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EPA REGION 6

Proceeding Under Section 3013(a), of the
Resource Conservation and Recovery Act
as amended, 42 U.S.C. § 6934(a)
USEPA Docket No. RCRA-06-2024-0924

FINAL
RCRA SECTION 3013(a) ORDER REQUIRING MONITORING, TESTING,
ANALYSIS AND REPORTING
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**FINAL RCRA 3013(a) ORDER REQUIRING MONITORING, TESTING,
ANALYSIS AND REPORTING**

I. JURISDICTION

1. This unilateral Administrative Order ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or "Complainant") by Section 3013(a) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), as amended, 42 U.S.C. § 6934(a). The authority to issue this Order has been delegated from the Administrator to the Regional Administrator, which has been duly delegated to the Director of the Enforcement and Compliance Assurance Division U.S. EPA, Region 6.
2. This Order is issued to the owner and operator ORG Chem Group ("ORG CHEM" or "Respondent"), a corporation doing business at 847 Blacksnake Road, Hot Springs, Arkansas 71913. The property on which company is located and all contiguous property under the ownership and control of Respondent, is hereinafter referred to as the "Facility" or "Site."
3. Counsel for Respondent has been presented with information from which a determination has been made that the presence and/or release of hazardous wastes, as defined by Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), at ORG Chem's Facility may present a substantial hazard to human health or the environment, and hereby orders Respondent to conduct monitoring, testing, analysis, and reporting to ascertain the nature and extent of such hazard.
4. This Order is based upon the administrative record¹ compiled by EPA and incorporated herein. The record is available for review by the Respondent and the public at EPA's Regional Office at 1201 Elm Street, Dallas, Texas 75270. Contact Mr. Fred Deppe for access to the file at (214) 665-7591.
5. The State of Arkansas's RCRA Program was authorized under Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Although EPA has granted the State of Arkansas authority to enforce its own hazardous waste program, EPA retains its authority under Section 3013(a) of the Solid Waste Disposal Act. However, EPA has notified the State of Arkansas of this action.

II. PARTIES BOUND

6. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, contractors, successors, and assigns.
7. No change in ownership, corporate, or partnership status relating to the Facility described in this Order will in any way alter the status or responsibility of Respondent under this Order.

¹ Much of the Administrative Record has been claimed by Respondent as Confidentiality of Business Information pursuant to 40 Code of Federal Regulations, Part 2, Subpart B.

Any conveyance by Respondent of title, easement, or other interest in the Facility described herein, or a portion of such interest, shall not affect Respondent's obligations under this Order. Respondent shall be responsible and liable for any failure to carry out all activities required of Respondent by this Order, irrespective of its use of employees, agents, contractors, or consultants to perform any such tasks.

8. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within seven (7) calendar days of the effective date of this Order, or on the date of such retention of service, and Respondent shall condition all such contracts on compliance with terms of this Order.

9. Any documents transferring ownership and/or operations of the Facility described herein from Respondent to a successor-in-interest shall include written notice of this Order. In addition, Respondent shall, no less than thirty (30) days prior to transfer of ownership or operation of the Facility, provide written notice of this Order to its successor-in-interest, and written notice of said transfer of ownership and/or operation to EPA and the State of Arkansas.

III. STATEMENT OF PURPOSE

10. This Order is issued to Respondent to address EPA's concerns that hazardous wastes have been released to the environment from on-site locations which may present a substantial hazard to human health and/or the environment through requiring Respondent to implement sampling, analysis, monitoring, and reporting at the Facility. In meeting these objectives, Respondent shall prepare and submit for approval to EPA a sampling and analysis workplan (the "Workplan") to collect and analyze soil and groundwater samples to determine the nature and extent of any releases of hazardous waste, hazardous waste constituents, and/or Constituents of Concern ("COCs") which are reasonably likely to be found at the Facility in the environment. COCs shall be specified in the Workplan. After EPA approval of the Workplan, Respondent must then implement the approved Workplan and any subsequent modifications to it made by EPA.

IV. FINDING OF FACTS

11. Respondent's Facility covered by this Order is approximately 12.5 acres and is located at 847 Blacksnake Road Hot Springs Arkansas, 71913. The Facility has been in operation as ORG CHEM Group ("ORG CHEM") since 2013 and was known previously as Mid-American Distillers INC ("MADI") prior to 2013. ORG Chem is also a used oil transfer station, used oil processor and re-refiner, and a used oil fuel marketer who directs shipments of off-specification used oil to off-specification used oil burner facilities.

12. The Facility is described as NAICS 325998 as All Other Miscellaneous Chemical Product and Preparation Manufacturing facility in its Industrial and Hazardous Waste Notice of Registration.

The initial Registration date was April 14, 1998, and with an Amendment date of February 14, 2023.

13. The primary operation conducted at the Facility is the reclamation of Crude Ortho Chloro Tolulene ("cOCT") and Mono Chloro Benzene ("MCB") into usable Ortho Chloro Tolulene and Mono Chloro Benzene for the company. In October of 2023, W.R. Grace stopped shipping its cOCT and MCB to ORG CHEM. And prior to W.R. Grace, it was Union Carbide who shipped the cOCT and MCB to ORG CHEM.²

14. The cOCT is received via tanker and pumped from the tanker into the heat exchanger where sodium hydroxide (NaOH) is added to neutralize titanium tetrachloride found in the cOCT. Acid is then added to neutralize the NaOH. The neutralized material, referred to as "consista slurry" by ORG CHEM is then pumped back into the tanker and transferred and pumped into onsite frac tanks. The consista slurry is stored in the frac tanks until it is ready to be pumped into the "800 tanks" which consists of twelve (12) 30,000-gallon tanks that are filled up to or about 90%. In the "800 tanks" the consista slurry is stored until it is ready for the steam stripping process to fully reclaim the final product, OCT and the MCB.

