

**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
Dober Chemical Corporation	:	Docket No. RCRA-03-2018-0048
	:	
Respondent,	:	
	:	
	:	<b>U.S. EPA-REGION 3-RHC</b>
	:	FILED-18JUL2018pm3:24
Dober Chemical Corporation	:	
Humboldt Industrial Park	:	
543 Forest Road	:	Proceeding under Section 3008(a) of the
Hazleton, Pennsylvania 18201,	:	Resource Conservation and Recovery Act,
	:	42 U.S.C. § 6928(a).
Facility.	:	

1. This Consent Agreement and Final Order (hereinafter, “Order”) is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA”, or “Agency”) and Dober Chemical Corporation (“Respondent”) pursuant to Sections 3008(a) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as “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 (“Consolidated Rules of Practice”), 40 C.F.R. §§ 22.1(a)(4), 22.13(b) and 22.18((b)(2).
2. This Order, addresses an alleged violation by Respondent of RCRA and the federally authorized Pennsylvania Hazardous Waste Management Regulations (“PaHWMR”), codified at 25 Pa. Code Chapters 260a – 266a, 266b, and 268a – 270a.
3. Effective January 30, 1986, the PaHWMR, and as revised November 27, 2000, March 22, 204 and June 29, 2009, was authorized by the EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A and thereby became requirements of RCRA Subtitle C and enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). *See 51 Fed.Reg. 1791* (January 15, 1986), *65 Fed. Reg. 57734* (September 26, 2000), *69 Fed. Reg. 2674* (January 20, 2004) and *74 Fed. Reg. 19453* (April 29, 2009). The PaHWMR incorporate, with certain exceptions, specific provisions of Title 40 of the 1999 Code of Federal Regulations by reference. *See 25 Pa. Code § 260a.3(e).*

4. RCRA compliance orders are subject to the requirements of the Consolidated Rules, which include the right to an administrative hearing. Pursuant to 40 C.F.R. § 22.37(b), compliance orders become final, unless, no later than thirty (30) days after the order is served, the respondent requests a hearing pursuant to 40 C.F.R. § 22.15. As specified in Paragraphs 7 – 10, below, Respondent agrees to waive its right to a hearing.

### **I. GENERAL PROVISIONS**

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Order.
6. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this Order, except as provided in Paragraph 5, above.
7. For the purposes of this proceeding only, Respondent agrees not to contest EPA's jurisdiction with respect to the execution and issuance of this Order, or the enforcement of this Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Order and any right to appeal this Order.
9. Respondent waives any right to judicial review of this Order under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) and 40 C.F.R. § 22.15.
10. Respondent consents to the issuance of this Order and agrees to comply with its terms.
11. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

### **Notice of Action to the Commonwealth of Pennsylvania**

12. By letter to Thomas Mellot, Chief, Hazardous Waste Management Division, Pennsylvania Department of Environmental Protection ("PaDEP"), dated October 24, 2016, EPA has given the Commonwealth of Pennsylvania, through PaDEP, prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
13. Upon making a determination that any person has violated or is in violation of any requirement of RCRA Subtitle C, and upon satisfying the notification requirements of RCRA Section 3008(a)(2), 42 U.S.C. § 6928(a)(2), RCRA Section 3008(a)(1), 42 U.S.C. § 6928(a)(1) authorizes the Administrator of EPA to issue an order for any past or current violation, requiring compliance immediately or within a specified time period, or both.

## **II. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW**

14. Respondent, Dober Chemical Corporation, is an Illinois corporation and is a “person” as defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15), and 25 Pa. Code § 260a.10.
15. Respondent is and has been, through the period of the violation alleged herein, the “owner” and “operator” of a “facility” located at Humboldt Industrial Park, 543 Forest Road, Hazleton, Pennsylvania, as the term “facility” is defined in 25 Pa. Code § 260a.10 and the terms “owner” and “operator” are defined in 40 C.F.R. § 260.10 as incorporated by reference in 25 Pa. Code § 260a.1. Such facility is herein referred to as the “Facility.”
16. On May 18, 2016, an EPA representative conducted a Compliance Evaluation Inspection of the Facility.
17. Respondent is a large quantity generator and has been assigned EPA identification number PAR000536821.

