

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:)
)
Equistar Chemicals, LP,) **CONSENT AGREEMENT**
) **AND FINAL ORDER**
Respondent)
) Docket No. RCRA-07-2014-0007
Proceeding under Sections 3008(a) and (g))
of the Resource Conservation and)
Recovery Act as amended,)
42 U.S.C. § 6928(a) and (g))
)

I. PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (Complainant) and Equistar Chemicals, LP (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice. This authority has been delegated by the Administrator of EPA to the Regional Administrator and further delegated to the Director of the Air and Waste Management Division.

2. This Consent Agreement and Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C § 6925.

Parties

3. Complainant is the Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of EPA, Region 7, as duly delegated from the Administrator of EPA.

4. Respondent is Equistar Chemicals, LP is a Delaware limited partnership, authorized to operate under the laws of the state of Iowa.

Statutory and Regulatory Framework

5. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, through January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized. Based upon the facts alleged in this CAFO and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this CAFO.

General Factual Background

7. Respondent is a limited partnership and authorized to conduct business within the state of Iowa. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent's facility is located at 3400 Anamosa Road, Clinton, Iowa. Respondent produces polyethylene in various densities and some vinyl acetate ethylene copolymer. Respondent employs approximately 300 people at this facility with approximately 150 contractors.

9. Respondent generates approximately 300 waste streams at this facility. Relevant to this matter, at the time of the inspection, the following solid wastes were present in the container storage area:

- a. Two 55-gallon containers of pumpable used oil (from switch engine);
- b. Two 55-gallon containers of oily pig material/socks;
- c. One 55-gallon container of pumpable waste oil from the maintenance shop;
- d. One 55-gallon container of waste aerosol cans;
- e. Forty 55-gallon containers of chromic acetate catalyst;
- f. Seven 55-gallon containers of overpacked chromic acetate catalyst;
- g. Six 55-gallon containers of waste paint;
- h. Two 55-gallon containers of F 705A blowdown material;
- i. Two 55-gallon containers of used carbon filters;
- j. One 55-gallon container of lead contaminated clothing;
- k. Fourteen 55-gallon containers of miscellaneous bundle pad clean up;
- l. Two 55-gallon containers of used compressor oil filters;
- m. Nineteen 55-gallon containers of DAF sludge;
- n. Four 55-gallon containers of Bundle Pad Clean Up Material – Benzene;
- o. Two 55-gallon containers of Flare KO drum oil, gravel and debris;
- p. One 55-gallon container of C153 clean out;
- q. Two 55-gallon containers of Chromic acetate cat filters;
- r. Two 55-gallon containers of Insulation/Debris with Chrome Catalyst; and
- s. Thirty-Seven 55-gallon containers of maleic anhydride solution (liquid from vac tank).

10. At the time of the inspection, the following hazardous wastes were present in the container storage area:

- a. Forty 55-gallon containers of chromic acetate catalyst. Chromic acetate catalyst is D007 characteristic hazardous waste;
- b. Seven 55-gallon containers of overpacked chromic acetate catalyst. Chromic acetate catalyst is D007 characteristic hazardous waste;
- c. Six 55-gallon containers of waste paint. Waste paint is D001 and D035 characteristic hazardous waste;
- d. One 55-gallon container of lead contaminated clothing. Lead contaminated clothing is D008 characteristic hazardous waste;
- e. Fourteen 55-gallon containers of miscellaneous bundle pad clean up. Bundle pad clean up is a D018 characteristic hazardous waste;
- f. Two 55-gallon containers of used compressor oil filters. Used oil filters are D018 characteristic hazardous waste;
- g. Nineteen 55-gallon containers of DAF sludge. DAF sludge is D018 characteristic hazardous waste;
- h. Two 55-gallon containers of used carbon filters. Used carbon filters are a D018 characteristic hazardous waste;
- i. Four 55-gallon containers of Bundle Pad Clean Up Material – Benzene. Bundle Pad Clean Up Material – Benzene is D018 characteristic hazardous waste;

- j. Two 55-gallon containers of Chromic acetate cat filters. Chromic acetate cat filters are D007 characteristic hazardous waste;
- k. Two 55-gallon containers of Insulation/Debris with Chrome Catalyst. Insulation/Debris with Chrome Catalyst is D007 characteristic hazardous waste; and
- l. Thirty-Seven 55-gallon containers of maleic anhydride solution (liquid from vac tank). Maleic anhydride solution is D002 characteristic hazardous waste.

11. On or about September 12, 2007, EPA issued Respondent a Hazardous Waste Management Permit (Respondent's Permit) for the storage of hazardous waste. The effective date of Respondent's Permit was October 15, 2007. Respondent's Permit was revised November 12, 2009 with an expiration date of September 12, 2017.

12. In November 2009, EPA issued a permit modification for the container storage area. The modification called for the installation of a secondary containment system that consists of two 30-foot by 40-foot by 1-foot flexible polyethylene-lined berms that can contain up to 8,900 gallons.

13. On or about February 2, 2012, Respondent re-notified as a Large Quantity Generator (LQG) of hazardous waste pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930. LQGs generate 1,000 kilograms per month or more of hazardous waste, or more than one kilogram per month of acutely hazardous waste.

14. Respondent has been assigned the following EPA ID Number: IAD045372836.

15. On or about June 1-2, 2011, an EPA inspector conducted a RCRA Compliance Evaluation Inspection (hereinafter "the inspection") of the hazardous waste management practices at Respondent's facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a Large Quantity Generator of hazardous waste, a Small Quantity Handler of universal waste, and used oil generator. At the conclusion of the inspection, a Notice of Violation was issued to Respondent for violations of RCRA identified during the inspection.

