

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
BEFORE THE ADMINISTRATOR

FILED  
2013 APR 26 AM 11:15  
REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF

TM DEER PARK SERVICES  
LIMITED PARTNERSHIP

HARRIS COUNTY, TEXAS

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EPA DOCKET NO.  
RCRA-06-2013-0903

ADMINISTRATIVE COMPLAINT,  
COMPLIANCE ORDER AND NOTICE  
OF OPPORTUNITY FOR A HEARING

## I. STATEMENT OF AUTHORITY

1. Consistent with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Consolidated Rules of Practice"), 40 CFR Part 22, this Administrative Complaint, Compliance Order and Notice of Opportunity for a Hearing ("Complaint") is issued to initiate an administrative action authorized by Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a). The Complainant is the Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency ("EPA"), Region 6, who has been delegated the authority to issue such complaints and administrative orders in EPA Region 6.

## II. NATURE OF THIS ACTION

2. This is an administrative action against TM Deer Park Services Limited Partnership ("Respondent") under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). As described in this Complaint, EPA has determined that Respondent has violated one or more requirements of Subchapter III of RCRA, 42 U.S.C. §§ 6921-6939e, its implementing

regulations, 40 CFR Parts 262, 264, 268 and 270, and state regulations implementing Texas's authorized RCRA hazardous waste program, including Chapter 335 of Title 30 of the Texas Administrative Code ("Chapter 335"). Through this action, Complainant is issuing an administrative order to assess civil administrative penalties and to require Respondent to comply with RCRA and applicable laws and regulations implementing RCRA in Texas.

3. As required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has notified the State of Texas of the commencement of this action.

### **III. STATUTORY AND REGULATORY BACKGROUND**

4. RCRA was enacted on October 21, 1976, Pub. L. 94-580, 90 Stat. 2795 (Oct. 21, 1976), to amend the Solid Waste Disposal Act of 1965 and was amended by the Solid Waste Disposal Act Amendments of 1980, 94 Stat. 2334 (Oct. 21, 1980) and the Hazardous and Solid Waste Amendments of 1984, 98 Stat. 3254 (Nov. 8, 1984), as well as other acts. Subchapter III of RCRA (RCRA Sections 3001-3023, 42 U.S.C. §§ 6921-6939e) establishes a comprehensive program administered by the Administrator of the EPA for regulating the generation, treatment, storage and disposal of hazardous waste. RCRA hazardous waste regulations promulgated by EPA are codified as 40 CFR Parts 260-272.

5. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of the EPA may authorize a State to administer a RCRA hazardous waste program in lieu of the Federal program when the Administrator determines that the State program is substantially equivalent to the Federal program.

*In the Matter of TM Deer Park Services  
Limited Partnership, RCRA-06-2013-0903*

6. The State of Texas received final authorization to implement its hazardous waste management program effective December 26, 1984, with multiple program revisions approved by EPA since that time, as provided by 40 CFR § 272.2201.

7. The State of Texas's hazardous waste management program is administered primarily by the Texas Commission on Environmental Quality ("TCEQ") through regulations published in Title 30 of the Texas Administrative Code, including Chapters 37, 305 and 335, some of which incorporate Federal (EPA) regulations by reference.

8. Pursuant to Sections 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) & 6926(g), EPA may enforce the authorized Texas hazardous waste management program, as well as the Federal regulations promulgated under the HSWA, by issuing compliance orders assessing a civil penalty for any past or current violation and/or requiring compliance immediately or within a specified time for violations of any requirement of Subchapter III of RCRA (Sections 3001-3023 of RCRA), 42 U.S.C. §§ 6921-6939e. As adjusted by the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and the Civil Penalty Inflation Adjustment Rule of December 11, 2008 (73 Fed. Reg. 75340, 75346), 40 CFR §19.4, EPA may assess a civil penalty of up to \$32,500 per day of violation for a violation occurring between March 15, 2004 and January 12, 2009 and \$37,500 per day of violation for a violation occurring after January 12, 2009.

9. Pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921, EPA has promulgated regulations identifying the characteristics of hazardous waste in 40 CFR Part 261 Subpart C

*In the Matter of TM Deer Park Services  
Limited Partnership, RCRA-06-2013-0903*

and listing particular hazardous wastes in 40 CFR Part 261 Subpart D, that are subject to the requirements of Subchapter III of RCRA.

10. Pursuant to Section 3004 of RCRA, 42 U.S.C. § 6924, EPA has promulgated regulations in 40 CFR Part 264 establishing minimum national standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities.

11. 40 CFR Part 264 Subpart J (§§ 264.190-264.200) provides standards for tank systems. As a part of its authorized program (*see* 40 CFR § 272.2201), Texas has promulgated regulations in 30 Tex. Admin. Code § 335.152(a)(8) adopting by reference the regulations in 40 CFR Part 264 Subpart J (as amended through July 14, 2006 (71 FR 40254)).

12. 40 CFR Part 264 Subpart DD (§§ 264.1100-264.1102) provides standards for containment buildings. As a part of its authorized program (*see* 40 CFR § 272.2201), Texas has promulgated regulations in 30 Tex. Admin. Code § 335.152(a)(20) adopting by reference the regulations in 40 CFR Part 264 Subpart DD (as amended through July 14, 2006 (71 FR 40254)).

