



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2008 OCT -1 PM 3:32
REGIONAL HEARING
CLERK

OCT 1 - 2008

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

David T. Buente, Jr., Esq.
Sidley & Austin LLP
1501 K Street, NW
Washington, D.C. 20005

Re: MPM Silicones, LLC
Docket No. RCRA-02-2008-7107

Dear Mr. Buente:

Enclosed is a copy of the Consent Agreement and Final Order ("CA/FO") in the above referenced proceeding signed by the Regional Administrator of the U.S. Environmental Protection Agency.

Please note that payment is due within forty-five (45) days of signature of the Final Order by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given in that Order.

If you have any questions, please contact me at 212-637-3195.

Sincerely yours,

Gary H. Nurkin
Assistant Regional Counsel

cc: Thomas Killeen, NYSDEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 OCT -1 PM 3:32
REGIONAL HEARINGS
CLERK

In The Matter of:

MPM Silicones, LLC
Respondent

**Proceeding Under Section 3008 of
the Resource Conservation and
Recovery Act as amended.**

**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket Number RCRA-02-2008-7107

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901, *et seq.* ("RCRA" or the "Act").

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. The Respondent MPM Silicone LLC ("MPM") owns and operates a manufacturing facility situated at Waterford, New York. EPA inspected MPM on or about and between May 22 and May 24, 2007 and concluded that MPM may have violated the requirements of RCRA and regulations concerning the management of hazardous wastes.

EPA and MPM have subsequently engaged in settlement discussions with respect to three alleged violations that EPA discovered during the course of its inspection of MPM and have agreed to address these issues without the need for EPA to issue a formal Complaint. Pursuant to 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Both the EPA and MPM have agreed that entering into this CA/FO is an appropriate means of resolving the alleged noncompliance with RCRA requirements that EPA believes existed at MPM's Waterford facility without further litigation or other administrative action.

This CA/FO is being issued pursuant to, and under the authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made. Respondent neither admits nor denies EPA's Findings of Fact or Conclusions of Law set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent is MPM.
2. Respondent is a corporation.
3. MPM is a “person” as that term is defined in § 1004(15) of the Act, 42 U.S.C. § 6903(15) and in Title 6 of the New York Codes, Rules, and Regulations (“6 NYCRR”) § 370.2(b).
4. Respondent, since at least June 2001, has and continues to own and operate a manufacturing facility situated at 260 Hudson River Road, Waterford, New York 12188.
5. Respondent manufactures silicone and silicone derivatives at the facility.
6. The hazardous wastes generated at the Respondent’s facility have included, without limitation, characteristic wastes (“D wastes”) and wastes from nonspecific sources (“F wastes”).
7. The organic hazardous waste (containing organic solvents) generated during the manufacture of the silicone and silicone derivatives were collected for a finite period of time in Tank 379 before being incinerated.
8. The organic hazardous waste collected in Tank 379 had a Volatile Organic Concentration (“VOC”) of above 500 parts per million by weight (“p.p.m.w.”).
9. The organic hazardous waste collected in Tank 379 had an organic concentration of more than 10% by weight.
10. The Respondent is, and has been, a “generator” at its Waterford facility of “hazardous wastes” as those terms are defined in 6 N.Y.C.R.R. 370.2.
11. Since on about August 1980, Respondent, or a corporate predecessor General Electric Company (“GE”) has generated 1,000 kilograms or more of organic hazardous waste each calendar month at the facility. Since on or about December 2006, based on information provided by MPM, MPM has collected a portion of this hazardous waste for short periods of time in Tank 379.
12. Respondent has been a Large Quantity Generator (*i.e.*, a generator who generates 1,000 kilograms or more of hazardous waste in a calendar month) at the facility.

13. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, GE on or about August 18, 1980, notified EPA that it conducted activities involving “hazardous waste” at the Facility (the “notification”).
14. The EPA provided GE with EPA RCRA identification number NYD002080034.
15. On or about October 19, 1989, New York State, based upon the GE Parts A and B permit applications (including the updated Part B permit applications), issued a RCRA permit (NYD002080034) to GE (the “1989 permit”). The 1989 permit became effective on December 18, 1989 and expired on December 17, 1994.
16. On or about October 18, 1993, including all succeeding revisions and data submissions (referred to collectively as the “Application”), GE submitted to New York State in a timely manner its RCRA Part B permit renewal application.
17. On or about January 12, 1999, New York State issued a new RCRA permit to GE for the operation of a hazardous waste management facility at its Waterford facility (the “1999 permit”). The 1999 permit took effect on or about January 12, 1999 and expired on January 12, 2004.
18. On or about June 29, 2001, there was an owner/operator transfer of the Waterford facility from GE to GE Silicones LLC (“GE Silicones”).
19. On or about July 14, 2003, including all succeeding revisions and data submissions (referred to collectively as the “Application”), GE Silicones submitted to EPA in a timely manner its RCRA Part B permit renewal application.
20. Upon information and belief, on or about December 2006, there was an owner/operator transfer of the Waterford facility from GE Silicones to MPM. On or about December 13, 2006, MPM filed an amended Notification of Hazardous Waste Activity with respect to the activities it would be conducting at the Waterford facility.
21. On or about and between May 22 and May 24, 2007, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, duly designated representatives of EPA conducted an inspection (hereinafter the “Inspection”) of the Waterford facility to determine Respondent’s compliance with the hazardous waste requirements applicable to both generators and permitted facilities.
22. On or about August 17, 2007, EPA issued to Respondent a combined Notice of Violation (“NOV”) and Request for Information (“IRL”).

23. The NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed the Respondent that EPA had identified a number of potential violations of both the air emission requirements for equipment leaks found at 6 N.Y.C.R.R. Section 373-3.28 and the air emission standards for tanks found at 6 N.Y.C.R.R. Section 373-3.29. The NOV also identified some violations associated with the tank systems found at 6 N.Y.C.R.R. Section 373-3.10. These included some violations involving Tank 379 which was used for short-term accumulation of hazardous waste and was not covered by the New York State RCRA permit. MPM was requested to provide a description and documentation of the actions it had taken to correct the violations identified by EPA in that NOV.
24. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought, in part, information and documentation relating to hazardous waste activities at Respondent's facility and required the submittal of certain documentation relating to such hazardous waste activities.
25. On or about November 9, 2007, MPM submitted its response to the combined NOV and IRL ("November Response").
26. On or about March 23, 2008, EPA issued a second 3007 IRL to Respondent to clarify the process and waste generation pertaining to Tank 379 and the hazardous waste that was being collected in that tank.
27. On or about April 14, 2008, MPM submitted its response to the second 3007 IRL ("April Response").
28. Based on the Inspection and MPM's November and April Responses, EPA believes that MPM since December 2006 failed to: (a) record daily inspections of its tank system in its operating log as required by 6 N.Y.C.R.R. § 373-3.10(f)(3); (b) conduct annual Subpart CC inspections of Tank 379 as required by 6 N.Y.C.R.R. § 373-3.29(f)(3)(iv)('b'); and (c) maintain records of the maximum organic vapor pressure of Tank 379 as required by 6 N.Y.C.R.R. §§ 373-3.29(f) and 373-3.29(k).
29. MPM informed EPA that it will no longer be using Tank 379 for collection of hazardous waste. More generally, Respondent informed EPA that corrective actions had been immediately taken to fully comply with the requirements of 6 N.Y.C.R.R. Subpart 373-3.28 at the Waterford facility.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between Complainant and MPM, and voluntarily and knowingly accepted by MPM, that MPM, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously (a) admits the jurisdictional allegations contained in the Preliminary Statement of the CAFO; (b) neither admits nor denies the Findings of Fact and Conclusions of Law stated above; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order accompanying this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and MPM, and voluntarily and knowingly accepted by MPM, that the parties shall comply with the following terms and conditions:

