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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

1201 Elm Street, Suite 500
Dallas, Texas 75270

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REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

Nouryon Surface Chemistry LLC,

Respondent.

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Docket No. RCRA-06-2023-0927

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Nouryon Surface Chemistry LLC (“Respondent”) have agreed to 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 and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Sections 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6928(a).

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated requirements of Subchapter III of RCRA, 42 U.S.C. §§ 6921 – 6940.

3. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the state of Texas received authorization to administer and enforce a hazardous waste program (49 FR 48300).¹ Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the EPA to enforce the provisions of an authorized state program and the regulations promulgated thereunder. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), the state of Texas has been notified of this action.

Parties

4. Complainant is the Director of the Enforcement and Compliance Assurance Division of EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

5. Respondent is Nouryon Surface Chemistry LLC, a company formed in the state of Delaware and conducting business in the state of Texas.

Statutory and Regulatory Framework

6. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from the potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

7. Subchapter III of RCRA, 42 U.S.C. §§ 6921 – 6940, commonly referred to as “Subtitle C” (Hazardous Waste Management), required the Administrator to establish a “cradle-to-grave” federal hazardous waste program that includes criteria for defining hazardous waste

¹ On December 26, 1984, the state of Texas received final authorization for its base Hazardous Waste Management Program (49 FR 48300). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations herein are to the “EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program” dated November 2014, incorporated by reference under 40 C.F.R. § 272.2201(c)(1)(i) effective on February 26, 2016. 80 Fed. Reg. 80672 (December 28, 2015). References and citations to the Program and Texas Administrative Code (T.A.C.) may vary slightly from the Texas published version of the T.A.C. The corresponding C.F.R. citations are also provided.

and regulating the activities of facilities that generate, transport, treat, store, or dispose of hazardous waste.

8. Pursuant to the authority provided in Section 3001 of RCRA, 42 U.S.C. § 6921, the EPA promulgated regulations listing hazardous wastes and providing criteria for identifying hazardous wastes, taking into account characteristics of ignitability, corrosivity, reactivity and toxicity, among other hazardous characteristics.

9. Pursuant to the authorities provided in Subtitle C, the EPA also promulgated the regulations found at 40 C.F.R. Parts 260 – 279 that provide detailed requirements governing the actions of generators and transporters of hazardous waste, and of treatment, storage, and disposal facilities. The equivalent and federally authorized Texas program is found at Title 30, Chapter 335, of the Texas Administrative Code (T.A.C.).

10. Pursuant to the regulations found at 40 C.F.R. § 270 [30 T.A.C. § 335.2], owners and operators of facilities that treat, store, or dispose of hazardous waste must have a RCRA permit, and must comply with the standard set forth in 40 C.F.R. Part 264 [30 T.A.C. § 335.152], unless otherwise exempt. Generally, these regulations prohibit the treatment, storage, and disposal of hazardous waste without a permit or equivalent “interim status”.

11. Pursuant to the generator standards found at 40 C.F.R. Part 262, Subchapter C [30 T.A.C. § 335], generators may accumulate (store) hazardous waste without a RCRA permit, provided the generator complies with the applicable conditions set forth in 40 C.F.R. 262.34(a)(1) – (4) [30 T.A.C. § 335.69(a)(1) – (4)]. If at any time a generator does not meet the exemption conditions, the generator must apply for and receive a RCRA permit and adhere to the standards set forth in 40 C.F.R. Part 264 [30 T.A.C. § 335.152].

12. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes a civil penalty of not more than \$25,000 per day for violations of Subtitle C of RCRA. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$117,468 for violations that occur after November 2, 2015, and are assessed after January 6, 2023.

EPA Findings of Fact and Conclusions of Law

13. Respondent is a company and “person” as defined by 40 C.F.R. § 260.10 [30 T.A.C. § 3.2(25)].

14. Respondent is the owner and operator of a “facility,” as defined by 40 C.F.R. § 260.10 [30 T.A.C. § 335.1(60)], located at: 15200 Almeda Road, Houston, Texas 77053 (the “Facility”), RCRA ID No. TXD065078826.

15. Pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, the EPA conducted an investigation on September 29, 2020, through October 2, 2020, to determine Respondent’s compliance with RCRA and the implementing regulations at the Facility (the “Investigation”).

16. Respondent generates and stores waste streams at the Facility including maleic anhydride (U147), feedstock for surfactants/surfactants/organic liquids (D001, D002), lab waste (D001, D002, D018, D021, D022, D038, D040, F002, F003, F005), hydrogen peroxide (D002), organic solids (D003), and sulfuric acid scrubber (D002), which are “solid wastes” as defined by 30 T.A.C. § 335.1(140) [40 C.F.R. § 260.10], and characteristic “hazardous wastes” as defined by 30 T.A.C. § 335.1(70) [40 C.F.R. § 261.3].

17. Respondent is a “generator” of hazardous waste, as defined by 30 T.A.C. § 335.1(76) [40 C.F.R. § 260.10].

18. From the time Respondent first generated or stored hazardous waste, Respondent was subject to Subtitle C of RCRA, and the regulatory requirements promulgated thereunder and found at 40 C.F.R. Parts 260 – 279 and Title 30, Chapter 335, of the Texas Administrative Code.

