

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
TransChemical Incorporated)
)
419 East DeSoto)
St. Louis, MO 63147)
)
RCRA I.D. No. MOD068527357)
)
Respondent.)
)
Proceeding under Sections 3008(a) and (g) of)
the Resource Conservation and Recovery Act,)
as amended, 42 U.S.C. §§ 6928(a) and (g))
_____)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-07-2010-0015

**COMPLAINT AND
CONSENT AGREEMENT/FINAL ORDER**

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and TransChemical Incorporated (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), Title 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

Section I

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) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order (CA/FO) serves as notice that EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925, Section

390.1(1) of Chapter 260 of the Revised Statutes of Missouri (R.S.Mo.), and the regulations found at 40 C.F.R. § 262, as incorporated in Title 10, Division 25 of the Missouri Code of State Regulations (10 C.S.R. 25) at Section 262(1) of Chapter 5.

Section II

Parties

3. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch in the Air and Waste Management Division of EPA, Region 7, who has been duly delegated the authority to bring this action by the Administrator of EPA.

4. The Respondent is TransChemical Incorporated, a company incorporated under the laws of Texas and licensed to do business in the state of Missouri.

Statutory and Regulatory Framework

5. The State of Missouri has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. The State of Missouri has adopted by reference the federal regulations cited herein at pertinent parts in Title 10, Division 25 of the Missouri Code of State Regulations. 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, 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 any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Missouri 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 \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, though January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

General Factual Allegations

7. Respondent is a Texas corporation authorized to conduct business in the State of Missouri and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent, located at 419 East De Soto Avenue in St. Louis, MO (Facility), is a chemical distributor and transfer facility. Respondent employs approximately 26 people at the facility.

9. As part of its operations, Respondent generated waste, including spent solvents from equipment cleaning (D001, D002, F002, F003, F005), solvent contaminated solids and residues from equipment cleaning (D001, F003, F005), solvent contaminated Personal Protective Equipment (F003, F005), solvent contaminated wastewater (D001, F003, F005) and solvent contaminated filters. Respondent also generates used oil and universal waste.

10. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 10 C.S.R. 25-4.261, which incorporate by reference the regulations at 40 C.F.R. Part 261. Each of the wastes listed in paragraph 9 is a "solid waste" and all of the wastes except the used oil and universal waste are also "hazardous wastes" within the meaning of these regulations.

11. At the time of the inspection, Respondent is registered as a Large Quantity Generator (LQG) of hazardous waste by both monthly generation (over 1000 kg) and accumulation. 10 C.S.R. 25-5.262, incorporating by reference the regulations at 40 C.F.R. Part 262.

12. Respondent has been assigned a RCRA facility identification number of MOD068527357.

13. Respondent operated two less-than-90 day hazardous waste container storage areas at the facility. One was located within a warehouse and the second was located outside, adjacent to a building. All of Respondent's less-than-90 day hazardous storage areas have containment structures.

14. On or about April 29-30, 2008, an EPA representative conducted a Compliance Evaluation Inspection at Respondent's facility (hereinafter the April 2008 inspection).

15. Based on a review of the April 2008 inspection report and the information provided during the April 2008 inspection by facility personnel, it was determined that Respondent was operating, at the time of April 2008 inspection, as a LQG of hazardous wastes, pursuant to 10 C.S.R. 25-5.262, however, subsequent information provided by the Respondent indicates that hazardous waste generation at the facility is substantially reduced.

Violations

16. Complainant hereby states and alleges that Respondent has violated RCRA and federal and state regulations promulgated thereunder, as follows:

Count 1

Failure to Comply with Generator Requirements

17. The allegations stated in paragraphs 7 through 16 are realleged and incorporated as if fully set forth herein.

Hazardous Waste Containment Structure

18. The regulation at 10 C.S.R. 25-5.262(2)(C)2.D.(III)(a) requires generators to store hazardous waste in containers that have containment structures free of cracks and gaps.

19. At the time of the April 2008 inspection, Complainant alleges the containment area at the north end of the tank transport loading rack did not include a base that was free of cracks, gaps or was impervious to container leaks, spills, and accumulated precipitation until the collected material was detected and removed.

20. Failure to have a containment structure free of cracks and gaps is a violation of 10 C.S.R. 25-5.262(2)(C)2.D.(III)(a).

Conducting Weekly Inspections

21. The regulations at 10 C.S.R. 25-5.262(2)(C)2.C.(I) and (II), which incorporate by reference 40 C.F.R. § 265.174, require that generators of hazardous waste inspect their facility for malfunction and deterioration, as well as for operator error and evidence of discharges that could cause the release of hazardous waste constituents to the environment or could pose a threat to human health. At a minimum, inspections must comply with the requirements of 40 C.F.R. § 265.174, which mandates at least weekly inspections of hazardous waste container storage areas.

22. At the time of the April 2008 inspection, Respondent performed monthly inspections rather than weekly inspections of two hazardous waste container storage areas, the north end of the loading rack and the Meredith building storage area.

