



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 JUN 28 AM 9:22
REGIONAL HEARING
CLERK

JUN 27 2007

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Mr. Robert Elefante, President
Deltech Resin Company
49 Rutherford Street
Newark, NJ 07105

Re: **In the Matter of Deltech Resin Co.**
Docket No. RCRA-02-2007-7111

Dear Mr. Elefante:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an

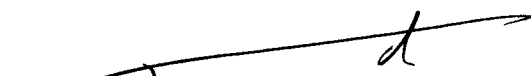
Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclose both an "Information sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and the nature of your company.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
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REGIONAL HEARING
CLERK

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In the Matter of :
: **COMPLAINT, COMPLIANCE ORDER,**
Deltech Resin Co., : **AND NOTICE OF OPPORTUNITY**
: **FOR HEARING**
:
Respondent. :
: Docket Number RCRA-02-2007-7111
Proceeding under Section 3008 of the :
Solid Waste Disposal Act, as amended. :
-----x

COMPLAINT

This is an administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. §§ 6901 et seq. (referred to collectively as the "Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at 40 C.F.R. Parts 260 - 273 and 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("complaint") serves notice of EPA's preliminary determination that Deltech Resin Co. has violated provisions of RCRA and the federally authorized New Jersey regulations concerning the handling and management of hazardous waste at its Newark, New Jersey, facility.

Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), "[a]ny State which seeks to administer and enforce a hazardous waste program pursuant to [Subchapter III, Hazardous Waste Management; 42 U.S.C. §§ 6921-6939e] may develop and...submit to the Administrator [of EPA] an application...for authorization of such program." If EPA then grants a State's request to operate such a hazardous waste program, Section 3006 further provides that "[s]uch State is authorized to carry out such program in lieu of the Federal program under this subchapter in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste...."

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey was authorized by EPA in 1999 to conduct a hazardous waste program (the "authorized State program"). 64 *Fed. Reg.* 41823 (August 2, 1999). There were subsequent changes in the scope

of the authorized State program as a result of EPA's authorization of New Jersey's regulations incorporating by reference changes to the federal program promulgated by EPA between July 2, 1993 and July 31, 1998 (including 40 C.F.R. Part 265 subpart CC regulations). 67 *Fed. Reg.* 76995 (December 16, 2002). These changes became effective February 14, 2003. Prior to such date, the authorized State program incorporated by reference, with some minor modifications, the federal program at 40 C.F.R. Parts 124, 260-266, 268 and 270, as set forth in the 1993 edition of the Code of Federal Regulations. As of February 14, 2003, the authorized State program, with some minor modifications, essentially incorporated by reference the regulations in the 1998 edition of the same parts of Title 40 of the Code of Federal Regulations. See the New Jersey Register for New Jersey's authorized regulations constituting the original authorized State program. 28 *N.J.R.* 4606 (October 21, 1996). See 31 *N.J.R.* 166 (January 19, 1999) for the New Jersey regulations authorized in 2003. New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998.

EPA is authorized to enforce the provisions of the authorized State program and retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA- Region 2, has been duly delegated the authority to institute this action. Complainant, on behalf of the Administrator of the EPA, by and through her attorneys, hereby alleges as and for her complaint against Respondent:

Jurisdictional and Background Legal Allegations

1. This is an administrative proceeding pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to assess a civil penalty against Respondent for past violations of the requirements of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e, and to require future compliance with said requirements.

2. This Tribunal has jurisdiction over the subject matter of this administrative proceeding pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).

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

4. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has already given the State of New Jersey notice of this administrative proceeding.

5. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), "[a]ny penalty assessed in the order [issued under authority of Section 3008(a)(1) of RCRA, 42 U.S.C. §

6928(a)(1)] shall not exceed \$25,000 per day of noncompliance for each violation of a requirement of [Subtitle C of RCRA].”

6. Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), to \$32,500 for any violation occurring after March 15, 2004.

