

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

Troy Chemical Corporation

Respondent.

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

**CONSENT AGREEMENT AND
FINAL ORDER**

Docket No. RCRA-02-2021-7103

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 (RCRA) and the Hazardous and Solid Waste Amendments (“HSWA”) of 1984, 42 U.S.C. §§ 6901, *et seq.* (referred to collectively as “RCRA” or the “Act”) for injunctive relief and the assessment of civil penalties. The United States Environmental Protection Agency (“EPA”) has promulgated regulations governing the handling and management of hazardous waste at 40 C.F.R. Parts 260–273 and 279.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA’s Administrator may, if certain criteria are met, authorize a state to operate a hazardous waste program (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the Federal Program). The State of New Jersey has been authorized by EPA to conduct a hazardous waste program (“authorized state program”).

The State of New Jersey was authorized by EPA to conduct a hazardous waste program on August 2, 1999 (64 Fed. Reg. 41823). At that time, the authorized state program incorporated by reference, with some modifications, the regulations in the federal program at 40 C.F.R. Parts 260-266, 268 and 270, as set forth in the 1993 edition. On Dec. 16, 2002 (67 Fed. Reg. 76995), New Jersey was also authorized for the hazardous waste requirements promulgated by EPA between July 2, 1993 and July 31, 1998. These changes became effective February 14, 2003. Thus, as of February 14, 2003, the authorized state program, with some modifications, essentially incorporates by reference the regulations in the 1998 edition of the same Parts of Title 40 of the C.F.R. New Jersey’s regulations that comprised the original state program, and that were authorized in 1999, can be found in the New Jersey Register. See 28 N.J.R. 4606 (Oct. 21, 1996).

The regulations authorized in 2002 can be found at 31 N.J.R.166 (Jan. 19, 1999). New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998, for which EPA retains primary responsibility.

Section 3008(a) of the Act, 42 U.S.C. § 6928(a), authorizes EPA to enforce the regulations constituting the authorized state program, and EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA.

Pursuant to 40 C.F.R. § 22.13(b), where the parties agree to settlement of one or more causes of action before the filing of an administrative 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). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions.

The Complainant and Respondent agree, by entering into this CA/FO, that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims specified herein against the Troy Chemical Corporation (“Troy” or “Respondent”) without litigation. The parties had a settlement conference on or about February 25, 2021, which led to this settlement. The findings of fact and conclusions of law set forth below, which pertain to times relevant to this proceeding, are not intended, nor are they to be construed, as Respondent either admitting or denying such findings and conclusions. No adjudicated finding of fact or conclusions of law have been made.

EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Notice

1. EPA has given notice of this action to the State of New Jersey.

Respondent

2. Respondent is Troy Chemical Corporation, a subsidiary of Troy Corporation.
3. Respondent manufactures defoamers, dispersions, anti-fungal agents and bactericides for the paint and coating industry at a 4-acre facility located at One Avenue L, Newark, New Jersey 07105.
4. Respondent is a “person” as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10 as incorporated by reference in New Jersey Administrative Code (N.J.A.C.) 7:26G-4.1(a).

Hazardous Waste

5. RCRA establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6901 et seq.
6. Pursuant to Sections 3002(a) and 3004(a) of RCRA, 42 U.S.C. §§ 6922(a) and 6924(a), the Administrator of EPA has promulgated regulations for the management of hazardous waste including standards for generators and treatment, storage, and disposal facilities. These regulations are set forth in 40 C.F.R. Parts 260 through 279.
7. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of EPA to issue an order assessing a civil penalty and/or requiring compliance for any past or current violation(s) of Subtitle C (Hazardous Waste Management) of RCRA, which include the regulations referenced below.
8. Respondent is and has been the “owner” and/or “operator” of the “facility” located in Newark, New Jersey, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in N.J.A.C. 7:26G-4.1(a).
9. In or about August 1980, Respondent notified EPA that it may generate 1,000 kilograms or more of non-acute hazardous waste in each calendar month at its facility in Newark, New Jersey. Respondent’s notification was made pursuant to Section 3010 of RCRA.
10. In response to the notification referenced above, EPA issued Respondent’s facility EPA Identification Number NJD002144517.
11. Respondent is and has been a “generator” of “hazardous waste” at the facility identified in Paragraph 3 above as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in N.J.A.C. 7:26G-4.1(a).
12. The requirements for generators that are part of the state authorized program were set forth in 40 C.F.R. Part 262 (1998), as incorporated by reference at N.J.A.C. 7:26G-6.
13. Respondent stores hazardous waste in container areas at its facility for a finite period of time, at the end of which the hazardous waste is treated, disposed of, or recycled elsewhere. The hazardous waste is stored in numerous types of “containers” as that term is defined in 40 C.F.R. § 260.10, as incorporated by reference in N.J.A.C. 7:26G-4.1(a), including 55-gallon drums, 5-gallon buckets, and 275-gallon totes.
14. Respondent submitted a Part A Permit Application to EPA in or about November 1980 for the facility identified in Paragraph 3 but did not submit a Part B Permit Application and never received “interim status” or a hazardous waste permit to treat, store or dispose of hazardous waste at this facility.

