

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

FILED
FEB 14 PM 3:13
REG. JILL DEAR, US CLERK
EPA REGION VI

IN THE MATTER OF:

TM CHEMICALS LIMITED
PARTNERSHIP

HARRIS COUNTY, TEXAS

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EPA DOCKET NO.
RCRA-06-2013-0902

CONSENT AGREEMENT
AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”) and TM Chemicals Limited Partnership (“Respondent”) agree that settlement of this proceeding is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of settling this matter. Therefore, before taking any testimony, without any adjudication of issues of law or fact herein, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

I. PRELIMINARY STATEMENT

1. On November 6, 2012, EPA filed an Administrative Complaint, Compliance Order and Notice of Opportunity for a Hearing (the “Complaint”) against Respondent for the assessment of civil penalties under Sections 3008(a) and (g) of the Resource Conservation and Recovery Act (the “Act” or “RCRA”), 42 U.S.C. § 6928(a) and (g). The Complaint alleged that Respondent, through its operations at its facility located in Deer Park, Harris County, Texas (the “Facility”), violated requirements of Chapter 335 of the Texas Administrative Code implementing RCRA Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) as a

part of the Texas hazardous waste management program authorized by EPA in 40 CFR § 272.2201 under Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). On December 5, 2012, the Regional Judicial Officer issued an Order granting Respondent an extension of time until January 18, 2013 to file an Answer.

2. In the Complaint, EPA alleged that Respondent failed to conduct hazardous waste determinations for certain solid wastes, in violation of 30 Tex. Admin. Code § 335.62.

3. In the Complaint, EPA also ordered Respondent to take the following actions and provide evidence of compliance within the time period specified below: (a) as of the date of the order, cease its practice of sending hazardous waste for offsite disposal prior to making the hazardous waste determination required by 30 Tex. Admin. Code § 335.62; (b) within 30 days of the effective date of the order, submit to EPA a written plan or standard procedure for characterizing wastes generated by each batch production process it performs, including those identified in Paragraph 20 of the Complaint; (c) within sixty (60) days of the effective date of the order, implement the written plan or standard procedure submitted to EPA; and (d) maintain records of its hazardous waste determinations as required by 30 Tex. Admin. Code § 335.70(a).

4. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and stipulates that EPA has jurisdiction over the subject matter of the Complaint and that the Complaint states a claim for which relief can be granted.

5. For the purposes of this proceeding, Respondent neither admits nor denies the specific factual allegations in the Complaint.

6. Respondent waives any right to contest the allegations in the Complaint and waives all defenses which have been raised or could have been raised to the claims set forth in the Complaint.

7. Respondent waives its right to appeal the proposed Final Order set forth herein.

8. Respondent consents to the issuance of this CAFO and to the assessment and payment of a civil penalty in the amount and by the method set forth in Paragraphs 13-16 of this CAFO.

9. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.

10. The provisions of this CAFO shall be binding upon EPA and Respondent, including Respondent's officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

II. TERMS OF SETTLEMENT

11. Respondent has demonstrated to the satisfaction of EPA that it has complied with the requirements of the Compliance Order provided in the Complaint.

12. As of the date of this CAFO, Respondent certifies that, regarding the violations alleged in the Complaint, Respondent is in compliance with the applicable requirements of RCRA.

13. Based on the nature of the violation alleged in Count 1 of the Complaint and having considered those factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the RCRA Civil Penalty Policy, as well as other relevant factors, EPA has determined that payment by Respondent of a civil penalty in the amount and by the terms provided in Paragraph 15, below, is appropriate for settlement of this proceeding.

14. Respondent consents to the issuance of this CAFO and to pay a civil penalty in the amount and by the terms provided in Paragraph 15, below.

15. Respondent shall pay a civil penalty in the amount of sixty-nine thousand four hundred and fifty dollars (\$69,450.00) in four payments according to the schedule provided below:

- a) Payment 1, in the amount of \$ 17,362.50 is due and must be paid no later than thirty (30) days after the effective date of this CAFO.
- b) Payment 2, in the amount of \$ 17,362.50, is due and must be paid no later than ninety (90) days after the effective date of this CAFO.
- c) Payment 3, in the amount of \$ 17,362.50, is due and must be paid no later than one-hundred and eighty (180) days from the effective date of this CAFO.

