

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

2007 APR 24 AM 10:37

U.S. EPA REGION IX
REGIONAL HEARING CLERK

In the matter of:)
)
)
ROMIC ENVIRONMENTAL)
TECHNOLOGIES CORP.)
)
EPA I.D. No. AZD 009 015 389)
)
Respondent.)
)

U.S. EPA Docket No.
RCRA 09-2007- 0011

DETERMINATION OF VIOLATION
COMPLIANCE ORDER
AND
NOTICE OF RIGHT TO
REQUEST A HEARING

I. DETERMINATION OF VIOLATION

A. INTRODUCTION

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Romic Environmental Technologies Corp. ("Romic").
2. Respondent owns and operates a facility on the Gila River Indian Community reservation, located at 6760 West Allison Road, Chandler, Arizona 85226 (the "Facility"). The Facility performs solvent recycling, blending, aerosol can processing, bulking, container crushing, and waste consolidation for off-site disposal. The Facility's EPA Identification Number is AZD 009 015 389.
3. This Determination of Violation, Compliance Order and Notice of Right to Request a Hearing ("Complaint") serves as notice that EPA, on the basis of information available to it, has determined that Respondent violated Section 3001 et seq., of RCRA, 42 U.S.C. §6921 et seq. and the federal regulations adopted pursuant thereto. This Complaint seeks to assess a civil penalty that Respondent must pay for violations alleged herein, and compliance with the compliance tasks described herein.

B. JURISDICTION

4. Respondent is a "person" as defined in 40 C.F.R. § 260.10.
5. Respondent is the "operator" of a facility as defined in 40 C.F.R. § 260.10.
6. Respondent is an interim status treatment and storage facility as defined in Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).
7. Respondent is engaged in "storage" and "treatment" of hazardous waste as defined in 40 C.F.R. § 260.10.
8. At the Facility, Respondent stores and treats a number of hazardous wastes as defined by Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. §§ 260.10 and 261.3. The majority of the waste streams accepted at the Facility are characteristic or F-listed hazardous wastes. They include solvents, resins, paints, paint thinner, freon, adhesives, batteries, sludges, debris, oxidizers, wastewaters, corrosive wastes, aerosol cans, fluorescent tubes, and laboratory chemicals. The solvents recycled at the Facility include n-methyl pyrrolidinone (NMP), xylene, lacquer thinner, methylene chloride, n-butyl acetate, methyl ethyl ketone (MEK), toluene, and acetone. The Facility does not accept radioactive waste, bio-hazards, medical/infectious wastes, explosives, or polychlorinated biphenyl (PCB) waste.
9. On April 5, 2007, the Facility General Manager instructed Facility personnel to mix incompatible wastes, contrary to Facility policy. The action resulted in a flash fire and smoke. On April 6, 2007, Respondent submitted a report to EPA, titled "4/5/07 Peroxide Incident Summary of Events" describing the facts of the incident. The report describes violations that form the basis for this action.
10. Based upon the report of events of April 5, 2007 and Respondent's response to a 3007(a) Request for Information, EPA has determined that Respondent has violated Sections 3002 and 3004 of RCRA, 42 U.S.C. §§ 6922 and 6924, and the regulations adopted pursuant thereto at 40 C.F.R. Part 265.
11. Arizona is authorized to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. However, the federal regulations apply here because the Facility is located on the Gila River Indian Community, and Arizona is not authorized to administer the program in Indian country. *See, e.g.,* 65 FR 64369, 64371 (Oct. 27, 2000).
12. Respondent, in violating the requirements of Sections 3002 and 3004 of RCRA, 42 U.S.C. §§ 6922 and 6924, and the regulations adopted pursuant thereto at 40 C.F.R. Part 265, is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified

time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA et seq., 42 U.S.C. § 6921, et seq.

13. The Administrator has delegated the authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrator for Region IX, who has redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