7. Pursuant to each of the following provisions, an “owner” or “operator” (as those terms are defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)) of a “hazardous waste management unit” (as defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)) must obtain a permit or qualify for “interim status” (as defined in Section 3005(e) of RCRA, 42 U.S.C. § 6925(e)) in order to treat, store or dispose of such waste:

- a. Section 3005 of the Act, 42 U.S.C. § 6925; and
- b. 40 C.F.R. § 270.1(c) (1993) (N.J.A.C. 7:26G-12.1(a))

8. Pursuant to 40 C.F.R. § 262.34(a)(1)(ii) (1998) (N.J.A.C. 7:26G-6.1(a)) and 40 C.F.R. § 265.202 (1998) (N.J.A.C. 7:26G-9.1(a)), to be exempt from the RCRA permitting requirements, a “generator” (as that term is defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)) of at least 1,000 kilograms (“kgs”) of “hazardous waste” [as that term is defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a))] per calendar month must, *inter alia*, manage all hazardous waste placed in tanks in accordance with the applicable requirements of 40 C.F.R. Part 265, Subpart J (1998)(N.J.A.C. 7:26G-9.1(a)), and 40 C.F.R. §§ 265.1030 - .1090 (1998) (N.J.A.C. 7:26G-9.1(a)).

Respondent's Background

9. Respondent is Deltech Resin Co. (hereinafter “Deltech.” or “Respondent”).
10. Respondent is also known as Deltech Resins Co.
11. Respondent is a corporation organized pursuant to, and since January 26, 2005 existing under, the laws of the State of Delaware.
12. Respondent is a “person”, as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)).
13. Deltech has since September 16, 2005 owned and operated a facility located at 49 Rutherford Street, Newark, New Jersey 07105 (the “Newark facility”).

14. Prior to September 16, 2005, the Newark facility was owned and operated by the Adco Chemical Company ("Adco").

15. The Newark facility is a "facility" as that term is defined in 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1(a)).

16. On or about September 16, 2005, Deltech acquired Adco.

17. Pursuant to the aforementioned (§ 16, above) acquisition, Deltech assumed all outstanding liabilities and responsibilities of Adco, including those pertaining to Adco's ownership and operation of the Newark facility.

18. Since September 16, 2005, Respondent has been the owner and the operator of the Newark facility.

19. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, in or around August 1980, Adco notified EPA that it conducted activities involving "hazardous waste" at the Newark facility (the "1980 notification").

20. In response to the 1980 notification, EPA, in or around September 1980 provided Adco with EPA identification number NJD002154086 for the Newark facility.

21. On or about January 13, 2006, the aforementioned (§ 20, above) EPA identification number for the Newark facility was transferred to Deltech.

EPA Interactions with Respondent

22. On or about November 29, 2006, a duly designated EPA representative, pursuant to Section 3007 of the Act, 42 U.S.C. § 6927, conducted an inspection at the facility (" the 2006 inspection").

23. The purpose of the 2006 inspection was to determine Deltech's compliance with RCRA regulatory requirements with regard to its operation of the Newark facility.

24. On or about December 19, 2006, EPA sent a Notice of Violation/Information Request Letter to the Respondent ("NOV/IRL").

25. The NOV/ IRL sought, in part, information and documentation relating to Deltech's compliance at the Newark facility with the air emission requirements of 40 C.F.R. Part 265, Subparts BB and CC (N.J.A.C. 7:26G-9.1(a)).

26. On or about January 17, 2007, the Respondent submitted its response to the NOV/IRL ("NOV/IRL Response").

27. The NOV/IRL Response was prepared by an official of Deltech in the course of carrying out his duties and responsibilities as an employee of Respondent.

Deltech's Generation and Storage of Hazardous Waste at the Newark facility

28. At the Newark facility, Deltech has since September 16, 2005 manufactured resins and urethanes used, *inter alia*, in the production of paints and paint products, coatings, adhesives and varnishes.

29. In the course of the aforementioned (¶ 28, above) manufacturing activities, Deltech has generated (and continues to do so) various hazardous wastes, including those identified pursuant to 40 C.F.R. § 261 Subpart C (1993) (N.J.A.C. 7:26G-5.1(a)) as D001 waste, F003 waste and F005 waste.

