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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 23 SEP -6 PM 3: 32
REGION 6
DALLAS, TX
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

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Compliance Order on Consent
USEPA Docket No. RCRA-06-2023-0945

W.R. GRACE & CO-CONN
RESPONDENT

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I. PRELIMINARY STATEMENT

1. This Administrative Compliance Order on Consent (“ACOC”) is entered by the United States Environmental Protection Agency (“EPA” or “Complainant”), Region 6 and W.R. GRACE & CO-CONN., a Connecticut corporation (“GRACE” or “Respondent”) and concerns Respondent’s facility that is located in Norco, Louisiana and at least:

- a. Thirty-four (34) rail cars located now or formerly on three (3) noncontiguous sections of a rail track, located near 2200 Spring Street, Hot Springs, Arkansas; and
- b. Six (6) rail cars, forty-four (44) frac tanks, and twelve (12) vertical tanks, located at 847 Blacksnake Road, Hot Springs, Arkansas.

2. Notice of the commencement of this action has been given to the States of Louisiana and Arkansas pursuant to Section 3008(a)(2) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a)(2).

3. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the State of Louisiana final authorization to carry out its hazardous waste program in lieu of the federal

program.¹

4. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may enforce the federally approved State of Louisiana’s hazardous waste program.

5. Pursuant to Section 3007 of RCRA, on November 29, 2022, EPA, Region 6 issued to GRACE an information request (“Request”).

6. Pursuant to Section 3007 of RCRA, on December 16, 2022, EPA, Region 6 conducted a RCRA inspection at the ORG Chem Group, Inc., (“ORG Chem”) a facility that is located at 847 Blacksnake Road, Hot Springs, Arkansas 71913 (the “Inspection”). The ORG Chem facility was previously owned and/or operated by Mid-America Distillations (“MADI”).

7. On January 20, 2023, GRACE submitted responses to the Request (“Responses”).

8. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 Code of Federal Regulations (“C.F.R.”) Part 22, EPA, Region 6 issues, and GRACE agrees to issuance of this ACOC.

9. By their signatures to this ACOC, the EPA and GRACE (the “Parties”) agree to the use of electronic signatures for this matter. The Parties further agree to electronic service of this ACOC, pursuant to 40 C.F.R. § 22.6, by email to the following addresses: EPA,

Moncrieffe.Marcia@epa.gov and for Respondent, Apple.Chapman@grace.com.

¹ On January 24, 1985, the State of Louisiana received final authorization for its base Hazardous Waste Management Program (50 Fed. Reg. 3,348). Subsequent revisions have been made to the Louisiana Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this Consent Agreement are to the “EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program” dated November 2015, incorporated by reference under 40 C.F.R. § 272.951(c)(1)(i) effective on December 26, 2018. (83 Fed. Reg. 6,6143; 40 C.F.R. § 272.951: Louisiana State-Administered Program: Final Authorization). References and citations to the “EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program” may vary slightly from the State of Louisiana’s published version. The corresponding C.F.R. citations are also provided.

II. JURISDICTION

10. This ACOC is issued by EPA, Region 6 pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 and is simultaneously commenced and concluded through the issuance of this ACOC and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

11. The Regional Administrator, EPA Region 6 (“Complainant”) has been delegated the authority pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to sign this ACOC, and has further redelegated the authority to the Director of the Enforcement and Compliance Assurance Division.

12. Respondent agrees to undertake and complete all actions required by the terms and conditions of this ACOC. In any action by EPA or the United States to enforce the terms of this ACOC, Respondent agrees not to contest the authority or jurisdiction of the administrator of EPA to issue or enforce this ACOC and agrees not to contest the validity of this ACOC or its terms and conditions.

13. Part III of this ACOC contains concise statements of the factual and legal basis for EPA’s alleged violations of RCRA together with specific provisions of RCRA and the implementing regulations that Respondent is alleged by EPA to have violated.

III. FACTUAL ALLEGATIONS and ALLEGED VIOLATIONS

14. Respondent is incorporated in the State of Connecticut and registered and authorized to do business in the State of Louisiana.

15. Respondent is a “person” as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and LAC 33:V.109, [40 C.F.R. § 260.10].

16. Respondent owns and operates a specialty catalyst operation at its Norco plant at

16122 River Road, Louisiana 70079 (the “Norco Site” or “Facility”).

17. The Norco Site is a “facility” as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and LAC 33:V.109, [40 C.F.R. § 260.10].

18. Respondent is the “owner” and “operator” of the “facility” that is identified in Paragraph 16 above as those terms are defined in LAC 33:V.109, [40 C.F.R. § 260.10].

19. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent notified as a large quantity generator and the Facility’s generator identification number is LAR000004598.

20. Respondent’s predecessor of the Facility is Union Carbide Corporation Cypress Plant, (“Union Carbide”) who operated the Facility with the same generator identification number LAR000004598.

