

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

07 MAY 20 11:10 AM
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:
SOLUTIA, INC.
FM 2917
ALVIN, TEXAS 77512

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DOCKET NUMBER
RCRA-6-2007-0903

EPA I.D.: TXD001700806

RESPONDENT

COMPLAINT, COMPLIANCE ORDER, AND NOTICE
OF OPPORTUNITY FOR HEARING

The Complainant, the Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency ("EPA") Region 6, issues this Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Complaint") to Solutia, Inc. ("Respondent").

I. STATEMENT OF AUTHORITY

This Complaint is issued pursuant to Section 3008 of the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). Section 3008(a) of RCRA authorizes the Administrator of the EPA to issue complaints whenever the Administrator has information that any person has violated or is violating any requirement of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e. The requirements of Subtitle C include the requirements of the authorized program in a State that has been authorized to carry out a hazardous waste program under Section 3006 of RCRA, 42 U.S.C. § 6926. On December 12, 1984, the State of Texas

received final authorization for its base RCRA program, effective December 26, 1984, (49 Fed. Reg. 48300), and there have been subsequent authorized revisions to the base program. The Texas Commission on Environmental Quality ("TCEQ") is the State agency designated to carry out the authorized RCRA program. EPA is enforcing the Texas regulations in its oversight capacity.

The authority to issue this Complaint has been delegated by the Administrator of the EPA to the Regional Administrator, EPA Region 6, and has been further delegated to the Compliance Assurance and Enforcement Division Director, EPA Region 6 ("Complainant").

II. NOTICE TO THE STATE

Notice of this action has been given to the State of Texas prior to the issuance of this Complaint pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

III. PRELIMINARY STATEMENT

1. Solutia, Inc. ("Respondent") is incorporated in and under the laws of the State of Texas.
2. Respondent is a corporation, and therefore is a "person" as defined in Texas Health and Safety Code § 361.003(26) (Vernon 1993), 30 Texas Administrative Code (TAC) § 335.1, Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 Code of Federal Regulations (C.F.R.) § 260.10.
3. Respondent's registered agent for service in the State of Texas is C.T. Corporation System, 350 N. St. Paul, Suite 2900, Dallas, Texas 75221.
4. Respondent owns and operates a Chemical Intermediates facility. The principal products produced at the manufacturing facility are Acrylonitrile, Formalin, Nitriolotriacetic Acid, Diphenyl Oxide, Sorbic Acid, Methionine Hydroxy Butanoic Acid and Soft Alkylbenze.

5. Respondent's facility is located approximately seven (7) miles southeast of the intersection of State Highway No. 35 and Farm-to-Market Road No. 2917, 14 miles southeast of Alvin, Texas ("the Facility").
6. The Facility was previously owned by Monsanto, which began operations in 1962.
7. On or about September 14, 1995, Monsanto submitted a Part A application for a hazardous waste container storage area.
8. In 1997, Monsanto divested itself from its chemical plants and formed the current company, Solutia, Inc.
9. On July 2, 1999, Solutia, Inc. was issued a permit for an industrial solid waste management site, Permit No. HW-50189-000 ("Permit").
10. Pursuant to RCRA § 3010, 42 U.S.C. § 6930, on or about August 25, 2000, Respondent filed a Notification of Hazardous Waste Activity ("3010 Notification") with EPA.
11. In the 3010 Notification, Respondent identified itself as a Large Quantity Generator of hazardous wastes, including generation of the following hazardous wastes:
 - a. K011, K013, K022;
 - b. F003, F038, F039, F005, F010;
 - c. D001, D002, D003, D004, D005, D006, D007, D009, D010, D018, D022, D035, D038, D040; and
 - d. U and P hazardous wastes.
12. Respondent is a "generator" of hazardous waste, as that term is defined in 30 TAC § 335.1 [40 C.F.R. § 260.10].
13. The Respondent's chemical manufacturing business is a "Facility" as the term is defined at 30 TAC § 335.1 [40 C.F.R. § 260.10].

14. Pursuant to RCRA § 3007, 42 U. S. C. § 6927, on April 5-8, 2004, EPA representatives conducted a Compliance Evaluation Inspection (“Inspection”) at Respondent’s Facility.
15. During the Inspection, Paul Richardson, Facility Environmental Specialist for Respondent, accompanied EPA representatives.
16. During the Inspection, EPA representatives observed there were no inspection documentations for certain container storage areas as follows: 1) the permitted storage area; 2) less than 90-days storage area; and 3) the laboratory less than 90-days storage area. The container storage areas were not being inspected as required by Provision III.D of Respondent’s hazardous waste permit #HW-50189-000, specifically under Table III D, Inspection Schedule. Respondent did not document at the time of shipment or during loading and unloading, that the above-referenced container storage areas were being inspected daily for spills/wet spots as required under the Permit. Facility representatives responded that inspections were being performed but the Facility failed to document them for that day of shipment.
17. During the Inspection, Respondent’s representative prepared a check sheet to be filled out to comply with Provision III D of the Permit.
18. Pursuant to the authority granted by Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), on the dates of May 02, 2006 and December 4, 2006, EPA issued a Request for Information (“Request”) to Respondent seeking information pertaining to the Facility’s activities and regulatory compliance.
19. On the dates of June 8, 2006 and January 19, 2007, Respondent submitted a response letter (“Response”) to each of EPA’s Requests. The Responses included relevant information and certifications to address EPA’s areas of concern that resulted from the Inspection.

