

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.  
2008 MAR 28 PM 3:22  
REGIONAL HEARING  
CLERK

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In the Matter of :  
: **CONSENT AGREEMENT**  
Deltech Resin Co., : **AND FINAL ORDER**  
:   
:   
Respondent. :   
: **Docket Number RCRA-02-2007-7111**  
:   
Proceeding under Section 3008 of the :  
Solid Waste Disposal Act, as amended. :  
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This is an administrative proceeding instituted pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6928 (such statutes here referred to collectively as the "Act" or "RCRA"). This action was commenced to assess a civil penalty against Respondent for alleged past violations of the requirements of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e, and to require future compliance with said requirements. The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at 40 C.F.R. Parts 260-273.

Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA authorized the State of New Jersey to conduct a hazardous waste program (hereinafter referred to as the "authorized State program"). 64 Fed. Reg. 41823 (August 2, 1999). There were later changes in the scope of the authorized State program as a result of EPA's authorization of New Jersey's regulations incorporating by reference changes to the federal program promulgated by EPA between July 2, 1993 and July 31, 1998. 67 Fed. Reg. 76995 (December 16, 2002). As of February 14, 2003, the authorized State program, with some modifications, essentially has incorporated by reference the federal hazardous waste regulations found in the 1998 edition of Title 40 of the Code of Federal Regulations. EPA can enforce the New Jersey regulations comprising the authorized State program. EPA retains primary responsibility for enforcement of requirements EPA promulgated pursuant to HSWA since July 31, 1998.

federal program incorporated by reference, followed by the New Jersey regulation that incorporated the corresponding federal regulation by reference. All federal regulatory references are to the 1993 editions the C.F.R. unless expressly noted otherwise.)

Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, issued a "Complaint, Compliance Order, and Notice of Opportunity for Hearing," bearing docket number RCRA-02-2007-7111, to Deltech Resin Co., on June 27, 2007, and Respondent, served its answer on or about July 27, 2007. The Complaint alleged that Respondents had violated requirements of RCRA and regulations concerning the handling and management of hazardous waste. The answer admits many of the predicate allegations but neither admits nor denies the material allegations regarding liability; it also asserts several affirmative defenses and requests a hearing.

Complainant and Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims against Respondent without further litigation. This CA/FO is being issued pursuant to, and under authority of, 40 C.F.R. § 22.18(b). No admissions by Respondent and no adjudicated findings of fact or conclusions of law have been made. For the purposes of this CA/FO and for purposes of implementing the settlement set forth herein, Respondent neither admits nor denies the EPA Findings of Fact or the EPA Conclusions of Law that have been set forth below.

### **EPA FINDINGS OF FACT**

1. Respondent, Deltech Resin Co., a corporation organized under Delaware law since January 2005, has since September 16, 2005 owned and operated a facility located at 49 Rutherford Street, Newark, New Jersey 07105 (the "Newark facility").
2. On or about November 29, 2006, a duly designated EPA representative conducted an inspection of and at the Newark facility in order to determine Respondent's compliance, in its operation of the Newark facility, with RCRA regulatory requirements ("EPA inspection").
3. On or about December 19, 2006, EPA sent a Notice of Violation/Information Request Letter to the Respondent seeking, in part, information and documentation relating to its compliance with the air emission requirements of 40 C.F.R. Part 265, Subparts BB and CC (N.J.A.C. 7:26G-9.1(a)); Respondent submitted its response thereto on or about January 17, 2007.
4. At the Newark facility, Respondent has since September 16, 2005 manufactured resins and urethanes used, *inter alia*, in the production of paints and paint products, coatings, adhesives and varnishes, and in the course of such operations has generated (and continues to generate)

various hazardous wastes, which include spent solvents (the "Deltech spent solvents").

5. Since September 16, 2005 through at least the time of the EPA inspection, Respondent had generated (and continues to generate) at the Newark facility 1,000 kilograms or more of the Deltech spent solvents in each calendar month, with such solvents having an organic concentration of at least ten percent (10%) by weight.

6. The Deltech spent solvents constitute organic hazardous waste with a volatile organic contamination of greater than 500 parts per million (by weight).

