

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTERS OF)	
)	
CONDEA VISTA COMPANY)	Docket No. RCRA-6-00-017
)	
Respondent)	
)	
	and	
)	
GEORGIA GULF LAKE CHARLES, LLC)	Docket No. RCRA-6-00-018
)	
Respondent)	

**ORDER CONSOLIDATING ABOVE-CAPTIONED
DOCKETS, DENYING MOTION TO INTERVENE AS MOOT,
AND ESTABLISHING PROCEDURES**

I. CONSOLIDATION OF DOCKETS

INTRODUCTION

By motion dated November 15, 2000, Georgia Gulf Lake Charles L.L.C. (Georgia Gulf), the respondent in Docket No. RCRA-6-00-018, filed a motion to intervene in Docket No. RCRA-6-00-017, wherein CONDEA Vista Company is the respondent. Georgia Gulf states that the Complaints in the two dockets “are not identical, but EPA has alleged various violations in this case [Docket No. RCRA-6-00-017] and against Movant [Georgia Gulf] in Docket No. RCRA-6-018-00 relating to characterization of the same wastes and treatment systems.” Complainant opposes Georgia Gulf’s motion. To date, no action has been taken on the motion.¹

By order issued on January 22, 2001, the undersigned directed the parties in **both dockets** to file initial comments on or before **February 5, 2001**, on the question of whether consolidation of both dockets for purposes of hearing and decision is appropriate under the provisions of 40 C.F.R. § 22.12 (a). Reply comments were due on or before **February 16, 2001**. Initial comments were filed by Condea Vista, Georgia Gulf, and Complainant. Reply comments were filed by Georgia Gulf. For the reasons set forth below, the two above-referenced dockets are hereby consolidated for purposes of hearing and decision. In light of this action, Georgia Gulf’s motion to intervene shall be **denied**.

¹ By order issued January 16, 2001, the procedural schedule was vacated in Condea Vista.

BACKGROUND

On August 17, 2000, Complainant issued its “COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING” in Condea Vista pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). Specifically, the Complaint charges the following:

- Count I. Disposal of hazardous waste without a permit in violation of LAC 33:V.305 and LAC 33:V.501 [40 C.F.R. §§ 270.1 and 270.10].
- Count II. Failure to make adequate hazardous waste determination for the ASU sludge in violation of LAC 33:V.1103 [40 C.F.R. § 262.11].
- Count III. Failure to prepare hazardous waste manifests for off-site shipments of ASU Sludge in violation of LAC 33:V.1107 [40 C.F.R. § 262.20(a)].
- Count IV. Failure to properly complete hazardous waste manifest in violation of LAC 33:V1107.B [40 C.F.R. 262.20(a)].
- Count V. Operating a hazardous waste storage unit without a permit or interim status as a result of failing to meet the exemption requirements of LAC 33:V.1109.E [40 C.F.R. § 262.34(a)] - wet air oxidation system feed tanks.
- Count VI. Operating a hazardous waste storage unit without a permit or interim status as a result of failing to meet the exemption requirements of LAC 33:V.1109.E [40 C.F.R. § 262.34(a)].
- Count VII. Operating a hazardous waste storage unit without a permit or interim status as a result of failing to meet the exemption requirements of LAC 33:V.1109.E [40 C.F.R. § 262.34(a)] - Tank T-413.
- Count VIII. Failure to make adequate hazardous waste determination for off-site shipments in violation of LAC 33:V.1103 [40 C.F.R. § 262.11].
- Count IX. Treatment of hazardous waste without a permit in violation of LAC 33:V.305 and LAC 33:V.501 [40 C.F.R. §§ 270.1 and 270.10].