20. For purposes of this Complaint, the term “hazardous waste” shall mean “hazardous waste” and “industrial hazardous waste” as defined at 30 TAC § 335.1 [40 C.F.R. § 260.10].

IV. VIOLATIONS

COUNT I - FAILURE TO INSPECT CONTAINER STORAGE AREAS AND MAINTAIN RECORDS AS REQUIRED

21. Paragraphs 1 through 20 are hereby incorporated by reference.
22. Pursuant to Provision III D of Respondent’s Permit, the Permit states that the Permittee shall follow the inspection schedule contained in the permit application submittals identified in Provision I. B and as set out in Table III. D-Inspection Schedule. The Permit also states that the Permittee shall remedy any deterioration or malfunction discovered by an inspection, as required by 40 CFR 264.15(c). The Permit also requires that records of the inspection shall be kept as required by 40 CFR 264.15(d) and any remedial actions taken in response to facility inspections and the date of the remediation shall be included in the inspection records.
23. Pursuant to 30 TEX. ADMIN. CODE § 305.125 [40 C.F.R. § 264.15(d)] the owner or operator must record inspections in an inspection log or summary and must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspections, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.
24. During the EPA Inspection, EPA representatives observed there was no inspection documentation for the permitted storage area, less than 90 days storage area and the laboratory less than 90 days storage area. The container storage areas were not being inspected as required by Provision III.D of Respondent’s Permit. Respondent did not

document at the time of shipment that the container storage areas were inspected for spills/wet spots as required under its permit. Facility representatives responded that inspections were being performed but the facility failed to document them for that day of shipment.

25. THEREFORE, because Respondent could not show that it inspected its hazardous waste storage units or recorded inspections in its inspection logs or summary, it violated Provision IID of the Permit and 30 TAC § 305.125, [40 C.F.R. § 264.15 (d)].

V. COMPLIANCE ORDER

1. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondent is hereby ordered to provide to EPA, within sixty (60) days of receipt of this Complaint, a document describing how Respondent plans to ensure compliance with the above-cited hazardous waste violations.
2. In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification signed by a "responsible official":

I certify that the information contained in or accompanying this submission is true, accurate and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting upon my direct instructions, made the verification, that this information is true, accurate and complete.

For the purpose of this certification, a "responsible official" of a corporation means a president, secretary, treasurer, or vice president of Solutia, Inc. in charge of a principal business function, or any other person who performs similar decision-making functions for the corporation.

3. Copies of all documentation required by this Compliance Order, shall be sent to the following persons:

Section Chief
Texas Section (6EN-HT)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Attention: Agatha Benjamin, P.E.

John Sadlier, Director
Office of Enforcement
Texas Commission on Environmental Quality
P.O. Box 13087, Capitol Station
Austin, TX 78711-3087

NOTICE: If you fail to take the required action(s) within the time specified in the Order, you may be liable for an additional penalty of up to thirty-two thousand five hundred dollars (\$32,500) for each day of continued noncompliance, and may be subject to further enforcement action, including injunction from any further generation, transportation, treatment, storage or disposal of hazardous waste and such other and further relief as may be necessary to achieve compliance with Subtitle C of RCRA, all pursuant to Section 3008(c) of RCRA, 42 U.S.C. § 6928(c).

Notwithstanding any other provision of this Complaint, an enforcement action may be brought against the Respondent pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority if EPA finds that the handling, storage, treatment, transportation or disposal of solid waste or hazardous waste at the facility presents an imminent and substantial endangerment to human health or the environment.

VI. PROPOSED CIVIL PENALTY

Section 3008 of RCRA authorizes a civil penalty of up to thirty-two thousand five hundred dollars (\$32,500.00) per day for each violation of RCRA and the regulations promulgated thereunder. Complainant proposes to assess a civil penalty of twenty-four thousand dollars (\$24,000.00) against the Respondent. The computation of this amount is based upon the seriousness of the violations, any good faith efforts by the Respondent to comply with the applicable regulations, and the June 2003 revised RCRA Civil Penalty Policy.

