing data that ChemDesign submitted to DNR to document emissions reductions from the operation of the Facility’s collection or control devices, including its scrubbers, meets all of the criteria set forth in Condition I.A.3.b.(2)(a)–(d).

49. ChemDesign violated Condition I.A.3.a.(1)(b) of the Permit for at least 38 months from July to December 2016 (inclusive); January to September 2017 (inclusive); December 2017 (inclusive); January to July 2018 (inclusive); March to December 2019 (inclusive); and January to May 2020 (inclusive); by emitting total HAPs in excess of 24.5 tons per month, averaged over the previous 12 consecutive months.

COMPLIANCE-DEMONSTRATION VIOLATIONS

**VIOLATION FOUR: TAKING INTO ACCOUNT UNSUBSTANTIATED
TOTAL VOCS EMISSION REDUCTIONS**

50. Condition I.A.1.b.(2) of the Permit provides that for the “Compliance Demonstration” for determining VOC emissions, “the permittee may not take into account emission reductions from the operation of any collection or control device, unless the permittee has emissions testing data documenting the percent reduction” meeting all the criteria set forth in Condition I.A.1.b.(2)(a)–(c).

51. Condition I.A.1.b.(2) of the Permit is in the “compliance demonstration area” of Part I.A.1. of the Permit, which “contains limits on parameters or other mechanisms’ that are to be “monitored periodically to ensure compliance with the limitations.”

52. Wisconsin Admin. Code § NR 407.09(4)(a)1. states that operation permits shall contain compliance testing, monitoring, reporting, and record keeping requirements sufficient to ensure compliance with the terms and conditions of the permit.

53. ChemDesign took into account VOC emissions reductions from the operation of Facility’s scrubbers in determining its compliance with the Permit limitations each month from January 1, 2016, through December 31, 2019 (inclusive).

54. ChemDesign based its compliance determination for each month from January 1, 2016, through December 31, 2019, (inclusive) on the 1998 Survey.

55. The 1998 Survey does not meet the criteria set forth in Condition I.A.1.b.(2)(a)–(c) of the Permit for taking into account emissions reductions from collection or control devices.

56. None of the emissions testing data that ChemDesign submitted to DNR to document emissions reductions from the operation of the Facility's collection or control devices, including its scrubbers, meets all the criteria set forth in Condition I.A.1.b.(2)(a)–(c) of the Permit for taking into account emissions reductions when determining the Facility's compliance with the Permit.

57. ChemDesign violated Condition I.A.1.b.(2) of the Permit for 48 months (each month for four years, from January 1, 2016, through December 31, 2019, (inclusive)) by determining its compliance with the Permit using VOC emissions reductions not substantiated by emissions testing data meeting all the criteria set forth in Condition I.A.1.b.(2)(a)–(c) of the Permit.

**VIOLATION FIVE: TAKING INTO ACCOUNT UNDOCUMENTED
EMISSION REDUCTIONS FOR TOTAL HAPS**

58. Condition I.A.3.b.(2) of the Permit provides that for the “Compliance Demonstration” for determining “[each federal HAP], the

permittee may not take into account emission reductions from the operation of any collection or control device, unless the permittee has emissions testing data documenting the percent reduction” meeting all the criteria set forth in Condition I.A.3.b.(2)(a)–(d).

59. Condition I.A.3.b.(2) is in the “compliance demonstration area” of Part I.A.3. of the Permit, which “contains limits on parameters or other mechanisms” that are to be “monitored periodically to ensure compliance with the limitations.”

60. ChemDesign took into account emissions reductions for certain federal HAPs from the operation of the Facility’s scrubbers when determining its compliance with Permit limitations each month from January 1, 2016, through December 31, 2019 (inclusive).

61. ChemDesign relied on the 1998 Survey for documentation of its compliance determination each month from January 1, 2016, through December 31, 2019 (inclusive).

62. The 1998 Survey does not meet the criteria set forth in Condition I.A.3.b.(2)(a)–(d) of the Permit for taking into account emissions reductions from collection or control devices.

63. None of the emissions testing data that ChemDesign submitted to DNR to document emissions reductions from the operation of the Facility’s collection or control devices, including its scrubbers, meets all the criteria set

forth in Condition I.A.3.b.(2)(a)–(d) for taking into account emissions reductions when determining the Facility’s compliance with the Permit.