13. 40 CFR Part 264 Subpart G (§§264.110-264.120) provides closure and post-closure requirements for hazardous waste management facilities. As a part of its authorized program (*see* 40 CFR § 272.2201), Texas has promulgated regulations in 30 Tex. Admin. Code § 335.152(a)(5) adopting by reference the regulations in 40 CFR Part 264 Subpart G (as amended through July 14, 2006 (71 FR 40254)).

14. 40 CFR Part 264 Subpart H (§§ 264.140-264.151) provides financial requirements for owners and operators of hazardous waste facilities. As a part of its authorized program (*see*

*In the Matter of TM Deer Park Services  
Limited Partnership, RCRA-06-2013-0903*

40 CFR § 272.2201), Texas has promulgated regulations establishing substantially equivalent financial requirements, *see* 30 Tex. Admin. Code § 335.152(a)(6) (adopting by reference the regulations in 40 CFR Part 264 Subpart H (“as amended through April 4, 2006 (71 FR 16862), except 40 CFR §§264.140, 264.141, 264.142(a)(2), 264.142(b) and (c), 264.143(a) - (h), 264.144(b) and (c), 264.145(a) - (h), 264.146, 264.147(a) - (d), 264.147(f) - (k), and 264.148 - 264.151 . . .”), 30 Tex. Admin. Code §§ 335.178 & 335.179, and 30 Tex. Admin. Code Chapter 37.

15. Under Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), the storage, treatment or disposal of hazardous waste is prohibited except when it is in accordance with a RCRA permit. Section 3005(a) provides that “the Administrator shall promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit issued pursuant to this section . . . and upon and after [the effective date of EPA’s permit regulations] the treatment, storage or disposal of any such hazardous waste . . . is prohibited except in accordance with such a permit”.

16. Pursuant to Section 3005(a) of RCRA, EPA has promulgated permitting regulations in 40 CFR Part 270 (§§ 270.1-270.235) which state that “[s]ix months after the initial promulgation of the part 261 standards [Identification and Listing of Hazardous Waste], treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a RCRA permit is prohibited”. 40 CFR § 270.1(b). As a part of its authorized

program (*see* 40 CFR § 272.2201), Texas has promulgated regulations establishing permitting requirements in 30 Tex. Admin. Code Chapters 335, 305 and 50.

17. Under 30 Tex. Admin. Code § 335.1(108), “owner” means “the person who owns a facility or part of a facility”.

18. Under 30 Tex. Admin. Code § 335.1(107), “operator” means “the person responsible for the overall operation of a facility”.

19. Under 30 Tex. Admin. Code § 335.1(157), “treatment” means “[t]o apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness”.

20. Under 30 Tex. Admin. Code § 335.1(143), “storage” means “the holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere”.

21. Under 30 Tex. Admin. Code § 335.1(122), “processing” is defined, in part, to include “. . . the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. . . .”.



22. Under 30 Tex. Admin. Code § 335.1(79), “industrial solid waste” means “solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include hazardous waste as defined in this section”.

23. Under 30 Tex. Admin. Code § 335.1(69), “hazardous waste” means “any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq*”.

24. Under 30 Tex. Admin. Code § 335.1(67), “hazardous industrial waste” means “any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the Resource Conservation and Recovery Act of 1976, §3001 (42 United States Code, §6921). The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 261. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator”.

25. Under 30 Tex. Admin. Code § 335.1(72), “hazardous waste management unit” means “a landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment

unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste”.

26. Under 40 CFR § 260.10, “containment building” means “a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of subpart DD of parts 264 or 265 of this chapter”.

27. Under 30 Tex. Admin. Code § 335.1(a)(146), “tank” means a “stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support”.

#### **IV. JURISDICTION**

28. Respondent is a Texas Limited Partnership authorized to conduct business in the State of Texas.

29. Respondent is a “person” as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and as used in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and as that term is defined by 30 Tex. Admin. Code § 3.2(25).

30. As described in this Complaint, EPA has determined that Respondent violated one or more requirements of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, including its implementing regulations in Texas under Chapter 335 of the Texas Administrative Code.

31. Therefore, EPA has jurisdiction over this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. §§ 6928(a).



## **V. FACTUAL BASIS OF VIOLATIONS**

32. Respondent owns and operates a facility located at 2525 Independence Parkway South in Deer Park, Texas, which provides commercial services for the management of hazardous and non-hazardous industrial waste, including storage, processing and disposal of such waste (the "Facility").

33. Since approximately 1980, the Facility has been operated to provide commercial hazardous and non-hazardous industrial waste treatment, storage and disposal services, including the operation of two disposal wells at the Facility permitted by TCEQ's underground injection control program.

34. In 1983, Disposal Systems, Inc., which operated the Facility at that time, filed a Part B RCRA Permit Application for the Facility with the Texas Natural Resource Conservation Commission ("TNRCC").<sup>1</sup>

35. In 1992, TNRCC issued Permit No. HW-50058-001 to Disposal Systems, Inc., authorizing certain hazardous and non-hazardous industrial waste processing and storage operations at the Facility.

36. In May 2003, TCEQ renewed the Facility's RCRA Permit, issuing Permit No. HW-50058-001 to Respondent as the owner and operator of the Facility (the "RCRA Permit").

