

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
BEFORE THE ADMINISTRATOR

FILED
3/16/17
11:03 AM
OFFICE OF THE ADMINISTRATOR
EPA REGION 6

IN THE MATTER OF:	§	EPA DOCKET NO.
	§	RCRA-06-2016-0914
Sloan Valve Company	§	
	§	
Augusta, Woodruff County	§	COMPLAINT, COMPLIANCE ORDER
State of Arkansas	§	AND NOTICE OF OPPORTUNITY
	§	FOR A HEARING
RESPONDENT	§	
	§	
	§	

ADMINISTRATIVE COMPLAINT

This Administrative Complaint, Compliance Order, and Notice of Opportunity for a Hearing (Complaint) is issued under authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resources Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6928(a). This authority is exercised through a delegation to the Regional Administrator for EPA Region 6, and a re-delegation to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (Complainant). This Complaint is also being issued in accordance with 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. Part 22. The Complainant provided notice of the commencement of this action to the State of Arkansas in accordance with section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). In support of this Complaint, the Complainant alleges the following:

I. NATURE OF THE ACTION

1. This is an administrative action brought against Sloan Valve Company (Respondent) as authorized by section 3008(a) of RCRA, 42 U.S.C. § 6928(a), seeking assessment of penalties against Respondent and requiring Respondent's compliance to resolve multiple violations of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, the statutory provisions that regulate the disposal of hazardous wastes.
2. The requirements of Subtitle C of RCRA include the requirements of the authorized program in a State which has been authorized to carry out a hazardous waste program under section 3006 of RCRA, 42 U.S.C. § 6929.
3. EPA granted final authorization to the State of Arkansas for its base hazardous waste program, effective January 25, 1985, with multiple program revisions approved since that time, as referenced in 40 C.F.R. § 272.201.
4. Two State Acts, the Arkansas Hazardous Waste Management Act, as amended, and the Arkansas Resource Reclamation Act, as amended, set the legal framework for the State's hazardous waste management program. In addition to and based on this framework, the Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission promulgated *APC&EC Regulation No. 23 (Hazardous Waste Management)*, which serves as the basic regulation for administration of the State's hazardous waste management program.
5. This administrative action concerns Respondent's violations of requirements in the authorized program for the State of Arkansas, namely several regulatory provisions in APC&EC Regulation No. 23. For ease of reference, Arkansas regulatory provisions cited below are accompanied by corresponding federal regulatory provisions.

II. PRELIMINARY ALLEGATIONS

6. Respondent is a Delaware corporation authorized to do business in the State of Arkansas.
7. Respondent is a “person” as defined in APC&EC Regulation No. 23 § 260.10 [40 C.F.R. § 260.10].
8. Respondent owns and operates a facility located at 2719 Business Highway 33 in Augusta, Arkansas, where it conducts brass foundry and brass valve casting operations and disposes of materials in an on-site landfill (the “Facility”).
9. Respondent’s Facility is a “facility,” and Respondent is its “owner” and “operator” as these terms are defined in APC&EC Regulation No. 23 § 260.10 [40 C.F.R. § 260.10].
10. On or about March 8, 1993, Respondent submitted an EPA Form 8700-12 to EPA and the State of Arkansas that was marked as a “subsequent notification” and notified regulators that the Facility is a “Generator” of hazardous waste in amounts “Greater than 1000 kg/mo.”
11. On or about June 24-26, 2014, Respondent’s Facility was inspected by representatives of EPA under the authority of section 3007 of RCRA, 42 U.S.C. § 6927.
12. At the time of inspection and at all times relevant to the violations alleged in this Complaint, Respondent was a “Generator” of hazardous waste in amounts greater than 1000 kg per month.
13. A Generator, as defined in APC&EC Regulation No. 23 § 260.10 [40 C.F.R. § 260.10], is “any person, by site, whose act or process produces hazardous waste identified or listed in Section 261 of this regulation or whose act first causes a hazardous waste to become subject to regulation.”

A. Facility Operations

14. Respondent's facility manufactures plumbing fixtures and utilizes thermally moldable foundry sand to create brass molding forms. The sand is cycled through the process multiple times until it is no longer suitable for use.
15. Foundry sand that is not suitable for reuse ("Spent Sand") is contaminated with high amounts of lead metal due to repeated exposure to leaded brass alloy.
16. When Spent Sand is collected and designated as a material that will not be reused in the process it becomes "spent material" as defined at APC&EC Regulation No. 23 § 261.1(c)(1) [40 C.F.R. § 261.1(c)(1)].
17. Spent material is a "solid waste" when it is "reclaimed"; moreover, solid waste includes discarded materials that are "disposed of," as provided by APC&EC Regulation No. 23 § 261.2 [40 C.F.R. 261.2].
18. Before disposal, Spent Sand is sent to a location known as the Ball Mill Building. Although Spent Sand is there processed to remove and reclaim any remaining pieces of brass, the Spent Sand enters the Ball Mill Building as a solid waste and remains so upon leaving for disposal in the on-site landfill.
19. Lead contamination levels in Spent Sand using the toxicity characteristic leaching procedure (TCLP) exceed the regulatory level of 5.0 mg/L provided at APC&EC Regulation No. 23 § 261.24(b), Table 1 [40 C.F.R. § 261.24(b)]. Because it exceeds the regulatory limit, Spent Sand exhibits the characteristic of lead toxicity. Solid waste that exhibits the "characteristic of toxicity" is hazardous waste.

