



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

September 29, 2015

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7007 3020 0002 5102 7983

Chris Pepper
Winstead, P.C.
401 Congress Ave, Ste 2100
Austin, TX 78701

RE: In the Matter of K-Solv, L.P., CAA-06-2015-3363

Dear Mr. Pepper,

Please find enclosed the fully executed Consent Agreement and Final Order ("CAFO") in regard to the above-entitled case. The fully executed CAFO was filed with the Regional Hearing Clerk on September 29, 2015 (effective date).

The K-Solv, L.P. will have thirty (30) days from the effective date to pay the agreed upon civil penalty of fifty-one thousand dollars (\$51,000). If you have any questions regarding this matter, please feel free to contact me at 214-665-8130. Thank you for your assistance in bringing this matter to a successful conclusion

Sincerely,

A handwritten signature in black ink that reads "Justin Lannen".

Justin Lannen
Assistant Regional Counsel
EPA, Region 6

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2015 SEP 23 11:35 AM
EPA REGION 6 OFFICE
DALLAS, TEXAS

IN THE MATTER OF:)
)
)
 K-Solv, L.P.) Docket No. CAA-06-2015-3363
)
)
 RESPONDENT)

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act, (the “CAA” or “Act”), 42 U.S.C. § 7413(d), and Sections 22.13, 22.18, and 22.34 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permit (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region 6 (the “EPA”). On the EPA’s behalf, the Director of the Compliance Assurance and Enforcement Division has been delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.

3. Respondent is a limited partnership doing business in the state of Texas. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement along with the corresponding Final Order hereinafter known together as “CAFO” without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CAFO.

B. JURISDICTION

5. This CAFO is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this CAFO are pursuant to Section 113(a)(1)(B).

6. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than a year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

7. In satisfaction of the notice requirements of Section 113(a)(1), on August 18, 2015, the EPA issued to Respondent a notice of violation (“NOV”) and provided a copy of the NOV to Texas, providing notice to both that the EPA found that Respondent committed the alleged violations described in Section E of this CAFO and providing Respondent an opportunity to confer with the EPA.

8. The Regional Judicial Officer is authorized to ratify this CAFO which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.4(b) and 22.18(b).

9. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

10. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

11. Section 109(a) of the CAA, 42 U.S.C. § 7409(a), requires the Administrator of EPA to publish national ambient air quality standards ("NAAQS") for certain pollutants. The NAAQS establish primary air quality standards to protect public health and secondary standards to protect public welfare.

12. The Administrator has promulgated NAAQS for nitrogen oxides (NO_x) and ozone. *See* 40 C.F.R. §§ 50.9, 50.10, and 50.11. Volatile organic compounds (VOC) are precursors to the formation of ozone. *See* 40 C.F.R. § 52.21(b)(23)(i).

13. To achieve the objectives of the NAAQS and the CAA, Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each state to adopt and submit a plan to the Administrator that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region. This plan is known as an applicable implementation plan or state implementation plan ("SIP").

14. Section 110(a)(2)(C) of the CAA, 42 U.S.C. § 7410(a)(2)(C), requires each SIP to include, *inter alia*, "regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved...."

15. Each state's SIP must include permitting requirements for "major stationary sources" and "major modifications," which fall under Prevention of Significant Deterioration

(PSD) and Nonattainment New Source Review (NNSR) statutory provisions and corresponding EPA regulations. See Parts C and D of Subchapter I of the CAA, 42 U.S.C. §§ 7470-7492 and 7501-7515, and 40 C.F.R. §§ 52.21 and 51.165.

16. Each state's SIP must also include permitting requirements for any construction or modification of stationary sources that do not trigger PSD or NNSR requirements. 40 C.F.R. §§ 51.160-51.164. These SIP provisions are generally referred to as Minor New Source Review ("Minor NSR") regulations.