37. TCEQ has modified the RCRA Permit multiple times since May 2003.

38. The RCRA Permit is a "permit" as defined by 30 Tex. Admin. Code § 335.1(111).

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<sup>1</sup> TNRCC was the predecessor to the TCEQ; a 2001 state law changed the name of the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality (TCEQ).

39. Section II.A.1. of the RCRA Permit provides that “[the] facility units and operational methods authorized are limited to those described herein and by the application submittals identified in Provision I.B. (Incorporated Application Materials). All facility units and operational methods are subject to the terms and conditions of this permit and TCEQ rules. Prior to constructing or operating any facility units in a manner which differs from either the related plans and specifications contained in the permit application or the limitations, terms or conditions of this permit, the permittee must comply with the TCEQ permit amendment/modification rules as provided in 30 . . . [Tex. Admin. Code] Sections 305.62 and 305.69”.

40. Section V of the RCRA Permit identifies the authorized hazardous waste management units at the Facility. When EPA inspected the Facility in July 2011, the RCRA Permit authorized ten container storage areas and more than one hundred tanks.

41. One of the container storage areas identified in Section V of the RCRA Permit is TCEQ Permit Unit No. 125, also called the Storage-Treatment Area VIIB or STA-VIIB (“STA-VIIB”).

42. Pursuant to Section II.A.6. of the RCRA Permit, in April 1994, WCM Group, Inc. submitted a report to TNRCC on behalf of Disposal Systems, Inc., which operated the Facility at that time (the “WCM report”).

43. The WCM report confirmed that STA-VIIB would be used as a container storage area as stipulated in the RCRA Permit and certified that construction of STA-VIIB had been

completed in conformance with the design and construction specifications of the RCRA Permit.

44. The WCM report included a construction drawing of STA-VIIB showing the unit as a building with an open floor plan to be used for indoor storage of waste containers (i.e., a container storage area).

45. Contrary to the WCM report, STA-VIIB is a completely enclosed building within a portion of the Facility and includes a concrete-floored area, two in-ground, open-top tanks, two remotely-operated backhoe buckets, and an elevated control room.

46. Since approximately 1994, STA-VIIB has been operated to provide secondary containment and air emission control for hazardous waste management activities including mixing, stabilization and encapsulation; Respondent has operated STA-VIIB for this purpose since approximately 2003.

47. On or about July 11, 2011 through July 14, 2011, EPA Region 6 inspected the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 (the "EPA Inspection").

48. The EPA inspector requested a complete and up-to-date copy of Respondent's RCRA Permit to determine Respondent's compliance with the permit's requirements and RCRA.

49. During the EPA Inspection, Respondent provided the EPA inspector two copies of the RCRA Permit that were incomplete and that did not appear to authorize all of the active hazardous waste management units and processes at the Facility.

*In the Matter of TM Deer Park Services  
Limited Partnership, RCRA-06-2013-0903*

50. In November 2011, Respondent sent EPA another copy of the RCRA Permit that was incomplete and did not appear to authorize all of the active hazardous waste management units and processes at the Facility.

51. In its Notice of Registration filed with the TCEQ pursuant to 30 Tex. Admin. Code § 335.6, Respondent identifies more than twenty types of hazardous wastes managed in STA-VIIB.

52. Respondent has treated hazardous waste in STA-VIIB, including the two tanks within STA-VIIB, as part of its regular operations since approximately 2003.

53. Hazardous waste treatment processes Respondent performs in STA-VIIB include stabilization and encapsulation to reduce the mobility of contaminants in the hazardous waste before sending the treated waste to offsite facilities for land disposal.

54. As of the date of the EPA Inspection, the RCRA Permit did not authorize Respondent to conduct hazardous waste treatment in tanks within STA-VIIB.

55. In July 2012, Respondent applied to TCEQ for a modification of its RCRA Permit to obtain authorization to treat hazardous waste in the two existing tanks in STA-VIIB.

56. On or about October 4, 2012, TCEQ modified the RCRA Permit to authorize Respondent to treat hazardous waste in the two existing tanks in STA-VIIB, subject to the permit requirements, designating the tanks as hazardous waste management units "MT-1" and "MT-2".

57. Respondent has operated STA-VIIB as a containment building for hazardous waste treatment since approximately 2003.



58. As of the date of the EPA Inspection, Respondent's RCRA Permit did not authorize Respondent to operate STA-VIIB as a containment building for hazardous waste treatment or storage.

59. As of the date of this Complaint, Respondent has not applied for or received a modification of its RCRA Permit to authorize it to operate STA-VIIB as a containment building for hazardous waste treatment or storage.

60. As of the date of the EPA Inspection, the cost estimate for closure of the Facility required by 30 Tex. Admin. Code § 335.178 did not account for closure of the two hazardous waste treatment tanks in STA-VIIB or a containment building enclosing the hazardous waste treatment activities in STA-VIIB.

61. As of the date of the EPA Inspection, the amount of the financial assurance established by Respondent under 30 Tex. Admin. Code § 335.179(b)(1) did not account for costs associated with the closure of STA-VIIB, including the STA-VIIB hazardous waste treatment tanks and containment building.

62. The October 2012 modification of the RCRA Permit included a revision in the closure cost estimate required by 30 Tex. Admin. Code § 335.178. The revised closure cost estimate allocates \$48,879 for the cost to close MT-1 and \$48,879 for the cost to close MT-2.

