



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.2
2009 SEP 29 PM 4:05
REGIONAL HEARING
CLERK

SEP 29 2009

CERTIFIED MAIL/RETURN RECEIPT

Phillip S. Deisch, Esq.
Associate General Counsel
Spectra Energy
5400 Westheimer Court
Houston, TX 77056

Re: Texas Eastern Transmission LP
Docket No. RCRA-02-2009-7104

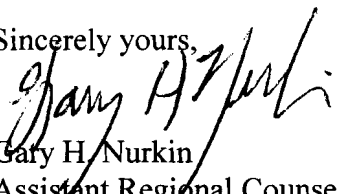
Dear Mr. Deisch:

Enclosed is a copy of the Consent Agreement and Final Order ("CA/FO") in the above referenced proceeding signed by the Regional Administrator of the U.S. Environmental Protection Agency.

Please note that payment is due within forty-five (45) days of signature of the Final Order by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given in that Order.

If you have any questions, please contact me at 212-637-3195.

Sincerely yours,



Gary H. Nurkin
Assistant Regional Counsel

cc: Michael Hastry, NJDEP

Catherine D. Little, Esq.
Attorney for Texas Eastern Transmission LP
Hunton & Williams, LLP
Bank of America Plaza, Suite 4100
600 Peachtree Street, NE
Atlanta, Georgia 30308

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

09 SEP 29 PM 4:05

REGIONAL HEARING

CLERK

In The Matter of:

Texas Eastern Transmission LP,

Respondent,

Proceeding under Section 3008 of the
Solid Waste Disposal Act, as
amended.

**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket Number: RCRA-02-2009-7104

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901, et seq. ("RCRA" or the "Act").

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. The Respondent, Texas Eastern Transmission LP, ("Texas Eastern" or "Respondent") owns and operates a number of facilities including a facility situated at Lambertville, New Jersey 08530, one facility situated in Linden, New Jersey 07036 and one facility at M & R 128, Union County, New Jersey. The United States Environmental Protection Agency ("EPA") inspected the Lambertville facility on or about February 27, 2008 and the two other facilities on or about June 2, 2009.

EPA and Texas Eastern have subsequently engaged in settlement discussions with respect to the alleged violations that EPA discovered during the course of its inspection of Texas Eastern and have agreed to address these issues without the need for EPA to issue a separate formal Complaint to Texas Eastern. Pursuant to 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Both the Complainant, the Director of EPA Region 2's Division of Enforcement and Compliance Assistance, and the Respondent, Texas Eastern, have agreed that entering into this CA/FO is an appropriate means of resolving the alleged noncompliance with RCRA requirements that EPA believes existed at the Texas Eastern facilities without further litigation or other administrative action.

This CA/FO is being issued pursuant to, and under the authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made. Respondent neither admits nor denies EPA's Findings of Fact and Conclusions of Law set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is Texas Eastern Transmission LP ("Texas Eastern").
2. Respondent is a limited partnership duly existing under, and organized pursuant to the laws of the State of Delaware.
3. Respondent is a "person", as that term is defined in § 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10(1993) (N.J.A.C. 7:26G-4.1(a)).
4. At all times relevant hereto, Respondent has owned and operated an interstate natural gas transmission pipeline system including facilities located at 1325 Route 179, Lambertville, NJ 08530. (hereinafter, "Lambertville facility"); Parkway Ave. and Lower Road, Linden, New Jersey 07036 (hereinafter "Linden facility"); and M & R 128 Union County, New Jersey (hereinafter "M & R 128 facility") (collectively referred to as "Facilities").
5. Respondent provides transportation and storage of natural gas for shippers and consumers in the Mid-Atlantic and northeastern United States, as well as other markets.
6. Respondent has been and remains the "owner" and has been and remains the "operator" of the Facilities as those terms are defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)).
7. The Lambertville, Linden and M & R 128 facilities are each a "facility" as that term is defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)).
8. The hazardous wastes generated at the Lambertville, Linden and M & R 128 facilities have included, without limitation, characteristic wastes ("D wastes"), wastes from nonspecific sources ("F wastes"), and discarded commercial chemical products including manufacturing chemical intermediates ("U wastes") as defined within 40 C.F.R. § 261 Subpart C (1993) (N.J.A.C. 7:26G-5.1(a)).