Count I

Failure to Meet Requirements for Incompatible Wastes

14. Paragraphs 1 through 13 above are incorporated herein by this reference as if they were set forth here in their entirety.
15. 40 C.F.R. § 265.1(b) states that the standards of 40 C.F.R Part 265 apply to owners and operators of interim status facilities.
16. 40 C.F.R. § 265.199(a) states that incompatible wastes, or incompatible wastes and materials, must not be placed in the same tank system, unless 265.17(b) is complied with.
17. 40 C.F.R. 265.17(b) states that where specifically required by other sections of this part, the treatment, storage, or disposal of ignitable or reactive waste, and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, must be conducted so that it does not, among other matters, generate extreme heat or pressure, fire or explosion, or violent reaction.
18. On April 5, 2007, according to Facility representatives, Facility personnel transferred hydrogen peroxide-bearing waste into Tank 136, a tank containing residual amounts of inorganic acid waste.
19. According to Romic's "4/5/07 Peroxide Incident Summary of Events" ("Summary Report") and 3007(a) Response, at approximately 10:15 am on April 5, 2007, the Romic employee commenced transfer of approximately 100 gallons of aqueous waste solution of hydrogen peroxide from a tote into Tank 136, which contained approximately residual inorganic acids. Romic originally estimated that there was approximately 500 gallons of residual inorganic acids in Tank 136 and later revised this downward to approximately 200 gallons.
20. Romic states that it has "an established policy that prohibits the consolidation of hydrogen peroxide-bearing materials in Tank 136. This policy is in place because such wastes exhibit a significant risk of incompatibility with organics and acids."
21. The hydrogen peroxide-bearing waste transferred into Tank 136 and the residual inorganic acid waste in Tank 136 are incompatible wastes.

22. The mixing of the two wastes in Tank 136 resulted in a reaction, including a fire.
23. After approximately 50 gallons of solution had been pumped into tank 136, the operator observed a brief flash fire followed by some smoke generation.
24. Romic states that "The reaction that took place was a two-stage reaction. The first stage was the decomposition of hydrogen peroxide to yield water and oxygen...The second stage was the incomplete combustion and possible smouldering reaction of the released oxygen with organics in the residue of Tank 136."
25. Therefore EPA alleges that Romic mixed incompatible wastes, a violation of 40 C.F.R. § 265.199(a).

Count II

Failure to Operate the Facility to Minimize the Possibility of Release

26. Paragraphs 1 through 25 above are incorporated herein by this reference as if they were set forth here in their entirety.
27. 40 C.F.R. § 265.31 states that facilities must be maintained and operated to minimize the possibility of a fire, explosion, or an unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
28. Beginning November 29, 2006 and continuing until December 4, 2006, Romic was conducting a process whereby it was distilling a waste material comprised predominantly of sulfolane.
29. The sulfolane material is a hazardous waste.
30. The sulfolane waste was identified on the generator waste profile as a "corrosive solvent waste" D002 and as a characteristically toxic waste for lead (D008) and selenium (D010).
31. During the distillation, sulfolane was released into the environment.
32. Romic estimated less than a pound was released.
33. Romic received an odor complaint from Lumber Products, the neighbor to the west of the facility on December 1, 2006.
34. Romic received another odor complaint from Lumber Products on December 4, 2006. Romic did not cease the distillation of the sulfolane until after this complaint was received.

35. Romic states that "The odors arising from the processing of the sulfolane stream did not result in an actual or potential hazard to human health or the environment, except that the unpleasant nature of the odors can and did result in people experiencing symptoms of headache and nausea."
36. Prior to this distillation of the sulfolane in the distillation unit during the Nov. 29 to Dec. 4, 2006 period, Romic had not previously distilled the waste, but had bulked the waste for fuels blending into a railcar.
37. Prior to distillation of the sulfolane, Romic had failed to determine whether it could be managed in the distillation unit without resulting in potentially harmful releases.
38. Subsequent to the fire and reaction in Tank 136 on April 5, 2007, another reaction occurred in the tote that originally held the hydrogen peroxide-bearing waste.
39. Romic states that "The follow-on reaction within the tote resulted in the release of approximately forty gallons of the hydrogen peroxide solution....The remaining forty gallons remaining in the tote...were vaporized by the energy released by the hydrogen peroxide decomposition reaction in the third phase of the incident."
40. The solution released from the tote is a hazardous waste, with the characteristic of ignitability (D001).
41. Romic admits that it does not have a "formal process for managing waste in a manner other than that specified by the laboratory disposition."
42. Romic admits that the lack of such a formal process is the primary root cause of the incident on April 5, 2007.
43. Romic failed to operate its Facility to minimize the possibility of an unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment, in violation of 40 C.F.R. § 265.31.

Count III

Failure to Implement Contingency Plan Emergency Procedures

44. Paragraphs 1 through 43 above are incorporated herein by this reference as if they were set forth here in their entirety.
45. According to Romic's 3007(a) Response, after the hydrogen peroxide solution had been added to Tank 136, and the internal plant alarm was activated, the Emergency Coordinator ("EC") initiated an assessment.