63. On or about August 2012, Respondent established financial assurance for the cost of closure of the two hazardous waste treatment tanks in STA-VIIB.

64. As of the date of this Complaint, Respondent has not established financial assurance for the cost of closure of a containment building for STA-VIIB.

65. During the EPA Inspection, the EPA inspector requested operational records to demonstrate compliance with the requirements of 40 CFR Part 264 Subpart DD with respect to the STA-VIIB containment building.

66. Respondent could not provide the EPA inspector a certification by a professional engineer that the STA-VIIB containment building design met the requirements of 40 CFR § 263.1101(a-c).

67. Respondent could not provide the EPA inspector an operating record with the results of inspections of monitoring and leak detection data, the containment building and the area immediately surrounding the containment building, to detect signs of releases of hazardous waste, as required by 40 CFR § 264.1101(c)(4).

68. During the EPA Inspection, the EPA inspector requested records of compliance with the requirements of 40 CFR Part 264 Subpart J with respect to the two hazardous waste treatment tanks operated in STA-VIIB.

69. As of the date of the EPA Inspection, Respondent could not provide records demonstrating that its operation of the hazardous waste treatment tanks in STA-VIIB complied with the requirements of 40 CFR Part 264 Subpart J.

70. The hazardous waste treatment tanks in STA-VIIB were not designed or installed consistent with the requirements for new tanks in 40 CFR § 264.192.

71. Respondent could not provide the EPA inspector with a certification by a professional engineer attesting to the sufficiency of the structural integrity and suitability of the hazardous waste treatment tanks in STA-VIIB for storing or treating hazardous waste.

72. As of the date of the EPA Inspection, Respondent had not performed paint filter liquids test referenced in 40 CFR § 264.190(a) with respect to the two hazardous waste treatment tanks within STA-VIIB.

73. As of the date of the EPA Inspection, Respondent had not provided secondary containment or leak detection measures with respect to the hazardous waste treatment tanks in STA-VIIB.

74. As of the date of the EPA Inspection, Respondent had not performed or documented daily inspections of the hazardous waste treatment tanks in STA-VIIB consistent with the requirements of 40 CFR § 264.195.

75. As of the date of the EPA Inspection, Respondent had not implemented measures to control air emissions from the hazardous waste treatment tanks in STA-VIIB consistent with 40 CFR § 264.200 (referencing 40 CFR Part 264 Subparts AA, BB, and CC).

76. In addition to Respondent's Facility, a separate facility, operated by TM Chemicals Limited Partnership ("TM Chemicals") as a batch organic chemical production plant, is located on the same parcel of property (2525 Independence Parkway South) as Respondent's Facility.

77. TM Chemicals sends hazardous wastewater by piping directly to permitted storage tanks at Respondent's Facility for disposal in Respondent's permitted injection wells.

78. Pursuant to 30 Tex. Admin. Code §335.9, TM Chemicals reported to TCEQ that it sent approximately two million, five hundred sixty nine thousand, one hundred (2,569,100) pounds of hazardous wastewater to Respondent's Facility for disposal from 2009 through 2011.



79. As a part of its routine practice, Respondent sampled the wastewater it received from TM Chemicals for disposal and tested the samples in accordance with the approved Waste Analysis Plan (WAP) required by the Underground Injection Control Permit.

80. Based on the WAP test results, Respondent determined that one-million, five-hundred thousand (1,500,000) pounds of the wastewater it received from TM Chemicals for disposal from 2009 through 2011 was hazardous waste based on the characteristics of hazardous waste provided in 40 CFR Part 261 Subpart C.

81. Pursuant to 30 Tex. Admin. Code § 335.15, Respondent reported to TCEQ that it disposed of 1,500,000 pounds of hazardous wastewater received from TM Chemicals from 2009 through 2011.

## **VI. VIOLATIONS**

### **COUNT 1: FAILURE TO PROVIDE A COMPLETE COPY OF THE FACILITY'S RCRA PERMIT, 30 TEX. ADMIN. CODE § 305.125(6)**

82. Complainant incorporates paragraphs 1-81 as if restated herein.

83. Under 30 Tex. Admin. Code § 305.125(6), (*see also*, 40 CFR § 270.30(h)), “[t]he permittee shall furnish to the executive director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit, and copies of records required to be kept by the permit”.

84. Under 30 Tex. Admin. Code § 305.125(1), (*see also*, 40 CFR § 270.30(a) and Section II.A.2. of the RCRA Permit), “[t]he permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the permit and statutes

under which it was issued and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or an application for a permit for another facility”.

85. A complete and up to date copy of the RCRA Permit is necessary to determine whether Respondent has complied with all of the requirements of the RCRA Permit and, therefore, whether cause exists for amending, revoking, suspending, or terminating the RCRA Permit.

86. Since approximately 2003, Respondent has been the “permittee” with respect to the RCRA Permit for the Facility (TCEQ Permit HW-50058-001).

87. As the permittee, Respondent violated 30 Tex. Admin. Code § 305.125(6) by failing to provide a complete and up-to-date copy of the RCRA Permit in response to the EPA inspector’s request during the EPA Inspection of the Facility on July 11, 2011 through July 14, 2011.