EPA Alleged Violations Violation

19. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

20. Complainant hereby states and alleges that Respondent has violated RCRA, and the federal and state regulations promulgated thereunder, as follows, and is therefore subject to civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a):

Count 1 - Notification

21. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), and the regulation at 30 T.A.C. § 335.6, any person generating a characteristic or listed hazardous waste shall file with the Administrator (or authorized state) a notification stating the location and general description of such activity and the identified characteristic or listed hazardous waste handled by such person.

22. Respondent submitted a notification describing its hazardous waste activity for one unit as permit exempt. The unit was not permit exempt but was a 90-day storage area.

23. Respondent’s failure to submit a notification stating an accurate description of its hazardous waste generating activity is a violation of Section 3010(a) of RCRA, 42 U.S.C § 6930(a).

Count 2 – Contingency Plan Requirements

24. Pursuant to 40 C.F.R. § 262.261(c) and 30 T.A.C. § 335.61, the generator must prepare a contingency plan that describes arrangements agreed to with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, local hospitals or, if applicable the Local Emergency Planning Committee.

25. Respondent failed to prepare a contingency plan that described the arrangements made with local responders.

26. Pursuant to 40 C.F.R. § 262.261(d) and 30 T.A.C. § 335.61, the generator must prepare a contingency plan that lists the names and emergency telephone numbers of all persons qualified to act as an emergency coordinator, and the list must be kept up to date.

27. Respondent failed to prepare a contingency plan that listed names and emergency telephone numbers for emergency coordinators.

28. Pursuant to 40 C.F.R. § 262.261(e) and at 30 T.A.C. § 335.61, the generator must prepare a contingency plan that include a list of all emergency response equipment at the facility (such as fire extinguishing systems, spill control equipment, communications, and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

29. Respondent failed to prepare a contingency plan that listed all the emergency response equipment at the facility and its capabilities.

30. Respondent's failure to prepare a contingency plan that described the arrangements made with local responders, included names and emergency telephone numbers for emergency coordinators, and included a list of emergency response equipment and its

capabilities is a violation of 40 C.F.R. § 262.261(c), (d), and (e) and 30 T.A.C. § 335.61.

COMPLIANCE ORDER

31. Pursuant to Section 3008(a) of RCA, 42 U.S.C. § 6928(a), Respondent is hereby ORDERED, and agrees, to undertake the following compliance actions as expeditiously as possible, but in no event later than sixty (60) days from the Effective Date of this Consent Agreement and Final Order.

32. Respondent shall revise its contingency plan to describe the arrangements made with local responders, includes names and emergency telephone numbers for emergency coordinators, and includes a list of emergency response equipment and its capabilities in compliance with 40 C.F.R. § 262.261(c), (d), and (e) and 30 T.A.C. § 335.61.

Certifications and Submissions

33. Within ninety (90) days of the Effective date, Respondent shall certify as to the completion of the above compliance actions, provide documentation demonstrating completion to EPA, including at minimum the prepared contingency plan and any SOPs, and certify that Respondent is operating in compliance with RCRA, and the regulations promulgated thereunder.

34. All submissions to EPA required by this Consent Agreement and Final Order shall contain the following certification signed by an authorized representative of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

35. All submissions to EPA required by this Consent Agreement and Final Order shall be sent electronically to:

Erin Young-Dahl
Enforcement and Compliance Assurance Division

Waste Enforcement Branch
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2101
YoungDahl.Erin@epa.gov

CONSENT AGREEMENT

36. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action;
- g. waives any right to contest the allegations set forth herein; and
- h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

37. 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 specified herein and performance of the compliance actions described below.

38. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

39. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of five hundred twelve dollars (\$512.00) as set forth below.

40. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. 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:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

41. A copy of the check or other information confirming payment shall simultaneously be sent electronically by email to the following:

Lorena S. Vaughn
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
vaughn.lorena@epa.gov; and

Erin Young-Dahl
Enforcement and Compliance Assurance Division
Waste Enforcement Branch
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2101
YoungDahl.Erin@epa.gov

42. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or

stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) 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. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

43. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

44. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

45. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

46. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder. In any action by EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest

the authority or jurisdiction of the EPA to issue or enforce this CAFO and agrees not to contest the validity of this CAFO or its terms or conditions.

47. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

48. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

49. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

50. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

51. 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.

52. 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.

53. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: mills.clarissa@epa.gov

To Respondent: sergio.sepulveda@nouryon.com

**RESPONDENT:
NOURYON SURFACE CHEMISTRY LLC**

8/29/2023
Date

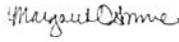

Signature

Heath Herbold
Printed Name

Site Director
Title

**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date


Digitally signed by
MARGARET OSBOURNE
Date: 2023.08.30
15:26:25 -05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to Sections 3008(a) of RCRA, 42 U.S.C. §§ 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. 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.

IT IS SO ORDERED.

THOMAS
RUCKI

Thomas Rucki
Regional Judicial Officer

Digitally signed by THOMAS RUCKI
DN: cn=U.S. govt. U.S. Government, ou=Environmental
Protection Agency, email=THOMAS.RUCKI,
o=9.2342.19200300.100.1.1+68001003655804
Date: 2023.08.31 09:30:59 -0400

Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was transmitted to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

mills.clarissa@epa.gov

Copy via Email to Respondent:

sergio.sepulveda@nouryon.com

Signed
Office of Regional Counsel
U.S. EPA, Region 6