21. Based on information provided on October 19, 1995, by Shell Polypropylene Company, a previous owner of the Facility, the Louisiana Department of Environment Quality (“LDEQ”) made effective on February 12, 1996, the first variance (the “LDEQ Variance”) of this kind for the Facility, which was reissued to Union Carbide on June 20, 1997, both granted under authority by the Louisiana Environmental Quality Act, in particular La. R.S. 30:2014; by the Executive Reorganization Act, in particular La. R.S. 36:234; and by Section 105.D.29 of Title 33, Part V of the Louisiana Administrative Code “LAC” 33:V.105.D.29.

22. On March 17, 2006, following a request by Union Carbide to LDEQ, a subsequent public review and comment period, the LDEQ reissued the Variance for Crude Orthochlorotoluene (the “Crude OCT” or COCT stream) to Union Carbide.

23. From the first issuance of the LDEQ Variance, LDEQ allowed for the LDEQ Variance to be transferred to a new owner or operator if such person respects the conditions of the variance. And on or about December 3, 2013, the LDEQ Variance was transferred to GRACE.

24. The LDEQ Variance is contingent on several factors to include GRACE having the Crude OCT reclaimed and reused as a feedstock in a manner consistent with representations made by GRACE's predecessors, Shell and Union Carbide, which representations stated as well that:

- a. The COCT is not accumulated speculatively. It is loaded directly from the process into tank trucks, transported to the recycler, and directly hooked up to the process for treatment. The product OCT is transported back to the generating process when processing is complete. The entire round trip usually occurs in 10 days.
- b. Reclamation activities begin within 24-48 hours after generation, as soon as received by MADI,² so that no storage takes place; and
- c. After reclamation the material will be returned to Respondent within 24-48 hours of loading on a truck.

25. On January 10, 2014, Arkansas Department of Environmental Quality ("ADEQ") issued GRACE a variance (the "ADEQ Variance") under authority granted by the Arkansas Hazardous Waste Management Act (Act 406 of 1979, as amended; A.C.A § 8-7-209(a)(4) and the Arkansas Pollution Control and Ecology Commission ("APC&EC") Regulation No.23 Sections 260.30, 260.3, and 260.33.

26. The ADEQ Variance is contingent on several factors and subject to provisions, which include:

- a. GRACE reclaiming and reusing the Crude OCT in a manner consistent with representations made in the ADEQ Variance application made on November 26, 2013;
- b. Reclamation activities begin within 24-48 hours after generation, as soon as the material is received by MADI, so that no storage takes place;
- c. After reclamation the material will be returned to Respondent within 24-48 hours of loading on the truck;
- d. There must be no adverse impact to human health or the environment;
- e. Respondent will maintain title to the Crude OCT; and
- f. There should be no speculative accumulation in the management of the Crude OCT.

27. Pursuant to the referenced LDEQ and ADEQ Variances, identified respectively in

². MADI is now ORG Chem.

Paragraphs 24 and 26 of this ACOC, the issued Variances excluded from regulation Respondent's generated Crude OCT as solid waste and hence hazardous waste as long as Respondent complied with the terms of the Variances.³

28. From ADEQ's inspections, EPA, Region 6's Inspection, and subsequent information gathered by EPA, including the Responses (the "Investigation"), EPA has determined from contract documents signed by GRACE on July 20, 2015, and from communications between GRACE and ADEQ and GRACE and LDEQ that:

- a. GRACE's reclaimer/converter (ORG Chem) would need to make (as early as July 20, 2015) capital improvement necessary to reclaim and return GRACE's spent Crude OCT to GRACE;
- b. The referenced contract is also applicable to shipments received by ORG Chem prior to July 20, 2015;
- c. ORG Chem would complete the process of neutralization of the of COCT and that the capital improvement would take months and not years to complete; and
- d. Importantly, ADEQ in its letter of August 21, 2015, to GRACE, stated, "Please notify ADEQ, in writing, when the upgrades have been completed and W.R. GRACE is back to normal recovery according to the variance granted by ADEQ for Crude OCT." Also, LDEQ in a similar letter of September 24, 2015, stated, "Please notify the LDEQ-WPD, in writing, when the upgrades at the ORGChem facility have been completed."

29. From the Investigation, EPA has no evidence that GRACE provided to ADEQ or LDEQ the respective notices that the upgrades to the capital improvement project necessary to reclaim and return GRACE's spent Crude OCT to GRACE in accordance with the conditions of the Variances was completed.

30. From the Investigation, EPA has determined that Respondent on/or before 2015 and continuing through the date of the filing of this ACOC, generated and shipped the Crude OCT from its Facility in Louisiana to the ORG Chem facility in Arkansas.

31. From the Investigation, and specifically from documentation provided by Respondent,

³. For emphasis, the COCT exclusion from solid waste was condition on Respondent's obligation to respect the conditions of the ADEQ and LDEQ Variances.