64. ChemDesign violated Condition I.A.3.b.(2) of the Permit for 48 months (each month for four years from January 1, 2016, through December 31, 2019 (inclusive)) by determining its compliance with the Permit based on emissions reductions for federal HAPs without testing data meeting all the criteria set forth in I.A.3.b.(2)(a)–(d) of the Permit.

ANNUAL EMISSIONS REPORTING VIOLATIONS

VIOLATION SIX: FAILING TO REPORT AND KEEP RECORDS OF ACTUAL ANNUAL EMISSIONS

65. Wisconsin Admin. Code § NR 438.03(1)(a) states that, subject to exceptions not applicable in this case, “any person owning or operating a facility that emits an air contaminant in quantities above applicable reporting levels [as provided in Table 1], . . . shall annually submit to [DNR] an emission inventory report of annual, actual emissions or, for . . . VOCs throughput information sufficient for [DNR] to calculate its annual, actual emissions.”

66. Table 1 of Wis. Admin. Code § NR 438.03(1)(a) sets the applicable reporting level for VOCs at 6,000 pounds per year and provides that emissions for every VOC should be reported if the permittee emits more than 6,000 pounds of total VOCs per year.

67. Wisconsin Admin. Code § NR 438.03(4) states that “[a]n owner or operator of a facility required to file an emissions inventory shall keep accurate and reliable records sufficient to enable verification of the emissions inventory” by the DNR. Wisconsin Admin. Code § NR 438.03(4) further provides that “[r]ecords shall include data on . . . any results of stack or performance tests”

68. ChemDesign emitted more than 6,000 pounds of VOCs per year in 2016, 2017, 2018, and 2019.

69. Permit Condition I.B.4.b.(1) requires the permittee to “[s]ubmit a monitoring report which contains the results of monitoring or a summary of monitoring results required by this permit to [DNR] every 12 months.”

70. ChemDesign submitted Annual Emissions Inventory Summary Reports for 2016, 2017, 2018, and 2019 that were based on emissions reductions for certain VOCs from scrubbers that were not substantiated by emissions testing, including because they were based on the 1998 Survey.

71. ChemDesign violated Permit Condition I.B.4.b.(1) and Wis. Admin. Code § NR 438.03(1)(a) on four separate occasions, in 2016, 2017, 2018, and 2019, by submitting annual emissions inventories for VOC emissions that were neither actual, annual emissions, nor throughput information sufficient for DNR to calculate the Facility’s annual, actual emissions, because the Annual Emissions Summary Reports submitted for those years were based on

VOC emissions reductions that were not substantiated through emissions testing.

72. ChemDesign violated Wis. Admin. Code § NR 438.03(4) on four separate occasions, in 2016, 2017, 2018, and 2019, by failing to keep accurate and reliable records sufficient to enable verification of the annual inventory reports that it was required to file.

PENALTY PROVISIONS

73. Wisconsin Stat. § 299.95 authorizes the Attorney General to enforce Wis. Stat. ch. 285 and all rules promulgated and permits issued under that chapter, subject to exceptions not applicable to this case. Under Wis. Stat. § 299.95, the circuit court for Dane County or the county where the violation occurred has jurisdiction to enforce Wis. Stat. ch. 285 and all rules promulgated and permits issued under that chapter “[b]y injunctive and other relief appropriate for enforcement.”

74. Wisconsin Stat. § 285.87(1) states that “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 nor more than \$25,000 for each violation. Each day of continued violation is a separate offense.”

RELIEF REQUESTED

WHEREFORE, Plaintiff asks the Court to enter judgment against the Defendant as follows:

1. Forfeitures as provided for in Wis. Stat § 285.87(1);
2. The 26 percent penalty surcharge pursuant to Wis. Stat. § 814.75(18), the 20 percent environmental surcharge pursuant to Wis. Stat. § 814.75(12), the 1 percent jail surcharge pursuant to Wis. Stat. § 814.75(14), \$25.00 in 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 under Wis. Stat. § 814.75(2), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15); and
3. Any other relief the Court deems just and appropriate.

Dated this 27th day of October, 2023.

JOSHUA L. KAUL
Wisconsin Attorney General

Electronically signed by Zachary B. Corrigan

ZACHARY B. CORRIGAN
Assistant Attorney General
State Bar #1116596

BRADLEY J. MOTL
Assistant Attorney General
State Bar #1074743

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-1677 (Corrigan)
(608) 267-0505 (Motl)
(608) 294-2907 (Fax)
corriganzb@doj.state.wi.us
motlbj@doj.state.wi.us