

**BEFORE THE PUBLIC SERVICE
COMMISSION OF MARYLAND**

IN THE MATTER OF THE APPLICATION OF *
ENERGY ANSWERS INTERNATIONAL, LLC *
FOR A CERTIFICATE OF PUBLIC * Case No. 9199
CONVENIENCE AND NECESSITY TO *
CONSTRUCT A 120 MW GENERATING *
FACILITY IN BALTIMORE, MARYLAND *

* * * * *

**COMMENTS OF UNITED WORKERS AND ENVIRONMENTAL INTEGRITY
PROJECT ON ENERGY ANSWERS BALTIMORE
RESPONSE TO ORDER TO SHOW CAUSE**

United Workers Association, Inc. (“United Workers”) and the Environmental Integrity Project (“EIP”) hereby submit these brief comments on Energy Answers Baltimore’s April 29, 2016 response to the Commission’s April 15, 2016 Order to Show Cause, and state as follows:

1. United Workers and EIP agree with the main point set forth in the May 12, 2016 reply by the Maryland Department of the Environment (“Department”). The expiration of the air quality provisions of Energy Answers’ CPCN renders invalid and nonexistent Energy Answers’ approvals under the Clean Air Act Prevention of Significant Deterioration (“PSD”) and Nonattainment New Source Review (“NANSR”) programs as well as its state air quality permit to construct. If Energy Answers wishes to obtain these approvals, it must submit a new application that addresses every requirement of the PSD and NANSR programs and state air quality laws as of the new application date (and any required updates during the review process), including but not limited to Best Available Control Technology (“BACT”) and Lowest Achievable Emissions Rate (“LAER”) emission limits. It would be patently insufficient for Energy Answers to update the BACT and LAER analyses without addressing all other requirements.

2. For example, the NANSR program requires offsetting of certain emissions, which is accomplished in Maryland through the acquisition of Emissions Reduction Credits (“ERCs”). The Department notes that some of Energy Answers’ ERCs may no longer be eligible for NANSR compliance. This is certainly the case for the ERCs transferred to Energy Answers in October 2011 from the 2001 shutdown of a facility in Montgomery County, Pennsylvania.

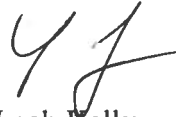
These ERCs expired on November 12, 2011. *See* Attachment A.¹ Depending on ozone nonattainment status at the time of the review, these ERCs would likely also be ineligible for use because the area in which they were generated may not have “an equal or higher nonattainment classification than the area in which the [new] emissions unit is located.” *See* COMAR 26.11.17.04(D)(1)(a). Following a new application, Energy Answers would almost certainly have to obtain ERCs from within the Baltimore area.

3. In addition, United Workers and EIP disagree with Energy Answers’ statement that “the Commission has twice determined that the [Fairfield] Project met all applicable State, local, and federal standards.” In several instances, the CPCN explicitly states that it does not constitute certain required approvals and/or compels Energy Answers to obtain those approvals separately. Examples include approval under the Clean Water Act (Condition E-5), approval from the Chesapeake Bay Critical Area Commission (Condition E-2), and approval for the use of processed scrap tires as supplemental fuel (Condition F-5).

4. United Workers and EIP submit that the most simple and administratively efficient approach would be for the Commission to revoke the CPCN in its entirety and to require Energy Answers, if it wishes to proceed with the project, to submit a new CPCN application addressing all requirements as of the date of the new CPCN application. In the event that the Commission elects not to do this, United Workers and EIP support the recommendations of the Department and/or Commission Staff that the Commission issue an order: (1) confirming the expiration of the air quality provisions of the CPCN; (2) prohibiting construction, as defined under the Clean Air Act and implementing laws, of the Fairfield project until Energy Answers has obtained new air quality conditions, which must constitute its PSD and NANSR approvals under the federal Clean Air Act and its State of Maryland permit to construct; and (3) requiring Energy Answers to submit to the Department a new, full, and complete application for air quality conditions, which application must meet and address compliance with every requirement of the then currently applicable federal Clean Air Act and State of Maryland air quality regulatory regimes.

¹ The documents provided at Attachment A show that ERCs obtained by Energy Answers from Harvard Industries, Inc. for 28.25 tons per year (“tpy”) of NO_x and 8.7 tpy of VOCs from a 2001 shutdown in Montgomery County, PA, have expired. This includes excerpts from Pennsylvania’s ERC registry, last updated in April 2016, which is available online at http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/Permits/erc/ERC_PA_Report.pdf (last visited May 13, 2016).

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'L Kelly', written in a cursive style.

Leah Kelly
Attorney

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Washington, D.C. 20005

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On behalf of United Workers and EIP

CERTIFICATE OF SERVICE

I certify that on this 15th day of May, 2016, a copy of the foregoing comments was transmitted via electronic mail to the parties and interested persons on the service list for Case No. 9199.