EPA has concluded that approximately 1.8 million gallons of the neutralized Crude OCT (the “Backlog”) has been and continues to be stored in Arkansas in two locations six and one-half miles apart in at least twelve (12) vertical tanks, forty-four (44) frac tanks, and forty (40) rail cars.

32. From the Investigation, EPA confirmed that approximately half of the Backlog identified in Paragraph 31 of this ACOC has been stored in Arkansas and is in thirty-four (34) rail cars now or formerly located near 2200 Spring Street, Hot Springs, Arkansas.

33. From the Investigation, which is supported by photographic evidence, the rail cars identified in Paragraphs 31 and 32 of this ACOC are unsupervised, without security of any kind, not enclosed in any confined area and are located amongst and near to residents, a school, a creek, and other nearby businesses.

34. From the Investigation, EPA confirmed that approximately half of the Backlog identified in Paragraph 31 of this ACOC has been stored currently in Arkansas in twelve (12) vertical tanks, forty-four (44) frac tanks, and six (6) rail cars, which are located at the ORG Chem facility, 847 Blacksnake Road, Hot Springs, Arkansas 71913.

35. From the Investigation, which is supported by photographic evidence, the twelve (12) vertical tanks and forty-four (44) frac tanks were seen with several areas of rust, holes, several open hatches, without covers, without any markings, and/or secondary containment.

36. From the Investigation, EPA has confirmed that the storage of the Backlog started as early as 2015 and continues through the date of the filing of this ACOC in the twelve (12) vertical tanks and forty-four (44) frac tanks, which are located at the ORG Chem facility 847 Blacksnake Road, Hot Springs, Arkansas 71913.

37. From the Investigation, EPA has confirmed that the storage of the Backlog expanded

from the ORG Chem facility, on or about October 2021 to the rail cars, which are located near 2200 Spring Street, Hot Springs, Arkansas as a lease was signed on October 13, 2021, between ORG Chem and Arkansas Midland Railroad Company, Inc., a Delaware corporation (the “Railroad”), the owner of the three (3) noncontiguous sections (distinct sections) of the rail track on which rail cars have been stored and continue to be stored.

38. From the Investigation, EPA has determined that as early as 2015 through the filing date of this ACOC, Respondent did not comply with several of the provisions delineated in the ADEQ and LDEQ Variances, some of which are listed in Paragraphs 24 through 26, to include specifically the provisions listed in Subparagraphs 24.a. through c. and 26.a. through f.

39. From the Investigation, EPA has determined that the Backlog identified in Paragraphs 31 through 37 of this ACOC beginning as early as July 15, 2015, is a “solid waste” as defined by LAC 33:V.109, [40 C.F.R. § 261.2].

40. From the Investigation, EPA has determined that the Backlog identified in Paragraphs 31 through 37 of this ACOC exhibits the characteristics for ignitability pursuant to LAC 33:V.4903(B), [40 C.F.R. § 261.21], and respectively bearing the hazardous waste code D001.

41. From the Investigation, EPA has determined that the Backlog (identified in Paragraphs 31 through 37 of this ACOC) beginning as early as July 15, 2015, is a “hazardous waste” as defined at LAC 33:V.4903(B), [40 C.F.R. § 261.21].

42. From as early as 2015 and continuing through the date of the filing of this ACOC, the ORG Chem facility has been and continues to store Respondent’s hazardous waste identified in Paragraphs 40 and 41 of this ACOC.

43. The ORG Chem facility is not a RCRA Subtitle C permitted, treatment, storage, and

disposal (“TSD”) facility as defined by the APC&EC Rule 23, Parts 270.1 and 270.1040, [C.F.R. Parts 270.1 and 270.10].

44. From at or about October 13, 2021, to the current date of this ACOC, one or all three (3) noncontiguous sections of the rail track identified in Paragraph one (1) of this ACOC have been and continue to store Respondent’s hazardous waste identified in Paragraphs 40 and 41 of this ACOC.

45. The three facilities⁴ owned by the Railroad are not RCRA Subtitle C permitted TSD facilities as defined by the APC&EC Rule 23, Parts 270.1 and 270.1040, [C.F.R. Parts 270.1 and 270.10].

46. Pursuant to the conditions and provisions of the ADEQ Variance and LDEQ Variance, Respondent is required to ensure, among several additional provisions not listed in this ACOC, and based on representation made by GRACE’s predecessors, Shell and Union Carbide, that:

- a. The reclamation activities of the Crude OCT begin within 24-48 hours after generation, as soon as the material is received by the reclaimer/converter, so that no storage takes place;
- b. The reclaimed material is returned to Respondent within 24-48 hours of loading on the truck;
- c. There must be no adverse impact to human health or the environment; and
- d. The product OCT is transported back to GRACE’s generating process and that the entire round trip usually occurs in 10 days.

47. From as early as 2015 and continuing through the date of the filing of this ACOC,

⁴ The three distinct sections of rail track are each a “facility” as defined as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.

Respondent has offered for transportation its Crude OCT without a hazardous waste manifest.