The penalty was calculated as follows:

Count I - Failure to inspect hazardous waste storage areas and record it in inspection log or summary

- | | |
|--|----------------|
| 1. Gravity based penalty from matrix | \$8,000.00 (3) |
| (a) Potential for harm - Moderate | |
| (b) Extent of deviation - Moderate | |
| 2. Number of days of violation for which a penalty is proposed - (0) | |
| 3. Total multi-day gravity-based penalty - | \$0.00 |
| 4. Percent increase for negligence | N/A |
| 5. Percent increase for history of noncompliance | N/A |

Proposed Penalty for this Complaint \$24,000.00

TOTAL PROPOSED PENALTY - \$24,000.00

Payment of the penalty must be made by certified or cashier's check made payable to the

Treasurer of the United States and shall be mailed to:

Regional Hearing Clerk
U.S. EPA, Region 6
PO Box 371099M
Pittsburgh, PA 15251

Docket No. RCRA-6-2007-0903 should be clearly typed on the check to ensure proper credit.

Respondent shall send simultaneous notice of the penalty payment, including copies of the cashier's check or certified check, to the following:

Section Chief
Texas Section (6EN-HT)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Attention: Agatha Benjamin

Lorena S. Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Respondent's adherence to these procedures will ensure proper credit when payments are received. If Respondent wishes to contest any material fact contained in this Complaint, or the appropriateness of this penalty, Respondent may refer to the following Section entitled "Notice of Opportunity to Request a Hearing".

VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Where Respondent (1) contests any material fact upon which the Complaint is based; (2) contends that the amount of the penalty proposed in the Complaint is inappropriate; or (3) contends that it is entitled to a judgment as a matter of law, Respondent shall file a written Answer to the Complaint with the Regional Hearing Clerk, EPA - Region 6, within thirty (30) days after the filing of the Complaint.

The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge.

Where Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. Failure of Respondent to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

The Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested.

The hearing, if requested, will be conducted in accordance with the provisions of the Administrative Procedures Act (5 U.S.C. § 551 et seq.) and the Consolidated Rules of Practice codified at 40 C.F.R. Part 22. A copy of the Consolidated Rules is enclosed. Respondent may retain counsel to represent it at the hearing.

The Regional Hearing Clerk's address is:

Lorena S. Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

A copy of Respondent's Answer shall also be sent to Ms. Lynde Jones, Enforcement Counsel (6RC-ER), RCRA Enforcement Branch, U.S. Environmental Protection Agency - Region 6, 1445 Ross Avenue, Wells Fargo Bank Tower, Dallas, Texas 75202-2733.

VIII. DEFAULT ORDER

If Respondent fails to file an Answer within thirty (30) days after the filing of the Complaint, it may be found to be in default pursuant to 40 C.F.R. § 22.17. For the purposes of this action, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing under Section 3008 of RCRA, 42 U.S.C. § 6928, concerning such factual allegations. The proposed penalty shall become due and payable by

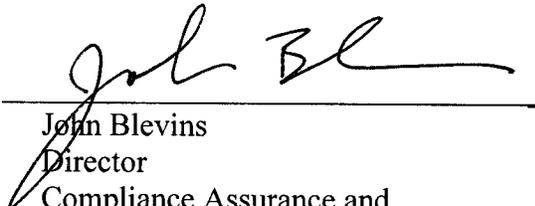
Respondent without further proceedings thirty (30) days after the final order is issued upon default. Upon issuance of the Order upon Default, Respondent must immediately comply with the Compliance Order provisions in this Complaint.

IX. SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, it may confer with the Complainant concerning settlement. EPA encourages settlement consistent with the provisions and objectives of RCRA and applicable regulations. A request for a settlement conference does not extend the thirty (30) day period during which the written Answer and a Request for Hearing must be submitted. The settlement conference procedure may be pursued as an alternative to and simultaneous with the formal hearing procedures. Respondent may appear at the settlement conference and/or be represented by counsel.

The Regional Administrator, EPA Region 6, shall finalize any settlement reached by the parties upon the issuance of a written Consent Agreement and Final Order in accordance with 40 C.F.R. § 22.18. The issuance of a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein. To explore the

possibility of settlement in this matter, address your correspondence to Lynde Jones, enforcement Counsel (6RC-ER), RCRA Enforcement Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Wells Fargo Bank Tower, Dallas, Texas 75202-2733 or by telephone call to (214) 665- 7359.



John Blevins
Director
Compliance Assurance and
Enforcement Division

Dated this 22nd day of MAY 2007, at Dallas, Texas.

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing concerning Solutia, Inc. - Docket No. RCRA-6-2007-0903, was filed with the Regional Hearing Clerk, EPA Region 6, Dallas, Texas, and that a true and correct copy of such Complaint, together with a copy of the Consolidated Rules of Practice (40 C.F.R. Part 22) was placed in the United States mail, postage prepaid, certified mail, return receipt requested, on this 23 day of May, 2007, addressed as follows:

CERTIFIED MAIL RECEIPT NO.

CT Corporation System
350 N. St. Paul
Dallas, Texas 75201


Lori Jackson, Paralegal