9. Organic hazardous wastes consisting of natural gas pipeline condensate contaminated with polychlorinated biphenyls (PCBs) entrained in the gas stream are removed from the pipeline system by scrubbing operations at the Facilities and are transferred to a hazardous waste tank for storage before being transported off-site for disposal.
10. The condensate remains in process (in the gas stream) until the gas is diffused to the atmosphere in "source control" vessels. Region 2 has concluded that at the point in the process where the gas and liquid condensate are separated -- which occurs in the source control vessel component of the process -- the PCB contaminated condensate is "generated" as a hazardous waste, as that term is defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)). In configurations where the condensate is timely moved to a separate storage tank after the gas has been diffused, Region 2 has concluded that the source control vessel is a process unit that is not subject to regulation as a RCRA tank. In configurations where the source control equipment is situated upon a vessel that is also used for storage of the condensate after diffusion, Region 2 has concluded that such vessel is subject to regulation as a RCRA storage tank.
11. The organic hazardous waste stored in the hazardous waste tanks at the Facilities have a concentration of more than 10 % organics by weight.
12. Respondent has been a "generator" of "hazardous waste" as those terms are defined in 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.1(a)) at the Facilities.
13. Since on or about September 1981, Respondent, at times, has been a Large Quantity Generator ("LQG") (i.e., generated 1,000 kilograms or more of organic hazardous waste in a calendar month) at the Facilities and has stored this waste for short periods of time in the hazardous waste tanks at each facility.
14. On or about February 27, 2008, duly designated EPA representatives conducted an inspection at the Lambertville facility ("the Inspection").
15. On or about April 10, 2008, EPA sent a joint Notice of Violation ("NOV") and Information Request Letter ("IRL") to the Respondent
16. The NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed the Respondent that EPA had identified a number of potential violations of both the air emission requirements for equipment leaks found at 40 C.F.R. § 265 Subpart BB (1993) (N.J.A.C. 7:26G-9.1(a)) and the air emission standards for tanks, surface impoundments and containers found at 40 C.F.R. § 40 C.F.R. § 265 Subpart CC (1998) (N.J.A.C. 7:26G-9.1(a)) at the Lambertville facility and requested Respondent to provide a description and documentation of

the actions Texas Eastern had taken to correct the violations identified by EPA in that NOV.

17. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought, in part, information and documentation relating to the air emission activities regulated under 40 C.F.R. § 265 Subpart BB (1993) (N.J.A.C. 7:26G-9.1(a)) and 40 C.F. R. § 265 Subpart CC (1998) (N.J.A.C. 7:26G-9.1(a)) at the Respondent's Lambertville facility. On or about June 20, 2008, the Respondent submitted its response to the joint NOV/IRL concerning the Lambertville facility.
18. Based upon the Inspection and Respondent's response to the joint NOV/IRL, Region 2 now believes that the storage of wastes in the tanks at the Facilities is excluded from regulation under Subpart CC of the RCRA regulations because pursuant to 40 C.F.R. § 265.1080(b)(5) EPA currently exempts from the RCRA Subpart CC regulations tanks being used solely for the on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h), CERCLA authorities or similar Federal or State authorities. Region 2 has concluded that this exemption extends to Respondent's tanks at the Facilities based on Respondent's assurance that the tanks are solely used to store PCB contaminated condensate removed from the Texas Eastern pipeline system as part of a remediation project required to be conducted pursuant to the requirements of the Compliance Monitoring Program established under the Toxic Substances Control Act ("TSCA") and the current TSCA PCB regulations (see 40 C.F.R. §§ 761.30(i)(5)(i) and 761.61), and the Consent Decree entered into with the EPA in the United States v. Texas Eastern Transmission Corporation (U.S. Dist. Ct., S.D. of Texas, Civil Action No. H-88-1917).
19. Based upon the Inspection and Respondent's response to the joint NOV/IRL, EPA believes that between 2005 and the date of the Inspection, Texas Eastern failed at the Lambertville facility to: (a) monitor, on a monthly basis, using Reference Method 21, the two centrifugal pumps used to transport hazardous waste with more than 10 % organics in violation of 40 C.F.R. § 265.1052(a)(1) (1993)(N.J.A.C. 7:26G-9.1(a)) and (b) monitor, on a monthly basis using Reference Method 21, the forty-one valves in light liquid service used to transport hazardous waste with more than 10% organics in violation of 40 C.F.R. § 265.1057(a)(1993)(N.J.A.C. 7:26G-9.1(a)).
20. Texas Eastern, on or about September 3, 2008, informed EPA that it was now monitoring its pumps and valves at the Lambertville facility in accordance with 40 C.F.R. Part 265 Subpart BB(1993) (N.J.A.C. 7:26G-9.1(a)).