48. From as early as 2015 and continuing through the date of the filing of this ACOC, Respondent has engaged and continues to engage in speculative accumulation of the Backlog, which is not allowed by each respective Variance.

49. From as early as 2022 and continuing through the date of the filing of this ACOC, Respondent has paid for the storage of the Backlog, which is not allowed by each respective Variance.

Count 1: Failure to Ship its Hazardous Waste on Manifests from Louisiana to Arkansas

50. The allegations in Paragraphs 1 through 49 are realleged and incorporated by reference.

51. Pursuant to LAC 33:V.1107.A.1, [40 C.F.R. § 262.20(a)(1)], a generator shall not offer its hazardous waste for shipment unless it prepares a standard manifest form (EPA Form 8700-22) according to the instructions found in the Appendix to LAC 33:V.1107.A.1, [40 C.F.R. Part 262].

52. Respondent generated and offered for transportation its hazardous waste identified in Paragraphs 31 through 37, 40, and 41 of this ACOC and without preparing standard manifest forms (EPA Form 8700-22) according to the instructions found in the Appendix to LAC 33:V.1107.A.1, [40 C.F.R. Part 262] and in violation of LAC 33:V.1107.A.1, [40 C.F.R. § 262.20(a)(1)].

53. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$25,000, and increased for inflation, per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance or both.

Count 2: Failure to Ship its Hazardous Waste to a Permitted Treatment, Storage, and Disposal Facility

54. The allegations in Paragraphs 1 through 53 are realleged and incorporated by reference.

55. Pursuant to LAC 33:V.1105.C, [40 C.F.R. § 262.12(c)], a generator must not offer its hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an active EPA identification number and/or the required permit(s) necessary to receive and manage the generator's hazardous waste.

56. Respondent has offered for offsite storage its hazardous waste identified in Paragraphs 31 through 37, 40, and 41 of this ACOC to the ORG Chem facility in Arkansas for storage in violation of LAC 33:V.1117.C, [40 C.F.R. § 262.12(c)].

57. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$25,000, and increased for inflation, per day of noncompliance for each violation of a requirement of Subtitle C of RCRA, issue an order requiring compliance or both.

IV. TERMS OF SETTLEMENT

58. For this proceeding, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and alleged violations of law contained in this ACOC.

59. For purposes of this proceeding, the Respondent explicitly waives any right to contest the allegations set forth in this ACOC and any right to appeal the proposed Final Order set forth herein. 40 C.F.R. § 22.18(b)(2). Further, for purposes of this proceeding, Respondent waives all defenses which have been raised or could have been raised to the claims set forth in this ACOC.

60. Respondent consents to the issuance of this ACOC hereinafter recited, and consents

to undertake the actions specified in this ACOC.

61. Pursuant to Section 3008(c) of RCRA, 42 U.S.C § 6928(c), failure to take corrective action within the time specified in this ACOC may subject Respondent to civil penalties for each day of noncompliance.

62. As required by the ADEQ Variance, Respondent has retained ownership of the approximately 1.8 million gallons of “solid waste” and “hazardous waste” that is identified in this ACOC. Respondent has accepted legal responsibility for taking the corrective actions necessary to manifest, transport, and dispose of the Backlog (the approximately 1.8 million gallons of “solid waste” and “hazardous waste”) and in compliance with this ACOC and in accordance with RCRA Subtitle C.

i. Compliance Order

63. Respondent is hereby ordered to comply with the following requirements pursuant to Section 3008(a) of RCRA, 42 U.S.C § 6928(a) and within the specific time period set forth in each Subparagraph:

- a. **The rail cars:** By November 29, 2023, Respondent shall have all hazardous waste⁵ contained in the rail cars, identified in this ACOC, transported by a licensed RCRA hazardous waste transporter, and supported by hazardous waste manifest(s) to a RCRA Subtitle C permitted TSD facility for reclamation, recovery, recycling, and/or disposal;⁶
- b. **The frac tanks and vertical tanks:** By November 29, 2023, Respondent shall prepare and submit to the EPA, Region 6 a detailed work plan for EPA’s review and approval (the “Work Plan”). The Work Plan shall, among other emphases, address and/or identify: (i) Procedures and protocols to track and document the volumes of Backlog stored in the frac tanks and vertical tanks and provide schedules and milestones for the removal of hazardous waste from the frac tanks and vertical tanks; (ii) the licensed RCRA hazardous waste

⁵ For purposes of this ACOC, the terms Backlog and hazardous waste are used interchangeably to reference the approximately 1.8 million gallons of waste.