15. In July 2019, and prior and subsequent thereto, Respondent generated and continues to generate 1000 kilograms (“kg”) or more of hazardous waste in some calendar months at its facility.

EPA’s Investigative and Enforcement Activities Related to this CA/FO

16. On or about July 23, 2019 through July 25, 2019, duly designated representatives of EPA conducted an inspection of Respondent’s Newark facility to determine Respondent’s compliance with Subtitle C of RCRA and its implementing regulations, including New Jersey’s authorized hazardous waste regulations (the “2019 Inspection”). The inspection was conducted pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.
17. Pursuant to Sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, on or about November 4, 2019, EPA issued Respondent a combined Notice of Violation (“NOV”) and Information Request Letter (“IRL”) regarding hazardous waste activities at its Newark facility.
18. On or about January 21, 2020, Respondent emailed EPA a certified response to EPA’s combined NOV and IRL (“Respondent’s Response”). Respondent’s Response incorporated information submitted to EPA in August 2019 in response to outstanding questions from the July 2019 Inspection.

Pre-filing Settlement Discussions

19. On February 5, 2021, EPA sent Respondent a Notice of Potential Violations and Opportunity to Confer (“NOPVOC”) regarding the following potential July 2019 violations of RCRA and New Jersey’s authorized hazardous waste regulations identified by EPA at the Troy Newark, New Jersey facility:
 - a) failure to make hazardous waste determinations for solid waste generated at its facility pursuant to 40 C.F.R. § 262.11, as incorporated by reference by N.J.A.C. 7:26G-6.1(a); and
 - b) failure to comply with the conditions set forth in 40 C.F.R. § 262.34(a), as incorporated by reference in N.J.A.C. 7:26G-6.1(a), that if complied with would have allowed the Troy Chemical facility to store hazardous waste for up to ninety (90) days without a permit, and the storage of hazardous waste without a permit in violation of 40 C.F.R. § 270.1 as incorporated by reference by N.J.A.C. 7:26G-12.1(a), and Section 3005 of the Act, 42 U.S.C. § 6925.
20. On February 25, 2021, the parties had an informal settlement conference and thereafter agreed to settle this matter as provided herein.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional basis for EPA prosecuting this case; (b) neither admits nor denies EPA's Findings of Fact and Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed CA/FO shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the "effective date").

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18, Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter comply with RCRA and all applicable federally authorized New Jersey State hazardous waste regulations pertaining to the generation and storage of hazardous waste at its Troy facility in Newark, New Jersey including:
 - a. making timely hazardous waste determinations for each solid waste stream generated at its facility as required by 40 C.F.R. § 262.11, as incorporated by reference by N.J.A.C. 7:26G-6.1(a); and
 - b. complying with all applicable conditions for large quantity generators set forth in 40 C.F.R. § 262.34(a), as incorporated by reference in N.J.A.C. 7:26G-6.1(a), which, if fully complied with, allow Respondent to store hazardous waste for up to ninety (90) days at its Newark facility without a hazardous waste permit.
2. Respondent hereby certifies that, as of the date of its signature to this Consent Agreement, to the best of its knowledge and belief, it is in compliance with all the RCRA requirements referenced in Paragraph 19 of EPA's Findings of Facts and Conclusions of Law of this CA/FO.
3. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local laws and regulations relating to any generation, management,

treatment, storage, transport or offering for transport, or disposal of hazardous waste by the Respondent.

4. Respondent shall pay a civil penalty to EPA in the total amount of **forty-four thousand and five hundred dollars (\$44,500)** in one installment. 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 Troy Chemical Corporation** and shall bear thereon the **Docket No. RCRA-02-2021-7103**.

