

June 26, 2023

7:34AM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

Received by
EPA Region 7
Hearing Clerk

In the Matter of:)
)
Valent BioSciences LLC,)
) **Docket No. RCRA-07-2022-0076**
 Respondent)
)
_____)

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and Valent BioSciences, LLC (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 Code of Federal Regulations (“C.F.R.”) §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (“RCRA”), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.
2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Sections 3002 and 3005 of RCRA, 42 U.S.C §§ 6922 and 6925, and the standards applicable to generators of hazardous waste (40 C.F.R. § 262).

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.
4. Respondent is Valent BioSciences, LLC, a Delaware corporation authorized to operate under the laws of Iowa.

Statutory and Regulatory Framework

5. 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 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.

6. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in Sections 2002, 3001, 3002, 3003, 3004, 3005, 3007 and 3010 of RCRA, 42 U.S.C. §§ 6912, 6921, 6922, 6923, 6924, 6925, 6927, and 6930, to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Part 239 through Part 282.

7. Section 3001 of RCRA, 42 U.S.C. § 6921, requires the Administrator to develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.

8. Section 3002 of RCRA, 42 U.S.C. § 6922, requires the Administrator to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment.

9. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to 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.

10. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), defines “person” as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

11. The regulation at 40 C.F.R. § 260.10 defines “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

12. The regulation at 40 C.F.R. § 260.10 defines “storage” as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

13. The regulation at 40 C.F.R. § 260.10 defines “disposal” as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constitute thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

14. “Solid waste” is defined at 40 C.F.R § 261.2.

15. “Hazardous waste” is defined at 40 C.F.R. § 261.3.

16. The regulation at 40 C.F.R. § 260.10 defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

17. The regulation at 40 C.F.R. § 260.10 defines “large quantity generator” as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).

18. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), whenever on the basis of any information the EPA determines that any person has violated or is in violation of any requirement of RCRA, the EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period.

19. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). 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 \$81,540 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 12, 2022. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

General Factual Background

20. Respondent is a corporation and authorized to conduct business within the State of Iowa. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

21. Respondent owns and operates a facility located at 2142 350th Street in Osage, Iowa (“facility”). Respondent formulates and produces active ingredients for biorational

chemicals, including pesticides and soil amendments. Respondent employs approximately 100 people.

22. On or about November 16, 2015, Respondent notified EPA, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, as a Large Quantity Generator (“LQG”) of hazardous waste pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930.

23. On or about May 18, 2021, an EPA contract inspector conducted a RCRA Compliance Evaluation Inspection of the hazardous waste management practices at Respondent’s facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a LQG of hazardous waste.

24. At the time of the inspection, the inspector observed hazardous waste methanol, carrying waste codes D001/F003, with an organic concentration of more than 10% according to facility process knowledge, stored outside in a vertical hazardous waste accumulation tank with a capacity of approximately 9500 gallons (“TA-110”). This is a solid and hazardous waste as defined at 40 C.F.R. § 261.2 and 261.3.

25. On or about November 30, 2021, an EPA inspector conducted a follow up inspection of Respondent’s facility to obtain further information about Respondent’s facility and waste handling practices.

26. Respondent has been assigned the following EPA ID Number: IAR000519736.

Violations

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

Count 1

Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

28. Complainant hereby incorporates the allegations contained above, as if fully set forth herein.

29. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 270 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

Generator Requirements

30. The regulation at 40 C.F.R. § 262.17(a) states that a large quantity generator may accumulate hazardous waste on-site for no more than ninety (90) days without a permit or interim status, and without complying with the requirements of parts 124, 264 through 267, and 279, or the notification requirements of sections 3010 of RCRA provided all the conditions for exemption set forth at 40 C.F.R. § 262.17 are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at its facility for any length of time. Respondent failed to comply with the following conditions:

Failure to conduct monthly monitoring on pumps in light liquid service for leaks per Reference Method 21

31. The regulations at 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 265.1052(a)(1) require that a generator conduct monthly monitoring on pumps in light liquid service for leaks per Reference Method 21.