⁶ Implementation and performance of the requirements of Subparagraph 63.a. of this ACOC shall include the interim measures specified in the attached Appendix; and the terms of the Appendix are hereby incorporated by reference into this ACOC.

transporter who will transport the hazardous waste; (iii) the RCRA Subtitle C, TSD facility where the hazardous waste will be temporarily stored and/or treated before final disposition of all the hazardous waste no later than February 28, 2025 and all in compliance with RCRA Subtitle C;

- c. **EPA's Review and Approval:** The EPA will have fourteen (14) business days⁷ to review, approve, and/or provide comments to Respondent's Work Plan. If upon receipt of the Work Plan for review and approval, EPA has no questions and/or comments, EPA in a written response to Respondent will provide an approval to proceed with the implementation of the Work Plan. If EPA has questions and/or comments on the Work Plan, EPA will provide its comments and/or questions in writing to the Respondent and will initiate a conference call with Respondent to discuss EPA's comments. Respondent will have fourteen (14) business days after the conference call to revise the Work Plan in accordance with EPA's comments and resubmit to EPA. If EPA has additional comments and/or questions on the Work Plan, EPA will schedule a conference call to discuss with Respondent. Respondent will have ten (10) business days from the date of this second conference call to finalize and resubmit to EPA the Work Plan, which incorporates EPA's comments. Upon receipt of Respondent's resubmittal of the Work Plan, EPA will review and provide a final decision on the Work Plan to Respondent within ten (10) business days of EPA's receipt. These discussions and finalization of the Work Plan shall not extend the timelines set forth in Subparagraphs 63.b of this ACOC;
- d. **Final Disposition:** For the actions ordered in Subparagraphs 63.a. and b. of this ACOC, Respondent has the option of disposing any/all of the hazardous waste/Backlog before any temporary storage, all in compliance with RCRA Subtitle C and within the timeline set forth in Subparagraphs 63.a. and b. of this ACOC;
- e. **Option for Reclamation and Reuse:**
 - i. If any of the RCRA Backlog/hazardous waste that is currently being stored in the rail cars can be reclaimed pursuant to RCRA Subtitle C, meets the specifications for reuse, and is returned to Respondent, Respondent will provide biweekly reports to include the respective certificates of analysis, and the dates of return and reuse.
 - ii. If any of the RCRA Backlog/hazardous waste that is currently being stored in frac tanks and vertical tanks can be reclaimed pursuant to RCRA Subtitle C, meets the specifications for reuse, and is returned to Respondent, Respondent will provide monthly reports to include the respective certificates of analysis, and the dates of return and reuse.

⁷ If a business day occurs on a federal holiday, the due date shall shift to the next business day.

- iii. For the actions ordered in Subparagraphs 63.e.i. and e.ii. of this ACOC, the period between a date of return and a date of reuse shall not exceed three hundred and sixty-five (365) calendar days, unless extended in accordance with Subparagraph 63.g.
 - iv. If any of the RCRA Backlog/hazardous waste that is currently being stored in the rail cars, frac tanks, and vertical tanks can be reclaimed pursuant to RCRA Subtitle C and is subsequently sold by Respondent's reclaimer/converter with whom Respondent has contracted, Respondent shall secure documentation from its reclaimer/converter that the reclaimed material is stored, prior to its sale to a third-party, in accordance with RCRA Subtitle C and the reclaimer/converter's RCRA Permit. However, if Respondent's reclaimer/converter does not sell the reclaimed material to a third-party, Respondent shall secure documentation from its reclaimer/converter that the material is stored and/or disposed in accordance with RCRA Subtitle C and the reclaimer/converter's RCRA Permit. Respondent will include this information (for sale to third-party, storage and/or disposal, and the associated dates) respectively in its reports for rail cars, frac tanks, and vertical tanks called for in Subparagraphs 63.e.i and ii of this ACOC;
- f. **Documentation and Reporting Requirements:** Within seven (7) business days after any shipment(s) for storage and/or final disposition of the hazardous waste, whether from the rail cars, vertical tanks, and/or frac tanks takes place, Respondent shall provide EPA, Region 6 with a generator's copy of the manifest(s) that supported each rail car/load shipped, with all applicable documentation, including Land Disposal Restriction documentation, in accordance with 40 C.F.R Parts 262 through 268, and state the quantity sent off for storage and/or final disposition, length of storage and/or final disposition schedule, and the final disposition of the hazardous waste. For any amount of hazardous waste that has been disposed, treated, and/or sent for legitimate reuse prior to the effective date of this ACOC, Respondent has thirty (30) business days after the effective date of this ACOC to provide EPA with a detailed report as to the disposition of said amount, supported by documentation and in compliance with Subparagraph h of this Subsection;
- g. **Request for Additional Time:** If Respondent cannot meet the timeline(s) set forth (including milestones that will be approved by EPA in the Work Plan) for the rail cars, frac tanks, and/or vertical tanks and will need to delay compliance for less than thirty (30) calendar days,⁸ Respondent shall notify EPA, Region 6 and request an extension of time, including a timetable for compliance. EPA, Region 6 will

⁸ If a calendar day occurs on a weekend or federal holiday, the due date shall shift to the next business day.

