

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

FILED
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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

TM CHEMICALS LIMITED
PARTNERSHIP

HARRIS COUNTY, TEXAS

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EPA DOCKET NO.
RCRA-06-2013-0902

ADMINISTRATIVE COMPLAINT,
COMPLIANCE ORDER AND
NOTICE OF OPPORTUNITY
FOR A HEARING

I. STATEMENT OF AUTHORITY

1. This Complaint and Notice of Opportunity for a Hearing is issued to TM Chemicals Limited Partnership (“Respondent”) as authorized by Section 3008(a) of the Resource, Conservation and Recovery Act (the “Act” or “RCRA”), 42 U.S.C. § 6928(a) and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation / Termination or Suspension of Permits (the Consolidated Rules of Practice), 40 CFR Part 22, including 40 CFR § 22.14 (relating to administrative complaints). The Complainant is the Director, Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (“EPA”), Region 6, who has been delegated the authority to issue Complaints under Section 3008(a) of RCRA in EPA Region 6.

2. Respondent is hereby notified of EPA’s determination that Respondent has violated regulations promulgated under RCRA Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) including 40 CFR Parts 262, 264, 268 and 270, and regulations

promulgated under the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Ann. (Vernon, 2001) as amended, including Texas Commission on Environmental Quality (TCEQ) regulations codified as 30 Texas Admin. Code Part 335 (Hazardous Waste Management).

3. Complainant hereby provides notice of Respondent's opportunity to request a hearing in this action.

II. NATURE OF THIS ACTION

4. Through this action under Section 3008(a) of RCRA, Complainant is issuing an administrative order assessing a civil administrative penalty and requiring Respondent to comply with applicable statutory and regulatory requirements.

5. As required by Section 3008(a)(2) of RCRA, EPA has notified the State of Texas of the commencement of this action.

III. RCRA STATUTORY AND REGULATORY BACKGROUND

6. RCRA was enacted on October 21, 1976, and amended thereafter by, among other acts, the Hazardous and Solid Waste Amendments of 1984 (the "HSWA"). RCRA established a comprehensive program to be administered by the Administrator of the EPA regulating the generation, treatment, storage and disposal of hazardous waste. RCRA hazardous waste regulations promulgated by the Administrator are codified at 40 CFR Parts 260-272.

7. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA may authorize a state to administer a RCRA hazardous waste program in lieu of the federal program when he or she determines that the state program is substantially equivalent to the federal program.

8. The State of Texas received final authorization to implement its hazardous waste management program effective December 26, 1984, with multiple program revisions approved by EPA since that time, as provided by 40 CFR § 272.2201.

9. The State of Texas's hazardous waste management program is administered by the TCEQ through regulations published as Chapter 335 of Title 30 of the Texas Administrative Code ("Chapter 335").

10. Pursuant to Section 3008(a) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) 6926(g), EPA may enforce the federally-approved Texas hazardous waste management program, as well as the federal regulations promulgated under the HSWA, by issuing compliance orders assessing a civil penalty for any past or current violation and/or requiring compliance immediately or within a specified time for violations of any requirement of Subtitle C of RCRA (Sections 3001-3023 of RCRA), 42 U.S.C. §§ 6921-6939e. As adjusted by the Civil Penalty Inflation Adjustment Rule of December 11, 2008 (73 Fed. Reg. 75340, 75346), 40 CFR §19.4, EPA may assess a civil penalty of up to \$32,500 per day of violation for a violation occurring between March 15, 2004 and January 12, 2009 and \$37,500 per day of violation for a violation occurring after January 12, 2009.

11. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides that authorized state hazardous waste management programs are carried out under Subtitle C of RCRA. TCEQ administers Texas's authorized hazardous waste management program through Chapter 335. Therefore, a violation of any requirements of Chapter 335 is a violation of Subtitle C of RCRA.

IV. JURISDICTION

12. As described by this Complaint, Respondent is a person and has violated a requirement of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e. EPA has jurisdiction over this action, which is authorized by Section 3008(a) of RCRA, 42 U.S.C. §§ 6928(a).

13. Respondent is a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and within the meaning of Section 3008(a) of RCRA, 42 U.S.C. §§ 6928(a). Respondent is a Texas Limited Partnership.