- d) Payment 4, in the total amount of \$ 17,362.50, is due and must be paid
no later than two-hundred and seventy (270) days from the effective date
of this CAFO.

Respondent shall make the payments described above by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Consent Agreement and Final Order
In the Matter of TM Chemicals Limited Partnership
EPA Docket Number RCRA 06-2013-0902

Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency” with a phone number of (412) 234-4381. Respondent shall note the case name, “In the Matter of TM Chemicals Limited Partnership” and the EPA docket number “RCRA-06-2013-0902” on the check, or other method of payment, to ensure proper credit.

If payment is made by check, the check shall be accompanied by a transmittal letter referencing Respondent’s name and address, the case name and the EPA docket number. If payment is made by wire transfer, the wire transfer instructions shall reference Respondent’s name and address, the case name, and the EPA docket number. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Jonathan Bull
Assistant Regional Counsel
Mail Code 6RC-ER
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

and to:

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

16. Consistent with 40 CFR § 22.31(b), the effective date of this CAFO is the date upon which it is filed with the Regional Hearing Clerk.

17. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

18. If Respondent fails to make a penalty payment by the date that it is due as provided by the schedule in Paragraph 15, Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

19. Pursuant to 31 U.S.C. § 3717 and 40 CFR § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of this CAFO and will be recovered by EPA on any amount of the total assessed civil penalty (\$69,450.00) that has not been paid as of the date that Respondent first fails to make a payment as required by the schedule in paragraph 15. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 CFR § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue, in accordance with 40 CFR § 13.11(b).

20. EPA also will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid.

In addition, consistent with 40 CFR § 13.11(c), a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent as provided in 31 CFR § 901.9(d). Other penalties for failure to make a payment may also apply.

21. Compliance with the terms and conditions of this CAFO shall only resolve Respondent's liability for Federal civil penalties for the causes of action specifically alleged in the Complaint.

22. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent.

23. Nothing in the CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

24. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of RCRA and the Federal and State regulations implementing RCRA in Texas, including such provisions in 40 CFR Parts 260-272 and Tex. Admin. Code Ch. 335.

25. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 CFR Part 17.

26. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

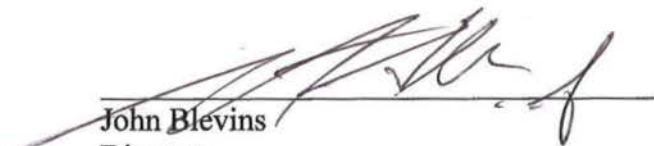
FOR RESPONDENT:

Date: 2/11/13


TM Chemicals Limited Partnership

FOR COMPLAINANT:

Date: FEB 13 2013

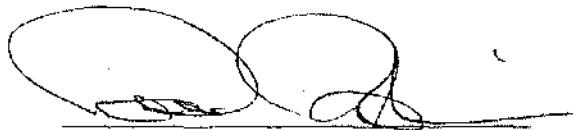

John Blevins
Director
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6

III. FINAL ORDER

Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR Part 22, the foregoing Consent Agreement is hereby ratified and incorporated by reference into this Order. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 CFR § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

2-14-13



Patrick Rankin
Regional Judicial Officer

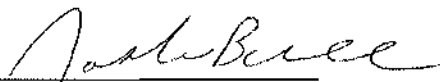
CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of February, 2013, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following by the method indicated below:

CERTIFIED MAIL, RETURN RECEIPT REQUESTED: # 7007 3020 0002 5102 2025

Paul Sarahan, ESQ
Fulbright & Jaworski L.L.P.
98 San Jacinto Boulevard, Suite 1100
Austin, Texas 78701-4255
Counsel for TM Chemicals Limited Partnership

Date: 2/14/2013



U.S. EPA, Region 6
Dallas, Texas