20. Spent Sand is a “hazardous waste” as defined at APC&EC Regulation No. 23 § 261.3

[40 C.F.R. § 261.3]. Specifically, the material is lead-bearing hazardous waste with the EPA Hazardous Waste Number (waste code) D008.

21. Spent Sand also contains lead as an “underlying hazardous constituent,” as defined at APC&EC Regulation No. 23 § 268.2(i) [40 C.F.R. § 268.2(i)].

22. The Facility manages several other waste streams that contain detectable or high lead concentrations, including “dust” collected at the Sand Plant Dust Collector and Pangborn Dust Collector. The dust is primarily composed of small particles and fines of the sands used in the Foundry operations. Like Spent Sand, dust is ultimately disposed of in the on-site landfill.

B. Respondent’s Dubious Treatment of Hazardous Waste

23. Respondent operates an on-site landfill that is permitted by the State of Arkansas for disposal of non-hazardous foundry waste.

24. Respondent’s disposal of waste materials, including Spent Sand, in the facility’s on-site landfill is “land disposal,” as defined at APC&EC Regulation No. 23 § 268.2 [40 C.F.R. § 268.2].

25. However, any solid waste that carries hazardous waste code D008, including all Spent Sand that is routed through the Ball Mill Building, cannot be land disposed unless the waste complies with applicable treatment standards under Subsection D of APC&EC Regulation No. 23 Section 268 [subpart D of 40 C.F.R. Part 268], as required by APC&EC Regulation No. 23 § 268.9(c) [40 C.F.R. § 268.9(c)]. These requirements are commonly referred to as the land disposal restriction (“LDR”) treatment standards.

26. Respondent attempts to satisfy the applicable LDR treatment standards for D008 waste by blending it with a “lead-stabilization agent.”
27. Treatment is defined, in relevant part by APC&EC Regulation No. 23 § 260.10 [40 C.F.R. § 260.10], as “any method, technique, or process, including neutralization designed to change the physical, chemical or biological character or composition of hazardous waste...so as to render such waste non-hazardous.”
28. Respondent dry mixes Spent Sand, a D008 waste, with the lead-stabilization agent, denominated Free Flow 100 (“Free Flow”), prior to disposal in its on-site landfill.
29. According to informational materials provided by the Respondent to EPA in 2008, the “chemical reaction commences” once “Free Flow would ever come into contact with water or moisture, whether in the TCLP test or in actual conditions in the landfill.”
30. According to other informational materials provided by the Respondent to EPA in 2008, the blend “in solution...allows the reaction to take place. The TCLP procedure is simulating an exposure of materials to an acid rain environment, similar to what would occur in a landfill situation.”
31. Respondent does not use water to promote a stabilization reaction between Free Flow and Spent Sand prior to any TCLP compliance tests or prior to its land disposal. Respondent instead relies on the TCLP testing procedure and post-disposal rainfall to render the waste non-hazardous. In practical effect, Respondent uses the landfill as a treatment unit.
32. The applicable treatment standard for non-wastewater D008 waste is provided in the treatment standard table in APC&EC Regulation No. § 268.40 [40 C.F.R. § 268.40], which additionally directs that the waste “meet § 268.48 standards.”

33. The treatment standard table requires “wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for lead” to not exceed the extract measurement of “0.75 mg/L TCLP.”
34. Moreover, the “Universal Treatment Standards” table at APC&EC Regulation No. 23 § 268.48 [40 C.F.R. § 268.48] requires treatment of the “underlying hazardous constituent” of lead so it does not exceed the numerical standard of 0.75 mg/L, TCLP.
35. Compliance with the treatment standards is based on grab sampling in accordance with APC&EC Regulation No. 23 §§ 268.40(b) and 268.48(a) [40 C.F.R. §§ 268.40(b) and 268.48(a)].
36. On June 25, 2014, as part of the site inspection, EPA inspectors collected nineteen grab samples and one composite sample from various locations at the Facility, including the on-site landfill, to obtain laboratory testing of lead and other metals concentrations in each of the samples.
37. The samples were tested by the EPA Region 6 Laboratory in Houston, Texas, which produced a “Final Analytical Report” on August 7, 2014.
38. EPA Region 6 completed an inspection report on April 27, 2015, and a copy of the report including its appended photo log and the EPA laboratory’s “Final Analytical Report” was provided to the Respondent.