30. Included among the aforementioned (¶ 29, above) hazardous waste were spent solvents, including xylene (hereinafter, collectively referred to as the "Deltech spent solvents").

31. The Deltech spent solvents have an organic concentration of at least ten percent (10%) by weight.

32. Since September 16, 2005 through at least the time of the 2006 inspection, Deltech has periodically transferred the Deltech spent solvents it generated to an above-ground hazardous waste tank for storage prior to having such waste transported off-site for disposal.

33. The aforementioned (¶ 32, above) hazardous waste storage tank at the Newark facility has a capacity 20,000 gallons.

34. At the time of the 2006 inspection, the aforementioned (¶ 33, above) hazardous waste storage tank contained the Deltech spent solvents with a volatile organic contamination ("VOC") level of over 500 parts per million ("ppm").

35. Since September 16, 2005 through at least the time of the 2006 inspection, at least 21 valves have been utilized (and continue to be) in the transport of the Deltech spent solvents from the reactors where they were generated to the aforementioned (¶ 33, above) hazardous waste storage tank.

36. Since September 16, 2005 through at least the time of the 2006 inspection, at least two pumps have been utilized (and continue to be) in the transport of the Deltech spent solvents from the reactors where they were generated to the aforementioned (¶ 33, above) hazardous waste storage tank.

37. Since September 16, 2005 through at least the time of the 2006 inspection, Respondent has generated (and continues to do so) at the Newark facility at least 1,000 kgs of the

Deltech spent solvents in each calendar month.

38. Since September 16, 2005 through at least the time of the 2006 inspection, Respondent, at the Newark facility, has from time to time stored hazardous waste, including the Deltech spent solvents.

**Count 1: Failure to Conduct Required Monitoring of Pumps
Used to Transport Organic Hazardous Waste**

39. Complainant realleges each allegation contained in paragraphs "1" through "38," inclusive, as if fully set forth herein.

40. Pursuant to 40 C.F.R. § 265.1052(a)(1) (1993) (N.J.A.C. 7:26G-9.1(a)), each pump in "light liquid service" (as defined by reference in 40 C.F.R. § 265.1051 to the definition found in 40 C.F.R. § 264.1031) shall be monitored monthly to detect leaks by methods specified in 40 C.F.R. § 265.1063(b) (1993) (N.J.A.C. 7:26G-9.1(a)).

41. Pursuant to 40 C.F.R. § 265.1063(b)(1) (1993) (N.J.A.C. 7:26G-9.1(a)), monitoring shall comply with Reference Method 21 set forth in 40 C.F.R. Part 60.

42. Pursuant to 40 C.F.R. § 265.1050(e) (1993) (N.J.A.C. 7:26G-9.1(a)), equipment that contains or contacts hazardous waste with an organic concentration of at least 10% by weight for less than 300 hours is excluded from, *inter alia*, the monitoring requirements of 40 C.F.R. Part 265, Subpart BB, provided such equipment is identified as required in 40 C.F.R. § 265.1064(g) (1993) (N.J.A.C. 7:26G-9.1(a)).

43. Since September 16, 2005 through at least the time of the 2006 inspection, Respondent had not identified, either by list or location, equipment at the Newark facility that contained or contacted hazardous waste with an organic concentration of at least 10% by weight for less than 300 hours per calendar year.

44. Since September 16, 2005 through at least the time of the 2006 inspection, Deltech was required to conduct monthly monitoring of each of the aforementioned (¶ 36, above) two pumps using Reference Method 21.

45. Deltech did not conduct the aforementioned (¶ 44, above) monthly monitoring of said two pumps.

46. Respondent's aforementioned (¶ 45, above) failure to conduct the monthly monitoring of said two pumps constitutes a violation of 40 C.F.R. § 265.1052(a)(1) (1993) (N.J.A.C. 7:26G-9.1(a)).