7. Since September 16, 2005 through at least the time of the EPA inspection, Respondent had periodically transferred the Deltech spent solvents to an above-ground 20,000 gallon tank for storage (said tank referred to as the "Deltech storage tank").

8. Since September 16, 2005, Respondent has been (and continues to be) the owner and operator of the Deltech storage tank.

9. Since September 16, 2005 through at least the time of the EPA inspection, in the transport of the Deltech spent solvents from the reactors where they were generated to the Deltech storage tank:

- a. at least two pumps have been utilized (and continue to be); and
- b. at least 21 valves have been utilized (and continue to be).

10. Since September 16, 2005 through at least the time of the EPA inspection, Respondent had been storing the Deltech spent solvents in the Deltech storage tank prior to said solvents being removed therefrom and then transported off-site for disposal.

11. Since September 16, 2005 through at least the time of the EPA inspection, Respondent had not identified, either by list or location, equipment at the Newark facility that contained or contacted hazardous waste with an organic concentration of at least 10% by weight for less than 300 hours per calendar year.

12. Since September 16, 2005 through at least the time of the EPA inspection, Respondent did not conduct monthly monitoring of each of the aforementioned (§ 9, sub-§ a., above) two pumps using the monitoring method set forth in 40 C.F.R. Part 60 (known as "Reference Method 21").

13. Since September 16, 2005 through at least the time of the EPA inspection, Respondent did not conduct monthly monitoring of each of the aforementioned (§ 9, sub-§ b., above) 21 valves using Reference Method 21.

14. At no time during the period between September 16, 2005 through at least the time of

the EPA inspection did Respondent determine the maximum organic vapor pressure in the Deltech storage tank.

15. On or around January 17, 2007, Respondent informed EPA that Respondent has subsequent to the date of the EPA inspection identified and listed two pumps and eight valves at the Newark facility that contain or contact hazardous waste with an organic concentration of at least 10% by weight for less than 300 hours per calendar year.

16. On or around January 17, 2007, Respondent informed EPA that Respondent has subsequent to the date of the EPA inspection determined the maximum organic vapor pressure in the Deltech storage tank.

### EPA CONCLUSIONS OF LAW

1. Respondent is a "person" within the meaning of Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10 (N.J.A.C. 7:26G-4.1(a)).

2. The Newark facility is a "facility" as that term is defined in 40 C.F.R. § 260.10 (N.J.A.C. 7:26G-4.1(a)).

3. Since September 16, 2005 through at least the time of the EPA inspection, the following were in "light liquid service" (as defined by reference in 40 C.F.R. § 265.1051 to the definition found in 40 C.F.R. § 264.1031) (N.J.A.C. 7:26G-9.1(a)).

a. each of the aforementioned (¶ 9, sub-¶ a., of the "EPA Findings of Fact" section, above) two pumps; and

b. each of the aforementioned (¶ 9, sub-¶ b., of the "EPA Findings of Fact" section, above) 21 valves.

4. Pursuant to 40 C.F.R. § 265.1052(a)(1) (N.J.A.C. 7:26G-9.1(a)), Respondent was required to conduct monthly monitoring of each of the aforementioned (¶ 9, sub-¶ a., of the "EPA Findings of Fact" section, above) two pumps, with such monitoring, pursuant to 40 C.F.R. § 265.1063(b) (N.J.A.C. 7:26G-9.1(a)), to comply with Reference Method 21.

5. Respondent's aforementioned (¶ 12 of the "EPA Findings of Fact" section, above) failure to conduct the monthly monitoring of said two pumps constitutes a violation of 40 C.F.R. § 265.1052(a)(1) (N.J.A.C. 7:26G-9.1(a)), with the requirement for such monitoring constituting a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

6. Pursuant to 40 C.F.R. § 265.1057(a) (N.J.A.C. 7:26G-9.1(a)), Respondent was required to conduct monthly monitoring of each of the aforementioned (¶ 9, sub-¶ b., of the "EPA Findings of Fact" section, above) 21 valves, with such monitoring, pursuant to 40 C.F.R. § 265.1063(b) (N.J.A.C. 7:26G-9.1(a)), being required to comply with Reference Method 21.