III. VIOLATIONS

Count One-Operation of a hazardous waste landfill without a hazardous waste permit in violation of the permit requirements of RCRA section 3005 and APC&EC Regulation No. 23 § 270 [40 C.F.R. Part 270].

39. Complainant hereby restates and incorporates by reference paragraphs 6 through 38, above.

40. Under APC&EC Regulation No. 23 § 270.1(b) [40 C.F.R. § 270.1(b)] and section 3005(a) of RCRA, 42 U.S.C. § 6925(a), any person who has not applied for and received a hazardous waste permit under section 270 of APC&EC Regulation No. 23 is prohibited from disposing of hazardous waste.
41. Respondent has neither applied for nor obtained a permit for disposing of hazardous waste or for operating a hazardous waste landfill.
42. On June 24 and 25, 2014, EPA inspectors visited Respondent's on-site landfill, where Respondent routinely and regularly disposes of Spent Sand, baghouse dust, and other foundry waste contaminated with lead metal.
43. The active area of the landfill was an exposed area of approximately 20 yards wide and 50 yards long that had recently been graded with heavy machinery.
44. Respondent's representatives informed EPA inspectors that the active area of the landfill had the exposed contents of approximately three previous years of disposal activities by the Facility.
45. Older portions of the landfill were covered with an earthen cap and not exposed for ready sample collection.
46. EPA inspectors collected twelve grab samples of disposed waste from ten approximately equally spaced points on the active area of the landfill.
47. Each sample was collected from the top two to four inches of the active disposal area of the landfill.
48. EPA laboratory TCLP results show that three landfill grab samples exhibited the characteristic of lead toxicity by exceeding the regulatory limit of 5.0 mg/L established by APC&EC Regulation No. 23 § 261.24(b), Table 1 [40 C.F.R. § 261.24(b)].

49. The grab samples exhibiting the characteristic of toxicity for lead were obtained from landfill locations #5, #6, and #9 with the following associated sample designations and TCLP results: Sample S12 (5.50 mg/L), Sample S13 (6.50 mg/L), and Sample S16 (5.85 mg/L). Accordingly, these samples are hazardous waste as defined by APC&EC Regulation No. 23 § 261.3 [40 C.F.R. § 261.3].
50. EPA obtained other sample results uniformly indicating high levels of lead and leachable lead throughout the landfill, including Sample S14 from landfill location #7 with a TCLP result of 4.99 mg/L for lead, but these samples did not exceed the regulatory level that exhibits the characteristic of toxicity.
51. At the time of inspection, Respondent was operating and actively managing a landfill containing hazardous waste.
52. Respondent was operating a landfill for hazardous waste without obtaining the required hazardous waste permit under APC&EC Regulation No. 23 Part 270 [40 C.F.R. Part 270]. Therefore, Respondent violated APC&EC Regulation No. 23 § 270.1(b) [40 C.F.R. § 270.1(b)] and section 3005(a) of RCRA, 42 U.S.C. § 6925(a).
53. Upon information and belief, this violation began as early as three years prior to the inspection on June 24-25, 2015, and Respondent remained in violation as of the filing of this Complaint.

Count Two-Failure to Comply with Treatment Standards Prior to Land Disposal in violation of APC&EC Regulation No. 23 § 268.9(c) [40 C.F.R. § 268.9(c)].

54. Complainant hereby restates and incorporates by reference paragraphs 6 through 53, above.
55. Under APC&EC Regulation No. 23 § 268.9(c) [40 C.F.R. § 268.9(c)], it is a violation to land dispose of characteristic waste that is hazardous at its point of generation unless there is

- compliance with the applicable treatment standards of Subsection D of APC&EC Regulation No. 23 Section 268 [subpart D of 40 C.F.R. Part 268].
56. Land disposal includes placement in a landfill, as provided by APC&EC Regulation No. 23 § 268.2(c) [40 C.F.R. § 268.2(c)].
57. EPA laboratory TCLP results for all twelve grab samples from all ten locations in Respondent's active landfill exceeded the numerical treatment standard for lead of 0.75 mg/L. This treatment standard applies to the Spent Sand and other D008 waste generated by the foundry.
58. EPA laboratory TCLP results for three locations in Respondent's active landfill indicated the presence of solid waste that exhibits the characteristic of toxicity for lead, i.e., lead-bearing hazardous waste [D008].
59. One of the samples of hazardous waste was designated Sample S13. Sample S13 was taken from a location where there appeared to be a relatively fresh deposit of Spent Sand. At that location, nearby bags of dust were not ruptured so as to commingle with the Spent Sand. Moreover, the area of sampling was not driven over by heavy machinery as was observed for most of the surface of the active landfill.
60. On June 25, 2014, EPA inspectors also collected a grab sample of Spent Sand, designated Sample S05, from Respondent's dump truck that was carrying a load of waste from the Ball Mill Building to the on-site landfill for disposal.
61. EPA laboratory TCLP results for Sample S05 indicated lead levels of 1.14 mg/L. This result exceeds the applicable treatment standards in the LDR regulations.