### **COUNT I**

(Failure to Perform a Hazardous Waste Determination)

18. The preceding paragraphs are incorporated by reference.
19. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, with exceptions not relevant herein, provides that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste using the following methods:
  - (a) He should first determine if the waste is excluded from regulation under 40 C.F.R. § 261.4.
  - (b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 C.F.R. Part 261.
  - (c) For purposes of compliance with 40 C.F.R. Part 268, or if the waste is not listed in subpart D of 40 C.F.R. Part 261, the generator must then determine whether the waste is identified in subpart C of 40 C.F.R. Part 261 by either:
    - (1) Testing the waste according to the methods set forth in subpart C of 40 C.F.R. Part 261, or according to an equivalent method approved by the Administrator under 40 C.F.R. § 260.21; or
    - (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

20. Waste sodium hydroxide is a hazardous waste (EPA Hazardous Waste No. D002) within the meaning of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. §§ 261.22, because it exhibits the characteristic of corrosivity.
21. The waste referred to in Paragraph 20, above, is and was at the time of the alleged violation a “solid waste” and “hazardous waste” as those terms are defined in 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10.
22. On November 20, 2015, Respondent disposed of three totes of waste sodium hydroxide by sending such totes to a solid waste disposal facility without first performing an adequate hazardous waste determination as required by 25 Pa Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11. The three totes of hazardous waste were returned to Respondent from the solid waste disposal facility on December 11, 2015.
23. As of the date of the EPA inspection on May 18, 2016, Respondent had not performed an adequate hazardous waste determination on the three totes of solid waste sodium hydroxide returned to Respondent’s Facility from the solid waste disposal facility on December 11, 2015.
24. From at least November 20, 2015 until May 18, 2016, Respondent violated 25 Pa Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11 by failing to adequately perform a hazardous waste determination for waste sodium hydroxide, which is a solid waste generated by the Facility.

### **III. COMPLIANCE ORDER**

25. While EPA is not seeking civil penalties as part of this Order, Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), provides for the assessment of civil penalties for Respondent’s noncompliance with an Order.
26. Respondent shall draft and submit to EPA for review, a Standard Operating Procedure (SOP) within thirty (30) days of the effective date of this Order for its Facility located in Hazleton, Pennsylvania that ensures: (1) a hazardous waste determination is made for each waste generated by Respondent in accordance with 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, and (2) quarantined product is accumulated at Respondent’s Hazleton Facility in accordance with the provisions of 25 Pa. Code § 261a.1, which incorporates by reference 40 C.F.R. § 261.1(c)(8).

27. The SOP shall, at a minimum shall:
- a) Identify, by position title, the person(s) responsible for waste identification and making hazardous waste determinations;
  - b) Identify, by position title, the person at the Facility responsible for supervising and coordinating the management of hazardous waste at the Facility;
  - c) Describe sampling (if applicable), waste identification and hazardous waste determination procedures;
  - d) Describe how the hazardous waste will be managed while on-site, including labeling, dating, and weekly inspections and identify, by position title, the person(s) at the Facility responsible for labeling and dating containers and conducting weekly inspections;
  - e) Describe how the Facility will track hazardous waste to ensure it is not stored on site at the Facility for greater than 90 days;
  - f) Describe how the Facility will manage and maintain waste determination /characterization records;
  - g) Describe how often the SOP will be reviewed and updated and the position title of the person(s) responsible for such review and updates; and
  - h) Include an “effective date” and “revised date.”
28. Within sixty (60) days of receipt of Respondent’s SOP identified in Paragraphs 26 and 27, above, EPA will provide written notification to Respondent of one of the following:
- a. If the SOP is deficient, EPA will notify Respondent in writing that the SOP is deficient, provide an explanation of the deficiencies, and grant Respondent an additional thirty (30) calendar days to correct those deficiencies and submit the revised SOP to EPA in accordance with Paragraph 30;
  - b. If the SOP meets the requirements of this Order, EPA will notify Respondent in writing that EPA has concluded that the SOP has been accepted.
29. Upon EPA’s acceptance of Respondent’s SOP, Respondent shall implement the SOP in accordance with its terms and submit a certification signed by the person identified in Paragraph 27(b), above, in accordance with Paragraph 30 that the SOP has been implemented at the Facility.

30. Submissions to EPA: Any notice, certification, data presentation, report, or other document submitted by Respondent pursuant to this Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirements of this Order shall be certified by a responsible corporate officer of Respondent. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars). The aforesaid certification shall provide the following statement above the signature of the responsible corporate officer signing the certification on behalf of the Respondent:

I certify under penalty of law that this document and all attachments are true, accurate and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate 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 fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Except as otherwise provided herein, notifications or submissions to EPA required by this Order shall be sent to the attention of:

Stephen Forostiak (3LC32)  
Environmental Scientist  
United States Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029; and

Joyce A. Howell (3RC30)  
Sr. Assistant Regional Counsel  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-202

Any communications from EPA to Respondent under this Order shall be directed to:

Director of Global Manufacturing  
Dober Chemical Corporation  
11230 Katherine's Crossing  
Woodridge, IL 60517

31. A determination of compliance with the conditions set forth herein will be based upon, inter alia, records and reports submitted by Respondent to EPA under this Order, and any inspections of work performed under the Order. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability.