7. Respondent's aforementioned (¶ 13 of the "EPA Findings of Fact" section, above) failure to conduct the monthly monitoring of said 21 valves constitutes a violation of 40 C.F.R. § 265.1057(a) (N.J.A.C. 7:26G-9.1(a)), with the requirement for such monitoring constituting a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

8. Pursuant to 40 C.F.R. 265.1085(c)(1) (1998) (N.J.A.C. 7:26G-9.1(a)), Respondent was required to determine the maximum organic vapor pressure in the Deltech storage tank before the Deltech spent solvents were first placed in said tank.

9. Respondent's aforementioned (¶ 14 of the "EPA Findings of Fact" section, above) failure to determine the maximum organic vapor pressure in the Deltech storage tank constitutes a violation of 40 C.F.R. § 265.1085(c)(1) (1998) (N.J.A.C. 7:26G-9.1(a)), with the requirement for making such determination constituting a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

10. Pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), whenever any person has violated or is in violation of a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e, the Administrator of EPA, *inter alia*, "may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both."

#### AGREEMENT ON CONSENT

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 voluntarily accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the non-jurisdictional allegations of the Complaint; (c) neither admits nor denies the "EPA Findings of Fact" or "EPA Conclusions of Law" as set forth in this document; (d) consents to the assessment of the civil penalty as set forth below; (e) consents to the issuance of the Final Order accompanying this Consent Agreement; and (f) waives its right to seek judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed CA/FO shall become effective and binding when it is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2 (such date henceforth referred to as the "effective date").

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall pay a civil penalty to EPA in the amount of **SIXTEEN THOUSAND**

**(\$16,000.00) DOLLARS**, to be paid in accordance with the terms and schedule set forth in paragraph 2, below. Each payment in accordance with the terms and schedule set forth below shall be made by cashier's check, certified check or by electronic fund transfer (EFT), provided, however, that Respondent only employ one method of payment for the four installments. If payment is made by cashier's check or by certified check, each such check shall be made payable to the "**Treasurer, United States of America,**" and shall be identified with a notation thereon listing the following: *In the matter of Deltech Resin Co., Docket Number RCRA-02-2007-7111*. Each such check making payment shall be mailed to the following address:

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

Alternatively, if Respondent chooses to make each installment payment by EFT, Respondent shall then provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**
- c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
- d. Federal Reserve Bank of New York ABA routing number: **021030004**
- e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**
- f. Name of Respondent: **Deltech Resin Co.**
- g. Case docket number: **RCRA-02-2007-7111**

2. Payment shall be made as follows:

- a. Respondents shall pay **FOUR THOUSAND (\$4,000.00) DOLLARS** within, but no later than, 45 days<sup>1</sup> of the effective date;
- b. Within, but no later than, one hundred thirty-five (135) days after the effective

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<sup>1</sup> For purposes of this CA/FO, days shall mean calendar days.

date, Respondents shall pay an additional **FOUR THOUSAND (\$4,000.00) DOLLARS;**

c. Within, but no later than, two hundred twenty-five (225) days after the effective date, Respondent shall pay an additional **FOUR THOUSAND (\$4,000.00) DOLLARS ;** and

d. Within, but no later than, three hundred fifteen (315) days after the effective date, Respondents shall pay an additional **FOUR THOUSAND (\$4,000.00) DOLLARS.**

e. Each payment shall be in accordance with the instructions set forth in paragraph 1 of this section, above. If Respondent makes payments by cashier's check or certified check, then each such check shall be *received* at the above-listed address on or before each respective date specified. If Respondent makes payments by the EFT method, then each EFT shall be *received* on or before each respective date specified.

f. Whether Respondent makes payments by cashier's check, certified check or by the EFT method, Respondent shall promptly thereafter each installment furnish reasonable proof that each such respective payment has been made, and such proof shall be furnished to each of:

Lee A. Spielmann  
Assistant Regional Counsel  
Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

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

g. Failure to pay the amount in full within the time periods 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.

h. Furthermore, if any payment(s) is(are) not made on or before the date when such payment(s) is(are) made due under the terms of this document, interest for said payment(s) 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(s) was(were) to have been made through the date said payment(s) has(have) 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 any such payment(s) was(were) to have been made, in which payment(s) 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) days of the date for which any such payment(s) was(were) required hereto to have been made.