V. FACTUAL BASIS OF VIOLATIONS

14. Respondent operates a batch organic chemical production facility located at 2525 Independence Parkway South in Deer Park, Texas (the Facility). Respondent produces chemicals at the Facility on a batch basis, filling orders from customers for a particular type and quantity of organic chemical.

15. The Facility is located adjacent to a larger property operated by Texas Molecular Deer Park Services LP (“TMDPS”) as a RCRA-permitted commercial hazardous waste treatment, storage and disposal facility.

16. Respondent’s chemical production operations at the Facility generate solid waste, including wastewater.

17. Respondent’s chemical production operations at the Facility generate hazardous waste streams that are regulated under RCRA.

18. In 1990, Respondent filed a Notice of Registration (“NOR”) with the TCEQ for the Facility, registering as a large quantity generator of hazardous waste. Respondent subsequently updated its NOR, including an update in February 2011, but it did not change its status as a large quantity generator of hazardous waste.

19. EPA conducted a RCRA compliance inspection of the Facility on July 11-14, 2011 and issued a report of the inspection on November 28, 2011. During the inspection, the EPA inspector evaluated hazardous waste management activities for compliance with Subtitle C of RCRA and Chapter 335.

20. Respondent has performed several processes at the Facility in the course of its batch chemical production, including: Acidulation, Alkylation, Azeotropic Distillation, Carboxylation, Esterifications, Liquid-Liquid Extraction, Peroxidations, Polymerization, Reductions, and Saponification.

21. Respondent’s February 2011 NOR identified multiple hazardous waste codes for the Facility’s used carbon filter waste stream, including: D018, D027, D028, D035, D040, F002, F003, F005, U002, U019, U113, U154, U226 and U359.

22. Respondent’s February 2011 NOR identified “other toxic organics” in several of Respondent’s process wastewater waste streams, but Respondent did not apply any toxicity-based hazardous waste codes to these waste streams.

23. The EPA inspector asked to review Respondent’s hazardous waste determinations and supporting documentation for process wastewater generated at the Facility.

24. Respondent could not produce documentation that it performed a hazardous waste determination for its process wastewater that complied with the requirements of 30 Tex. Admin. Code § 335.62, 40 CFR § 262.11. Rather, Respondent provided copies of work orders for disposal of its process wastewater at the neighboring TMDPS disposal facility and from notifications of land disposal restrictions required by 40 CFR Part 268.

25. Since at least 2009, Respondent has failed to maintain records of its hazardous waste determinations for its process wastewater, as required by 30 Tex. Admin. Code § 335.70(a), 40 CFR § 262.40(c).

26. Respondent does not store its process wastewater at the Facility. Rather, Respondent manages this waste as it is generated by moving it through a pipeline from the Facility into certain above-ground tanks located on the neighboring TMDPS property.

27. Respondent's employees subsequently enter the TMDPS property, collect a sample of the process wastewater from the receiving tank, and prepare a work order for disposal by TMDPS. Respondent then submits the work order and the sample to TMDPS for verification and compatibility testing.

28. TMDPS verification and compatibility testing is not equivalent to a hazardous waste determination for purposes of 30 Tex. Admin. Code § 335.62, 40 CFR § 262.11.

29. TMDPS disposes of Respondent's process wastewater and other waste streams stored in the surface tanks at the TMDPS property by a disposal well located on the TMDPS property.

30. From 2009 through 2011, Respondent shipped approximately 2,569,100 pounds of hazardous process wastewaters to the TMDPS facility for disposal without making the hazardous waste determination for this waste stream required by 30 Tex. Admin. Code § 335.62, 40 CFR § 262.11.

VI. VIOLATIONS

COUNT 1: FAILURE TO MAKE A HAZARDOUS WASTE DETERMINATION (30 TEX. ADMIN. CODE § 335.62, 40 CFR § 262.11)

31. Complainant incorporates paragraphs 1-30 as if restated herein.

32. Respondent is a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and within the meaning of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

33. In the course of its batch chemical production operations, the Facility generates solid wastes as defined by 30 Tex. Admin. Code § 335.1(138), 40 CFR § 261.2, including process wastewater.

34. The process wastewater is a “discarded material,” as defined by 30 Tex. Admin. Code § 335.1(138), 40 CFR § 261.2(a)(2), and is not excluded from the definition of solid waste.