Minor NSR Regulations in Texas

17. Texas has several types of approved Minor NSR regulations as part of its SIP, two of which are of relevance to this CAFO: the Texas Minor NSR Permit program and the Texas Permits by Rule program. Texas, through the Texas Commission on Environmental Quality (TCEQ), is authorized to issue and enforce Minor NSR Permits. 30 Tex. Admin. Code Chapter 116, Subpart B (approved at 60 Fed. Reg. 49,788, Sept. 27, 1995). Texas, through the TCEQ, is also authorized to adopt and enforce Permits by Rule. 30 Tex. Admin. Code Chapter 106 (approved at 68 Fed. Reg. 64,543, Nov. 14, 2003).

i. Minor NSR Permit Program

18. Under the Texas Minor NSR Permit program, a source must apply for, and obtain, a permit to construct any new or modified source of air contaminants. See 30 Tex. Admin. Code § 116.110(a)(1). (approved at 68 Fed. Reg. 64,543, Nov. 14, 2003).

19. Texas Minor NSR Permits may contain general or special conditions. See 30 Tex. Admin. Code § 116.115(a).

20. A Texas Minor NSR Permit holder must comply with all special conditions contained in the permit document.

21. Requirements and conditions in Minor NSR Permits issued by Texas pursuant to its federally-approved Minor NSR program are federally enforceable. *See* 30 Tex. Admin. Code §§ 101.1(36) (approved at 75 Fed. Reg. 68989, Nov. 10, 2010) and 116.10(5) (approved at 72 Fed. Reg. 49198, Aug. 28, 2007).

ii. Permits by Rule Program

22. Texas's Permits by Rule (PBR) program provides for an alternative process for approving the construction of new and modified facilities or changes within facilities that qualify as minor sources of air contaminants. 68 Fed. Reg. 64,543, 64544 (Nov. 14, 2003).

23. Texas has adopted PBR that apply to the specific activities and processes listed in 30 Tex. Admin. Code Chapter 106.

24. Qualified PBR holders must maintain compliance with all requirements, conditions, and limitations contained in the PBR that are applicable to the permit holder. *See* 30 Tex. Admin. Code § 106.4.

25. Requirements, conditions, and limitations in Permits by Rule adopted by Texas pursuant to its federally-approved Minor NSR program are federally enforceable. *See* 30 Tex. Admin. Code §§ 101.1(36) (approved at 75 Fed. Reg. 68989, Nov. 10, 2010) and 116.10(5) (approved at 72 Fed. Reg. 49198, Aug. 28, 2007).

D. FINDINGS OF FACT AND CONCLUSIONS OF LAW

26. K-Solv, L.P. ("K-Solv") owns and operates the K-Solv Channelview Facility located at 1015 Lakeside Drive, Channelview, Texas (the "Facility").

27. Respondent is the owner and operator of the Facility within the meaning of 40 C.F.R. § 51.100(f).

28. At all times relevant to this proceeding, Respondent owned and operated the Facility.

29. The Facility receives, stores, blends, and distributes petrochemical products. The Facility is authorized to depressurize, degas, and clean barges containing residual amounts of petrochemicals.

30. The Facility is a stationary “source” as that term is defined in 30 Tex. Admin. Code § 116.10(15) (approved at 72 Fed. Reg. 49198, Aug. 28, 2007).

31. At all times relevant to this proceeding, Respondent owned and operated equipment at the Facility that emitted NO_x and VOC.

32. On October 25, 2011, Respondent was issued Permit No. 87595 (the “Permit”), a Minor NSR Permit issued under the Texas Minor NSR program.

33. The Facility was constructed and, at all times relevant to this proceeding, has operated pursuant to several Permits by Rule, including 30 Tex. Admin. Code § 106.472, relating to organic and inorganic liquid loading and unloading.

34. Respondent has corrected the violations alleged in Section E of this CAFO by taking the following actions:

- a. By December 2013, K-Solv began maintaining complete records relating to its barge depressurizing and degassing operations;
- b. In November 2014, K-Solv, obtained written approval from the TCEQ for the use of an alternate method of monitoring for VOC breakthrough at its carbon adsorption system; and
- c. In June 2014, K-Solv ceased storing any acetic acid at the Facility.