16. During the inspection a breach in the secondary containment system was observed. Specifically, the north end of the secondary containment system wall had collapsed and was lying flat on the ground.

Violations

17. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

Count 1
Failure to Provide Notification

18. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 16 above, as if fully set forth herein.

19. Part I.E.15.a of Respondent's Permit requires, *inter alia*, that Respondent report to EPA any noncompliance which may endanger health or the environment. Any such information shall be reported orally within 24 hours from the time Respondent becomes aware of the circumstances. Examples of such occurrences include, but are not limited to, cracks or other breaches in the structure of any hazardous waste units, or any other occurrence which may cause the release or threatened release of hazardous waste from any area within the permitted facility.

20. Part I.E. 15.c of Respondent's Permit requires, *inter alia*, that Respondent provide written submission summarizing the noncompliance and its cause to EPA within five days of the time Respondent becomes aware of the circumstances.

21. At the time of the inspection, the secondary containment system as described in Respondent's permit was inadequate. Specifically, the north end of the secondary containment system's wall had collapsed and was lying flat on the ground. The walls on the secondary containment system were not one-foot tall and therefore not able to contain leaks, spills and accumulated precipitation. The collapsed wall constitutes a breach in the structure of this hazardous waste unit.

22. Respondent's failure to provide oral 24-hour notice or written five day notice of the breach in the secondary containment system is a violation of Permit Condition I.E.15.a and c of Respondent's Permit. Respondent's failure to comply with a term of its permit is a violation of 42 U.S.C. § 6925.

Count 2
Failure to Maintain Secondary Containment

23. Complainant hereby incorporates the allegations contained in Paragraphs 7 through 16 above, as if fully set forth herein.

24. Part III.F of Respondent's Permit requires, *inter alia*, that Respondent maintain the containment system in accordance with the regulations in 40 C.F.R. § 264.175.

25. Part III.F of Respondent's Permit further requires, *inter alia*, that secondary containment is provided in the form of two 30-foot by 40-foot by one-foot flexible polyethylene-line berms that can contain up to 8,900 gallons should a release or leak occur.

26. At the time of the inspection, at least 136 55-gallon drums of hazardous waste were stored in this container storage area.

27. At the time of the inspection, the secondary containment system as described in Respondent's permit was inadequate. Specifically, the north end of the secondary containment system's walls had collapsed and were lying flat on the ground. The walls on the secondary containment system were not one-foot tall and therefore not able to contain leaks, spills and accumulated precipitation.

28. Respondent's failure to operate its waste storage area with a secondary containment system that includes one-foot tall berms capable of preventing leaks, spills and accumulated precipitation is a violation of Permit Condition III.F. of Respondent's Permit. Respondent's failure to comply with a term of its permit is a violation of 42 U.S.C. § 6925.

CONSENT AGREEMENT

29. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

30. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO set forth below.

31. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

32. Respondent waives any right to contest the allegations set forth above, and its right to appeal the proposed Final Order portion of the CAFO.

33. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

34. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

35. This CAFO addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

36. The effect of settlement described in Paragraph 35 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 37, below, of this CAFO.

37. Respondent certifies that by signing this CAFO that to best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

38. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

39. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Twenty-Seven Thousand Six Hundred and Thirty Dollars (\$27,630) as set forth in Paragraph 1 of the Final Order portion of this CAFO, below.

40. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal, state and local taxes.

41. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in Paragraph 39 above.

42. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury Tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorney fees. In addition, a non-payment penalty charge of six (6) percent 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. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. § 901.9(c) and (d).

43. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate

Effective Date

44. This CAFO shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

Reservation of Rights

45. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties

against Respondent in an amount not to exceed Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

46. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CAFO.

47. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

48. Notwithstanding any other provisions of this CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

49. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

50. The provisions of this CAFO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

FINAL ORDER

Pursuant to the authority of Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and according to the terms of this CAFO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CAFO, Respondent will pay a civil penalty of Twenty-Seven Thousand Six Hundred Thirty Dollars (\$27,630).

2. Payment of the penalty shall be made by cashier or certified check, by wire transfer, or on-line. The Payment shall reference the Docket Number on the check or wire transfer. If made by cashier or certified check, the check shall be made payable to "Treasurer of the United States" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Wire transfers shall be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency”

On-line payments are available through the Department of Treasury:

www.pay.gov
Enter “sfo 1.1” in the search field.
Open the form and complete required files.

3. A copy of the check, transfer, or on-line payment confirmation shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Kelley Catlin, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

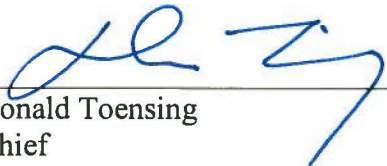
B. Parties Bound

5. The Final Order portion of this CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

1-13-14
Date



Donald Toensing
Chief
Waste Enforcement and Materials Management Branch
Air and Waste Management Division

1/13/14
Date



Kelley Catlin
Office of Regional Counsel

RESPONDENT

EQUISTAR CHEMICALS, LP

1/10/2014
Date


Signature

Christopher M. Cain
Printed Name

Site Manager
Title

Date

Signature

Printed Name

Title

IT IS SO ORDERED. This Final Order shall become effective upon filing.

1-21-14
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

IN THE MATTER OF Equistar Chemicals, LP, Respondent
Docket No. RCRA-07-2014-0007

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

catlin.kelley@epa.gov

Copy by email to Attorney for Respondent:

steven.cook@lyondellbasell.com

Dated: 1/21/14



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7