

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)
In re:)
Parker Solvents Company, Inc.)
EPA ID No. ARD035565068)
Initial Administrative Order)
Docket No. RCRA-06-2020-0945)
_____)

**RESPONSE TO INITIAL ADMINISTRATIVE ORDER
AND REQUEST FOR HEARING**

Pursuant to 40 CFR § 24.05, Petitioner Parker Solvents Company, Inc. (“Parker Solvents”), requests review of the Initial Administrative Order issued by the U.S. Environmental Protection Agency, Region 6. *See* Initial Administrative Order attached as Exhibit 1. Parker Solvents petitions this Board for review of whether the extensive and unduly burdensome measures imposed by the order are necessary to protect human health or the environment, particularly in light of Parker Solvents’ current financial status and the legal incapacity of its owner. More specifically, the Region’s inclusion of the following disputed provisions in the Initial Administrative Order is based on clearly erroneous findings of fact and conclusions of law and constitutes arbitrary and capricious agency action and an abuse of discretion:

- 1) Necessity to Protect Human Health or the Environment: Sections V(c)-(h), VI(d)-(e)

The Initial Administrative Order relies upon unsupported factual conclusions that releases from the Parker Solvents facility in Little Rock, Arkansas have migrated off-site and impacted a naturally occurring spring located outside of facility boundaries and that corrective measures are necessary to protect human health or the environment. But the most recent documentation upon which the Region claims to have drawn these factual conclusions are the results from sampling conducted more than eight years ago in 2009 and 2013. The Region provides nothing in its Initial

Administrative Order to demonstrate that any hazardous wastes are currently present in levels at or above risk-based screening levels and fails to account for natural attenuation.

The Initial Administrative Order therefore lacks an adequate factual basis under Section 3008(h) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928, to impose the extensive and burdensome remedial measures described in the Order. This lack of an adequate factual basis is particularly concerning given the sharp contrast between the extensive scope of remedial measures sought to be imposed and both Parker Solvent's ongoing financial difficulties and the incapacity of its owner due to an ongoing medical condition (considerations which have been fully disclosed to the Region). Current cost estimates for the scope of work in the Initial Administrative Order total approximately \$200,000 in year one, \$480,000 in year two, \$230,000 in year three, \$220,000 or more in year four, and \$170,000 in year five. As demonstrated to Region staff via a schedule of deliverables with cost estimates and company tax returns, Parker Solvents simply does not have the financial means to incur these extensive costs regardless of its desire to cooperate with EPA, especially when the Initial Administrative Order also requires financial assurance above and beyond actual anticipated costs that alone would stretch Parker Solvents' financial capabilities.

2) Interim Measures Compliance Schedule: Section VIII.15(a)

The expedited compliance schedule set for the Interim Measures ("IM") phase is additionally unreasonable. The requirement in Section 4(b) that Parker Solvents complete construction of Interim Measures within 60 days of the date the Region approves the IM Work Plan does not adequately allow for unexpected delays that are out of Parker Solvents' control. Although a later section of the Order does describe a process through which the Region might approve delays for a force majeure, 60 days for completion of construction is not reasonable when other factors such as subcontractor availability, extended weather delays, etc. may impact the completion of construction. It also fails to account for the submission of Estimated Costs and subsequent EPA approval which must happen between the approval of the IM Work Plan and the start of

construction under Section XV.36(b). Section 4(b) should instead require that Parker Solvents initiate construction within 60 days of approval of the IM Work Plan.

Section 4(d) requires that a preliminary IM Effectiveness Report be submitted sooner than is technically appropriate. Though the Order requires this report be submitted within 60 days of the first submitted semiannual report, allowing a longer period of time to elapse between the start of post-IM monitoring will allow a more accurate determination of whether the Interim Measures imposed were effective and would allow for sampling anomalies. Likewise, requiring that a final IM Effectiveness Report be submitted within 180 days assumes that the maximum effectiveness of the Interim Measures can be fully determined within this short time frame. It would be more appropriate for Parker Solvents to collect two sets of semiannual groundwater samples and allow more time for the Interim Measures to be effective before any IM Effectiveness Report is submitted and that additional time be allowed before the final IM Effectiveness Report is due. Extending these periods of time also allows for a more accurate determination of whether any additional measures beyond the Interim Measures imposed are necessary to protect human health or the environment.

The last sentence of Section 4(d) should be changed to require that semiannual groundwater monitoring reports be submitted within 45 days of receipt of the sampling data as Parker Solvents has no control over how long the laboratory may take to provide these results once groundwater sampling is complete.

3) Necessity of Additional Corrective Measures: Section VIII.15(b)-(c)

The Order currently requires the additional Corrective Measures be evaluated and implemented regardless of the effectiveness of the Interim Measures taken. This unreasonably requires Parker Solvents to expend significant time and financial resources on further study and Corrective Measures regardless of whether the Interim Measures imposed are determined to be sufficient to protect human health and the environment. The Order should be amended to negate the need for any additional Corrective Measures Study (“CMS”) or Corrective Measures

Implementation (“CMI”) and to discharge any further obligations under the Order, including financial assurance requirements, if the final IM Effectiveness Report concludes that the Interim Measures already undertaken by Parker Solvents are adequate remedial measures to protect human health and the environment.