Leah Kelly

ATTACHMENT A

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
COMMONWEALTH OF PENNSYLVANIA**

CERTIFIED EMISSION REDUCTION CREDITS IN PENNSYLVANIA'S ERC REGISTRY

Emission reduction credits (ERCs) are surplus, permanent, quantified and federally enforceable emission reductions used to offset emission increases of oxides of nitrogen (NOx), volatile organic compounds (VOCs) and the following criteria pollutants: carbon monoxide (CO), lead (Pb), oxides of sulfur (SOx), particulate matter (PM), PM-10, and PM-2.5.

The Pennsylvania Department of Environmental Protection (PADEP) maintains an ERC registry in accordance with the requirements of 25 Pa. Code § 127.209. The ERC registry system provides for the tracking of the creation, transfer and use of ERCs. Prior to registration of the credits, ERC Registry Applications are reviewed and approved by the Department to confirm that the ERCs meet the requirements of 25 Pa. Code §§ 127.206-208. Registration of the credits in the ERC registry system constitutes certification that the ERCs satisfy applicable requirements and that the credits are available for use. The following registered and certified ERCs in the ERC Registry are currently available for use as follows:

- (1) To satisfy new source review (NSR) emission offset ratio requirements;
- (2) To "net-out" of NSR at ERC-generating facilities;
- (3) To sell or trade the ERCs for use as emission offsets at new or modified facilities.

The certified ERCs shown below, expressed in tons per year (tpy), satisfy the applicable ERC requirements contained in 25 Pa. Code §§ 127.206-208. ERCs created from the curtailment or shutdown of a source or facility expires for use as offsets 10 years after the emission reduction occurs. ERCs generated by the over control of emissions by an existing facility do not expire for use as offsets. However, credits in the registry that are not used in a plan approval will be discounted if new air quality requirements are adopted by the Department or U.S. Environmental Protection Agency (EPA).

For additional information concerning this listing of certified ERCs, contact the Bureau of Air Quality, Division of Permits, Department of Environmental Protection, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-4325. This Pennsylvania ERC registry report, ERC Registry application and instructions are located at www.depweb.state.pa.us, select Air, Bureau of Air Quality, Permits, Emission Reduction Credits.

Facility information	Criteria Pollutant	Certified ERCs Available (tpy)	Expiration date	Intended use of ERCs
R. R. Donnelley & Sons Co. County: Lancaster Contact Person: Frederick Shaak, Jr. Telephone Number: (717)-293-3750	VOCs VOCs	16.00 7.62	3/27/2017	Internal Trading
PPG Industries, Inc. Source Location: Springdale Complex County: Allegheny Contact Person: Joe Frank Telephone Number: (412) 274-3884	VOCs	171.82		Trading

Purchaser/Holder Recipient: Robert O Lampl
ERC Generating Facility Name: Kosmos Cement Company, Cemex Inc.
Address of Recipient: 960 Penn Avenue, Suite, Pittsburgh, PA 15222
Certified ERCs (tpy): 442.00 tpy of SOx and 61.00 tpy of PM10
Amount of ERCs traded to Purchaser/Recipient: Nil
Date of ERCs Transfer: 10/18/2010
ERCs available for future use: 442.00 tpy of SOx and 61.00 tpy of PM10
Expiration Date: 04/24/2011

114 GENERATING FACILITY INFORMATION

ERC Generating Facility Name: Harvard Industries, Inc.
Location of Source: Old Reading Pike, West Pottsgrove Township, Montgomery County, PA
Certified ERCs (tpy): 28.25 tpy of NOx & 8.7 tpy of VOCs
Amount of ERCs traded to Purchaser/Recipient: 28.25 tpy of NOx & 8.7 tpy of VOCs
Date of ERCs Transfer: 10/03/2011
ERCs available for future use: 28.25 tpy of NOx & 8.7 tpy of VOCs
Expiration Date: 11/12/2011

PURCHASER/RECIPIENT OF ERCs

Purchaser/Recipient of ERCs: Energy Answers Baltimore, LLC
Location of Purchaser: 79 North Pearl St., Albany, NY 12207
Location of User Source: 1701 East Patapsco Avenue, Baltimore, MD
Credits available for future use: 28.25 tpy of NOx & 8.7 tpy of VOCs
ERCs available for future use: 0

115 GENERATING FACILITY INFORMATION

ERC Generating Facility Name: Worthington Steel Company
Location of Source: Malvern, Chester County, PA
Amount of ERCs traded to Purchaser/Recipient: 21 tpy of VOCs
Date of ERCs Transfer: 12/22/2011
ERCs available for future use: 49 tpy of VOCs
Expiration Date: 01/31/2012

PURCHASER/RECIPIENT OF ERCs

Purchaser/Recipient of ERCs: Waste Management Disposal Services of Pennsylvania Inc.
Location of User Source: GROWS Landfill, Bucks County
ERCs obtained: 21 tpy of VOCs