15. Also, ORG CHEM specializes in the reclamation of amines, heat transfer fluids, industrial chemicals, and petrochemical by-products. ORG CHEM offers large scale Wiped Film Evaporation ("WFE"), short path distillation process, packed column distillation processes, and is accessible by both railroad and common carrier tankers. The WFE system is a high vacuum distillation system capable of distilling materials at a much lower temperature than would normally be required. This system is used primarily to distill high boiling point or temperature sensitive materials that cannot be distilled using conventional methods. The amine flash system recycles amines that were used in the gas treating processes during petroleum refining and natural gas processing. Amines are treated with caustic to regenerate heat stable salts and are distilled to remove surplus water. The amines from the system are then sent to the WFE system for high vacuum distillation and recovery.

16. On October 11, 2023, the State of Arkansas conducted an inspection at the Facility ("the Arkansas Inspection"). Arkansas referred the matter to EPA on November 9, 2023, (the "Referral") and within the Referral there is reference to a citizen's complaint made to the National Response Center alleging release of materials from Wet film evaporator 3 ("WFE3") to surface soils at the Facility through a secondary containment trench servicing WFE3. The Arkansas Inspection documented the trench without a concrete or lined bottom. Wet film evaporators are distillation units and the process involving their use can be seen in the ORG CHEM facility process flow diagrams, which are included in the Arkansas Inspection as units that distill OCT and MCB post neutralization and stripping.

² W.R. Grace purchased the Union Carbide operation located in NORCO Louisiana in 2015.

17. The Referral also identified an alleged release of materials from offloading of railcars at the facility transload area to surface soils at the Facility.
18. The Referral also identified an alleged release of materials from the building behind the Wet film evaporator 1 ("WFE1") to surface soils at the Facility (at the corner of the building containing WFE1).
19. Photographs taken during the Arkansas Inspection showed spills to the ground at two separate locations and the secondary containment trench.
20. A prior inspection conducted by the State of Arkansas on March 9, 2022, of the ORG CHEM Facility, collected 12 months of spill logs that show spillage of materials, during various stages of the reclamation process, originating from the WFE3 unit, the WFE1 Building, and the transload area to the land. Also, detectable levels of chemicals of potential concern ("COPC") were found in a surface soil grab sample from the secondary containment trench.
21. During the Arkansas Inspection, surface samples were taken from the secondary containment trench and the samples of COPC included: 2,4-dinitrotoluene (2,200 micrograms/kg) exceeding the residential soil screening level (1,700 micrograms/kg), and nickel (150 mg/kg) matched the residential soil screening level (150 mg/kg). From the sample results, EPA has identified a partial list of COPCs to be present at the Facility and in the soil to include benzene, chloro toluene, and xylene.
22. Although the samples identified in Paragraph 21 above did not exceed industrial screening levels, the release may present a substantial hazard to human health or the environment, specifically to groundwater, since the ditch is not lined and surface samples' results confirmed that benzene, 2-hexanone, naphthalene, 2,4-dinitrotoluene, phenol, and pyrene exceeded the EPA Regional Groundwater Screening levels.
23. The Referral also noted that "Ecological concerns from a comparison to soil ecological screening levels include chromium, copper, lead, nickel, zinc, phenol, and pyrene (the high molecular weight PAHs detected were chrysene and pyrene; the screening level is for total high molecular weight PAHs – pyrene exceeds the screening level for total HMWPAHs and chrysene is equal to the screening level)."
24. Lab analysis dated October 19, 2023, from Eurofin lab, shows degradation products, which likely resulted from the parent materials of cOCT and MCB, to be present in the secondary containment trench indicating a release of hazardous waste.
25. Pursuant to EPA Information Request of November 29, 2022, issued to W.R. GRACE (the generator), EPA obtained information, which confirmed that cOCT has been stored and/or treated at the Facility.
26. From December 12 through the 15, 2022, EPA conducted a Compliance Evaluation Inspection ("CEI") at ORG Chem and obtained waste profile information, which identified

parent material constituents of the other likely degradation products found in the soil grab sample indicating the release of hazardous waste and hazardous material to the ground.

27. During the Arkansas Inspection and EPA's CEI, EPA and the State of Arkansas in their respective inspections documented the condition of tanks and containers and photographic evidence show storage units to have degraded, with holes in the container's sides and roofs. Many of the containers and frac tanks had man-way hatches rusted in the open position and secondary containments, when in place, were not the adequate size (by volume) to contain the material stored in the rusting containers and tanks should there be a leak.

28. Under certain conditions of dose, duration, or extent of exposure, the COPCs identified in Paragraph 21 above, which are present at the Facility and/or have been released to the environment at/from the Facility, may present a substantial hazard to the environment or human health, specifically by ingestion and/or absorption.