46. According to Romic, the EC concluded "that the oxidizer in the tote had likely reacted with oil in the tank, creating a flash fire." In addition, the EC's report "noted black smoke of low to medium opacity coming from Tank 136 being carried by light winds in a north-northeasterly direction and dissipating approximately fifteen feet from the tank."
47. 40 C.F.R. § 265.56 (d)(2) provides that "If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility," he must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center.
48. The 3007(a) Response indicates that the substances released from the tank were water vapor, carbon dioxide, carbon monoxide, soot, and possibly hydrogen chloride gas.
49. Hydrogen chloride gas is considered an acutely toxic vapor.
50. According to Medical Management Guidelines of the Agency for Toxic Substances and Disease Registry":
 - "Hydrogen chloride gas is intensely irritating to the mucous membranes of the nose, throat, and respiratory tract. Brief exposure to 35 ppm causes throat irritation, and levels of 50 to 100 ppm are barely tolerable for 1 hour. The greatest impact is on the upper respiratory tract; exposure to high concentrations can rapidly lead to swelling and spasm of the throat and suffocation.
 - "Most seriously exposed persons have immediate onset of rapid breathing, blue coloring of the skin, and narrowing of the bronchioles. Patients who have massive exposures may develop an accumulation of fluid in the lungs.
 - "Exposure to hydrogen chloride can lead to Reactive Airway Dysfunction Syndrome (RADS), a chemically- or irritant-induced type of asthma.....
 - "Exposure of the eyes to concentrated hydrogen chloride vapor or hydrochloric acid can cause corneal cell death, cataracts, and glaucoma. Exposure to dilute solutions can cause stinging pain and injuries such as ulcers of the eye surface."
51. According to Romic, the EC determined there was "little chance of exposure to offsite receptors" based on the fact that the wind was blowing towards vacant land.
52. Romic failed to conduct any air monitoring of the release.
53. The EC's determination that there was "little chance of exposure" concedes that the release "could threaten human health, or the environment, outside the facility" but that the EC concluded that the threat was low.

54. The EC's determination did not take into account exposures that may have occurred if the wind shifted, or if traffic entered the area via the rail lines adjacent to the Facility.
55. The EC did not immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center.
56. 40 C.F.R. § 265.56(e) states that during an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility.
57. Romic's 3007(a) Response indicates that after the first incident that resulted in the black smoke being released, two more reactions occurred that triggered internal alarms.
58. The second internal alarm sounded approximately 35 minutes after the "all clear" was given from the first alarm, due to overpressurization of the transfer pump that had been used to pump the hydrogen peroxide mixture into Tank 136.
59. The third internal alarm sounded approximately one hour after the "all clear" was given from the second alarm, and resulted from material reacting as a result of drain-back of the contents of the hose into the tote, which resulted in the release of hydrogen peroxide solution.
60. Therefore EPA alleges that Respondent failed to notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center, and that the emergency coordinator did not take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility, and that Romic violated 40 C.F.R. § 265.56.

D. CIVIL PENALTY

61. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, (*see* 61 Fed. Reg. 69360 (Dec. 31, 1996)), authorizes a civil penalty of up to TWENTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$27,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.* occurring on or after January 31, 1997 but before March 16, 2004, and a penalty of up to THIRTY-TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after March 15, 2004. In assessing the severity of these violations, EPA has determined that these violations demonstrate substantial noncompliance with the applicable requirement, and resulted in substantial risk to human health and the environment. Therefore, Complainant requests that the Administrator assess a civil penalty against Respondent of up to \$32,500 per violation per day for each day during which a violation cited in the above outlined

Counts continued. For the three counts, each violation continued for one day, the day of the incident, April 5, 2007.

II. COMPLIANCE ORDER

62. In order to prevent a recurrence of an incident like that which occurred on April 5, 2007, Romic shall submit to EPA for review and approval a set of protocols/procedures that Romic will follow when managing hazardous waste in a manner other than that provided in Romic's Standard Operating Procedures. This set of protocols/procedures shall be submitted within 30 days. In its submittal of April 16, 2007, Romic stated it was developing a written protocol for overriding assigned disposition codes. The submittal pursuant to this paragraph shall not be limited to situations in which a staff member proposes to override a determination made by laboratory staff but shall also describe the protocols/procedures that Romic may follow in the event a member of either the laboratory, process or Environmental, Health and Safety staffs at Romic proposes to override a determination made by a member of another staff (i.e., laboratory, process or Environmental, Health and Safety staff).