62. Accordingly, Respondent violated APC&FC Regulation No. 23 § 268.9 [40 C.F.R. § 268.9]

by disposing of characteristic waste that is hazardous at its point of generation without adequate treatment or compliance with the applicable treatment standards.

63. Upon information and belief, this violation began as early as three years prior to the inspection on June 24-25, 2015, and Respondent remained in violation as of the filing of this Complaint.

Count Three-Failure to operate the facility to minimize the release of hazardous waste to air, soil, or surface water as required by APC&EC Regulation No. 23 § 265.31 [40 C.F.R. § 265.31].

64. Complainant hereby restates and incorporates by reference paragraphs 6 through 63, above.

65. As allowed by APC&EC Regulation No. 23 § 262.34, a generator of hazardous waste may accumulate hazardous waste on-site without a permit, provided the generator complies with the conditions for that permit exemption.

66. One condition provided in APC&EC Regulation No. 23 § 262.34(a)(4) [40 C.F.R.

§ 262.34(a)(4)] is that a generator of more than 1,000 kg of hazardous waste in a calendar month must meet the requirements of APC&EC Regulation No. 23 § 265 Subsection C [40 C.F.R. § 265 Subpart C] in order to obtain the permit exemption.

67. Respondent's Facility is a generator of more than 1,000 kg of hazardous waste each month and, in order to accumulate waste without a permit, must thereby comply with APC&EC Regulation No. 23 § 265.31 [40 C.F.R. § 265.31], which specifies: "Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

68. Respondent accumulates hazardous waste on-site and has neither applied for nor obtained the necessary permit to do so.
69. On June 24, 2014, EPA inspectors visited a concrete pad area described in the inspection report as the “North Baghouse Pad.”
70. The North Baghouse Pad is at the site of the sand plant baghouse, which generally produces three 2,000 lb. bags of baghouse dust per day. The baghouse dust, a lead-bearing waste, is regularly generated, managed, and removed from this area.
71. A photograph of the area designated as the North Baghouse Pad is included in the inspection report under “Appendix 1, Inspection Photos.”
72. On the soil on the periphery of the concrete pad, EPA inspectors observed a material that contrasted in color and appearance with the underlying soil. This material was visually similar to the sand and dust the Facility generates as waste from its use of sand in brass molding forms.
73. On June 25, 2014, the observed material was still present, and EPA inspectors collected a multi-point composite sample from the perimeter of the North Baghouse Pad that was designated Sample S01.
74. EPA laboratory TCLP results for Sample S01 revealed lead contamination at 72.8 mg/L, greatly exceeding the regulatory level for the characteristic of toxicity for lead at 5 mg/L.
75. Lead contaminated material on the surrounding soil of the North Baghouse Pad was present as a result of Respondent’s failure to maintain and operate the facility to minimize the possibility of an “unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents” to air and to soil which could threaten human health and the environment.

76. Therefore, Respondent failed to meet all conditions found in APC&EC Regulation No. 23 § 262.34 and did not qualify for the permit exemption. As a result, Respondent must comply with the requirements of APC&EC Regulation No. 23, Section 265, for those facilities that should have obtained a permit, including section 265.31.

77. For the reasons set out above, Respondent failed to minimize the possibility of releases of hazardous waste in this area and violated APC&EC Regulation No. 23 § 265.31 [40 C.F.R. § 265.31].

78. Upon information and belief, Respondent violated this requirement no later than the day before EPA's inspection and remains in violation as of the filing of this Complaint by not removing the lead contamination from the soil and not changing its operational practices to minimize the possibility of releases of hazardous waste to soil and air.

Count Four-Failure to provide annual hazardous waste training or maintain records of annual hazardous waste training as required by APC&EC Regulation No. 23 § 265.16 [40 C.F.R. § 265.16].

79. Complainant hereby restates and incorporates by reference paragraphs 6 through 78, above.

80. As allowed by APC&EC Regulation No. 23 § 262.34, a generator of hazardous waste may accumulate hazardous waste on-site without a permit, provided the generator complies with the conditions for that permit exemption.