SUMMARY OF THE COPCs:

Benzene: Benzene is a volatile, aromatic hydrocarbon and a component of gasoline. EPA's Integrated Risk Information System ("IRIS") and the Report on Carcinogens lists benzene as a Group A (known human) carcinogen, causing leukemia in exposed individuals. Benzene exposure is associated with chromosomal damage in both humans and animals, although it is not mutagenic in microorganisms. Benzene has been shown to be fetotoxic and to cause embryo-lethality in experimental animals. Exposure to benzene has resulted in leukemia in humans. It also adversely affects the hematopoietic system. Very high concentrations in air (about 20,000 ppm) can cause death in minutes, with central nervous system depression and convulsions, and cardiovascular collapse. Vertigo, dizziness, drowsiness, headache, nausea, confusion, tremors, tachycardia, and eventual unconsciousness result from milder exposures. Dermal adsorption of liquid benzene can result in erythema, blistering, and scaly dermatitis. Benzene contamination of drinking and surface waters, fruits, vegetables, dairy products, nuts, and eggs all add to the human body burden of benzene. Long-term benzene exposures affect bone marrow thereby diminishing erythrocyte production and causing anemia. Excessive bleeding and deleterious effects on the immune system may also occur. Drinking fluids or eating food contaminated with high concentrations can result in vomiting, gastritis, vertigo, convulsions, tachycardia, and death.

Xylene: Xylene may be a possible carcinogen, based on a number of human occupational studies that have suggested possible chronic inhalation exposure to xylenes. However, in each case co-exposure to other chemicals was a major confounder, leading to an inability to adequately assess the potential effects of chronic exposure to xylenes. Animal data on the carcinogenicity of xylenes following inhalation exposure are not available. Data are inadequate for an assessment of the carcinogenic potential of xylenes, under the Draft Revised Guidelines for Carcinogen Risk Assessment (U.S. EPA, 1999). Adequate human data on the carcinogenicity of xylenes are not available, and the available animal data are inconclusive as to the ability of

xylenes to cause a carcinogenic response. Evaluations of the genotoxic effects of xylenes have consistently given negative results. Data on the carcinogenicity of xylenes following inhalation exposure are limited.

Toluene: Toluene is not assessed under the Guidelines for Carcinogen Risk Assessment (U.S. EPA, 2005) because there is inadequate information to assess the carcinogenic potential of toluene. The studies of humans chronically exposed to toluene are inconclusive, toluene was not carcinogenic in adequate inhalation cancer bioassays of rats and mice exposed for life (CIIT, 1980; NTP, 1990; Huff, 2003), and increased incidences of mammary cancer and leukemia were reported in a lifetime rat oral bioassay at a dose level of 500 mg/kg-day but not at 800 mg/kg-day (Maltoni et al., 1997).³

29. In a letter dated, October 20, 2023, ORG CHEM communicated to the State of Arkansas that based on analytical results from samples collected from the WFE3 trench, ORG CHEM is developing a work plan for further investigation of the vertical and horizontal extent of the detected constituents in soil and groundwater.

30. The State of Arkansas received the work plan referenced in Paragraph 29 above on November 10, 2023.

31. EPA initiated conversations with counsel for ORG CHEM in December 2023, regarding the disposal of hazardous waste at/or from the Facility. Additionally, EPA had subsequent conversations in January 2024 and February 2024, regarding the issuance of this Order and the purpose for issuing the Order. Further and via email, EPA shared this Order initially as a proposed Order to counsel for Respondent and for counsel's receipt on March 4, 2024. EPA in its cover letter that accompanied the proposed Order allowed Respondent thirty days for Respondent to review and provide written comment to EPA.⁴

V. DETERMINATION AND CONCLUSION OF LAW

32. Respondent's Facility is a "facility or site" within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), and as the term "facility" is defined in 40 Code of Federal Regulations ("CFR") § 260.10.

³. The information on benzene, xylene, and toluene was compiled from: "Chemical, Physical, and Biological Properties of Compounds Present at Hazardous Waste Sites," prepared by Clement Associates, Inc., dated September 27, 1985, EPA's Integrated Risk Information System, publications of the Agency for Toxic Substances and Disease Registry ("ATSDR"), and the Report on Carcinogens, 8th Summary 1998 Edition ("RoC") published by the National Institute of Environmental Health Science ("NIEHS"). Variance issued by both the States of Arkansas and Louisiana dictates that the material in question be treated as a product with value. Products released to the land no longer have value as products and subsequently fall out of the variance that was active and become solid and potentially hazardous waste. In this instance cOCT and MCB would cross the thresholds for hazardous waste determination as seen in product SDS.

⁴. The Proposed Order and Cover Letter are included in the Administrative Record to this Order.

33. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.
34. Respondent is an "owner" and/or "operator" of the Facility located at 847 Blacksnake Road, Hot Springs, Arkansas 71913, within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), and as defined at 40 C.F.R. § 260.10.
35. Section 1004(27) of RCRA, 42 U.S.C. § 6903(27) defines the term "solid waste" to mean "any garbage, refuse and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations"
36. Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), defines the term "hazardous waste" to mean a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:
- (A) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
 - (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise, managed.
37. Certain wastes and constituents found at the Facility are hazardous waste or hazardous waste constituents as defined respectively at Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and 40 C.F.R. § 260.10.
38. Section 1004(3) of RCRA, 42 U.S.C. § 6903(3), 40 C.F.R. § 260.10, define the term "disposal" to mean "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into the water, including ground waters."
39. The regulations at 40 C.F.R. § 260.10 define the term "hazardous waste constituent" to mean "a constituent that caused the Administrator to list the hazardous waste in Part 261, subpart D, of this chapter, or a constituent listed in table 1 of § 261.24 of this chapter."
40. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA has hereby determined that the Facility, owned and/or operated by Respondent, is a facility at which hazardous waste is or has been stored, treated, or disposed of.

41. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA has hereby determined that there may be a substantial hazard to human health or the environment due to the presence and/or release of hazardous wastes at or from the Facility.

42. EPA has further determined that Respondent, as owner and/or operator of the Facility, is the party responsible for conducting the actions ordered herein, which are necessary to ascertain the nature and extent of the hazard to human health or the environment.

VI. ORDER

43. Based on the Findings of Fact and Determinations and Conclusions of Law, Respondent is hereby ordered, pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), to submit a written proposal to EPA, within thirty (30) days of the issuance of this Order, for carrying out monitoring, testing, analysis, and reporting to ascertain the nature and extent of the hazard posed by the hazardous wastes that are present at or that may have been released from the Respondent's Facility. Respondent is hereby ordered to implement such written proposal once approved, or modified and approved, by EPA. Such written proposal shall be specific and shall include, but is not limited to, the following.

SAMPLING AND ANALYSIS WORK PLAN

44. Within thirty (30) days of the effective date of this Order, Respondent shall submit to EPA the Workplan.

45. The Workplan shall be designed to determine the presence, magnitude, extent, direction, and rate of movement of any hazardous waste, hazardous constituents, and/or COCs within and beyond the Facility's boundary. COCs shall be limited to those that are reasonably likely to be found at the Facility. The Workplan shall document the procedures Respondent shall use to assess sampling and analysis data Respondent has previously generated that relate to the purposes of this Order as well as the procedures Respondent shall use to conduct those activities necessary to: characterize the source(s) of contamination; characterize the potential pathways of contaminant migration; define the degree and extent of contamination; and identify actual or potential human and/or ecological receptors. Respondent may implement the work contained in the Workplan in a multi-phased approach. A specific schedule for expeditious implementation of all activities shall be included in the Workplan. At a minimum, Respondent's Workplan for assessment must include the following:

- (A) Estimated quantities of the discharged waste from WFE3, discharges from products, process spills, tank cleanouts, run off from process areas, and discharge waters from maintenance and turnaround activities for the life of the unit;

(B) Sediment and/or soil sampling and analysis section to collect and analyze representative sediment and/or soil samples to determine the nature and extent of potential contamination, both vertically and horizontally. Areas of sampling shall include the Respondent operations adjacent to WFE3 and the secondary containment trench associated with WFE3. The Workplan shall also include sampling in areas of discharges from product spills, and discharge waters from maintenance activities. The Workplan must define the number, location, and depth of the samples, and the parameters for analysis;

(C) A groundwater sampling and analysis section to characterize the groundwater quality and the extent of any groundwater contamination both vertically and horizontally, which may be migrating from the WFE3 unit at the Facility. This shall include lined and unlined areas within the Respondent operations. The Workplan shall define the number, location, and depth of ground water samples included in the ordered groundwater monitoring program;

(D) A section addressing potable well survey within a ½ mile radius of the Facility including a schedule for sampling of each well, and the parameters for analysis if hazardous constituents are found emanating from the Facility and beyond the Facility boundary and exceeding Standards for Ground Water in Arkansas Department of Energy and Environment's ("ADEE") Standards contained in EPA Regional Screening Levels, located at: <https://semspub.epa.gov/work/HQ/404330.pdf>. Upon confirmation of an exceedance, based on ADEE ground water standards, in any of the potable wells, the well survey will be extended by ½ mile radial increments in the appropriate direction depending on the results of the initial well survey;

(E) A section addressing an Environmental Indicator Assessment shall be included using health screening exposure parameters located at: <https://semspub.epa.gov/work/HQ/404330.pdf> upon confirmation of the existence of hazardous constituents emanating from the Facility and beyond the Facility boundary in the soil exceeding the EPA Regional Screening Standards, or background Standards for Soil, whichever is higher;

(F) A survey that identifies any wetlands, creeks, or lakes within a two (2) mile radius down gradient and beyond Respondent's property boundaries (not including public roadside ditches). This survey should also identify any such bodies of water which are used for public recreational purposes or may contain endangered species;

(G) A Project Management Plan;

(H) A Quality Assurance/Quality Control Plan, using EPA Regional Screening Levels for sampling and analyses required by this Order and located at:
<https://semspub.epa.gov/work/HQ/404330.pdf>;

(I) A Data Management and Tracking Procedures, if requested by EPA, using EPA Regional Screening Levels for sampling and analyses required by this Order and located at:
<https://semspub.epa.gov/work/HQ/404330.pdf>;

(J) A Community Relations Plan; and

(K) Timeline for work detailed above and a schedule for the submission of progress reports, including a draft Sampling and Analysis Report and a Final Sampling and Analysis Report.

46. Concurrent with the submission of the Sampling and Analysis Workplan, Respondent shall submit a Health and Safety Plan ("HASP") with respect to the work to be performed under this Order.

47. Upon receipt of EPA approval of the work plan (the "Approved Work Plan"), Respondent shall implement the Approved Work Plan in accordance with the times and schedules contained therein. Upon complete implementation of the Approved Work Plan, Respondent shall submit to EPA for approval a draft Sampling and Analysis Report, in accordance with the requirements and schedule contained in the EPA Approved Work Plan. Upon approval of the draft Sampling and Analysis Report by EPA, Respondent shall submit a final Sampling and Analysis Report as set forth in the Approved Work Plan.