3. If Respondent fails to make any of the above installment payments according to the terms and schedule set forth in this section, Respondent shall, in addition to any other penalties provided for herein, pay a stipulated penalty of **TWO THOUSAND (\$2,000.00) DOLLARS** for each installment penalty payment that is late. Respondent shall be responsible for any stipulated penalty(ies) that becomes due. Respondent shall follow the payment instructions set out in the paragraphs above of this section for any stipulated penalty(ies) paid. If Respondent, in writing sent certified mail, return receipt requested, demonstrates good cause for its failure to make any timely payment in accordance with the terms and schedules set forth above, the EPA may, in its discretion, excuse Respondent from payment of a stipulated penalty(ies).

4. The civil penalty provided for in this section and any stipulated penalty that might become due constitute a penalty within the meaning of 26 U.S.C. § 162(f).

5. Unless exempted pursuant to 40 C.F.R. § 1050(e) (N.J.A.C. 7:26G-9.1(a)) or other applicable provision, Respondent shall conduct the following:

a. pursuant to 40 C.F.R. § 265.1052(a) (N.J.A.C. 7:26G-9.1(a)), monthly monitoring of the aforementioned (paragraph 9.a., in the "EPA Findings of Fact" section, above) two pumps; and

b. pursuant to 40 C.F.R. § 265.1057(a) (N.J.A.C. 7:26G-9.1(a)), monthly monitoring of the aforementioned (paragraph 9.b., in the "EPA Findings of Fact" section, above) 21 valves.

6. Respondent shall, to the extent that it has not already done so, determine, pursuant to 40 C.F.R. § 265.1085(c)(1) (1998) (N.J.A.C. 7:26G-9.1(a)), the maximum organic vapor pressure in the Deltech storage tank.

7. Complainant shall mail to Respondent (to the representative designated below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk:

Steven T. Singer  
Counselor-at-Law  
383 Franklin Street  
Bloomfield, New Jersey 07003



8. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement and consents to making full payment of the civil penalty in accordance with the terms and schedule set forth above.

9. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent'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 (hereinafter, "the management") at, in or from the Newark facility.

10. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve the administrative claims alleged in the Complaint bearing docket number RCRA-02-2007-7111 upon full payment of the penalty amount and any stipulated penalty(ies) that becomes due. Notwithstanding the above, nothing herein shall affect the right of the EPA or the United States to pursue appropriate injunctive or otherwise seek equitable relief or criminal sanctions for any violation(s) of law resulting from or pertaining to Respondent's operation of the Newark facility.

11. Respondent hereby waive its right to seek or to obtain any hearing on the allegations made in the Complaint, and on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or on the EPA Findings of Fact or EPA Conclusions of Law, above.

12. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.

13. Respondent voluntarily waives any right or remedy it might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

14. Each party shall bear its own costs and fees in connection with this proceeding.

15. Each undersigned signatory to this Consent Agreement certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms and conditions of this Consent Agreement.

**RESPONDENT:**

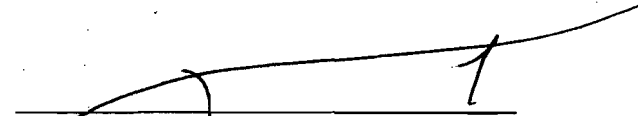
BY: Bernard Brody

NAME: BERNARD Brody

TITLE: V.P. - G.M.

DATE: 3/7/08

**COMPLAINANT:**

BY: 

PATRICK DURACK  
Per 2

Dore LaPosta, Director  
Division of Enforcement and Compliance  
Assistance  
U.S. Environmental Protection Agency -  
Region 2


DATE: March 19, 2008

*In re Deltech Resin Co.,*  
Docket Number RCRA-02-2007-7111

**FINAL ORDER**

The Regional Administrator of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Deltech Resin Co.*, bearing Docket Number RCRA-02-2007-7111. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect 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: Mar 27, 2008  
New York, New York

  
for ALAN J. STEINBERG  
Regional Administrator  
United States Environmental Protection Agency –  
Region 2