#### **V. EFFECT OF SETTLEMENT, RESERVATION OF RIGHTS**

32. This Order is not intended to be nor shall it be construed to be a permit. Further, the parties acknowledge and agree that EPA's approval of this Order does not constitute or warrant or represent that requirements provided hereunder will meet the requirements of RCRA. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA, or any applicable state or federal laws and regulations.
33. Neither EPA nor the United States, by entering in to the Order, assumes any liability for any acts or omissions by Respondent or its employees, agents, contractors or consultants engaged to carry out any action or activity pursuant to this Order. Nor shall EPA or the United States be held as a party to any contract entered into by Respondent or its employees, agents, contractors or consultants.
34. Notwithstanding any other provision of this Order, EPA reserves the right to enforce the terms of this Order portion of this Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent pursuant to 3008(c) of RCRA for each day of non-compliance with the terms of the Order, or to seek any other remedy allowed by law.
35. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations to enforce the terms of this Order.

36. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive relief or other appropriate relief relating to the allegations in this Order, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based on any contention that the claims raised by EPA or the United States on the subsequent proceeding were or should have been raised in the present matter.

#### **VI. PARTIES BOUND**

37. This Order shall apply to and be binding upon the EPA, Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Order on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Order and to bind the Respondent to the terms and conditions of this Order.


#### **VII. TERMINATION**

38. The provisions of this Order shall be deemed satisfied upon a written determination by EPA that Respondent has fully implemented the actions required in the Order. Such written determination shall be of the same form and substance as the Draft Termination of Final Order Letter set forth in Attachment A of this Order, which is appended hereto and incorporated herein.



For Respondent, Dober Chemical Corporation:

Date: 4/30/2018

By:   
Scott Dobrez  
EVP Operations and Supply Chain

For EPA, United States Environmental Protection Agency, Region III:

Date: June 6, 2018

By: Joyce A. Howell  
Joyce A. Howell  
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and Final Order and other pertinent information, the Director, Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

6.20.18  
Date


By: John Armstead  
John Armstead  
Director  
Land and Chemicals Division

**FINAL ORDER**

**U.S. EPA-REGION 3-RHC**  
FILED-18JUL2018pm3:24

IT IS SO ORDERED. This Final Order shall become effective immediately.

July 18, 2018  
Date

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial Officer

# ATTACHMENT A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

DRAFT\*\*\*\*\*DRAFT\*\*\*\*\*DRAFT\*\*\*\*\*

John Sheehan, Esq.  
Michael, Best & Friedrich, LLP  
601 Pennsylvania Avenue, NW  
Washington, DC 20004

Future date.

IMO Dober Chemical Corporation  
RCRA-03-2018-0048  
Termination of Final Order

Dear Mr. Sheehan:

As provided by Paragraph 29 of the Consent Agreement and Final Order entered in this matter, EPA has received notice from you on behalf of your client, Dober Chemical Corporation, that it has fully implemented the actions required in the Final Order.

Based on the representations and documentation submitted by your client under Paragraph 29 of the Consent Agreement and Final Order entered in this matter, EPA has determined that Dober Chemical Corporation has fully and finally satisfied EPA's claims and Dober Chemical Corporation's obligations for the violation alleged in the CA/FO.

Sincerely,

John Armstead  
Director  
Land and Chemicals Division

cc: Joyce Howell (3RC30)  
Stephen Forostiak (3LC32)  
Scott Dobrez, EVP, Dober Chemical Corporation



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103**

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Dober Chemical Corporation	:	Docket No. RCRA-03-2018-0048
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Respondent,	:	
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	:	<b>U.S. EPA-REGION 3-RHC</b>
	:	FILED-18JUL2018PM3:24
Dober Chemical Corporation	:	
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Hazleton, Pennsylvania 18201,	:	Resource Conservation and Recovery Act,
	:	42 U.S.C. § 6928(a).
Facility.	:	

**CERTIFICATE OF SERVICE**

I certify that on July 18, 2018, the original and one copy of the Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

**Via UPS, next day delivery to:**

John A. Sheehan, Esq.  
Michael Best & Friedrich LLP  
601 Pennsylvania Avenue NW  
Suite 700 South  
Washington, D.C. 20004  
(Attorney for Respondent)

**Via Hand Deliver or Inter-Office Mail:**

Joyce Howell  
Senior assistant Regional Counsel  
Office of Regional Counsel (3RC30)  
U.S.EPA, Region III  
Philadelphia, PA 19103-2029  
(Attorney for Complainant)

Dated: JUL 18 2018

Bevin Esposito  
Bevin Esposito  
Regional Hearing Clerk  
U.S. EPA - Region III

TRACKING NUMBERS: 1ZA43F712493103130