47. The requirement to conduct the aforementioned (¶ 44, above) monthly monitoring of

the two pumps as set forth in 40 C.F.R. § 265.1052(a)(1) (1993) (N.J.A.C. 7:26G-9.1(a)) constitutes a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

**Count 2: Failure to Conduct Required Monitoring of Valves
in Light Liquid Hazardous Waste Service**

48. Complainant realleges each allegation contained in paragraphs"1" through "38", inclusive, as if fully set forth herein.

49. Pursuant to 40 C.F.R. §265.1057(a) (1993) (N.J.A.C. 7:26G-9.1(a)), each valve in light liquid service shall, *inter alia*, be monitored monthly to detect leaks in accordance with the provisions of 40 C.F.R. § 1063(b) (1993) (N.J.A.C. 7:26G-9.1(a)).

50. The aforementioned (¶ 49, above) leak detection monitoring must comply with Reference Method 21 set forth in 40 C.F.R. Part 60.

51. Pursuant to 40 C.F.R. § 265.1050(e) (1993) (N.J.A.C. 7:26G-9.1(a)), equipment that contains or contacts hazardous waste with an organic concentration of at least 10% by weight for less than 300 hours is excluded from, *inter alia*, the monitoring requirements of 40 C.F.R. Part 265, Subpart BB, provided such equipment is identified as required in 40 C.F.R. § 265.1064(g) (1993) (N.J.A.C. 7:26G-9.1(a)).

52. Since September 16, 2005 through at least the time of the 2006 inspection, Respondent had not identified, either by list or location, equipment at the Newark facility that contained or contacted hazardous waste with an organic concentration of at least 10% by weight for less than 300 hours per calendar year.

53. Since September 16, 2005 through at least the time of the 2006 inspection, Deltech was required to conduct monthly monitoring of each of the aforementioned (¶ 35, above) 21 valves using Reference Method 21.

54. Deltech did not conduct the aforementioned (¶ 53, above) monthly monitoring of said 21 valves.

55. Respondent's aforementioned (¶ 54, above) failure to conduct the monthly monitoring of said 21 valves constitutes a violation of 40 C.F.R. § 265.1057(a) (1993) (N.J.A.C. 7:26G-9.1(a)).

56. The requirement to conduct the aforementioned (¶ 53, above) monthly monitoring of the 21 valves as set forth in 40 C.F.R. § 265.1057(a) (1993) (N.J.A.C. 7:26G-9.1(a)) constitutes a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

Count 3: Failure To Determine Maximum Organic Vapor Pressure

57. Complainant realleges each allegation contained in paragraphs "1" through "38," inclusive, as if fully set forth herein.

58. The requirements of Subpart CC of 40 C.F.R. Part 265 (1998) (N.J.A.C. 7:26G-9.1(a)) apply to owners and operators of all facilities that treat, store or dispose of hazardous waste in, *inter alia*, tanks subject to the requirements of Subpart J of 40 C.F.R. Part 265 (1993) (N.J.A.C. 7:26G-9.1(a)).

59. The regulation at 40 C.F.R. § 265.1085(b)(1) (1998) (N.J.A.C. 7:26G-9.1(a)) states, in relevant part, for a tank storing hazardous waste that meets the conditions set forth in 40 C.F.R. § 265.1085(b)(1), the owner or operator must control air pollution emissions from such tank in accordance with the Tank Level 1 controls set forth in 40 C.F.R. § 265.1085(c) (1993) (N.J.A.C. 7:26G-9.1(a)).

60. Pursuant to 40 C.F.R. 265.1085(c) (1998) (N.J.A.C. 7:26G-9.1(a)), owners and operators controlling air pollution emissions from a hazardous waste storage tank using Tank Level 1 controls shall meet the requirements specified in said provision.

61. Among the aforementioned (¶ 60, above) requirements of 40 C.F.R. 265.1085(c) (1998) (N.J.A.C. 7:26G-9.1(a)) is the one set forth in sub-paragraph (c)(1), which mandates that the owner or operator of a hazardous waste storage tank determine the maximum organic vapor pressure for a hazardous waste to be managed in a tank using Tank Level 1 controls before the first time the hazardous waste is placed in the tank.