81. One condition provided in APC&EC Regulation No. 23 § 262.34(a)(4) [40 C.F.R. § 262.34(a)(4)] is that a generator of more than 1,000 kg of hazardous waste in a calendar month must comply with the training requirements of APC&EC Regulation No. 23 § 265.16 [40 C.F.R. § 265.16] in order to obtain the permit exemption.

82. Respondent's Facility, as a generator of more than 1000 kg of hazardous waste in a month, must thereby comply with APC&EC Regulation No. 23 § 265.16(c) [40 C.F.R. § 265.16(c)], which mandates that facility personnel take part in an annual review of initial hazardous waste training.
83. Additionally, under APC&EC Regulation No. 23 § 265.16(d) [40 C.F.R. § 265.1(d)], the owner or operator at the facility must maintain records that document the annual review of initial hazardous waste training.
84. Respondent accumulates hazardous waste on-site and has neither applied for nor obtained the necessary permit to do so.
85. During the June 24-26, 2014 inspection, EPA inspectors requested and collected records of employee hazardous waste training.
86. Respondent's records collected at the inspection indicate that an annual review of initial hazardous waste training did not occur in 2013.
87. As of the date of the filing of this Complaint, Respondent has not furnished records or any other evidence to EPA to demonstrate that the required annual hazardous waste training occurred in 2013.
88. Therefore, Respondent failed to meet all the conditions found in APC&EC Regulation No. 23 § 262.34 and did not qualify for the permit exemption. As a result, Respondent must comply with the requirements of APC&EC Regulation No. 23, Section 265 for those facilities that should have obtained a permit, including section 265.16.
89. For the reasons set out above, Respondent failed to train personnel in 2013 and failed to maintain records to document annual hazardous waste training of personnel in 2013 and violated APC&EC Regulation No. 23 § 265.16 [40 C.F.R. § 265.16].

Count Five-Failure to manage containers of hazardous waste as required by APC&EC

Regulation No. 23 § 265.173(a) [40 C.F.R. § 265.173(a)].

90. Complainant hereby restates and incorporates by reference paragraphs 6 through 89, above.
91. As allowed by APC&EC Regulation No. 23 § 262.34, a generator of hazardous waste may accumulate hazardous waste on-site without a permit, provided the generator complies with the conditions for that permit exemption.
92. One condition provided in APC&EC Regulation No. 23 § 262.34(a)(4) [40 C.F.R. § 262.34(a)(4)] is that a generator of more than 1,000 kg of hazardous waste in a calendar month must comply with the hazardous waste container management requirements in APC&EC Regulation No. 23, section 265, subsection I [40 C.F.R. part 265, subpart I] in order to obtain the permit exemption.
93. Respondent's Facility, as a generator of more than 1000 kg of hazardous waste in a month, must thereby comply with APC&EC Regulation No. 23 § 265.173(a) [40 C.F.R. § 265.173(a)], which requires that containers of hazardous waste "always be closed during storage, except when it is necessary to add or remove waste."
94. Respondent accumulates hazardous waste on-site and has neither applied for nor obtained the permit necessary to do so.
95. During the June 24-26, 2014 inspection, EPA inspectors observed and photo-documented open containers of hazardous waste in the Respondent's hazardous waste staging area and at the Facility's sand plant.
96. Therefore, Respondent failed to meet all the conditions found in APC&EC Regulation No. 23 § 262.34 and did not qualify for the permit exemption. As a result, Respondent must

comply with the requirements of APC&EC Regulation No. 23, Section 265 for those facilities that should have obtained a permit, including section 265.173(a).

97. For the reasons set out above, Respondent failed to manage containers of hazardous waste, as required, and violated APC&EC Regulation No. 23 § 265.173(a) [40 C.F.R. § 265.173(a)].

IV. COMPLIANCE ORDER

98. Based on the foregoing and under the authority of section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Complainant issues Sloan Valve Company the following Compliance Order:

- a. Immediately upon the Compliance Order becoming final, the Respondent shall:
 - (1) cease all land disposal of wastes that fail to meet the applicable treatment standards of Subsection D of APC&E Regulation No. 23 Section 268 [Subpart D of 40 C.F.R. Part 268];
 - (2) cease all use of a hazardous waste treatment process that depends on post-disposal chemical stabilization reactions to render such waste non-hazardous;
 - (3) only resume land disposal under a modified treatment process supported by an evaluation of representative sampling results that verifies D008 waste is rendered non-hazardous and treated to meet applicable treatment standards permanently under conditions of physical or chemical weathering and the stressors of transport and active landfill management;
 - (4) only resume land disposal of any waste subject to applicable treatment standards when compliance with those standards is demonstrated by TCLP analysis of at least one grab sample from every treated waste batch prior to disposal.

