

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KS 66219

IN THE MATTER OF:)
)
Helena Chemical Company) **CONSENT AGREEMENT**
) **AND FINAL ORDER**
)
)
Respondent.) Docket No. RCRA-07-2013-0023
)
)
Proceeding under Section 3008(a) and (g) of)
the Resource Conservation and Recovery)
Act as amended, 42 U.S.C. § 6928(a) and (g))
_____)

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Helena Chemical Company (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2). This Consent Agreement and Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent Agreement and Final Order.

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 United States Code (U.S.C.) § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated regulations found at Title 28, Article 31 of the Kansas Administrative Regulations and Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 262 and 265.

Parties

3. The Complainant is the Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of EPA, Region 7, as duly delegated from the Administrator of the EPA.

4. The Respondent is Helena Chemical Company, a corporation authorized to operate in the state of Kansas.

Statutory and Regulatory Framework

5. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "K.A.R. 28-31"). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized state program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, the EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of a hazardous waste program pursuant to Sections 3006 of RCRA, the EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008 (a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$37,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 12, 2009. Based upon the facts alleged in this Consent Agreement and Final Order and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by the EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this Consent Agreement and Final Order.

Factual Background

7. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
8. Respondent operates a facility located at 6409 Road 25, Goodland, Kansas, which has been assigned the EPA ID Number KSP000002051 (the Road 25 facility).
9. Respondent operates a facility located at 2220 Road 64, Goodland, Kansas, which has been assigned the EPA ID Number KSR000510115 (the Road 64 facility).
10. In 2004, Respondent notified the Kansas Department of Health and the Environment (KDHE) that the Road 25 facility was a Kansas Small Quantity Generator, generating less than 55 kilograms of hazardous waste per month.
11. In 2010, Respondent provided initial notification to the KDHE that the Road 64 facility was an EPA Generator (federal Large Quantity Generator) of hazardous waste. During 2012, Respondent renotified that the facility was a Conditionally Exempt Small Quantity Generator.
12. On March 1, 2011, the EPA conducted compliance evaluation inspections at both the Road 25 facility and the Road 64 facility. Based on information obtained during the inspections, the EPA issued Respondent a Notice of Violation for each facility.
13. In July of 2011, Respondent provided responses to the Notices of Violation and Letters of Warning issued to the Road 25 and the Road 64 facilities.
14. On March 14, 2012, Respondent provided a response to a February 28, 2012, Request for Information from the EPA.

Violations

COUNT 1

FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION

15. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 13 above, as if fully set forth herein.
16. Pursuant to 40 C.F.R. § 262.11 and K.A.R. 28-31-4(b), a generator of “solid waste,” as that term is defined in 40 C.F.R. § 261.2, is required to determine if the solid waste is a hazardous waste.

17. At the time of the inspection at the Road 25 facility, Respondent had generated a solid waste stream consisting of a waste pendamethalin pesticide product, in the form of a “floor dry” absorbent that had been used to contain spilled pendamathalin pesticide, and in the form of pendamethalin-stained soil on the ground outside of the facility.

18. At the time of the inspection at the Road 64 facility, Respondent had generated five solid waste streams at that facility in the form of five containers of unusable chemicals including: kerosene, toxic liquids, Penncap-M, herbicides with surfactants and sulfuric acid.

19. At the time of the inspections at the two facilities, Respondent had not conducted a hazardous waste determination on the six solid waste streams.

20. Respondent’s failure to make a hazardous waste determination on the above referenced waste streams is a violation of 40 C.F.R. §262.11 and K.A.R. 28-31-4(b).

COUNT 2
OPERATION OF A HAZARDOUS WASTE FACILITY WITHOUT
A RCRA PERMIT OR INTERIM STATUS

21. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 13 above, as if fully set forth herein.

22. Section 3005 of RCRA and Section 65-3437 of the Kansas Statutes, Annotated (K.S.A.) require each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities.

23. On or about May 1, 2011, following the March 1, 2011, inspection of its Road 25 facility, Respondent applied the pendamethalin-contaminated absorbent “floor-dry” and the pendamethalin-stained soil to a local field.

24. According to the Material Safety Data Sheet (MSDS) for the pendamethalin pesticide, the material contains ethylene dichloride, also known as 1,2-dichloroethane, which has a RCRA hazardous waste code D028.

25. The application of the pendamethalin waste to the field is “disposal” of a hazardous waste within the meaning of 40 C.F.R. § 260.10, which is incorporated by reference at K.A.R. 28-31-260.

26. Respondent has never obtained a permit to operate a hazardous waste treatment, storage or disposal facility pursuant to Section 3005 of RCRA or K.S.A. 65-3437.

27. Respondent's disposal of hazardous waste constitutes the operation of a hazardous waste treatment, storage, or disposal facility (TSD) without a permit, in violation of Section 3005 of RCRA and KSA Section 65-3437.

CONSENT AGREEMENT

28. Respondent and the EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

29. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

30. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

31. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement and Final Order.

32. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

33. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

34. Respondent certifies that by signing this Consent Agreement and Final Order that Respondent, at the two Helena Chemical Company facilities at issue in Goodland, Kansas, is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

35. The effect of settlement described in the immediately following paragraph below is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the immediately preceding paragraph above, of this Consent Agreement and Final Order.

36. This Consent Agreement and Final Order addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

37. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

38. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty as stated in Paragraph 1 of the Final Order.

39. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty as set forth in Paragraph 1 of the Final Order portion of this Consent Agreement and Final Order, below.

40. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

41. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

42. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

43. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 11 of the Final Order, that all requirements hereunder have been satisfied.

IV. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a civil penalty of Sixty-Seven Thousand Nine Hundred Thirty dollars (\$67,930.00).

2. Payment of the penalty by cashier or certified check shall be made payable to “Treasurer of the United States” and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Wire transfer payments shall be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency”

On-line payments are available through the Department of Treasury:

www.pay.gov
Enter “sfo 1.1” in the search field.
Open the form and complete required files.

3. The Respondent shall reference the Docket Number, RCRA-07-2013-0023, on the check. A copy of the check or other proof of payment shall also be mailed to:

Office of the Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave, N.W., Mail Code 1900L
Washington, DC 20460; and

Chris R. Dudding, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Parties Bound

5. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

C. Reservation of Rights

6. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

7. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

8. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

9. Notwithstanding any other provisions of the Consent Agreement and Final Order,

an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

10. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

11. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

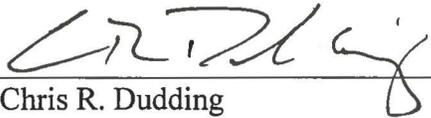
For the Complainant:
The United States Environmental Protection Agency

9-11-13
Date



Donald Toensing
Chief, Waste Enforcement and Materials Management
Branch
Air and Waste Management Division

9/6/13
Date



Chris R. Dudding
Assistant Regional Counsel

For Respondent:
Helena Chemical Company

9/3/13
Date


Signature

David W. Hawkins
Printed Name

Asst Sec + G.L.
Title

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

9-12-13
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

dudding.chris@epa.gov

Copy by First Class Mail to Respondent:

Mr. Ed Brister
Director, Regulatory Compliance/Engineering
Helena Chemical Company
225 Schilling Boulevard, Suite 300
Collierville, Tennessee 38017

Dated: 9/12/13



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7