4) Access to Adjoining Properties: Sections VIII.15(a), X.19

In Section V.9(h), the Order asserts that releases from the facility have migrated off-site and impacted a naturally occurring spring to the north of the facility. This is the only specific environmental impact alleged in the Order. Accordingly, from a technical standpoint, semiannual groundwater monitoring must include sampling offsite in order to accurately and fully evaluate whether remediation has been effective to protect human health and the environment. This necessarily includes sampling from existing wells located on adjoining properties that is owned by private property owners and the State of Arkansas. Section X.19 recognizes as an initial matter that conducting groundwater monitoring on these properties will require Parker Solvents to secure access and/or use agreements from these owners. Yet, the Order sets unreasonably short deadlines for Parker Solvents to conduct groundwater monitoring (Section VIII.15(a)) which then determines all other subsequent deadlines. All deadlines in the Order should instead begin running from when Parker Solvents receives access to adjoining properties and is therefore able to complete groundwater monitoring that fully evaluates potential impacts and any purported threat to human health and the environment.

5) Estimated Cost of Work Submissions: Section XV.35

The requirement in Section XV.35(b) that Parker Solvents submit an initial Estimated Cost of the Work (which the Order describes as covering both Interim Measures/Stabilization under Section VIII and Corrective Measures Study under Section VIII) within 30 days of the Region’s approval of the IM Workplan is unreasonable and inappropriate. This obligation assumes that additional Corrective Measures will be necessary and requires that Parker Solvents submit a cost estimate for Corrective Measures Study before the effectiveness of Interim Measures, which may

be all that is necessary to protect human health and the environment, is determined. The Order should require that an Estimated Cost of the Work be submitted for any Corrective Measures Study only if the final IM Effectiveness Report determines that Interim Measures have not already fully addressed any purported threat to human health or the environment.

6) Financial Assurance Requirements: Section XV.36-39

The extensive financial assurance requirements in Section XV.36 to 39, are unnecessary and unreasonable. In addition to demanding that Parker Solvents cover the costs of hundreds of thousands of dollars in unwarranted site activities, Section XV.36(a) of the Initial Administrative Order further requires that Parker Solvents establish and maintain financial assurance for the benefit of the EPA in the amount of the most recent Estimated Cost of Work. When Parker Solvents presented its financial difficulties to Region staff, language which appears to contradict the original financial assurance requirement in the first paragraph of Section XV.36(a) was added to subsection (1) that states, "At all times, the trust fund shall retain at least \$50,000 to protect the ongoing expenditures of the project" In addition to being unclear, these financial assurance requirements constitute an unreasonable double charge as they would require Parker Solvents to bear both the extensive actual costs of the activities described in the Initial Administrative Order and an unduly burdensome financial assurance requirement. This is particularly troubling given Parker Solvents current financial status as already demonstrated to Region staff. Though Section XV.39 does appear to allow a procedure for providing documentation in hopes of Region staff confirming its inability to secure financial assurance, Parker Solvents has already attempted this process with Region staff unsuccessfully prior to the issuance of the Initial Administrative Order.

7) Penalty Amounts: Sections XIV.32, XVI.41-42, XVI.44

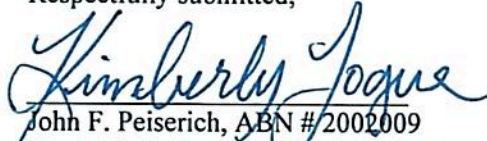
Section XVI.41 sets forth what the Initial Administrative Order describes as "stipulated" penalties. However, Parker Solvents has not agreed to the imposition of these penalties. In particular, Parker Solvents objects to the lack of any cap on the total penalties described. Further, given Parker Solvents' current financial strains, the potential imposition of penalties will only

further exacerbate its demonstrated inability to pay projected costs for the scope of work and financial assurance described in the Initial Administrative Order. As written, Parker Solvents has serious concerns about its ability to finance the activities required by the Initial Administrative Order despite its desire to cooperate with Region staff in good faith.

In addition to the specific objections described above, Parker Solvents reserves the right to amend its response and request for hearing if additional disputed factual or legal determinations or relief provisions are identified.

Parker Solvents requests that the Board remand the Initial Administrative Order for revision of these disputed provisions consistent with applicable facts and law. Pursuant to 40 CFR § 24.08(b), Subpart C hearing procedures should be employed as the Initial Administrative Order requires in Section VIII.15(a)-(c) (and as summarized in Section III) that Parker Solvents undertake corrective measures together with investigations and/or studies in Section VIII.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the attached filing upon the following counsel via email and United States mail, postage prepaid, certified mail, return receipt requested, this 21st day of April, 2021:

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