- b. Immediately upon the Compliance Order becoming final, the Respondent shall cease the use of any hazardous waste container which cannot demonstrate compliance with the hazardous waste container management requirements APC&E Regulation No. 23, section 265, subsection I [40 C.F.R. part 265, subpart I].
- c. Within 30 days of the Compliance Order becoming final, Respondent shall institute measures to ensure the operations at the North Baghouse Pad are conducted in a manner that minimizes the possibility of any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment, as required by APC&E Regulation No. 23 § 265.31 [40 C.F.R. § 265.31].
- d. Within 30 days of the Compliance Order becoming final, to the extent Respondent has not already decontaminated or disposed of contaminated materials and soil on the periphery of the North Baghouse Pad, Respondent shall also: (1) submit a statement affirming Respondent's intent to comply with APC&E Regulation No. 23 § 265.111 and § 265.114 [40 C.F.R. § 265.111 and § 265.114] and preliminarily reporting the measures Respondent expects to undertake to achieve compliance with those provisions; (2) alternatively, submitting a statement affirming the area of soil around the concrete pad is a land disposal site that requires Respondent to obtain a permit in accordance with part 270 of APC&E Regulation No. 23 [40 C.F.R. Part 270].
- e. Within 30 days of the Compliance Order becoming final, Respondent shall submit to EPA a written statement indicating whether it intends to: (1) continue the

operations of its onsite landfill by removing or decontaminating all landfill contents exposed and newly added since the time of EPA inspection on June 24, 2014, by meeting the standards of APC&E Regulation No. 23 § 265.111 and § 265.114 [40 C.F.R. § 265.111 and § 265.114], (2) obtain a permit to authorize active operations of the landfill as a hazardous waste management unit in compliance with part 270 of APC&E Regulation No. 23 [40 C.F.R. Part 270], or (3) close the unit as a landfill in compliance with post-closure requirements of APC&E Regulation No. 23, Subsection G and the financial assurance requirements of APC&E Regulation No. 23, Subsection H and obtain a post-closure permit in compliance with APC&E Regulation No. 23 § 270.1(c) [40 C.F.R. Part 270]. Respondent shall provide for EPA review and approval a plan and schedule to achieve prompt compliance with the selected measure(s) under this subparagraph. Respondent must adhere to the compliance plan and schedule that is approved by EPA.

- f. Within 90 days of the Compliance Order becoming final, Respondent shall submit a statement to EPA indicating its compliance with subparagraphs (a)-(c) with all documentation demonstrating such compliance. Respondent's submission may reference information already submitted to EPA. If earlier submitted information is referenced, dates and other identifying aspects of these prior submissions should be indicated. If Respondent is not in compliance with a particular requirement, the notice shall state the reasons for such noncompliance and shall provide a schedule for achieving prompt compliance with the requirement.

- g. In all instances in which this Compliance Order requires written submission to EPA, the Respondent's submission shall be signed by a responsible official and shall include the following certification:

"I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or the 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 fine and imprisonment for knowing violations."

All notifications and documents required by this Compliance Order to be submitted to EPA shall be sent to the following:

Mark Potts, Chief
Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attention: John Penland

- h. Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise release Respondent from liability from any violations at the facility. Further, nothing in this Compliance Order shall waive, prejudice or otherwise affect EPA's right to enforce any applicable provisions of law regarding the facility.

V. CIVIL PENALTIES

99. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the assessment of a civil monetary penalty against any person who violates any requirement of RCRA Subtitle C, EPA's regulations thereunder, or any regulation of a state hazardous waste program that has been authorized by EPA, of not more than \$25,000 for each day of violation. This amount

has been adjusted upward to \$37,500.00 for each day of violation by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

100. On the basis of the violations described above, Complainant has determined that the Respondent is subject to civil penalties. Complainant proposes to assess penalties based on the considerations described below.

101. Complainant will consider, among other factors, the Respondent's ability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with the Respondent.

102. To the extent that facts and circumstances unknown to Complainant at the time of the issuance of the Complaint become known after the Complaint is issued, such facts and circumstances may also be considered as a basis for increasing or decreasing the civil penalty, as appropriate.

103. For the purpose of determining the amount of a civil penalty to be assessed under RCRA, RCRA section 3008(a)(3), 42 U.S.C. § 6928(a)(3), requires EPA to take into account the seriousness of the violation and any good faith efforts by the Respondent to comply with applicable requirements (i.e., the "statutory factors"). In developing a civil penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the aforementioned statutory factors and EPA's June 2003 "RCRA Civil Penalty Policy" ("RCRA Penalty Policy"), a copy of which is enclosed with this Complaint (Enclosure A). This RCRA Penalty Policy provides a rational, consistent, and equitable method for applying the statutory factors to particular cases. Based on the foregoing allegations, Complainant proposes the assessment of a civil penalty against the Respondent for each day of non-compliance for each violation.