On June 30, 2000, Complainant filed its “COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING” in Georgia Gulf. In that case, Complainant alleged the following violations:

- Count I Disposal of Hazardous Waste without a permit in violation of LAC 33:V.305 and LAC 33:V.501 [40 C.F.R. §§ 270.1 and 270.10].
- Count II Failure to make an adequate Hazardous Waste determination (F024 Coke Fines mixed with wastewater) in violation of LAC 33:V.1103 [40 C.F.R. § 2262.11].
- Count III Operating a Hazardous Waste Storage Unit - the lugger - without a permit as a result of failing to meet the exemption requirements of LAC 33:V.1109E [40 C.F.R. § 262.34(a)].
- Count IV Operating a Hazardous Waste Storage Unit - steam stripper C-717A associated storage tank T-550, T-110 and T-551 - without a permit as a result of failing to meet the exemption requirements of LAC 33:V.1109.E [40 C.F.R. § 262.34(a)].
- Count V Operating a Hazardous Waste Storage Unit - Frac Tank - without a permit as a result of failing to meet the exemption requirements of LAC 33:V.1109.E [40 C.F.R. § 262.34(a)].

In response to the undersigned’s January 22, 2001 order, Condea Vista filed initial comments stating that the pertinent facts to decide the consolidation question were as follows:

EPA contends that the decoking wastewater generated from the decoking of three vinyl chloride cracking furnaces is F024 listed hazardous waste under both GGLC’s [Georgia Gulf] current ownership/operation and CVC’s past ownership operation. This decoking wastewater classification is a critical issue to both companies because GGLC commingles this very small intermittent decoking wastewater stream with other VCM process wastewater prior to stream stripping on its site. This combined, stripped stream is then further combined with wastewater streams from numerous CVC plants and is treated in CVC’s biological wastewater system prior to discharge via an NPDES permitted outfall. EPA’s alleges that the entire amount of sludge generated from this biological wastewater system is now listed F024 waste via the “derived-from” rule, (even though the decoking wastewater is less than one tenth of one percent of the volume of wastewater entering the biological system. This result would require the

incineration of the entire output of sludge. Thus the classification of this tiny stream has great legal and financial consequences for both companies.

EPA also alleges that both companies lost the RCRA wastewater treatment unit exemption for a number of tanks, some GGLC owned and some CVC owned, for the sole reason that the sale of the VCM plant from CVC to GGLC “broke” the wastewater treatment exemption. The integration of the wastewater treatment system and details related to the sale are obviously common for both companies.

Finally, EPA also alleges that certain spills in the VCM tank farm during CVC ownership caused both the soil in the tank farm and the underlying groundwater to become listed hazardous waste via the contained-in rule. EPA cited CVC for improper disposal of these spills and cited GGLC for violations related to the movement and management of the soils within the tank farm related to these spills. (There was an ongoing tank farm soil removal and paving project that overlapped the tenure of both companies.)

Condea Vista does not object to the consolidation of the dockets for liability purposes. However, Condea Vista believes that penalty issues should be tried separately as to each respondent because the circumstances would be different for each case.

In its initial comments, Georgia Gulf lists the common issues as follows:

- “Whether soil and groundwater removed from the vicinity of the VCM plant tank farm should be characterized as listed hazardous waste;
- Whether wastewater from the decoking process at the VCM plant should be characterized as a listed hazardous waste;
- Whether RCRA’s wastewater treatment unit (“WWTU”) exemption applies to tanks located at the VCM plant;
- Whether Louisiana Department of Environmental Quality’s interpretative opinions are determinative of these issues.

The same VCM plant located at the same site using the same process and equipment will provide the factual basis for determining the legal issues described above. A determination regarding these issues is relevant both to GGLC's operations and to operation of CONDEA Vista's wastewater treatment facility."

Complainant opposes consolidation of the two dockets, alleging that both Condea Vista and Georgia Gulf, under separate covers, submitted materials for which each claims business confidentiality. Absent a written waiver, Complainant asserts that the confidential business information (CBI) designation claim by each respondent cannot be waived. Thus, Complainant argues that to consolidate the two dockets would "administratively stretch" EPA in "continuing to protect the CBI of each company." Complainant also asserts that while a settlement with Condea Vista is "highly unlikely . . . settlement negotiations with Georgia Gulf have been productive and could result in resolution of the facts and issues." Complainant concludes by stating that consolidation of the dockets would make it "likely that the settlement negotiations with Georgia Gulf would be thwarted."