48. If Respondent has completed some of the tasks required by this Order and/or has available some of the information and data required by this Order, Respondent may use to meet some of the requirements of this Order, upon submission to and final approval by EPA.

VII. ADDITIONAL WORK

49. Based on the performance of the Approved Work Plan described above, EPA may determine that additional monitoring, testing, analysis, and/or reporting is necessary to ascertain the nature and extent of any hazard to human health or the environment which may be presented by the presence of hazardous wastes at and/or released from the Facility. If EPA determines that such additional work is necessary, EPA will notify Respondent in writing and specify the basis for its determination that additional work is necessary. Within fifteen (15) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. EPA will specify the contents of such work plan.

Such work plan shall be submitted by Respondent within sixty (60) days of Respondent's receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA.

VIII. MINIMUM QUALIFICATIONS FOR PERSONNEL

50. All work performed by or for the Respondent pursuant to this Order shall be under the direction and supervision of an individual who has demonstrated expertise in hazardous waste site investigation. Before any work is performed, Respondent shall submit to EPA, in writing, the name, title, and qualifications of the supervisory personnel and of any contractors or subcontractors to be used in carrying out the terms of this Order. Additionally, the Respondent shall ensure that when a license is required, only licensed individuals shall be used to perform any work required by this Order.

IX. SUBMISSIONS/EPA REVIEW

51. EPA will review all written proposals, work plans, draft and final reports, and any other documents required to be submitted under this Order (the "Submission(s)"). EPA may: (a) approve the Submission; (b) approve the Submission with modifications; (c) disapprove the Submission and direct Respondent to re-submit after incorporating EPA's comments; or (d) disapprove the Submission and assume responsibility for performing all or any part of the work. EPA may also approve, modify, or disapprove of a portion of a Submission. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in (a) or (b) of this Paragraph 51.

52. Prior to EPA's written approval (with or without modifications), no written proposal, work plan, report, or other submission shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute approval, nor shall any oral approval or oral assurance of approval be considered as binding.

53. Upon receipt of a notice of disapproval pursuant to Paragraph 51 above, or a request for a modification, Respondent shall, within fifteen (15) days, or such longer time as specified by EPA in its notice of disapproval or request for modification, to correct the deficiencies and resubmit the written proposal, work plan, report, schedule, or other submission for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondent shall proceed, at the direction of EPA, to take any action required by any approved portion of the Submission.

54. Within ten (10) days following EPA approval of a Submission or a portion thereof, Respondent shall implement such approved document or portion thereof.

55. All written proposals, work plans, reports, and/or other submissions required by this Order are, upon approval by EPA, incorporated into this Order. Any noncompliance with such

EPA-approved written proposals, work plans, reports, specifications, schedules, and other submissions shall constitute noncompliance with this Order. Oral advice or approvals given by EPA representatives shall not relieve Respondent of its obligation to obtain formal, written approvals required by this Order.

56. In all instances in which this Order requires written submissions to be submitted to EPA, each submission must be signed by a "responsible official" such as a president, vice president, secretary, or treasurer of the corporation in charge of a principal business function, or any other person who performs similar decision-making functions for the corporation.

57. In all instances in which this Order requires written submissions to EPA, each submission must be accompanied by the following certification signed by a responsible official:

"I certify that the information contained in and accompanying this submission is true, accurate, and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the facility official having supervisory responsibility for the person who, acting upon my direct instructions, made the verification, that this information is true, accurate, and complete."

Signature: _____

Name: _____

Title: _____

X. QUALITY ASSURANCE/QUALITY CONTROL

58. Respondent shall follow EPA's guidance for sampling and analysis. Respondent shall develop a Quality Assurance Project Plan ("QAPP") for all sampling and analysis conducted under this Order. Work plans shall contain quality assurance/quality control ("QA/QC") and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in the Approved Work Plans must be approved by EPA prior to implementation; must be documented, including reasons for the deviations; and must be reported in the applicable report.

59. The name, address, telephone number, and contact person of each analytical laboratory Respondent proposes to use must be specified in the applicable work plan. Respondent shall inform the EPA Project Coordinator in advance which contract laboratory will be used by Respondent.

60. All work plans required under this Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained, and that data are sufficient to support their intended use(s).

61. Respondent shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846 Third Edition or as superseded), or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall specify and submit all such protocols for EPA's approval in the Workplan. EPA may reject any data that does not meet the requirements of the Approved Work Plan or EPA analytical methods and may require resampling and additional analysis.

62. Respondent shall notify EPA and ADEE not less than thirty (30) days in advance of any field sampling or installation activity.

63. Respondent shall ensure that laboratories it uses for analyses participate in a QA/QC program equivalent to that which is followed by EPA. EPA may conduct a performance and QA/QC audit of each laboratory chosen by Respondent before, during, or after sample analyses. Upon request by EPA, Respondent shall have its laboratory perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, resampling and additional analysis may be required.

XI. PROJECT COORDINATOR

64. EPA hereby designates as its Project Coordinator:

William Mansfield
Waste and Chemical Enforcement Branch
U.S. Environmental Protection Agency, Region 6
1201 Elm St
Dallas, Texas 75270
Phone: (214) 665-8321
Email: Mansfield.William@epa.gov

65. Within ten (10) calendar days of Respondent's receipt of this Order, Respondent shall designate a Project Coordinator and submit the designated Project Coordinator's name, address, and telephone number in writing to EPA.