104. The proposed penalty does not constitute a “demand” as that term is defined at 28 U.S.C.

§ 2412. In accordance with 40 C.F.R. § 22.14(a)(4)(ii), a brief explanation of the severity of each violation alleged and the days of violations (where applicable) is provided below.

Penalties are sought for every alleged violation under the statutory penalty authority of RCRA.

105. Following 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred. See 40 C.F.R. § 22.19(a)(4).

106. Count One: Operation of a Hazardous Waste Landfill without a RCRA Permit

- a. Potential for Harm: The potential for harm posed by this violation is “major.” Samples collected from Respondent’s landfill indicate that the landfill contains not only lead waste that fails to meet LDR treatment standards but also some proportion of hazardous waste. The landfill is not designed or operated to the exacting standard required for a hazardous waste landfill to prevent the release of hazardous waste or hazardous constituents to the environment. According to Respondent’s RCRA notifications this landfill receives more than 3 million pounds of treated waste annually.
- b. Deviation from Regulatory Requirement: Respondent’s deviation from the regulatory requirements presented by this violation is “major.” The landfill permitting process is designed to ensure that landfills in hazardous waste operation are designed and constructed at a high enough standard to prevent migration of hazardous waste and hazardous constituents to the environment. Such a permit would also put into place standards intended to ensure that the landfill is operated in an environmentally protective manner. The permitting process further requires that the facility acquire financial assurance sufficient to ensure that the landfill is closed in a protective manner and that long term monitoring is established. Respondent’s landfill is not designed or operated in a manner comparable to the requirements for a hazardous waste landfill. Further, the financial assurance maintained by Sloan for its Subtitle D landfill would be insufficient to properly close and monitor a hazardous waste landfill.
- c. Economic Benefit of Non-Compliance: Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent as a result of its failure to obtain a permit and adhere to permit requirements.
- d. Days of violation: At the time of this Complaint, Respondent continues to actively manage the on-site landfill with hazardous waste. The portion of exposed landfill that was actively managed at the time of inspection represented

three prior years of disposal activities. Penalties are sought for as many as three years of violation and no fewer than 180 days of violation.

107. Count Two: Failure to Comply with Treatment Standards Prior to Land Disposal

- a. Potential for Harm: The potential for harm posed by this violation is “major.” The LDR treatment standards were designed to set a cost-effective, minimum standard for the treatment of hazardous waste throughout the regulated community. Failure to adequately meet the promulgated standards poses both a risk of harm to the environment and undermines the level playing field that the standards were intended to establish.
- b. Deviation from Regulatory Requirement: Respondent’s deviation from the regulatory requirements is “major.” The LDR rules specifically prohibit the land disposal of hazardous waste and/or waste which has been treated but which exceeds the 0.75mg/L treatment standard for hazardous constituents. Therefore, any act of disposal of a prohibited waste is a major deviation from this requirement.
- c. Economic Benefit of Non-Compliance: Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent as a result of the failure to adhere to requirements that are part of the land disposal prohibition.
- d. Days of violation: Consistent with the circumstances described above for Count Two, penalties are sought for as many as three years of violation and no fewer than 180 days of violation.

108. Count Three: Failure to operate the facility to minimize the release of hazardous waste to soil and to air.

- a. Potential for Harm: The potential for harm posed by this violation is “major” and presents a major risk to human health and the environment. The material sample collected from the area adjacent to the North Baghouse Pad contained a level of leachable lead of 72.8mg/L TCLP. The North Baghouse Pad is a Solid Waste Management area where baghouse dust containing high levels of lead is managed. This contaminated material was visibly evident at the time of the inspection. Though facility employees are routinely present in the area, there were no evident efforts to investigate or remediate the contamination. Lead is a highly toxic metal to humans and can adversely affect ecosystems. This violation is also tantamount to an unlawful disposal of hazardous waste on the soil inasmuch as the contaminating material was abandoned and discarded at the time of the sample collection.
- b. Deviation from Regulatory Requirement: Respondent’s deviation from the regulatory requirements presented by its activities is “moderate.” It was not evident that a discrete release to the environment such as a spill occurred. Rather, the contamination is the likely a result of routine and systematic management of

the solid waste at the North Baghouse Pad. Despite the visual evidence of the presence of a contaminated material, the facility took no action to minimize the contamination or determine its source.

- c. Days of violation: Respondent's release of hazardous constituents onto the soil began an indeterminate number of days before the EPA inspection. Lead contamination of the soil persisted an indeterminate number of days after the inspection. On knowledge and belief, Respondent's practices that fail to minimize the possibility of releases have continued to the time of filing. Penalties are sought for no fewer than 180 days of violation.