The protocol shall consider both on-site and off-site effects and, as guidance, Romic may consider OSHA's procedures for Management of Change under their Process Safety Management Standard (29 C.F.R. 1910.119)(for onsite effects) and EPA's Risk Management Plan under EPA's Clean Air Act (40 C.F.R. 68.83) (for offsite effects)

63. The submittal shall be subject to review and approval by EPA. After EPA's approval of Romic's submittal, Romic shall implement the protocols/procedures.
64. Within 30 days of EPA's approval of Romic's submittal, Romic shall provide EPA with a schedule for training its employees on the approved protocols/procedures. Romic shall assure that all laboratory, process or Environmental Health and Safety staff are trained on the protocols/procedures no later than 90 days after approval of the protocols/procedures.
65. Within 30 days, Romic shall notify EPA whether or not it intends to return Tank 136 to service and shall submit either a certification by a Professional Engineer or a schedule for closure as provided herein:
- a. If Romic wishes to return Tank 136 to service, it shall provide to EPA a certification by a Professional Engineer that the tank meets the standard set forth in 40 C.F.R. § 265.192 prior to returning that tank to service.
 - b. If Romic determines that it will not return Tank 136 to service, Romic shall submit a schedule for closure in accordance with the closure plan previously submitted to EPA and dated December 2004.
66. Within 30 days, Respondent shall submit documentation that it has complied with the requirements of 40 C.F.R. § 265.54(b) for review and amendment of its contingency plan.

III. NOTICE OF RIGHT TO REQUEST A HEARING

A. PUBLIC HEARING

47. In accordance with Section 3008(b) of RCRA, 42 U.S.C. §6928(b), the Compliance Order set forth herein shall become final unless Respondent files an Answer and request for public hearing in writing no later than thirty (30) days after the Effective Date of this Complaint with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX, 75 Hawthorne St., San Francisco, California 94105. A copy of the Answer and request for hearing and copies of all other documents relating to these proceedings filed with the Regional Hearing Clerk should be sent to Harrison Karr (ORC-3), Assistant Regional Counsel at the same address.
48. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. A failure to admit, deny or explain any material fact or allegation contained in this Complaint will constitute an admission of the allegation. Where the Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The Answer must also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense, (2) the facts which Respondent intends to place at issue, (3) the basis for opposing any proposed relief, and (4) whether a hearing is requested.
49. If Respondent fails to file a written Answer within thirty (30) days of the Effective Date of this Complaint, Respondent may be found in default. Respondent's default will constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing.
50. If Respondent requests a public hearing, it will be held in a location determined in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, a copy of which accompanies the Complaint. The hearing will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. § 552 *et seq.*, and 40 C.F.R. Part 22. Respondent may request a hearing on any material fact alleged in the complaint, or on the appropriateness of any proposed penalty, compliance or corrective action order.
51. Pursuant to 40 C.F.R. § 22.7© of the Consolidated Rules of Practice, where a pleading or document is served by first class mail or commercial delivery service, but not by overnight or same-day service, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document.

B. INFORMAL SETTLEMENT

52. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the alleged facts, violations and amount of the penalty. An informal conference does not, however, affect Respondent's obligation to file a written Answer within thirty (30) days of the Effective Date of the Complaint. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.
53. In addition to the compliance schedule set forth in the Order above, any settlement reached as a result of an informal conference will be embodied in a written Consent Agreement and Final Order. The issuance of the Consent Agreement and Final Order will constitute waiver of Respondent's right to a hearing on any matter to which Respondent has stipulated.
54. If a settlement cannot be reached through an informal conference, the filing of a written Answer within thirty (30) days of the Effective Date of this Complaint will preserve Respondent's right to a hearing.
55. EPA encourages all parties against whom a penalty is proposed to explore the possibility of settlement. To request an informal conference, Respondent should contact Harrison Karr, ORC-3, Assistant Regional Counsel, Office of Regional Counsel, at the above address, telephone number (415) 972-3939.

EFFECTIVE DATE

The "Effective Date" of this Complaint is the date of Service. Service is complete when the return mail receipt is signed by the Respondent or a duly authorized representative of the Respondent, in accordance with the provisions of 40 C.F.R. §§ 22.5(b) and 22.7©.

4/23/07
Date



Jeff Scott
Director
Waste Management Division
United States Environmental Protection Agency,
Region IX

CERTIFICATION OF SERVICE

I hereby certify that the original of the foregoing Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing was filed with the Regional Hearing Clerk, Region IX, and that a copy was sent, along with a copy of 40 C.F.R. Part 22 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, certified mail, return receipt requested, to:

Namki Yi
Romic Environmental Technologies Corp.
2080 Bay Road
East Palo Alto, CA 94303

April 24, 2007 Kandice Bellamy

Date

Hazardous Waste Management Division