62. Since September 16, 2005, Deltech has been (and continues to be) both the owner and operator of the aforementioned (¶s 32, 33 and 34, above) storage tank.

63. Since September 16, 2005 through at least the time of the 2006 inspection, Respondent had been storing the Deltech spent solvents — organic hazardous wastes with a volatile organic contamination of greater than 500 ppm (by weight) — in the aforementioned (¶s 32, 33 and 34, above) storage tank.

64. At no time during the period between September 16, 2005 through at least the time of the 2006 inspection did Respondent determine the maximum organic vapor pressure in the aforementioned (¶s 32, 33 and 34, above) storage tank.

65. Respondent's aforementioned (¶ 64, above) failure to determine the maximum organic vapor pressure constitutes a violation of 40 C.F.R. § 265.1085(c)(1) (1998) (N.J.A.C. 7:26G-9.1(a)).

66. The requirement to determine the aforementioned (¶ 64, above) maximum organic vapor pressure as set forth in 40 C.F.R. § 265.1085(c)(1) (1998) (N.J.A.C. 7:26G-9.1(a)) constitutes a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: <http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf>. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the civil penalty as set out below for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as tables in Attachment II, below.

In view of the above-cited violations, and pursuant to the authority of Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant herewith proposes the assessment of a civil penalty in the total amount of twenty nine thousand and five hundred ten dollars (\$ 29,510) against Respondent as follows:

Count/ Counts	Citation	Violation	Amount
Counts One	40 C.F.R. § 265.1052(a) (1993)(N.J.A.C. 7:26G-9.1(a))	Failure to Conduct Required Monitoring of Pumps Used to Transport Organic Hazardous Waste	\$ 17,160
Two	40 C.F.R. § 265.1057(a) (1993)(N.J.A.C. 7:26G-9.1(a))	Failure to Conduct Required Monitoring of Valves Used to Transport Organic Hazardous Waste	
Three	40 C.F.R. § 265.1085 (c)(1) (1998)(N.J.A.C. 7:26G-9.1(a))	Failure to Determine Maximum Organic Vapor Pressure	\$ 12,350
Total			\$ 29, 510

III. COMPLIANCE ORDER

Respondent shall, to the extent it has not already done so, immediately upon the effective date of this Order correct the violations alleged in the previous section and come into compliance and shall thereafter maintain such compliance at its facility with all the applicable organic air emission requirements set forth at 40 C.F.R. Section 265 Subparts BB (1993) (N.J.A.C. 7:26G-9.1(a)) and CC (1998) (N.J.A.C. 7:26G-9.1(a)) or in later versions of those regulations, including those for which Respondent has been cited above as having violated.

This Compliance Order shall take effect with respect to Respondent within 30 days of date of service of the Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. Section 22.15. *See* 42 U.S.C. Section 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

Any responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Abdool Jabar, Enforcement Officer
Hazardous Waste Compliance Section
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 28th floor
New York, New York 10007-1866

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or state) provisions, nor does such compliance release Respondent from liability for any violations at its facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at its facility.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to \$32,500 for each day of continued noncompliance that occurs after March 15, 2004. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by EPA or the State of New Jersey.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing."

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for

the filing of a responsive pleading or document.” Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

VI. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant’s calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent’s ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Lee A. Spielmann, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
212-637-3222

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent’s requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent’s obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).


Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this litigation and the administrative proceeding arising out of the allegations made in the complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements concerning the handling and management of hazardous waste, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Dated: June 27, 2007
New York, New York

COMPLAINANT:


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

To: Robert Elefante, President
Deltech Resin Co. (a/k/a Deltech Resins Co.)

cc: Michael Hastry, Chief
Bureau of Hazardous Waste Compliance and Enforcement
Central Field Office
New Jersey Department of Environmental Protection
300 Horizon Center
Trenton, New Jersey 08625-0407

Attachment I

PENALTY COMPUTATION WORKSHEET-COUNTS ONE AND TWO

Company Name: Deltech Resin Co.