109. Count Four: Failure to Provide Annual Hazardous Waste Training

- a. Potential for Harm: The potential for harm posed by this violation is "major." The Respondent did not train or did not document required training for its employees for 2013, the year immediately prior to the inspection. Failure to provide regular training to employees can result in the mismanagement of hazardous waste, causing harm to both the responsible employees and the environment. Facility training would appropriately cover hazardous waste identification and hazardous waste container management. Proper training may have avoided at least two of the other violations at issue in the Complaint.
- b. Deviation from Regulatory Requirement: Respondent's deviation from the regulatory requirements presented by its failure to train or maintain training records is "moderate." The records review made evident that initial employee training was provided.
- c. Economic Benefit of Non-Compliance: Complainant shall also seek assessment of a penalty that takes into account the economic benefit of non-compliance gained by Respondent as a result of its failure to train employees or maintain required training records.

110. Count Five Failure to Properly Manage Containers of Hazardous Waste

- a. Potential for Harm: The potential for harm posed by these violations is "moderate." Respondent accumulates, stores, and transports hazardous Spent Sand in open topped hoppers. At the time of this inspection, none of the containers were closed or outfitted with any kind of cover or closure device. Transportation and management of these open containers could result in a spill of the material or contribute to its mobilization in airborne dust particles.
- b. Deviation from Regulatory Requirement: Respondent's deviation from the regulatory requirements presented by the failure to keep the containers closed is "minor." The facility managed its containers in accordance with all other standards applicable to hazardous waste containers, with the exception of closure.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

111. By the Issuance of this Complaint, Respondent is notified of its opportunity to answer and request a hearing on the record in this matter.
112. If Respondent contests any material fact upon which this Complaint is based, contends that the proposed penalty or compliance order is inappropriate, or contends that it is entitled to judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk for EPA Region 6 not later than thirty (30) days after being served with this Complaint.
113. As required by 40 C.F.R. § 22.15, the Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation will be deemed denied. The failure of Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes and admission of the allegation.
114. Respondent's Answer shall also state: (a) the circumstances or arguments which are alleged to constitute the grounds of any defense; (b) the facts which Respondent disputes; (c) the basis for opposing any proposed relief, and (d) whether a hearing is requested.
115. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. §§ 554 and 556, and the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint (Enclosure B).
116. The Answer must be sent to:
- Regional Hearing Clerk (6RC-D)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

117. The Answer and other filed documents may be served on the Complainant by delivery to counsel, as follows:

Mr. Brian Tomasovic
Assistant Regional Counsel (6RC-M)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

118. As provided in 40 C.F.R. § 22.17, if Respondent fails to file a written Answer within thirty (30) days of service of this Complaint, Respondent may be deemed to have admitted all allegations made in this Complaint and waived its right to a hearing. A Default Order may thereafter be issued, and the civil penalty assessed shall become due and payable without further proceedings thirty (30) days after a Default Order becomes final.

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

VII. SETTLEMENT CONFERENCE

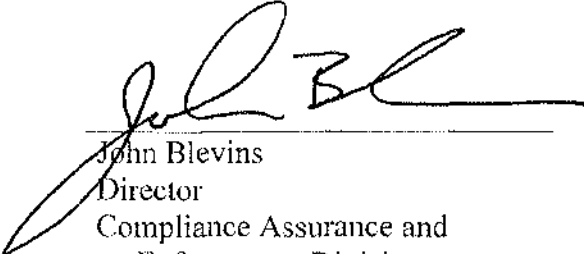
120. Whether or not Respondent requests a formal hearing or responds with an Answer, Respondent may request an informal conference in order to discuss the facts of this case and to arrive at settlement. To request a settlement conference, Respondent may contact Mr. Brian Tomasovic, Assistant Regional Counsel, at the address in paragraph 117 or by email at Tomasovic.Brian@epa.gov.

121. Please note that a request for an informal settlement conference does not extend the 30-day period during which Respondent must submit a written Answer and, if desired, a request for

a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing procedure.

122. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. Respondent is advised that no penalty reduction will be made simply because such a conference is held. As set forth in 40 C.F.R. § 22.18, any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement signed by the parties and their representatives and a Final Order issued by the Regional Judicial Officer, EPA Region 6. The issuance of that Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

Date: 2.26.16



John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

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

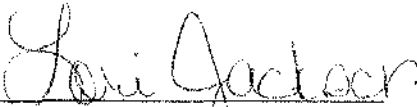
CERTIFIED MAIL, RETURN RECEIPT REQUESTED: # 7014 015000003454 9499

Corporation Service Company
Registered Agent for Sloan Valve Company
300 Spring Building, Suite 900
300 S. Spring Street
Little Rock, AR 72201

CERTIFIED MAIL, RETURN RECEIPT REQUESTED: # 7014 015000003454 9505

Director of Operations
Sloan Valve Company
P.O. Box 60
August, Arkansas 72006

Date: 03/01/2016


U.S. EPA, Region 6
Dallas, Texas