32. At the time of the inspection, Respondent failed to follow Reference Method 21 in its monitoring on pumps in light liquid service for TA-110 for leaks.

33. Respondent's failure to conduct monthly monitoring on pumps in light liquid service on hazardous waste accumulation tank TA-110 for leaks per Reference Method 21, is a violation of 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 265.1052(a)(1).

Failure to conduct weekly visual inspections on pumps in light liquid service for liquids dripping from pump seals

34. The regulations at 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 265.1051(a)(2) require that a generator conduct weekly visual inspections on pumps in light liquid service for liquids dripping from pump seals.

35. At the time of the inspection, Respondent failed to conduct weekly visual inspections on pumps in light liquid service for TA-110 for liquids dripping from pump seals.

36. Respondent's failure to conduct weekly visual inspections on pumps in light liquid service on hazardous waste accumulation tank TA-110 for liquids dripping from pump seals is a violation of 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 265.1052(a)(2).

Failure to conduct monthly monitoring on valves in light liquid service for leaks per Reference Method 21

37. The regulations at 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 265.1057(a) require that a generator conduct monthly monitoring on valves in light liquid service for leaks per Reference Method 21.

38. At the time of the inspection, Respondent failed to follow Reference Method 21 in its monitoring on valves in light liquid service on TA-110 for leaks.

39. Respondent's failure to conduct monthly monitoring on valves in light liquid service for leaks on hazardous waste accumulation tank TA-110 per Reference Method 21 is a violation of 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 265.1057(a).

Failure to mark each piece of equipment to which Subpart BB of Part 265 applies

40. The regulations at 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 265.1050(c) require that a generator mark each piece of equipment to which Subpart BB of Part 265 applies such that such pieces of equipment can be readily distinguished from other pieces of equipment.

41. At the time of the inspection, Respondent failed to mark these pieces of equipment associated with TA-110.

42. Respondent's failure to mark each piece of equipment associated with hazardous waste accumulation tank TA-110 is a violation of 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 265.1050(c).

Failure to develop and implement a written plan for inspections of equipment subject to Subpart CC of Part 265

43. The regulations at 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 265.1089(b) require that a generator develop and implement a written plan and schedule to perform inspections of air emission control equipment subject to Subpart CC of Part 265.

44. At the time of the inspection, Respondent failed to develop and implement a plan for these inspections for TA-110 and its associated equipment.

45. Respondent's failure to develop and implement a plan for these inspections for TA-110 is a violation of 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 262.1089(b).

Failure to record required information in the facility operating record for each piece of equipment to which Subpart BB of Part 265 applies

46. The regulations at 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 265.1064(a)(1) require that a generator record the following information for each piece of equipment to which Subpart BB of Part 265 applies: (i) Equipment identification number and hazardous waste management unit identification; (ii) Approximate locations within the facility, (iii) Type of equipment; (iv) Percent-by-weight total organics in the hazardous waste stream at the equipment; (v) Hazardous waste state at the equipment; and (vi) Method of compliance with the standard.

47. At the time of the inspection, Respondent failed to keep the aforementioned information for each piece of equipment to which Subpart BB of Part 265 applies for TA-110.

48. Respondent's failure to keep the aforementioned records for each piece of equipment to which Subpart BB of Part 265 applies for hazardous waste accumulation tank TA-110 is a violation of 40 C.F.R. § 262.17(a)(1)(i) referencing 40 C.F.R. § 265.1064(a)(1).

Failure to record required information in the facility operating record for each piece of equipment to which Subpart CC of Part 265 applies

49. The regulations at 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 265.1090 require that a generator record certain information for each piece of equipment to which Subpart CC of Part 265 applies.