Address: 49 Rutherford Street,
Newark, NJ 07105

Violations: Count 1 - 40 C.F.R. § 265.1052(a)(1) (1993) (N.J.A.C. 7:26G-9.1(a)): Failure to Conduct Required Monitoring of Pumps Used to Transport Organic Hazardous Waste

Count 2 - 40 C.F.R. § 265.1057(a) (1993) (N.J.A.C. 7:26G-9.1(a)): Failure to Conduct Required Monitoring of Valves Used to Transport Organic Hazardous Waste

1. Gravity based penalty from matrix	\$10, 400,
(a) Potential for harm.	
<u>MODERATE</u>	
(b) Extent of Deviation.	<u>MAJOR</u>
2. Select an amount from the appropriate multi-day matrix cell	\$ <u>520</u>
3. Multiply line 2 by number of days of violation minus 1(s).	\$ <u>6,760</u>
4. Add line 1 and 3	\$ <u>17,160</u>
5. Percent increase/decrease for good faith	<u>N/A</u>
6. Percent increase for willfulness/negligence	<u>N/A</u>
7. Percent increase for history of noncompliance	<u>N/A</u>
8. Total lines 5 through 7.....	<u>N/A</u>
9. Multiply line 4 by line 8.....	<u>N/A</u>
10. Calculated economic benefit	<u>N/A</u>
11. Add lines 4, 9 and 10 for penalty amount to be inserted into the complaint.....	\$ <u>17,160</u>

* Additional downward adjustments, where substantiated by reliable information, may be accounted for here.

NARRATIVE EXPLANATION TO SUPPORT PENALTY COMPUTATION

1. Gravity Based Penalty

(a) **Potential for Harm:** The "Potential for Harm" was "Moderate." Failure to comply with the 40 C.F.R. § 265 Subpart BB monitoring requirements for valves and pumps poses a substantial harm to the purposes/procedures of the RCRA program, and also might result in a potential threat to human health and the environment. However, although the facility failed to identify the existence of equipment subject to the requirements after its acquisition in September 2005 and subsequently failed to monitor that equipment since at least September 2005, the potential for harm for air emissions from this facility is mitigated because it is located in an industrial area far away for residential neighborhoods and the organic hazardous waste is mixed with water.

(b) **Extent of Deviation:** The "Extent of Deviation" was determined to be "Major" because the facility personnel since Respondent's acquisition of the predecessor company in September 2005 had failed to comply with any of the Subpart BB requirements.

The low point of the cell range in the penalty matrix was selected since the two pumps and nine of the 21 valves appear to be in organic hazardous waste service for substantially less than 300 hours.

(c) **Multi-Day:** Respondent failed to comply with the applicable Subpart BB regulations for the ancillary equipment (pumps and valves) associated with its hazardous waste tank. As a result, 21 valves and 2 pumps were not monitored since September 2005. From the time it owned and operated the Newark facility to the time of the 2006 inspection, Respondent should have conducted 14 monitoring events of such equipment.

2. Adjustment Factors (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied):

Good faith: EPA at this time has made no adjustment for this factor in the penalty determination since EPA has no definite information concerning any mitigating factors; if EPA receives such information, it will then evaluate it and consider making an appropriate adjustment.

Willfulness/Negligence: Not applicable

History of Compliance: Not applicable

Ability to Pay: Not applicable

Environmental Project: Not applicable

Other Unique Factors: Not applicable

3. **Economic Benefit:** The economic benefit derived from all violations were determined to be less than \$ 3,000. An economic benefit under this amount is deemed insignificant and is not included in the penalty assessment figure.

4. **Recalculation of Penalty Based on New Information:** N/A

PENALTY COMPUTATION WORKSHEET-COUNT THREE

Company Name: Deltech Resin Co.