35. In addition to the compliance measures taken in paragraph 34, K-Solv has taken the following actions:

- a. In October 2014, K-Solv installed and began operating an updated, comprehensive electronic recordkeeping system at the Facility;
- b. Since 2013, K-Solv has removed all storage tanks that were on-site during the EPA inspection and has undertaken significant physical upgrades at its Facility, at a significant cost, including the installation of at least 36 new storage tanks and a new carbon adsorption system, as well as other improvements to the Facility's tank farm, barge facility, and dock area;
- c. In December 2014, K-Solv submitted to TCEQ a permit amendment application to incorporate all applicable requirements, including Permits-by-Rule requirements, into individual Permit No. 87595.

E. ALLEGED VIOLATIONS

36. Permit No. 87595, Special Conditions 5 and 6, require Respondent to keep various records relating to barge depressurizing and degassing operations at the Facility.

37. Permit No. 87595, Special Condition 9, requires that Respondent receive approval from the TCEQ for the use of an alternate method (other than flame ionization detection) of monitoring for VOC breakthrough at its carbon adsorption system (CAS).

38. Permit by Rule 30 Tex. Admin. Code § 106.472(8) authorizes the loading, unloading, and storage of acetic acid only if the acetic acid is vented through a water scrubber.

Violation 1

39. From 2011-2013, Respondent failed to keep complete records relating to its barge depressurizing and degassing operations. The following records were incomplete: annual calibrations for the Facility's vapor collection system monitors; vapor flow rates; vapor combustor unit (VCU) Usage Reports (including incomplete data on pressure readings, start dates and times, barge material information, and temperature readings at the VCU); and barge hatch information, including associated air flow and velocity data.

40. By failing to keep complete records of its barge depressurizing and degassing operations, Respondent has violated Special Conditions 5 and 6 of Permit No. 87595.

Violation 2

41. At the time of EPA's 2013 inspection, Respondent was using an alternate method (other than flame ionization detection) to monitor for VOC breakthrough at its CAS. Respondent had not received approval from the TCEQ for the use of this alternate method.

42. By failing to receive approval from the TCEQ for the use of an alternate method to monitor for VOC breakthrough, Respondent has violated Special Condition 9 of Permit No. 87595.

Violation 3

43. From 2011 to 2014, Respondent loaded, unloaded, and stored small amounts of acetic acid without having vented the acetic acid through a water scrubber.

44. By failing to vent acetic acid through a water scrubber, Respondent has violated Permit by Rule 30 Tex. Admin. Code § 106.472(8).

F. CIVIL PENALTY AND SETTLEMENT

General

45. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- a. admits that the FPA has jurisdiction over the subject matter alleged in this CAFO;
- b. neither admits nor denies the specific factual allegations contained in the CAFO;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the issuance of any specified compliance or corrective action order;¹
- e. consents to the conditions specified in this CAFO;
- f. consents to any stated Permit Action;²
- g. waives any right to contest the alleged violations set forth in Section E of this CAFO; and
- h. waives its rights to appeal the Final Order included in this CAFO.

46. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;

¹ Although 40 C.F.R. § 22.18(b)(2) requires this statement, it is not applicable to this Consent Agreement.

² *Id.*

- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- d. consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the Southern District of Texas; and
- e. waives any right it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.
- f. Agrees that in any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other relief relating to this Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defenses based on any contention that the claims raised by the Complainant or the United States

were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

Penalty Assessment and Collection

47. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, EPA has assessed a civil penalty in the amount of fifty-one thousand dollars (\$51,000) ("EPA Penalty"). The EPA Penalty has been determined in accordance with the Section 113 of the Act, 42, U.S.C. § 7413 and at no time exceeded EPA's statutory authority.