**COUNT 2: FAILURE TO ESTABLISH FINANCIAL ASSURANCE FOR ALL  
HAZARDOUSE WASTE MANAGEMENT UNITS AT THE FACILITY,  
30 TEX. ADMIN. CODE § 335.179(b)(1)**

88. Complainant incorporates paragraphs 1-87 as if restated herein.

89. Under 30 Tex. Admin. Code § 335.179(b)(1), “[b]efore hazardous waste may be stored, processed, or disposed of at a solid waste facility subject to this subchapter, the permittee must: (1) establish financial assurance for the amount of the closure cost estimate in a manner that meets the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), in

addition to the requirements specified in § 335.152(a)(6) of this title” (relating to regulations contained in 40 CFR Part 264 Subpart H adopted by reference).

90. Under 40 CFR § 264.142(a), “[t]he owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 264.111 through 264.115 and applicable closure requirements in §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601 through 264.603, and 264.1102”.

91. Under 40 CFR § 264.112(b), the owner or operator is required to have a written plan for the closure of the facility, which must account for each hazardous waste management unit.

92. An estimate of the cost of closing a facility in accordance with the requirements in 40 CFR §§ 264.111 through 264.115, therefore, must include the cost to close each hazardous waste management unit at the facility.

93. The two in-ground, open-top tanks in STA-VIIB are “tanks” as defined by 30 Tex. Admin. Code § 335.1(a)(146) and are “hazardous waste management units” as defined by 30 Tex. Admin. Code § 335.1(72).

94. STA-VIIB, designated in Section V of the RCRA Permit as TCEQ Permit Unit No. 125, is a “containment building” as defined by 40 CFR § 260.10 and a “hazardous waste management unit” as defined by 30 Tex. Admin. Code § 335.1(72).

95. As the permittee with respect to the RCRA Permit for the Facility, Respondent violated 30 Tex. Admin. Code § 335.179(b)(1) by storing and treating hazardous waste at the

Facility since approximately 2003 without providing financial assurance for a cost estimate to close each hazardous waste management unit at the Facility, including the two hazardous waste treatment tanks in STA-VIIB and the STA-VIIB containment building.

**COUNT 3: OPERATION OF AN UNPERMITTED CONTAINMENT BUILDING FOR THE TREATMENT OF HAZARDOUS WASTE, 30 TEX. ADMIN. CODE § 335.2(a).**

96. Complainant incorporates paragraphs 1-95 as if restated herein.

97. Under 30 Tex. Admin. Code § 335.2(a), “. . . no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the Department of State Health Services (DSHS), or other valid authorization from a Texas state agency”.

98. Since approximately 2003, Respondent has operated the hazardous waste management unit STA-VIIB as a containment building, as defined by 40 CFR § 260.10, for the treatment of hazardous waste.

99. Under 30 Tex. Admin. Code § 335.2(a), the operation of a containment building for the treatment of hazardous waste is an activity that constitutes processing industrial solid waste and requires specific authorization by a permit.

100. The RCRA Permit only authorizes Respondent to operate STA-VIIB as a container storage area for hazardous waste storage; it does not authorize Respondent to operate STA-VIIB as a containment building for the treatment of hazardous waste.

101. Therefore, Respondent's operation of STA-VIIB as a containment building for the treatment of hazardous waste is a violation of 30 Tex. Admin. Code § 335.2(a).

**COUNT 4: FAILURE TO MEET STANDARDS FOR CONTAINMENT BUILDINGS  
IN 40 CFR PART 264 SUBPART DD, 30 TEX. ADMIN. CODE  
§ 335.152(a)(20).**

102. Complainant incorporates paragraphs 1-101 as if restated herein.

103. Under 30 Tex. Admin. Code § 335.151(b), the standards in 30 Tex. Admin. Code Chapter 335 Subchapter F [§§ 335.151-335.183] apply to owners and operators of all facilities which process, store, or dispose of hazardous waste, except as specifically provided for in §335.41 of this title (relating to Purpose, Scope, and Applicability).

104. 30 Tex. Admin. Code § 335.152(a)(20) adopts by reference the standards in 40 CFR Part 264 Subpart DD--Containment Buildings (as amended through July 14, 2006 (71 FR 40254)).

105. As the owner and operator of the Facility, Respondent is subject to the requirements in 40 CFR Part 264 Subpart DD (40 CFR §§ 264.1100-264.1102) with respect to its operation of STA-VIIB as a containment building.

106. 40 CFR § 264.1101(c)(2) requires the owner or operator of a containment building to "obtain and keep onsite a certification by a qualified Professional Engineer that the containment building design meets the requirements of paragraphs (a), (b) and (c) of this section [40 CFR § 264.1101(a-c)]".

107. Respondent has failed to obtain and keep onsite the certification required by 40 CFR § 264.1101(c)(2) for the STA-VIIB containment building.

108. 40 CFR § 264.1101(c)(4) requires the owner or operator of a containment building to “inspect and record in the facility’s operating record, at least once every seven days, . . . data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of release of hazardous waste. . . .”.

109. Respondent has failed to perform, and to record in the operating record, the inspections required by 40 CFR § 264.1101(c)(4) for the STA-VIIB containment building.

110. Therefore Respondent has failed to comply with one or more requirements of 40 CFR Part 264 Subpart DD, in violation of 30 Tex. Admin. Code § 335.152(a)(20).