50. At the time of the inspection, Respondent failed to keep the aforementioned records for each piece of equipment to which Subpart CC of Part 265 for TA-110.

51. Respondent's failure to keep the aforementioned records for each piece of equipment to which Subpart CC of Part 265 applies for hazardous waste accumulation tank TA-110 is a violation of 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 265.1090.

Failure to inspect annually tank air emission control equipment

52. The regulations at 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 265.1085(c)(4) and § 265.1089(a) require, among other things, that a generator subject to Subpart CC of Part 265 conduct annual inspections of air emission control equipment.

53. At the time of the inspection, Respondent had failed to conduct annual inspections for TA-110.

54. Respondent's failure to conduct annual inspections on the air emission control equipment for hazardous waste accumulation tank TA-110 is a violation of 40 C.F.R. § 262.17(a)(1)(i), referencing 40 C.F.R. § 265.1085(c)(4) and § 1089(a).

55. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 27 through 53 above, Respondent was not authorized to accumulate hazardous waste at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

CONSENT AGREEMENT

56. 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.

57. 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.

58. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

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

60. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following email address: *LMKornfeld@hollandhart.com*.

Penalty Payment

61. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Fifty-Three Thousand, Six Hundred and Seven Dollars \$53,607.

62. 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 979077
St. Louis, Missouri 63197-9000

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

63. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Daniel Lyskowski, Attorney
Lyskowski.Daniel@epa.gov

64. 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 from the date of delinquency until payment of the penalty in full as well as any other penalty and any accrued interest. 31 C.F.R. § 901.9. 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 (6) percent 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

65. 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.

66. 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.

67. Respondent certifies by the signing of this Consent Agreement and Final Order 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.

68. 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.

69. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed \$65,666 per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the

terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

70. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

71. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

72. Nothing contained this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

73. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

74. 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 filing by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

76. 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.

77. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

78. 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.

COMPLAINANT:

U.S. Environmental Protection Agency

David Cozad
Director
Enforcement and Compliance Assurance Division

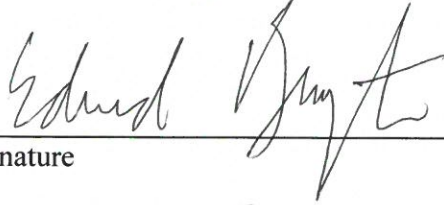
Date

Daniel Lyskowski
Office of Regional Counsel

Date

RESPONDENT:

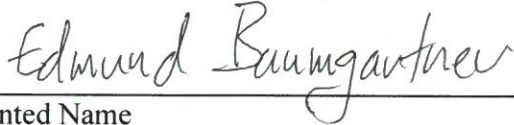
Valent BioSciences LLC



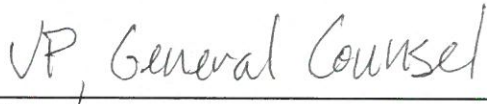
Signature



Date



Printed Name



Title

FINAL ORDER

Pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), 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.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

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

Copy via Email to Complainant:

Daniel Lyskowski
Office of Regional Counsel
Lyskowski.Daniel@epa.gov

Edwin Buckner
Compliance Officer, Enforcement and Compliance Assurance Division
Buckner.Edwin@epa.gov

Milady Peters
Paralegal
Peters.Milady@epa.gov

Copy via Email to Respondent:

Lynn Kornfeld
Holland & Hart
555 17th Street, Suite 3200
Denver, Colorado 80202
LMKornfeld@hollandhart.com

Copy via Email to the State of Iowa:

Ed Tormey, Acting Administrator (e-copy)
Environmental Services Division
Iowa Department of Natural Resources
Ed.tormey@dnr.iowa.gov

Mike Sullivan, Chief (e-copy)
Contaminated Sites Section
Iowa Department of Natural Resources
Michael.sullivan@dnr.iowa.gov

Dated this _____ day of _____, _____.

Signed