23. Respondent's failure to conduct inspect the storage areas at least once weekly is a violation of 40 C.F.R. § 265.174, incorporated by reference at 10 C.S.R. 25-5.262(2)(C)2.C.(I) and (II).

Contingency Plan

24. The regulation at 40 C.F.R. § 262.34(a)(4), incorporated by reference at 10 C.S.R. 25-5.262(1), requires generators to comply with the regulations found in Subparts C and D of 40 C.F.R. Part 265. The regulations at 40 C.F.R. § 265.53(b) require the generator to submit a copy of the facility's contingency plan, as well as revisions to the plan, to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

25. At the time of the April 2008 inspection, the facility representative stated that the contingency plan had not been submitted to the local emergency response agencies.

26. Respondent's failure to submit the contingency plan to all appropriate entities is a violation of 40 C.F.R. § 265.53(b), 40 C.F.R. § 262.34(a)(4), and 10 C.S.R. 25-5.262(1).

27. The regulation at 40 C.F.R. § 262.34(a)(4), incorporated by reference at 10 C.S.R. 25-5.262(1), requires generators to comply with the regulations found in Subparts C and D of 40 C.F.R. Part 265. The regulations at 40 C.F.R. § 265.52 describe the requirements for the contents of the facility's contingency plan.

28. The regulation at 40 C.F.R. § 265.52(c) requires that the contingency plan describe the arrangements to coordinate emergency services agreed to by local police and fire departments, hospitals, contractors, and State and local emergency response teams.

29. At the time of the April 2008 inspection, the facility's contingency plan did not contain a description of arrangements with local emergency response agencies.

30. The regulation at 40 C.F.R. § 265.52(d) requires that the contingency plan include an up-to-date list of names, addresses, and phone numbers of all persons qualified to act as emergency coordinator.

31. At the time of the April 2008 inspection, the list of emergency coordinators in the contingency plan was not current. The list did not include Ms. Goodman or Mr. Groppe, both of whom are emergency coordinators.

32. The regulation at 40 C.F.R. § 265.52(e) requires that the contingency plan include an up-to-date list of all emergency equipment at the facility and its location.

33. At the time of the April 2008 inspection, the facility's contingency plan did not have a list or description of emergency equipment and its location.

34. Respondent's failure to maintain a contingency plan that contained a description of

arrangements with local emergency response agencies, up-to-date contact information for emergency coordinators, and current information on emergency equipment at the facility constitutes a violation of 40 C.F.R. § 265.52, 40 C.F.R. § 262.34(a)(4), and 10 C.S.R. 25-5.262(1).

CONSENT AGREEMENT

1. Respondent and Complainant agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.
2. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CA/FO.
4. 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 CA/FO.
5. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.
6. This CA/FO 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.
7. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.
9. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$8,350.50, as set forth in Paragraph 1 of the Final Order.
10. 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.
11. Respondent understands that failure to complete the Compliance Actions described

in the Final Order within the designated timeframes may, among other things, subject Respondent to civil penalties of up to \$32,500 per day of non-compliance. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, though January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

12. This CA/FO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

13. By signing this CAFO, Respondent certifies that, to best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

14. The effect of settlement described in Paragraph 6 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 13 of this consent agreement and final order.

15. This CA/FO shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 21 of the Consent Agreement, that all requirements hereunder have been satisfied.

Reservation of Rights

16. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO 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-two Thousand Five Hundred Dollars (\$32,500) per day per violation pursuant to Section 3008(c) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, though January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

17. 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 CA/FO.

18. Except as expressly provided herein, nothing in this CA/FO 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.

19. Notwithstanding any other provisions of the CA/FO, 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.

20. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

21. The provisions of this CA/FO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

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 CA/FO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CA/FO, Respondent will pay a civil penalty of \$8,350.50. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

2. Wire transfers should be directed to the Federal Reserve Bank of New York:

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"

3. A copy of the payment documentation shall also be mailed to:

Regional Hearing Clerk
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

and to:

Kent Johnson, CNSL/CMBR
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO 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 CA/FO shall apply to and be binding upon Complainant and 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 CA/FO.

FOR COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

3/25/10
Date



Donald Toensing
Chief, RCRA Enforcement and State Programs Branch
Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

3/25/10
Date



Kent Johnson
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

FOR RESPONDENT
TRANSCHEMICAL, INCORPORATED

3/19/10
Date

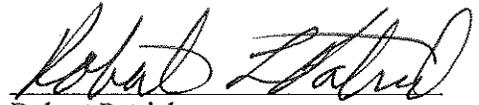
Daniel J. Croghan
Signature

DANIEL J. CROGHAN
Printed Name

PRESIDENT
Title

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

March 31, 2010
Date


Robert Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

IN THE MATTER OF TransChemical Incorporated, Respondent
Docket No. RCRA-07-2010-0015

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Amy L. Wachs
Husch Blackwell Sanders LLP
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105

Dated: 3/31/10



Kathy Robinson
Hearing Clerk, Region 7