66. Each Project Coordinator shall, on behalf of the party that designated the Project Coordinator, oversee the implementation of this Order and function as the principal project contact.

67. Respondent shall provide EPA with a written notice of any change in its Project Coordinator. Such notice shall be provided at least seven (7) calendar days prior to the change.

68. All communication between Respondent and EPA, and all documents, reports, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the Project Coordinator and should be transmitted electronically via Email.

69. The absence of the EPA's Project Coordinator shall not be cause for the stoppage or delay of work.

XII. IMMINENT AND SUBSTANTIAL ENDANGERMENT

70. Notwithstanding any other provision of this Order, an enforcement action may be brought against Respondent, pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and/or any other applicable statutory or regulatory authority, should EPA find that the 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 or the environment.

XIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

71. Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, Respondent pursuant to the requirements of this Order.

72. Respondent shall notify EPA and ADEE, in writing and by electronic mail, at least thirty (30) days in advance of engaging in any field activities at the Facility conducted pursuant to this Order.

73. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split and/or duplicate samples of all samples collected by Respondent pursuant to this Order.

74. Nothing in this Order shall limit or otherwise affect EPA's authority to collect samples pursuant to any applicable law, including, but not limited to, RCRA, the Clean Water Act ("CWA"), the Clean Air Act ("CAA"), and/or the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

75. Should EPA decide to collect samples, EPA will make available to the Respondent the results of sampling and/or tests or other data from the Facility similarly generated by EPA.

XIV. ON-SITE AND OFF-SITE ACCESS

76. EPA, and/or any EPA authorized representative(s) are authorized, allowed, and permitted, pursuant to Section 3007(a) of RCRA, 42 U.S.C § 6927(a), to enter and freely move about all property at the Facility following site-specific health and safety rules including rules requiring that visitors be constantly accompanied by an employee of Respondent at all reasonable times for the purposes of enforcing the requirements of RCRA including:

- (A.) Interviewing site personnel and contractors and inspecting records, operating logs, and contracts related to the Facility;
- (B) Reviewing the progress of Respondent in carrying out the terms of this Order;
- (C) Conducting such tests as EPA deems necessary;
- (D) Using a camera, video camcorder, sound recorder, or other documentary type equipment; and
- (E) Verifying the reports and data submitted to EPA by Respondent.

77. Pursuant to Section 3007(a) of RCRA, 42 U.S.C § 6927(a), Respondent shall provide access at reasonable times to the Facility and all records and documentation relating to conditions at the Facility and the activities conducted pursuant to this Order to EPA and its employees, contractors, agents, consultants, and representatives.

78. To the extent that activities required by this Order, or by any Approved Work Plan(s) prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent will use best efforts to obtain site access agreements in a timely manner from the present owners of such property. Best efforts as used in this paragraph, shall include the payment of reasonable compensation in consideration of granting access. Respondent shall ensure that EPA's Project Coordinator has a copy of any access agreement.

79. Nothing in this Order limits, constrains, or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.

XV. RECORD PRESERVATION

80. Respondent shall retain, during the pendency of this Order and for a minimum of five (5) years after its termination, a copy of all data, records, and documents now in its possession or control, or in the possession or control of its contractors, subcontractors, or representatives, or which come into the possession or control of the Respondent, its contractors, subcontractors, or representatives, which relate to the implementation of this Order. Respondent shall notify EPA, in writing, at least ninety (90) days in advance of the destruction of any such records and shall provide EPA with the opportunity to take possession of any such records. Such written

notification shall reference the caption, docket number and date of issuance of this Order and shall be addressed to via Email:

William Mansfield
Waste and Chemical Enforcement Branch
U.S. Environmental Protection Agency, Region 6
1201 Elm St
Dallas, Texas 75270
Phone: (214) 665-8321
Email: Mansfield.William@epa.gov

81. Additionally, Respondent shall provide data, records and documents retained under this Section at any time before the expiration of the five (5) year period at the written request of EPA. Nothing in this Order limits or otherwise affects Respondent's obligation to preserve records and documentation pursuant to applicable law. All employees of Respondent and all persons, including contractors who engage in activity under this Order, shall be available to and shall cooperate with EPA.

XVI. INFORMATION SUBMITTED TO EPA

82. Any information that Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

83. Respondent may assert a business confidentiality claim in the manner described in 40 C.F.R. § 2.203(b) covering all or part or any information submitted to EPA pursuant to this Order in accordance with 40 C.F.R. § 2.204(e)(4). Any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made. Respondent shall have the burden of demonstrating to EPA that such privilege exists. Justification submitted for which Respondent has asserted a claim of confidentiality as specified herein shall be disclosed by EPA only to the extent and in the manner permitted by 40 C.F.R. Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to the Respondent. Respondent shall not assert any confidentiality claim with respect to any physical, sampling, monitoring, or analytical data.

XVII. DISPUTE RESOLUTION

84. If a dispute arises under this Order, the procedure of this Section shall apply. The Parties shall make reasonable efforts to informally resolve the dispute at the Project Coordinator or immediate supervisor level.