grant an extension of up to thirty (30) calendar days. If Respondent determines that it needs longer than the additional thirty (30) calendar days to come into compliance, then Respondent will initiate a conference call with EPA, Region 6 to discuss the rationale for the delay, before the extension will be considered and/or granted. If EPA agrees to grant a longer extension, it will do so in writing and within five (5) business days of the conference call; and

- h. **Required Certification:** In all instances in which this ACOC requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer's designee of the Respondent and shall include the following certification:

I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

- i. Copies of all documents required by this ACOC shall be sent to following:

U.S. EPA, Region 6
Fred Deppe via email at Deppe.Fred@epa.gov

ii. Excusable Delay/Force Majeure

64. Respondent shall perform all the requirements of this ACOC within the time limits set forth, approved in the Work Plan, or established herein, unless such time limit is otherwise modified or a scheduling change has been agreed to by the EPA in accordance with this ACOC, or unless the performance is prevented or delayed solely by events which constitute a Force Majeure Event, or which cause an Excusable Delay.

- a. For purposes of this ACOC, a Force Majeure Event is defined as any event arising from causes not reasonably foreseeable and beyond the control of the Respondent which could not be overcome by due diligence, and which delays or prevents performance by a date required by this ACOC. Such events do not include unanticipated or increased costs of performance, changed economic circumstances, or normal precipitation events.

- b. For Purposes of this ACOC, an Excusable Delay is defined as any action and/or inaction by ORG Chem or any other third-party that impedes and/or delays Respondent's ability to perform the actions required by the Compliance Order of this ACOC and where such impediment(s) and/or delay(s) were not of a nature Respondent could reasonably foresee and prevent. Where the action and/or inaction that may cause such delay and/or impediment was reasonably foreseeable by Respondent, Respondent shall document its exercise of due diligence and best efforts, which includes Respondent's actions taken to prevent any foreseeable challenges given the foreseeability of all circumstances surrounding the facts and Respondent's obligations to perform the Compliance Order of this ACOC. Such actions and/or inactions by ORG Chem or any other third-party does not include and/or relate to unanticipated or increased costs of performance, changed economic circumstances, or normal precipitation events.

65. Respondent shall notify the EPA in writing within seven (7) business days after becoming aware of any event which is known, or should have been known, to have constituted a Force Majeure Event or an Excusable Delay. Such notice shall provide available information on the event causing or anticipated to cause the delay, the estimated length of delay, including necessary demobilization and remobilization, its causes, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondent must adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Subsection shall constitute a waiver of the Respondent's right to assert a Force Majeure Event or an Excusable Delay has occurred and shall be grounds for EPA to deny an extension of time for performance.

66. After receiving notice that Respondent is invoking the Force Majeure Event or an Excusable Delay provisions of this ACOC, EPA shall respond in writing indicating either EPA's agreement that the event constitutes a Force Majeure Event or an Excusable Delay or its disagreement and the reasons, therefore.

67. If EPA and the Respondent agree that a Force Majeure Event or an Excusable Delay has

occurred, the time for performance may be extended, upon EPA's approval, for a period equal to the delay resulting from such circumstances or such longer time as EPA determines appropriate. This shall be accomplished through written exchange of letters amongst the parties and a documentation to the file or through modification of the schedule in a previously approved schedule. Such an extension will not alter the schedule for performance or completion of any other tasks required by this ACOC unless these are also specifically altered.

68. In the event that EPA and the Respondent cannot agree that any delay or failure has been or will be caused by a Force Majeure Event or an Excusable Delay, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the Dispute Resolution provisions contained in this ACOC.

iii. Stipulated Penalties

69. In addition to any other remedies or sanctions available to EPA, Region 6, if the Respondent fails or refuses to comply with any provision of this ACOC and within the agreed upon time period, then the Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$1,000.00
16th through 30th day	\$1,000.00
31st day and beyond	\$5,000.00

70. Penalties shall accrue from the date of the noncompliance until the date the violation is corrected and/or compliance is achieved, as determined by EPA, Region 6. Respondent is liable for the total sum of the stipulated penalty assessed by EPA, Region 6.

71. The payment of stipulated penalties shall be made in accordance with the options set forth herein this Paragraph:

The payments shall be made by one of the following methods:

- a. By mailing a bank check, cashier's check, or certified check payable to "Treasurer, United States," to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: US Environmental Protection Agency
*Note: Foreign banks **must** use a United States Bank to send wire transfer to the US EPA

- c. By signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc.) a bank check, cashier's check, or certified check payable to: Treasurer, United States," to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979078
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone: 314-418-1028

- d. By Automatic clearing house (ACH) payment through Vendor Express using:

US Treasury REX/Cashlink Receiver
ABA: 051036706
Account number 310006 Environmental Protection Agency
CTX Format Transaction Code 22 -checking
Physical Location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

e. Through www.pay.gov using a credit or debit card (Visa, MasterCard, American Express, and Discovery) or checking accounting information.