**COUNT 5: OPERATION OF UNPERMITTED HAZARDOUS WASTE TREATMENT TANKS, 30 TEX. ADMIN. CODE § 335.2(a).**

111. Complainant incorporates paragraphs 1-110 as if restated herein.

112. Under 30 Tex. Admin. Code § 335.2(a), “. . . no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the Department of State Health Services (DSHS), or other valid authorization from a Texas state agency”.

113. Under 30 Tex. Admin. Code § 335.2(a), the treatment of hazardous waste in tanks is an activity that constitutes processing industrial solid waste and requires specific authorization by a permit.

114. Until November 2012, the RCRA Permit only authorized Respondent to operate STA-VIIB as a container storage area for hazardous waste storage; it did not authorize Respondent to treat hazardous waste in tanks in STA-VIIB.

115. Respondent violated 30 Tex. Admin. Code § 335.2(a) by treating hazardous waste in two tanks in STA-VIIB without permit authorization from approximately 2003 until November 2012.

**COUNT 6: FAILURE TO MEET STANDARDS FOR HAZARDOUS WASTE  
TREATMENT TANKS IN 40 CFR PART 264 SUBPART J, 30 TEX.  
ADMIN. CODE § 335.152(a)(8).**

116. Complainant incorporates paragraphs 1-115 as if restated herein.

117. Under 30 Tex. Admin. Code § 335.151(b), the standards in 30 Tex. Admin. Code Chapter 335 Subchapter F [§§ 335.151-335.183] apply to owners and operators of all facilities which process, store, or dispose of hazardous waste, except as specifically provided for in §335.41 of this title (relating to Purpose, Scope, and Applicability).

118. 30 Tex. Admin. Code § 335.152(a)(8) adopts by reference the standards in 40 CFR Part 264 Subpart J—Tank Systems (as amended through July 14, 2006 (71 FR 40254)).

119. As the owner and operator of the Facility, Respondent is subject to the standards for hazardous waste treatment tanks in 40 CFR Part 264 Subpart J with respect to its operation of two hazardous waste treatment tanks in STA-VIIB.

120. Respondent failed to comply with the certification requirement for new tank systems in 40 CFR § 264.192(a).



121. Respondent failed to assess the integrity of the tanks as required by 40 CFR § 264.191 for existing tank systems without compliant secondary containment.

122. Respondent failed to comply with the secondary containment and leak detection requirements for the tanks in 40 CFR § 264.193.

123. Respondent failed to inspect the tanks as required by 40 CFR § 264.195.

124. Respondent failed to comply with air emission standards for the tanks as required by 40 CFR § 264.200 (referencing 40 CFR Part 264 Subparts AA, BB, and CC).

125. Therefore, Respondent failed to comply with one or more of the applicable requirements in 40 CFR Part 264 Subpart J with respect to its operation of two hazardous waste treatment tanks in STA-VIIB, in violation of 30 Tex. Admin. Code § 335.152(a)(8).

**COUNT 7: FAILURE TO MAINTAIN AN ACCURATE OPERATING RECORD  
UNDER 40 CFR § 264.73, 30 TEX ADMIN. CODE § 335.152(a)(4).**

126. Complainant incorporates paragraphs 1-125 as if restated herein.

127. Under 30 Tex. Admin. Code § 335.151(b), the standards in 30 Tex. Admin. Code Chapter 335 Subchapter F [§§ 335.151-335.183] apply to owners and operators of all facilities which process, store, or dispose of hazardous waste, except as specifically provided for in §335.41 of this title (relating to Purpose, Scope, and Applicability).

128. 30 Tex. Admin. Code § 335.152(a)(4) adopts by reference the standards in 40 CFR Part 264 Subpart E—Manifest System, Recordkeeping and Reporting (as amended through April 4, 2006 (71 FR 16862)).

129. As the owner and operator of the Facility, Respondent is subject to the standards for recordkeeping and reporting in 40 CFR Part 264 Subpart E.

130. Under 40 CFR § 264.73(a), Respondent is required to keep a written operating record at the Facility.

131. Under 40 CFR § 264.73(b)(1), “[t]he following information must be recorded, as it becomes available, and maintained in the operating record for three years unless noted as follows: (1) [a] description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by appendix I of this part. This information must be maintained in the operating record until closure of the facility”.

132. Respondent failed to record in the operating record the full quantity of hazardous waste that it received at the Facility from TM Chemicals during the period from 2009 through 2011.

133. Respondent failed to record in the operating record the full quantity of hazardous waste from TM Chemicals that it disposed of at the Facility during the period from 2009 through 2011.

134. Therefore, Respondent failed to comply with one or more of the requirements of 40 CFR § 264.73(b)(1), in violation of 30 Tex. Admin. Code § 335.152(a)(4).

## **VII. COMPLIANCE ORDER**

135. Complainant incorporates paragraphs 1-134 as if restated herein.

*In the Matter of TM Deer Park Services  
Limited Partnership, RCRA-06-2013-0903*

136. Pursuant to Section 3008(a) of RCRA, Respondent is hereby ORDERED to take the following actions and provide evidence of compliance within the time period specified below:

137. Within thirty (30) days of the effective date of this Order, Respondent shall either: (1) cease operation of STA-VIIB as a containment building for the treatment of hazardous waste, or (2) provide a written plan and timetable (not to exceed one hundred eighty (180) days from the effective date of this Order) for obtaining authorization under the RCRA Permit to operate STA-VIIB as a containment building for hazardous waste treatment.