85. If Respondent disagrees, in whole or in part, with any EPA disapproval, modification or other decision or directive made by EPA pursuant to this Order, Respondent shall notify EPA in writing of its objections, and the basis the therefore, within fourteen (14) calendar days of

receipt of EPA's disapproval, decision or directive. Such notice shall set forth the specific points of the dispute, the position which Respondent asserts should be adopted as consistent with the requirements of this Order, the basis for Respondent's position, any matters which it considers necessary for EPA's determination. Within fourteen (14) days of EPA's receipt of such written notice, EPA shall provide to Respondent its decision on the pending dispute. EPA and Respondent may confer in person or by telephone to resolve any disagreement. If an agreement is reached on the disputed issues(s), the resolution shall be written and signed by an authorized representative of Respondent and EPA.

86. EPA's decision pursuant to Paragraph 85 above shall be binding upon both parties to this Order, unless Respondent within fourteen (14) days notifies EPA in writing of its continued objection(s) and request the Director, of the designee, to convene an informal conference for purposes of discussing Respondent's objections and the reasons for EPA's determination. The Director shall issue a written decision within fourteen (14) days from the date of the informal conference. The failure to invoke these Dispute Resolution procedures shall constitute a waiver of the right to contest a specific requirement of this Order.

87. In any Dispute, Respondent shall have the burden of showing that EPA's position, including without limitation any interpretation of the terms and conditions of this Order and of applicable federal and state law and regulations, was arbitrary and capricious or otherwise not in accordance with law.

88. Except as provided in Paragraph 85 above, the existence of a dispute, as defined in this Section, and EPA's consideration of matters placed into dispute, shall not excuse, toll or suspend any compliance obligations or deadline required pursuant to this Order during the pendency of the dispute resolution process. Notwithstanding any other provisions of this Order, no action or decision by EPA pursuant to this Order, shall constitute final agency action giving rise to any right to judicial review.

89. During the pendency of the dispute resolution process regarding a particulate issue, Respondent shall continue to perform all other aspects of the Order, unless EPA decides that the disputed matter is integral to one or more requirements/areas to be performed under this Order and EPA communicates in writing the relevance of the disputed issue and the further performance of one or more requirements/areas of the Order.

XVIII. FORCE MAJEURE

90. Respondent shall perform the requirements of this Order in the manner and within the time set forth herein, unless performance is prevented or delayed by events which constitute a force majeure.

91. Respondent shall have the burden of proving that any delay is or will be caused by a force majeure. EPA shall make the final determination as to whether certain events constitute a force majeure.

92. For the purpose of this Order, a force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, its contractor, or any entity controlled by Respondent that delays the performance of any obligations under this Order despite Respondent's best efforts to fulfill the obligation. Such events do not include: 1) increased costs of performance; 2) changed economic circumstances; 3) failure to obtain federal, state, or local permits; or 4) normal weather conditions, which could have been overcome by due diligence.

93. In the event of a force majeure, Respondent shall notify EPA, orally and by electronic or facsimile transmission as soon as possible, but no later than 48 hours after Respondent becomes aware or should have been aware of the force majeure event and shall within five (5) days after Respondent becomes aware or should have become aware of the force majeure event to notify EPA in writing of the event(s), which Respondent claims constitute the force majeure. Such written notice shall state the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay and an estimated timetable for implementation of these measures. Failure of Respondent to comply with this force majeure notice provision of this Order shall constitute a waiver of Respondent's right to assert a force majeure claim with respect to such event. In addition to the notification requirements herein, Respondent shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Order after it becomes or should have become aware of any event that may delay such compliance.

94. If EPA determines that the failure to comply or any delay has been or will be caused by a force majeure, the time for performance of that requirement may be extended, upon EPA's approval, for a period equal to the delay resulting from such force majeure plus any additional time EPA deems reasonable for resumption of activities. The time of performance of any activity dependent on the delayed activity shall be similarly extended, except to the extent that the dependent activity can be implemented in a shorter time. EPA shall determine whether subsequent requirements are to be delayed and the time period granted for any delay. Respondent shall adopt all reasonable measures to avoid or minimize any delay caused by the force majeure. Any change in performance caused by a force majeure shall be accomplished through an amendment to this Order pursuant to Section XXII, Subsequent Modification of Order.

95. In the event that EPA and Respondent cannot agree that any delay has been or will be caused by a force majeure, or if there is no agreement on the length of the extension, Respondent may invoke the dispute resolution procedures set forth in Section XVII, Dispute Resolution.

XIX. RESERVATION OF RIGHTS

96. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Order, and to order that Respondent perform additional work, and/or to conduct the work itself.

97. EPA expressly reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Order, including, without limitation, the right to commence a civil action against Respondent seeking an order requiring compliance with this Order and/or the assessment of penalties under Section 3013(e) of RCRA, 42 U.S.C. § 6934(e), and all rights EPA has pursuant to Section 3013(d) of RCRA, 42 U.S.C. § 6934(d) to conduct monitoring, testing, and analysis at the Facility and to seek reimbursement from Respondent for the costs of such activity. This Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, defenses, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, the CWA, the CAA, the Safe Drinking Water Act or any other statutory, regulatory, or common law enforcement authority of the United States.

XX. OTHER APPLICABLE LAWS

98. All actions required to be taken by Respondent pursuant to this Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws, regulations, permits, and ordinances.

99. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA, or any other applicable federal, state, or local laws, regulations, permits, and ordinances.