116 ERC Holder/Transferor

ERC Generating Facility Name: Tesa Tape, Inc., New York
ERC Holder/Transferor Name: Element Markets, LLC
Location of Source: New York
Amount of ERCs traded to Purchaser/Recipient: 4.5 tpy of VOCs
Date of ERCs Transfer: 04/25/2012
ERCs available for future use: 103.35 tpy of VOCs
Expiration Date: 02/01/2014



**HARVARD
INDUSTRIES, INC.**

DEP-RECEIVED
SOUTHEAST REGION

NOV 13 2001

VIA OVERNIGHT DELIVERY

November 7, 2001

Paul A. Howard
Air Quality Specialist
Pennsylvania Department of Environmental Protection
Southeast Regional Office
Lee Park, Suite 6010
Conshohocken, PA 19428

**RE: Pottstown Precision Casting, Inc.
Montgomery County
AQ Site ID: 23-2756073-1**

Dear Paul:

I recently received correspondence from the Southeast Regional Office requesting the completion and submittal of an "Application for Issuance of an Air Quality Plan Approval Extension". As you are aware from our prior discussions, operations at the Pottstown facility were terminated earlier this year. As such, Pottstown Precision Casting hereby withdraws its Title V Operating Permit application, and requests cancellation of its state operating permits. This shall also confirm your earlier voice mail message to me indicating that the cancellation of these permits would not, in any way, adversely affect the Department's treatment of our Emission Reduction Credit Registry Application. Please advise me at once if my understanding of this is incorrect.

Should you have any questions or concerns regarding this matter, please contact me directly at (517) 787-5181.

Sincerely,

Allan B. Currie Jr.
Corporate Director, Environmental Affairs

cc: Vince Toscano
Dave White

DEPARTMENT OF ENVIRONMENTAL PROTECTION
FIELD OPERATIONS - BUREAU OF AIR QUALITY

ERC LEDGER

1. Name of the Generator	Harvard Industries, Inc.
2. Location	West Pottsgrove Township Montgomery County
Telephone Number	517-787-5181
Fax Number	
3. Address	400 Old Reading Pike Stowe, PA 19464-3760
Telephone Number	610-327-5400
Fax Number	610-327-5418
4. Plan Approval/Operating Permit Number(s)	OP-46-0077
5. Classification of Area	Severe Non-Attainment for Ozone
6. Name of the Pollutant	NOx and VOC
7. Amount of the Pollutant Generated	28.25 tons/year NOx 8.7 tons/year VOC
8. Date of Proposed Reduction	11/13/2001
9. Date of Emission Reduction Occurred	5/15/2001
10. Type of Emission Reduction Technique	Permanent Shutdown
11. Life Span for ERCs Created	10 years
12. Date of ERC Expiration	11-13-2011
13. Nature of Usage of ERCs	<u>Own Use / Transfer</u>
14. Date of Transfer of ERCs	
15. Amount of Transfer of ERCs	
16. Balance Amount of ERCs	
17. Remarks	

DEPARTMENT OF ENVIRONMENTAL PROTECTION
FIELD OPERATIONS - BUREAU OF AIR QUALITY

ERC REGISTRY

1. **Pollutant Description** NOx and VOC
2. **Deposit Code**
3. (a) **Date of Deposit** November 13, 2001 (b) **Life Span** 10 years
4. (a) **Name of ERC Generator** Harvard Industries, Inc.
- (b) **Address**
- (c) **Plant I.D. Number**
5. (a) **Description of Process Generating ERCs and Permit Numbers – Facility shutdown – (Furnaces, Melting furnaces, and Boilers); Permit No. OP-46-0077.**

(b) What Caused Emission to be Available	Permanent Shutdown	
6. Certified ERCs Prior To Discounting	28.25 NOx	Tons/year
	8.70 VOC	Tons/year
7. Initial Discount	0.0	Tons/year
8. Balance (Subtract line 7 from line 6)	28.25 NOx	Tons/year
	8.70 VOC	Tons/year

For Further Explanation see Note Numbers

First Withdrawal

9. Date	Buyer	Permit No.
10. Emissions from Source Requiring Offsets (but before Applying Offset Ratio)		Tons/year
11. Offset Ratio: 1		
12. Offset Emissions (multiply line 10 by line 11)		Tons/year
13. Balance (subtract line 12 from line 8)		Tons/year

For Further Explanation see Note Numbers

ERC REGISTRY

Second Withdrawal

14. Date	Buyer	Permit No.
15. Emissions from Source Requiring Offsets (but before Applying Offset Ratio)		Tons/year
16. Offset Ratio: 1		
17. Offset Emissions (multiply line 15 by line 16)		Tons/year
18. Balance (Subtract line 17 from line 13)		Tons/year

For Further Explanation see Note Numbers

Third Withdrawal

19. Date	Buyer	Permit No.
20. Emissions from Source Requiring Offsets (but before Applying Offset Ratio)		Tons/year
21. Offset Ratio: 1		
22. Offset Emissions (multiply line 21 by line 22)		Tons/year
23. Balance (Subtract line 23 from line 18)		Tons/year

For Further Explanation see Note Numbers