138. In the event that Respondent elects to submit a plan and timetable for permitting the STA-VIIB containment building, Respondent may continue to operate the containment building for a period not to exceed one hundred eighty (180) days from the effective date of this Order, provided it diligently implements the plan and timetable and obtains permit authorization within the projected time period, and provided that its operation of the containment building during the interim period complies with all applicable requirements for containment buildings, including 40 CFR Part 264 Subpart DD.

139. Respondent shall submit all required documentation of compliance with tank standards in 40 CFR Part 264 Subpart J for review within sixty (60) days from the effective date of this Order, including all certifications, testing, engineering diagrams and supporting documents Respondent used to obtain authorization in the RCRA Permit for the two hazardous waste tanks in STA-VIIB now designated as MT1 and MT2.

*In the Matter of TM Deer Park Services  
Limited Partnership, RCRA-06-2013-0903*

140. Respondent shall submit a plan, within sixty (60) days from the effective date of this Order, for correcting waste counting and reporting requirements of the operating record pursuant to §264.73(b)(1). This plan shall include standard procedures for the transfer of waste from the co-located chemical plant and include the means by which volume is counted, how the waste determination is made and what testing and storage procedures will be implemented. This plan shall include all aspects prior to WAP related testing required by the UIC permit.

141. Respondent shall send all documents it is required to submit by this Order to:

Chief  
Compliance Enforcement Section (6EN-HE)  
Hazardous Waste Enforcement Branch  
Compliance Assurance and Enforcement Division  
U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

142. NOTICE: Pursuant to 40 CFR § 22.37(b), this compliance order shall automatically become a final order unless, no later than 30 days after this Complaint was served, Respondent requests a hearing pursuant to 40 CFR § 22.15, as described below in Section XVIII. (Opportunity to Request a Hearing). If Respondent fails to take the required actions within times specified in the Order, Respondent may be liable for additional penalties of up to THIRTY SEVEN THOUSAND FIVE HUNDRED (\$37,500) DOLLARS for each day of continued noncompliance, and may be subject to further enforcement action, including injunction, as may be necessary to achieve compliance with Subtitle C of RCRA 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.

### **VIII. PROPOSED PENALTY**

143. Complainant incorporates paragraphs 1-142 as if restated herein.

144. In light of the facts alleged in this Complaint, and having considered those factors set forth in Section 3008(a)(3) of RCRA, 42 USC § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts to comply with the applicable requirements, the extent of deviation from the statutory or regulatory requirements, the duration of the violations, any economic benefit derived from the non-compliance, and Respondent's compliance history, Complainant proposes to assess a civil administrative penalty of **FIVE-HUNDRED-SEVENTEEN-THOUSAND-NINE-HUNDRED-AND- FORTY-FOUR-DOLLARS (\$ 517,944.00)** for the violations alleged in Section VI of this Complaint.

145. The Penalty was calculated as follows:

Penalty Summary		
Count 1	\$	29,623
Count 2	\$	2,871
Count 3	\$	309,339
Count 4	\$	0
Count 5	\$	83,421
Count 6	\$	0
Count 7	\$	92,690
TOTAL		\$ 517,944

**Count 1**

**Failure to provide a complete copy of the Facility's RCRA Permit for inspection,  
30 Tex. Admin. Code § 305.125(6)**

Period of violation for which a penalty is calculated: 1 Day  
Potential for harm - Major  
Extent of deviation - Major  
Gravity-based penalty from matrix = \$32,915  
Good faith adjustment (10% of gravity) = \$3,291.50  
Economic benefit - not assessed  
**Total Penalty Count 1 - \$29,623.00**

**Count 2**

**Failure to establish financial assurance for all hazardous waste management units at the  
Facility, 30 Tex. Admin. Code § 335.179(b)(1)**

Period of violation for which a penalty is calculated: 1 Day  
Potential for harm - Minor  
Extent of deviation - Major  
Gravity-based penalty from matrix = \$3,190  
Good faith adjustment (10% of gravity) = \$319  
Economic benefit - not assessed  
**Total Penalty Count 2 - \$2,871.00**



**Count 3**

**Operation of an unpermitted containment building for the treatment of hazardous waste,  
30 Tex. Admin. Code § 335.2(a)**

Period of violation for which a penalty is calculated: 180 Days  
Potential for harm - Moderate  
Extent of deviation - Major  
Gravity-based penalty from matrix = \$13,455  
Multi-day penalty from matrix = \$1,845  
Days of violation minus 1 for which a penalty is proposed  $(180 - 1) = 179$   
Total multi-day penalty -  $(179 \times \$1,845) = \$330,255$   
Gravity-based penalty -  $(\$13,455 + \$330,255) = \$343,710$   
Good faith adjustment (10% of gravity) = \$34,371.00  
**Total Penalty Count 3 - \$309,339.00**

**Count 5**

**Operation of unpermitted hazardous waste treatment tanks, 30 Tex. Admin.  
Code § 335.2(a)**

Period of violation for which a penalty is calculated: 180 Days  
Potential for harm - Minor  
Extent of deviation - Major  
Gravity-based penalty from matrix = \$3,190  
Multi-day penalty from matrix = \$500  
Days of violation minus 1 for which a penalty is proposed  $(180 - 1) = 179$   
Total multi-day penalty -  $(179 \times \$500) = \$89,500$   
Gravity-based penalty -  $(\$3,190 + \$89,500) = \$92,690$   
Good faith adjustment (10% of gravity) = \$9,269  
Economic benefit – not assessed  
**Total Penalty Count 5 - \$83,421.00**