35. Respondent is the “operator,” as defined by 30 Tex. Admin. Code § 335.1(107), 40 CFR § 260.10, of the Facility.

36. As the operator of the Facility, Respondent is a generator of solid and hazardous waste under RCRA and is subject to state and federal hazardous waste regulations concerning generators of solid and hazardous wastes, including 30 Tex. Admin. Code Chapter 335 Subchapter C, 40 CFR Part 262.

37. Under 30 Tex. Admin. Code § 335.62, 40 CFR § 262.11, the generator of a solid waste is required to determine if that waste is a hazardous waste pursuant to 30 Tex Admin. Code §335.504 (relating to Hazardous Waste Determination) and must classify any nonhazardous waste under the provisions of 30 Tex. Admin. Code Subchapter R (relating to Waste Classification). If the waste is determined to be hazardous, the generator must refer to 30 Tex. Admin. Code Chapter 335 and to 40 CFR Parts 261, 264, 265, 266, 268, and 273 for any possible applicable exclusions or restrictions pertaining to management of the specific waste.

38. Under 30 Tex. Admin. Code § 335.70(a), 40 CFR § 262.40(c), a generator of hazardous waste is required to maintain records of its hazardous waste determinations for three years after such hazardous waste is sent to on-site or off-site treatment, storage or disposal.

39. Respondent disposes of its process wastewater when it pipes these waste streams into tanks owned and operated by TMDPS on the TMDPS property.

40. Since at least 2009, Respondent has failed to comply with 30 Tex. Admin. Code § 335.62, 40 CFR § 262.11, by routinely disposing of hazardous process wastewater generated at its Facility without making an accurate hazardous waste determination.

41. Between 2009 through 2011, Respondent disposed of 2,000,000 or more pounds of hazardous wastewater without first making a hazardous waste determination consistent with 30 Tex. Admin Code § 335.62, 40 CFR § 262.11.

VII. COMPLIANCE ORDER

42. Complainant incorporates paragraphs 1-41 as if restated herein.

43. Pursuant to Section 3008(a) of RCRA, Respondent is hereby ORDERED to take the following actions and provide evidence of compliance within the time period specified below:

44. As of the date of the order, Respondent shall cease its practice of sending hazardous waste for offsite disposal prior to making the hazardous waste determination required by 30 Tex. Admin. Code § 335.62, 40 CFR § 262.11.

45. Within 30 days of the effective date of the order, Respondent shall submit to EPA a written plan or standard procedure for characterizing wastes generated by each batch production process it performs, including those identified in Paragraph 20 of this Complaint.

46. Within sixty (60) days of the effective date of the order, Respondent shall implement the plan required by Paragraph 45 for characterizing each of the solid wastes generated by the batch production process it performs, including those identified in Paragraph 20 of this Complaint.

47. Respondent shall maintain records of its hazardous waste determinations as required by 30 Tex. Admin. Code § 335.70(a), 40 CFR § 262.40(c).

48. Respondent shall send all documents required by the order to:

Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

NOTICE: Pursuant to 40 CFR § 22.37(b), this compliance order shall automatically become a final order unless, no later than 30 days after this Complaint was served, Respondent requests a hearing pursuant to 40 CFR § 22.15, as described below in Section IX. (Opportunity to Request a Hearing). If Respondent fails to take the required actions within times specified in the Order, Respondent may be liable for additional penalties of up to thirty seven thousand five hundred (\$37,500) dollars for each day of continued noncompliance, and may be subject to further enforcement action, including injunction, as may be necessary to achieve compliance with Subtitle C of RCRA pursuant to Section 3008(e) of RCRA, 42 U.S.C. § 6928(c).

Notwithstanding any other provision of this Complaint, an enforcement action may be brought against the Respondent pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority if EPA finds that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at the facility presents an imminent and substantial endangerment to human health or the environment.

VIII. PROPOSED PENALTY

49. Complainant incorporates paragraphs 1-48 as if restated herein.

50. In light of the facts alleged in this Complaint, and having considered those factors set forth in Section 3008(a)(3) of RCRA, 42 USC § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts to comply with the applicable requirements, the extent of deviation from the statutory or regulatory requirements, the duration of the violations, any economic benefit derived from the non-compliance, and Respondent's compliance history, Complainant proposes a civil administrative penalty of \$92,690.00 for the violations alleged in Section VI of this Complaint.