48. Respondent agrees to:

- a. pay the EPA Penalty within 30 calendar days of the Effective Date of this CAFO
- b. pay the EPA Penalty by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of five (5) ways: (1) regular U.S. Postal Service mail including certified mail; (2) overnight mail; (3) wire transfer; (4) Automated Clearinghouse for receiving US currency; or (5) On Line Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, payment should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. FedEx), payment should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Natalie Pearson
(314) 418-4087

For wire transfer, payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact -- Jesse White (301) 887-6548

For On Line Payment:

<https://www.pay.gov/paygov/>
Enter sfo 1.1 in search field
Open form and complete required fields.

PLEASE NOTE: The docket number CAA-06-2015-3363 should be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter that shall reference K-Solv's name and address, the case name, and docket number CAA-06-2015-3363. K-Solv's adherence to this request will ensure proper credit is given when penalties are received for the Region. K-Solv shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following addresses:

Margaret Osbourne (6EN-AT)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

And

Region 6 Hearing Clerk (6RC-D)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

49. Respondent agrees to pay the following on any overdue EPA Penalty:

a. Interest. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C.

§ 7413(d)(5), any unpaid portion of a civil penalty must bear interest at the rates established pursuant to 26 U.S.C. § 6621(a)(2).

b. Nonpayment Penalty. On any portion of a civil penalty more than 90 calendar days delinquent, Respondent must pay a nonpayment penalty, pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), which shall accrue from the date the penalty payment became delinquent, and which shall be in addition to the interest which accrues under subparagraph a. of this paragraph.

50. Respondent shall pay a charge to cover the cost of processing and handling any delinquent penalty claim, pursuant to 42 U.S.C. § 7413(d)(5), including but not limited to attorneys' fees incurred by the United States for collection proceedings.

51. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- a. refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court (in which the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review) to secure payment of the debt, which may include the original penalty, enforcement and collection expenses, nonpayment penalty and interest, 42 U.S.C. § 7413(d)(5) and 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- b. collect the above-referenced debt by administrative offset (i.e. the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and II; and
- c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

52. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information.

53. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete

for each submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

54. Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17. Except as qualified by Paragraph 50, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER

55. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

56. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

57. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

58. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

59. Any violation of the included Final Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 per day of violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided

in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

60. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit.

61. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

II. EFFECTIVE DATE

62. Respondent and Complainant agree to the issuance of the included Final Order. Upon filing the EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of K-Solv, L.P., Docket No. CAA-06-2015-3363, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

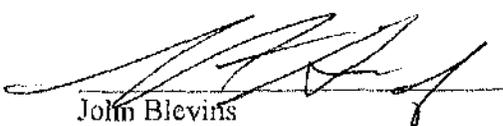
Date: 9-23-15



Russell Allen, President
K-Solv, L.P.
9660 Katy Freeway
Houston, Texas 77055

FOR COMPLAINANT:

Date: 9-28-15



John Blevins
Director
Compliance Assurance and
Enforcement Division

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

K-Solv, L.P.

RESPONDENT

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Docket No. CAA-06-2015-3363

FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

K-Solv is ORDERED to comply with all terms of the Consent Agreement. In accordance with 40 C.F.R. §22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

9/29/15



Regional Judicial Officer
U.S. EPA, Region 6

Thomas Rucki

CERTIFICATE OF SERVICE

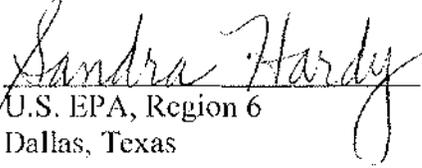
I hereby certify that on the 29th day of September, 2015, the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 70073020000251027976

Todd Riddle, Registered Agent
Four Houston Center
1221 Lamar Street, 16th Floor
Houston, TX 77010

ELECTRONIC COPY

Chris Pepper, Shareholder
Winstead P.C.



U.S. EPA, Region 6
Dallas, Texas