**Count 7**

**Failure to maintain an accurate operating record under 40 CFR § 264.73, 30 Tex. Admin. Code § 335.152(a)(4)**

Period of violation for which a penalty is calculated: 180 Days  
Potential for harm - Minor  
Extent of deviation - Major  
Gravity-based penalty from matrix = \$3,190  
Multi-day penalty from matrix = \$500  
Days of violation minus 1 for which a penalty is proposed  $(180 - 1) = 179$   
Total multi-day penalty -  $(179 \times \$500) = \$89,500$   
Gravity-based penalty -  $(\$3,190 + \$89,500) = \$92,690$   
Economic benefit – not assessed  
**Total Penalty Count 7- \$92,690.00**

**IX. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

146. By issuance of this Complaint, Respondent is hereby notified of its opportunity to answer and request a hearing on the record in this matter under 40 CFR § 22.15(c).

147. If Respondent contests any material fact upon which this Complaint is based, contends that the amount of the proposed penalty or compliance order is inappropriate, or contends that it is entitled to judgment as a matter of law, under 40 CFR § 22.15(a), Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk for EPA Region 6 not later than thirty days after being served with this Complaint.

148. Under 40 CFR § 22.15(b), Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations set forth in this Complaint with regard to which Respondent has knowledge. If Respondent has no knowledge of a particular factual allegation

*In the Matter of TM Deer Park Services  
Limited Partnership, RCRA-06-2013-0903*

and states so in its Answer, the allegation will be deemed denied. The failure of Respondent to admit, deny or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

149. Under 40 CFR § 22.15(b), Respondent's Answer also shall state (a) the circumstances or arguments which are alleged to constitute the grounds of defense, (b) the facts which Respondent disputes; (c) the basis for opposing any proposed relief and (d) whether a hearing is requested. A hearing on the issues raised by this Complaint and Respondent's Answer shall be held upon request of the Respondent in its Answer. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 554 and 556, and the Consolidated Rules of Practice, 40 CFR Part 22, a copy of which is included.

150. The Answer must be sent to:

Regional Hearing Clerk  
Mail Code 6RC-D  
U.S. Environmental Protection Agency  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

In addition, Respondent is requested to send a copy of the Answer and all other documents that it files in this action to:

Mr. Jonathan Bull  
Assistant Regional Counsel  
Mail Code 6RC-ER  
U.S. Environmental Protection Agency  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

151. As provided in 40 CFR § 22.17, if Respondent fails to file a written Answer within 30 days of service of this Complaint, Respondent may be deemed to have admitted all

allegations made in this Complaint and waived its right to a hearing. A Default Order may thereafter be issued, and the civil penalty assessed shall become due and payable without further proceedings 30 days after a Default Order becomes final.

152. Respondent is further informed that 40 CFR Part 22 prohibits any ex parte (unilateral) discussion of the merits of this action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

## **X. SETTLEMENT CONFERENCE**

153. Whether or not Respondent requests a formal hearing, Respondent may request an informal conference to discuss the facts of this case and to arrive at settlement. To request a settlement conference, Respondent may contact Mr. Jonathan Bull, Assistant Regional Counsel, at the address in paragraph 150 of this Complaint or by phone at (214) 665-8597.

154. Please note that a request for an informal settlement conference does not extend the 30-day period during which Respondent must submit a written Answer and, if desired, a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing procedure.

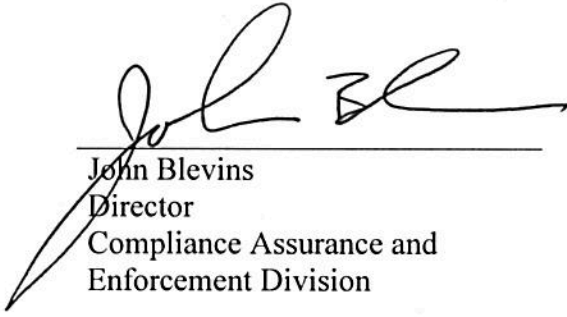
155. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. Respondent is advised that no penalty reduction will be made simply because such a conference is held. As set forth in 40 CFR § 22.18, any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement signed by the parties and their representatives

*In the Matter of TM Deer Park Services  
Limited Partnership, RCRA-06-2013-0903*

and a Final Order issued by the Regional Judicial Officer, EPA Region 6. The issuance of such Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

Date: \_\_\_\_\_

4.25.13



\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division



*In the Matter of TM Deer Park Services  
Limited Partnership, RCRA-06-2013-0903*

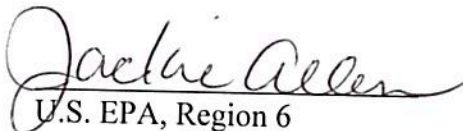
CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing (Complaint) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Wells Fargo Bank Tower, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint and the Consolidated Rules of Practice were placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL, RETURN RECEIPT REQUESTED: # 7011 3500 0000 0359 6051

Donna Ratliff  
2525 Independence Parkway South  
Deer Park, Texas 77536  
Registered Agent for TM Deer Park Services Limited Partnership

Date: APR 26 2013

  
U.S. EPA, Region 6  
Dallas, Texas