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

- a. Amount of Payment - **\$44,500**.
- b. WIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045**.
- c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**.
- d. Federal Reserve Bank of New York ABA routing number: **021030004**.
- e. Field Tag 4200 of the Fedwire message should read: **D 8010727 Environmental Protection Agency**.
- f. Name of Respondent and Matter: **Troy Chemical Corporation**
Docket Number: **RCRA-02-2021-7103**

If Respondent chooses to **make on-line payments**, Respondent shall go to www.pay.gov and enter SFO 1.1 in the search field on the tool bar on the Home Page; select Continue under "EPA Miscellaneous Payments – Cincinnati Finance Center;" and open the form and complete the required fields. Once payment has been effected, Respondent shall email proof of payment to chester.amy@epa.gov and wise.milton@epa.gov with **In the Matter of Troy Chemical Corporation, RCRA-02-2021-7103** as the subject line.

5. The payment of \$44,500 must be received at the above address (or account of EPA) on or before thirty (30) calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO.
 - a. Failure to pay the requisite civil penalty amount in full according to the above provisions may result in the referral of this matter to the United

States Department of Justice or Department of the Treasury for collection or other appropriate action.

- 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 required 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 any payment was to have been made, in which payment of the amount remains in arrears.
 - c. 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 deadline for any payment. Any such non-payment penalty charge on the debt will accrue from the date any penalty payment becomes due and is not paid.
 - d. The civil penalty provided for herein constitutes a “penalty” within the meaning of 26 U.S.C. § 162(f) and is not a deductible expenditure for purposes of federal or state law.
6. EPA shall mail to Respondent (to the representative designated in Paragraph 7 of this Consent Agreement), a copy of the fully executed CA/FO. Respondent consents to service of the CA/FO upon it by email and by an employee of EPA other than the Regional Hearing Clerk.
7. Except as the parties may agree otherwise in writing, all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

Steven Petrucelli, Enforcement Officer
Enforcement & Compliance Assurance Division
US Environmental Protection Agency 2
290 Broadway, 21st Floor
New York, New York 10007-1866
Petrucelli.Steven@epa.gov

And

Amy Chester, Assistant Regional Counsel
Office of Regional Counsel
US Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007
Chester.Amy@epa.gov

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following address:

Dennis M. Toft, Esq.
Chiesa Shahinian & Giantomasi, PC
One Boland Drive
West Orange, New Jersey 07052
DToft@csglaw.com

8. Full payment of the penalty described in Paragraphs 4 and 5 of the Consent Agreement, shall only resolve Respondent's liability for federal civil penalties for the violation(s) and facts described in paragraph 19 of EPA's Findings of Fact and Conclusions of Law. Full payment of this penalty 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.
9. The provisions of this Consent Agreement shall be binding upon Respondent, and its successors or assigns.
10. Respondent waives its right to request or to seek any hearing in this matter including one on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or EPA's Findings of Fact and Conclusions of Law, above.
11. Nothing in this document is intended or 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 Respondent, if Respondent has made any material misrepresentations or has provided materially false information in any document submitted during this proceeding.
12. Each party hereto agrees to bear its own costs and attorney's fees in this matter.
13. The undersigned signatory for Respondent certifies that he/she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

In the Matter of Troy Chemical Corporation
Docket Number RCRA-02-2021-7103

RESPONDENT:

BY:

(Signature)

NAME:

(Please Print)

TITLE:

DIRECTOR - SAFETY, HEALTH, AND ENVIRONMENT

DATE:

JUNE 16, 2021

In the Matter of Troy Chemical Corporation
Docket Number RCRA-02-2021-7103

COMPLAINANT:

for Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2

DATE: _____

In the Matter of Troy Chemical Corporation
Docket Number RCRA-02-2021-7103.

FINAL ORDER

The Acting Regional Administrator of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of **In the Matter of Troy Chemical Corporation**, bearing **Docket Number RCRA-02-2021-7103**. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued pursuant to Section 3008(a) of RCRA and shall take effect 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).

DATED: _____ 2021
New York, New York

Walter Mugdan
Acting Regional Administrator
United States Environmental Protection Agency
Region 2

In the Matter of Troy Chemical Corporation
Docket Number RCRA-02-2021-7103

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 Email:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
Maples.Karen@epa.gov

Copy by Email:

Dennis M. Toft, Esq
Chiesa Shahinian & Giantomasi, PC
One Boland Drive
West Orange, New Jersey 07052
DToft@csglaw.com

Dated: _____, 2021
New York, New York

Yolanda Majette
WTS Branch Secretary