100. This Order is not and shall not be interpreted to be a permit, or as a ruling or a determination of any issue related to a permit under federal, state or local law. This Order shall not in any way affect Respondent's obligation, if any, to secure such a permit, nor shall this Order be interpreted in any way to affect or waive any of the conditions or requirements that may be imposed by such permit, nor of Respondent's right to appeal any conditions of such permit. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XXI. OTHER CLAIMS

101. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arisen out of or relating in any way to the generation, storage, treatment, handling, transportation, release, and/or disposal of any solid wastes, hazardous wastes, hazardous constituents, hazardous substances, pollutants, or contaminants found at, taken to, or migrating from the Facility.

102. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts of omissions of Respondent or its agents, contractors, subcontractors or other representatives.

103. Neither the United States nor EPA shall be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from, or on account of, any act or omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Order.

XXII. SUBSEQUENT MODIFICATION OF ORDER

104. This Order may only be modified by written amendment signed by the undersigned EPA Region 6 Director of Enforcement Compliance Assurance Division. Modifications in any schedule adopted pursuant to this Order may be made in writing by EPA's Project Coordinator.

105. No informal advice, guidance, suggestions, or comments by EPA shall be construed to modify the requirements of this Order. Routine communications exchanged verbally, in person, by telephone or by electronic mail between the parties to facilitate the orderly conduct of work contemplated by this Order shall not alter or waive any rights and/or obligations of the parties under this Order.

XXIII. SEVERABILITY

106. If any provision or authority of this Order, or the application of this Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall not be affected thereby and shall remain in full force.

XXIV. TERMINATION AND SATISFACTION

107. Respondent may seek termination of this Order by submitting to EPA a written document which indicates Respondent's compliance with all requirements of this Order, and the associated dates of approval correspondence from EPA. The provisions of this Order shall be deemed satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement for Record Preservation and Reservation of Rights" (Acknowledgment).

108. The Acknowledgment shall specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this Order, including any additional work determined by EPA to be required pursuant to this Order, have been satisfactorily completed. The Acknowledgment shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder, including, but not limited to, Section XV., Record Preservation;

Section XIX., Reservation of Rights; Section XX., Other Applicable Laws; and Section XXI., Other Claims.

XXV. OPPORTUNITY TO CONFER

109. In accordance with Section 3013(c) of RCRA, 42 U.S.C. § 6934(c), Respondent and/or its representative may confer in person or by call with EPA regarding the Respondent's written proposal. This opportunity to confer with EPA may be pursued by the Respondent either before or after the written proposal is due, but not later than sixty (60) days after the issuance of this Order.

110. The scheduling of a conference with EPA does not relieve Respondent of the obligation to submit the written proposal required under Section VI., Order, within thirty (30) days of the date of issuance of this Order, or to implement the proposal once approved by EPA.

111. At the conference described above, Respondent may appear in person and/or by attorney or other representative.

112. Any request for a conference with EPA, and other questions regarding this Order should be directed to Mr. Fred Deppe via email at Deppe.Fred@EPA.gov and Ms. Marcia Moncrieffe at Moncrieffe.Marcia@EPA.gov.

113. If Respondent fails to request a conference within the time periods specified in this Section or fails to agree upon a date to schedule such conference within the time periods specified in this Section, Respondent shall be deemed to have waived the opportunity under Section 3013(c) of RCRA to confer with EPA regarding the Respondent's written proposal, as set forth in Paragraph 109 above.

XXVI. POTENTIAL CONSEQUENCES OF FAILURE TO COMPLY

114. If EPA determines that Respondent is not able to conduct the activities required by this Order in a satisfactory manner, or if actions carried out by Respondent are deemed unsatisfactory, then EPA or its representatives may conduct such monitoring, testing and analysis deemed reasonable by EPA to ascertain the nature and extent of the hazard at the property and/or Facility of Respondent, or authorize the state or any other person to conduct such monitoring, testing, and analysis. Respondent may then be ordered to reimburse EPA or its representatives, or the state or other person authorized by EPA, for the costs of such activity pursuant to Section 3013(d) of RCRA, 42 U.S.C. § 6934(d).

115. In the event Respondent fails or refuses to comply with the terms and provisions of this Order, EPA may commence a civil action in accordance with Section 3013(e) of RCRA, 42 U.S.C. § 6934(e), to require compliance with such Order and to assess a civil penalty not to exceed \$6,500 for each day during which such failure or refusal occurs.

XXVII. EFFECTIVE DATE

116. This Order shall be effective ten (10) days after the date of issuance, i.e., the date on which it is signed by the EPA Region 6 Director of Enforcement Compliance Assurance Division.

**IT IS SO ORDERED:
BY U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION**

DATE: May 14, 2024

BY:  Digitally signed by
CHERYL SEAGER
Date: 2024.05.14
09:17:27 -05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6
FOR COMPLAINANT

**IN THE MATTER OF: ORG CHEM Group
DOCKET NO: USEPA Docket No. RCRA-06-2024-0924**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing RCRA ORDER REQUIRING MONITORING, TESTING, ANALYSIS AND REPORTING, Docket No. RCRA-06-2024-0924, was filed with me, the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm St., Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in following manner to the email addresses below:

Copy via Email to Complainant, EPA:

Moncrieffe.marcia@epa.gov

Copy via Email to Respondent:

Eddie.Lewis@nortonrosefulbright.com.

Bob.Geenslade@nortonrosefulbright.com.

KElder@chem-group.com.

ORG CHEM Group
847 Blacksnake Road
Hot Springs, AR 71913

 5/14/2024

Name and Date: Lorena Vaughn
Regional Hearing Clerk
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270-2102