“In the matter of W.R. GRACE & CO-CONN., Docket No. RCRA-06-2023-0945” shall be clearly marked on the check or other remittance, to ensure proper credit. Respondent’s adherence to this request will ensure proper credit is given when penalties are received in EPA, Region 6.

72. Respondent understands that failure to timely pay any portion of the stipulated 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 on the stipulated penalty from the date of delinquency until such stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). 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 percent (6%) 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).

73. Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

74. The Respondent shall send simultaneous notices of such payments to the following:

Ms. Lorena S. Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Vaughn.Lorena@epa.gov

Jeff Yurk, Manager

Waste Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.Fred@epa.gov

Manager, RCRA Legal Branch (ORCER)
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Ms. Marcia E. Moncrieffe
Moncrieffe.Marcia@epa.gov

75. Adherence to these procedures in addition to Respondent's compliance with the provisions of Paragraph 72 concerning interest, penalties, and administrative costs, will ensure proper credit when payments are received.

76. If Respondent disputes the basis for imposition of stipulated penalties, then the issues shall be resolved under the Dispute Resolution procedures of this ACOC. All stipulated penalties shall continue to accrue through the period that the dispute resolution is ongoing. Invoking dispute resolution shall not stay the accrual of stipulated penalties; however, the obligation to pay shall be stayed pending resolution of the dispute.

iv. Dispute Resolution

77. If Respondent objects to any decision or directive of EPA, Region 6 regarding Section IV (Terms of Settlement), Subsections IV.i. (Compliance Order), IV.ii (Excusable Delays/Force Majeure) and/or IV.iii., (Stipulated Penalties), then Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fourteen (14) calendar days of receipt of EPA's decision or directive:

Jeff Yurk, Manager
Waste Enforcement Branch (ECDS)
Enforcement and Compliance Assurance Division

U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Mr. Fred Deppe
Deppe.Fred@epa.gov.

Manager, RCRA Legal Branch (ORCER)
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270
Attn: Ms. Marcia E. Moncrieffe
Moncrieffe.Marcia@epa.gov.

77. The Waste Enforcement Branch Manager (“Branch Manager”) or his/her designee and the Respondent shall then have an additional fourteen (14) calendar days from EPA, Region 6’s receipt of the Respondent’s written objections to attempt to resolve the dispute. If an agreement is reached between the Branch Manager and the Respondent, the agreement shall be reduced to writing and signed by the Branch Manager and the Respondent and incorporated by reference into this ACOC.

78. If no agreement is reached between the Branch Manager and the Respondent within that time, then the dispute shall be submitted to the Director of the Enforcement and Compliance Assurance Division (“Division Director”) or his/her designee. The Division Director and the Respondent shall then have a second fourteen (14)-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, then the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this ACOC. If the Division Director and the Respondent are unable to reach agreement within this second fourteen (14)-day period, then the Division Director shall provide a written statement of EPA, Region 6’s decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the ACOC.

79. If the Dispute Resolution process results in a modification of this ACOC, the modified ACOC must be approved by the Regional Judicial Officer and filed pursuant to the Subsection IV.vi., (Modification) below.

v. Notification

80. Unless otherwise specified elsewhere in this ACOC, whenever written notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the email addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication:

EPA: Jeff Yurk, Manager
 Waste Enforcement Branch (ECDS)
 Enforcement and Compliance Assurance Division
 U.S. EPA, Region 6
 1201 Elm St., Suite 500
 Dallas, TX 75270
 Attn: Mr. Fred Deppe
 Deppe.Fred@epa.gov

Respondent: Kevin Deuter
 Plant Manager
 W.R. GRACE & CO-CONN
 16122 River Road
 Norco, LA 70079
 Kevin.Deuter@grace.com

With Copy to: Apple Chapman, Apple.Chapman@grace.com

vi. Modification

81. The terms, conditions, and compliance requirements of this ACOC may not be modified or amended except upon the written agreement of all parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing

Clerk.

vii. Retention of Enforcement Rights

82. EPA, Region 6 does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or state laws, regulations, or permitting conditions.

83. Except as specifically provided in this ACOC, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from each of the locations identified in Paragraph 1 of this ACOC and/or at Respondent's Facility. Furthermore, nothing in this ACOC shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under other federal, state, or local laws or regulations.