Address: 49 Rutherford Street,
Newark, NJ 07105

Violation: 40 C.F.R. § 265.1085(c)(1) (1998) (N.J.A.C. 7:26G-9.1(a))
Failure To Determine Maximum Organic Vapor Pressure

- | | |
|---|-----------------|
| 1. Gravity based penalty from matrix | <u>\$12,350</u> |
| (a) Potential for harm | <u>Moderate</u> |
| (b) Extent of Deviation | <u>Major</u> |
| 2. Select an amount from the appropriate multi-day
matrix cell | <u>N/A</u> |
| 3. Multiply line 2 by number of days of violation minus
1 [or other number, as appropriate (provide
narrative explanation)] | <u>N/A</u> |
| 4. Add line 1 and 3 | <u>\$12,350</u> |
| 5. Percent increase/decrease for good faith..... | <u>N/A</u> |
| 6. Percent increase for willfulness/negligence | <u>N/A</u> |
| 7. Percent increase for history of noncompliance | <u>N/A</u> |
| 8. Total lines 5 through 7 | <u>N/A</u> |
| 9. Multiply line 4 by line 8..... | <u>N/A</u> |
| 10. Calculated economic benefit..... | <u>N/A</u> |
| 11. Add lines 4, 9 and 10 for penalty amount to be
inserted into the complaint..... | <u>\$12,350</u> |

* Additional downward adjustments, where substantiated by reliable information, may be accounted for here.

NARRATIVE EXPLANATION TO SUPPORT PENALTY COMPUTATION

1. Gravity Based Penalty

(a) **Potential for Harm:** The "Potential for Harm" resulting from this violation was determined to be "Moderate." Although Respondent failed to determine the maximum organic vapor pressure of the organic hazardous waste stored in its 20,000 gallon aboveground hazardous waste storage tank, the hazardous waste was shipped off-site on a regular basis, thereby reducing the potential for releases of hazardous waste.

(b) **Extent of Deviation:** The "Extent of Deviation" was determined to be "Major" because facility personnel failed to make a determination of the maximum organic vapor pressure of the hazardous waste which was to be stored in the tank after it acquired the facility in September 2005. The mid-point of the cell range was selected.

(c) **Multi-Day Penalty:** This requirement is considered to be a one-time event.

2. Adjustment factors (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied):

Good faith: At this time, EPA has made no adjustment for this factor in the penalty determination since EPA has no definite information concerning any mitigating factors; if EPA receives such information, it will evaluate it and consider making an appropriate adjustment.

Willfulness/Negligence: Not applicable

History of Compliance: Not applicable

Ability to Pay: Not applicable

Environmental Project: Not applicable

Other Unique Factors: Not applicable

3. Economic Benefit: The economic benefit derived from all violations were determined to be less than \$ 3,000. An economic benefit under this amount is deemed insignificant and is not included in the penalty assessment figure.

4. Recalculation of Penalty Based on New Information: N/A

ATTACHMENT II-TABLE I
GRAVITY BASED MATRIX

P O T E N T I A L F O R H A R M		MAJOR	MODERATE	MINOR
	MAJOR	\$32,500 to 26,000	\$25,999 to 19,500	\$19,499 to 14,300
	MODERATE	\$14,299 to 10,400	\$10,399 to 6,500	\$6,499 to 3,900
	MINOR	\$3,899 to 1,950	\$1,949 TO 650	\$649 TO 130

ATTACHMENT II-TABLE II
MULTI-DAY MATRIX

		EXTENT OF DEVIATION FROM REQUIREMENT		
		MAJOR	MODERATE	MINOR
P O T E N T I A L F O R H A R M	MAJOR	\$6,500 to \$1,300	\$6,499 to \$975	\$3,900 to \$715
	MODERATE	\$2,860 to \$520	\$2,080 to \$325	\$1,300 to \$195
	MINOR	\$780 to \$130	\$390 TO \$130	\$130

CERTIFICATE OF SERVICE

This is to certify that on the 27 day of June, 2007, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2007-7111, together with Attachments I and II (collectively henceforth referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Robert Elefante, President
Deltech Resin Co.
49 Rutherford Street
Newark, New Jersey 07105

I hand carried the original and a copy of the Complaint to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Dated: June 27, 2007
New York, New York

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