In its Reply Comments, Georgia Gulf reiterates its lack of objection to the common issues of law and fact being addressed in a single proceeding and the remaining issues being addressed in separate cases. As to Complainant's CBI concerns, Georgia Gulf states that it believes that an agreement between Respondents and Complainant could be reached regarding use and protection of each party's CBI. Similarly, Georgia Gulf does not see consolidation as adversely affecting settlement negotiations between Georgia Gulf and Complainant.

CONCLUSION

Upon review of the record, including the various pleadings filed by the parties, it is determined that there are sufficient common issues of law and facts to warrant consolidation of these two dockets for purposes of hearing and decision. Complainant has not persuasively demonstrated that consolidation will either preclude settlement with one or both of the parties, or that consolidation will create CBI issues that cannot be resolved.

Accordingly, consolidation of the dockets is hereby ordered. At this time, the issues in this proceeding will be limited to those involving liability. At such time as the liability issues are determined by initial decision, settlement, or accelerated decision, penalty issues will be addressed in separate proceedings to be set by future order.

In light of the action taken herein, Georgia Gulf's motion to intervene is denied as moot.

The parties are directed to meet informally to resolve any CBI issues that may arise. Should such efforts not be successful, the undersigned will convene a prehearing conference to deal with these matters. The following procedural schedule for the liability phase of this

proceeding shall be as follows. Additional time has been added to allow for further settlement negotiations.

II. CONDEA VISTA'S MOTION TO RECONSIDER AND/OR VACATE ORDER DENYING MOTION FOR ACCELERATED DECISION OR IN THE ALTERNATIVE TO REQUEST RECOMMENDATION FOR INTERLOCUTORY APPEAL

On May 30, 2001, Condea Vista filed a motion requesting, among other things, reconsideration of the undersigned's May 16, 2001 order denying Condea Vista's motion for accelerated decision. Complainant filed an opposition to Condea Vista's request. Georgia Gulf requests an opportunity to file in support of Condea Vista's motion. In order to permit Georgia Gulf to be heard on this matter, dates will be incorporated into the procedural schedule for that purpose.

III. JOINT PROCEDURAL SCHEDULE

Answers in Support of Condea Vista's May 30, 2001 Motion: **August 30, 2001**

Answers in Opposition to Condea Vista's May 30, 2001 Motion: **September 14, 2001**

Complainant's Prehearing Exchange: **November 15, 2001**

Condea Vista and Georgia Gulf Prehearing Exchanges: **January 4, 2002**

Condea Vista and Georgia Gulf to answer the other's cases: **February 4, 2002**

Complainant's Reply Prehearing Exchange: **February 22, 2002**

Substantive Motions: **March 20, 2002**

Charles E. Bullock
Administrative Law Judge

Dated: July 12, 2001
Washington D.C.

IN THE MATTERS OF CONDEA VISTA COMPANY and GEORGIA GULF LAKE CHARLES, LLC, Respondents
Docket Nos. RCRA-6-00-017 and RCRA-6-00-018

CERTIFICATE OF SERVICE

I certify that the foregoing Order Consolidating Above-Captioned Dockets, Denying Motion to Intervene as Moot, and Establishing Procedures, dated July 12, 2001, was sent in the following manner to the addressees listed below:

Original and Copy by EPA Pouch Mail to:

Ms. Lorena Vaughn
Regional Hearing Clerk
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Copy by EPA Pouch Mail to:

Counsel for Complainant:
Gloria Moran, Esquire
Assistant Regional Counsel
U.S. EPA, Region 6
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Copy by Regular Mail to:

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Marion Walzel, Legal Assistant

Dated: July 12, 2001