1. Respondent hereby certifies, at the time of its signature to this document, that, to the best of its knowledge and belief, it is in compliance with all of the applicable hazardous waste regulatory requirements with respect to management of hazardous waste (including organic hazardous waste) at its Waterford facility.
2. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect MPM's obligation to comply with all applicable federal, state and local law and regulations governing the generation, handling, treatment, storage, transport, and disposal of hazardous waste.
3. Nothing in this document is intended nor shall it be construed, to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against MPM for having provided any material misrepresentations or for MPM's having providing materially false information in any document submitted to EPA.
4. MPM shall pay a civil penalty to EPA in the total amount of **FIFTY THOUSAND DOLLARS (\$50,000)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: *IN THE MATTER OF MPM SILICONES, LLC*, and shall bear thereon the Docket Number *RCRA-02-2008-7107*. Payment of the penalty must be *received* at the above address on or before forty-five (45) calendar days after the Effective Date of this CA/FO (the “Due Date”).

If MPM chooses to make the payment by EFT, then MPM shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read “ D 68010727 Environmental Protection Agency.”
- 6) Name of Respondent: MPM Silicones, LLC.
- 7) Case Number: RCRA-02-2008-7107.

Such EFT must be received on or before forty-five (45) calendar days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, MPM shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Gary H. Nurkin, Esq.
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, Room 1623
New York, New York 10007-1866

and

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

- a. Failure to pay the amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the date for which the payment was required hereto to have been made.

c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

6. The provisions of this Consent Agreement shall be binding upon both Complainant and MPM along with their authorized representatives and successors or assigns.
7. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein and upon the accuracy of Respondent's certification in this proceeding): (a) the civil and administrative claims described in paragraph "28" of the Findings of Fact and Conclusions of Law resulting from the alleged violations which were identified based on the Inspection and MPM's November and April Responses; and (b) any EPA civil and administrative claims pursuant to Section 3008 of RCRA for any violations involving Tank 379 that may have existed in 2007 (or earlier) for which information was specifically requested in EPA's August 17, 2007 NOV and Request for Information and EPA's March 21, 2008 Request for Information. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of the settlement are set forth herein.
8. MPM explicitly waives its right to request or to seek any Hearing on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or the Findings Of Fact and Conclusions Of Law, above.
9. MPM waives any rights it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with, and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional

Administrator, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

10. The undersigned signatory for MPM certifies that he is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
11. MPM consents to the service of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
12. The effective date of this Consent Agreement and Final Order shall be the date that it is filed with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.
13. Each party hereto agrees to bear its own costs and fees in this matter.

RESPONDENT: **MPM Silicones, LLC,**

BY: Shawn D. Williams
Authorizing Signature

NAME: Shawn D. Williams

TITLE: President, Americas

DATE: 9/18/08

COMPLAINANT:

[Signature] P. LaPosta Director BR 2
Dore LaPosta, Director
Division of Enforcement
and Compliance Assistance
U.S. Environmental Protection Agency Region 2
290 Broadway
New York, NY 10007

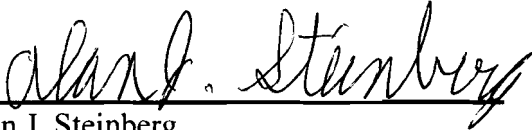
DATE: SEPTEMBER 23, 2008

In the Matter of MPM Silicones, LLC,
Docket No. RCRA-02-2008-7107

FINAL ORDER

The Regional Administrator of EPA, Region 2 (or anyone duly delegated to act on his behalf), concurs in the foregoing Consent Agreement in the case of *In the Matter of MPM Silicones, LLC*, bearing Docket No. RCRA-02-2008-7107. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b) (3) and shall constitute an order issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

DATED: September 29, 2008
New York, New York


Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection Agency Region 2
290 Broadway
New York, New York 10007-1866

In the Matter of MPM Silicones, LLC,
Docket No. RCRA-02-2008-7107

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

David T. Buente, Jr., Esq.
Sidley & Austin LLP
1501 K Street, NW
Washington, D.C. 20005.

Michael N. Bag

Dated: OCT 1 - 2008, 2008
New York, New York