21. On or about June 2, 2009, after initial discussions with Texas Eastern and with the concurrence of Texas Eastern, duly designated EPA representatives conducted an inspection at the Linden, M & R 128 and other facilities ("the June 2009 Inspections"), including the Highway 510 West facility in Hanover, New Jersey 07932.
22. Based upon the June 2009 Inspection, EPA believes that between 2005 and the June 2009 Inspections, Texas Eastern failed to: (a) monitor, on a monthly basis, using Reference Method 21, the one centrifugal pump used to transport hazardous waste with more than 10 % organics at the Linden facility in violation of 40 C.F.R. § 265.1052(a)(1)(1993) (N.J.A.C. 7:26G-9.1(a)) and (b) monitor, on a monthly basis using Reference Method 21, the two valves in light liquid service used to transport hazardous waste with more than 10% organics at the M & R 128 facility and the twenty-two valves in light liquid service used to transport hazardous waste with more than 10% organics at the Linden facility in violation of 40 C.F.R. § 265.1057(a)(1993) (N.J.A.C. 7:26G-9.1(a)).
23. EPA acknowledges that the generator status of a Texas Eastern facility described within these Findings of Facts and Conclusions of Law may change during the course of this CA/FO, and that a Texas Eastern facility described in the Findings of Fact and Conclusions of Law as having been a LQG in the past may in the future no longer be considered a LQG where the condensate is being appropriately managed as off-specification fuel.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between Complainant and Respondent and voluntarily and knowingly accepted by Texas Eastern, that Texas Eastern for purposes of this Consent Agreement and in the interest of settling this matter expeditiously: (a) admits that EPA has jurisdiction over this matter as recited in the Preliminary Statement of the CA/FO; (b) neither admits nor denies the Findings of Fact or Conclusions of Law stated above; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and Texas Eastern, and voluntarily and knowingly accepted by Texas Eastern, that the Respondent shall comply with the following terms and conditions:

1. Commencing on the effective date of the Order and thereafter, Respondent shall comply fully with the applicable requirements of 40 C.F.R. Part 265 Subpart BB(1993) (N.I.A.C. 7:26G-9.1(a)) with respect to the organic hazardous waste that it generates and transfers to a hazardous waste tank for storage at its Lambertville, Linden and M & R 128 facilities.
2. Respondent further agrees that if it becomes a LQG at any of its facilities situated within the geographic region of EPA Region 2 that is not named in this Consent Agreement, then Respondent shall fully comply with the applicable requirements of 40 C.F.R. Part 265 Subpart BB with respect to any organic hazardous waste it generates and transfers to a hazardous waste tank for storage before that waste is transported off-site for disposal.
3. Respondent hereby certifies, at the time of its signature to this document, that, to the best of its knowledge and belief, it is in compliance with all of the applicable hazardous waste regulatory requirements with respect to management of hazardous waste (including organic hazardous waste) at its Facilities.
4. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Texas Eastern's obligation to comply with all applicable federal, state and local law and regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste.
5. Nothing in this document is intended nor shall it be construed, to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Texas Eastern for having made any material misrepresentations or for Texas Eastern's having provided materially false information in any document submitted to EPA.
6. Texas Eastern shall pay a civil penalty to EPA in the total amount of **SIXTY THOUSAND DOLLARS (\$60,000)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check shall be identified with a notation thereon listing the following: *IN THE MATTER OF TEXAS EASTERN TRANSMISSION, LLP*, and shall bear

thereon the Docket Number *RCRA-02-2009-7104*. Payment of the penalty must be *received* at the above address on or before forty-five (45) calendar days after the Effective Date of this CA/FO (the "Due Date").