51. The Penalty was calculated as follows:

Gravity-based penalty from matrix	-	\$3,190
a. Potential for harm	-	Minor
b. Extent of deviation	-	Major
Multi-day penalty from matrix	-	\$ 500
Days of violation minus 1 for which a penalty is proposed		$(180 - 1) = 179$
Total multi-day penalty	-	$(179 \times \$500) = \$89,500$
Gravity-based penalty	-	$(\$3,190 + \$89,500) = \$92,690$
Economic benefit	-	insignificant
Total Penalty	-	\$92,690

IX. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

52. By issuance of this Complaint, Respondent is hereby notified of its opportunity to answer and request a hearing on the record in this matter.

53. If Respondent contests any material fact upon which this Complaint is based, contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk for EPA Region 6 not later than 30 days after being served with this Complaint.

54. Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations set forth in this Complaint with regard to which Respondent has knowledge. If Respondent has no knowledge of a particular factual allegation and states so in its Answer,

the allegation will be deemed denied. The failure of Respondent to admit, deny or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

55. Respondent's Answer also shall state (a) the circumstances or arguments which are alleged to constitute the grounds of defense, (b) the facts which Respondent disputes; (c) the basis for opposing any proposed relief and (d) whether a hearing is requested. A hearing on the issues raised by this Complaint and Respondent's Answer shall be held upon request of the Respondent in its Answer. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 554 and 556, and the Consolidated Rules of Practice, 40 CFR Part 22, a copy of which is included.

56. The Answer must be sent to:

Regional Hearing Clerk
Mail Code 6RC-D
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

In addition, Respondent is requested to send a copy of the Answer and all other documents that it files in this action to:

Jonathan Bull
Assistant Regional Counsel
Mail Code 6RC-ER
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

57. As provided in 40 CFR § 22.17, if Respondent fails to file a written Answer within 30 days of service of this Complaint, Respondent may be deemed to have admitted all allegations made in this Complaint and waived its right to a hearing. A Default Order may

thereafter be issued, and the civil penalty assessed shall become due and payable without further proceedings 30 days after a Default Order becomes final.

58. As provided in 40 CFR § 22.37(b), if Respondent fails to request a hearing pursuant to 40 CFR § 22.15 within 30 days of service of this Complaint, the Compliance Order contained herein shall automatically become a Final Order.

59. Respondent is further informed that 40 CFR Part 22 prohibits any ex parte (unilateral) discussion of the merits of this action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

X. SETTLEMENT CONFERENCE

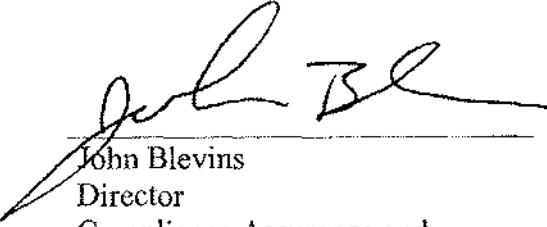
60. Whether or not Respondent requests a formal hearing, Respondent may request an informal conference in order to discuss the facts of this case and to arrive at settlement. To request a settlement conference, Respondent may contact Mr. Jonathan Bull, Assistant Regional Counsel, at the address in paragraph 56 of this Complaint or by phone at (214) 665-8597.

61. Please note that a request for an informal settlement conference does not extend the 30-day period during which Respondent must submit a written Answer and, if desired, a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing procedure.

62. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. Respondent is advised that

no penalty reduction will be made simply because such a conference is held. As set forth in 40 CFR § 22.18, any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement signed by the parties and their representatives and a Final Order issued by the Regional Administrator, EPA Region 6. The issuance of such Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

Date: 11.2.12



John Blevins
Director
Compliance Assurance and
Enforcement Division

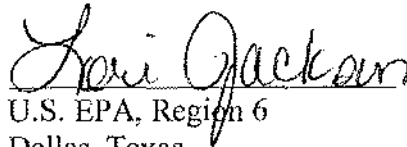
CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing (Complaint) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Wells Fargo Bank Tower, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint and the Consolidated Rules of Practice were placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL, RETURN RECEIPT REQUESTED: # 7007302000025102 0670

Donna Ratliff
Registered Agent for TM Chemicals Limited Partnership
2525 Battleground Road
Deer Park, TX 77536

Date: 11-6-2012


U.S. EPA, Region 6
Dallas, Texas