84. Notwithstanding 40 C.F.R. § 22.31(a), this ACOC does not resolve any civil or criminal claims for the violations alleged in ACOC, including claims for civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as adjusted by 40 C.F.R. Part 19 that will be brought in a separate proceeding. In accordance with Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), issuance of this ACOC does not preclude EPA from assessing penalties, obtaining injunctive relief, or taking any other actions authorized under RCRA, or other applicable federal laws or regulations. The waiver in Paragraph 59 of this ACOC is limited to this proceeding and does not apply to any separate proceedings that the EPA will bring. This ACOC does not affect the obligation of Respondent to comply with all federal, state, and local statutes, regulations, and permits.

viii. Indemnification

85. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondent, its officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this ACOC, nor shall EPA or the United States Government be held out as a party to any contract entered into by a Respondent in carrying out the activities required by this ACOC.

ix. Record Preservation

86. Respondent shall preserve, during the pendency of this ACOC, all records in its possession or in the possession of its, employees, agents, contractors, or successors, which relates to Respondent's completion of this ACOC regardless of any document retention policy to the contrary.

x. Cost

87. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

xi. Other Matters

88. The provisions of this ACOC and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

xii. Termination and Satisfaction

89. When Respondent believes that it has complied with all the requirements of this

ACOC, including compliance with Subsection IV.i., (Compliance Order) Respondent shall certify in writing and in accordance with the certification language set forth in Subsection IVi.h., (Compliance Order), Paragraph 63 of this ACOC. Unless the EPA, Region 6 objects in writing within sixty (60) calendar days of EPA's receipt of Respondent's certification, this ACOC will be terminated based on EPA's receipt of Respondent's certification.

xiii. Effective Date of Settlement


90. This ACOC, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk ("Effective Date"). 40 C.F.R. §§ 22.18(b)(2) and 22.31(b).

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT:

FOR THE RESPONDENT: W.R. GRACE & CO-CONN., a Connecticut Corporation

Date: 9/5/2023



W.R. GRACE & CO-CONN
David Wynn, VP Regional Manufacturing
Americas South

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS
ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT (con't):**

FOR THE COMPLAINANT:



Digitally signed by Cheryl
T. Seager
Date: 2023.09.06
11:10:37 -05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

The Administrator has delegated the authority to issue this Final Order to the Regional Administrator who has redelegated this authority to the Regional Judicial Officer of EPA, Region 6. The terms of the foregoing ACOC are hereby ratified and incorporated by reference into this Final Order. Notwithstanding 40 C.F.R. § 22.31(a) this ACOC does not resolve any civil or criminal claims for violations alleged in this ACOC, including claims for civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) as adjusted by 40 C.F.R. Part 19. This Final Order shall resolve only those causes of action alleged herein regarding the failure to ship hazardous waste on a hazardous waste manifest and failure to ship hazardous waste to a permitted treatment, storage, or disposal facility. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall in any case affect the right of EPA or the United States to pursue additional appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

**THOMAS
RUCKI**

Digitally signed by THOMAS RUCKI
DN: c=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=THOMAS RUCKI,
0 9 2342.19200300.100.1.1+68001003655804
Date: 2023.09.08 14:32:48 -0400

Regional Judicial Officer
Thomas Rucki

CERTIFICATE OF SERVICE

I hereby certify that on the day and year seen below, the original of the foregoing ACOC and Final Order was emailed to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm St., Suite 500, Dallas, Texas 75270. Also, a true and correct copy of the RCRA ACOC and Final Order, Docket No. RCRA-06-2023-0945 ACOC was transmitted via email to counsel for Respondent at Apple.Chapman@grace.com.

Name and Date: Marcia E. Moncrieffe
Counsel for EPA
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

23 SEP -6 PM 3: 32

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

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Compliance Order on Consent
USEPA Docket No. RCRA-06-2023-0945

W.R. GRACE & CO-CONN

RESPONDENT

APPENDIX

(Management of Rail Cars Reported to Be Overweight)

1. This Administrative Compliance Order on Consent (“ACOC”) is entered by the United States Environmental Protection Agency (“EPA” or “Complainant”), Region 6 and W.R. GRACE & CO-CONN., a Connecticut corporation (“GRACE” or “Respondent”).
2. Based on information ORG Chem Group, Inc. (“ORG Chem”) has provided to Respondent, it appears that seven of the rail cars currently located on the rail track at 2200 Spring Street, Hot Springs, Arkansas, referenced in Paragraph 37 of the ACOC, may be over their permitted weight limit. The rail cars in question are identified as:

- TEIX 23554
- TEIX 23553
- TEIX 23550
- TEIX 23555
- TEIX 23558
- TAEX 3533
- TEIX 23551

3. Before shipping any of these rail cars as required by Subparagraph 63.a. of the ACOC, each of the rail cars reported to be overweight shall be transferred to the ORG Chem facility, and a sufficient quantity of Backlog shall be offloaded to ensure that each of the seven (7) rail cars identified in Paragraph two (2) of this Appendix are within applicable weight restrictions.
4. The schedule of transferring the reportedly overweight rail cars and the logistics of offloading Backlog from them shall be undertaken in a manner that optimizes:
 - the protection of human health and the environment;
 - the rate of removing rail cars from the Spring Street location; and
 - the pace of completing the requirements of Subparagraph 63.a. of the ACOC.
5. In undertaking the work agreed upon and set forth in Subparagraph 63.a. ACOC and this Appendix, no rail cars shall be added or returned to the Spring Street location.
6. This Appendix is hereby incorporated by reference into the terms of the ACOC.