If Texas Eastern chooses to make the payment by EFT, then Texas Eastern shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: Texas Eastern Transmission LLP.
- 7) Case Number: RCRA-02-2009-7104.

Such EFT must be received on or before forty-five (45) calendar days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, Texas Eastern shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Gary H. Nurkin, Esq.
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, Room 1623
New York, New York 10007-1866

and

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

a. Failure to pay the amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be

assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the date for which the payment was required hereto to have been made.

c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

7. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein and upon the accuracy of Respondent's certification in this proceeding) the civil and administrative claims for the violations of RCRA described in paragraphs 19 and 22 of the Findings of Fact and Conclusions of Law. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of the settlement are set forth herein.
8. The provisions of this Consent Agreement shall be binding upon both Complainant and Texas Eastern along with their authorized representatives and successors or assigns.
9. Texas Eastern explicitly waives its right to request or to seek any Hearing on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or the Findings of Fact/Conclusions of Law, above.
10. Texas Eastern waives any rights it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with, and to reply to any memorandum or communication addressed to, the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

11. The undersigned signatory for Texas Eastern certifies that she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
12. Texas Eastern consents to the service of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
13. The effective date of this Consent Agreement and Final Order shall be the date that it is filed with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.
14. Each party hereto agrees to bear its own costs and fees in this matter.

RESPONDENT: **TEXAS EASTERN TRANSMISSION LP**

BY:

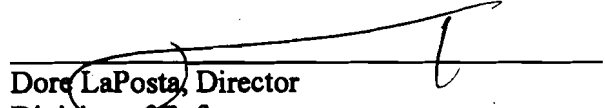

Authorized Signature

NAME: Theopolis Holeman
(PLEASE PRINT)

TITLE: Group Vice President U.S. Operations

DATE: September 22, 2009

COMPLAINANT:


Dore LaPosta, Director
Division of Enforcement
and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

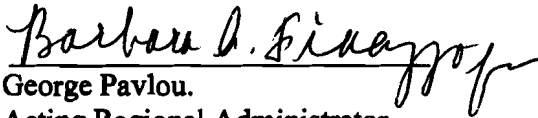
DATE: SEPTEMBER 24, 2009

In the Matter of Texas Eastern Transmission LP
Docket No. RCRA-02-2009-7104

FINAL ORDER

The Regional Administrator of EPA, Region 2 (or anyone duly delegated to act on his behalf), concurs in the foregoing Consent Agreement in the case of *In the Matter of Texas Eastern Transmission LP*, bearing Docket No. RCRA-02-2009-7104. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b) (3) and shall constitute an order issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

DATED: September 25, 2009
New York, New York


George Pavlou.
Acting Regional Administrator
U.S. Environmental Protection Agency -
Region 2
290 Broadway
New York, New York 10007-1866

In the Matter of Texas Eastern Transmission LP
Docket No. RCRA-02-2009-7104

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

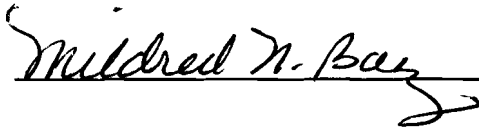
By Hand:

Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Phillip S. Deisch, Esq.
Associate General Counsel
Spectra Energy
5400 Westheimer Court
Houston, TX 77056

Catherine D. Little, Esq.
Attorney for Texas Eastern Transmission LP
Hunton & Williams, LLP
Bank of America Plaza, Suite 4100
600 Peachtree Street, NE
Atlanta, Georgia 30308



Dated: SEP 29 2009,
New York, New York