



OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

August 8, 2024

BY ELECTRONIC MAIL

Jeffrey S. Lang
Senior HSE Counsel
Solvay Specialty Polymers USA, LLC
10 Leonard Lane
West Deptford, NJ 08086-2150
jeffrey.lang@solway.com

Re: Notice of Potential Violations and Opportunity to Enter into Settlement Discussions with EPA

Dear Mr. Lang:

The United States Environmental Protection Agency ("EPA") has identified potential violations of the Resource Conservation and Recovery Act ("RCRA") and authorized New Jersey hazardous waste regulations at a Solvay Specialty Polymers USA, LLC ("Solvay") facility and is inviting you to enter into settlement discussions to resolve the same. The potential violations are discussed below.

Background

On or about February 13-16, 2023, EPA conducted an inspection of a Solvay facility in West Deptford, NJ ("the Facility") to determine its compliance with the RCRA hazardous waste regulations found at Title 40 Code of Federal Regulations ("C.F.R.") Parts 260-268, as incorporated by reference in the New Jersey Administrative Code ("N.J.A.C."). On July 23, 2024, EPA sent Solvay a copy of its inspection report.

Based upon EPA's inspection, EPA has reason to believe that the Facility failed to comply with the authorized New Jersey regulations that incorporated the following federal requirements:

1. Failure to Make a Hazardous Waste Determination, in accordance with 40 C.F.R. § 262.11;
2. Failure to Comply with Subpart BB and Subpart CC Organic Air Emission Standards. See 40 C.F.R. §§ 264.1050–1065, 40 C.F.R. §§ 264.1080–1090; and
3. Failure to have a Permit or have interim status. See 40 C.F.R. § 270.1.

Administrative Complaint

EPA is prepared to proceed with drafting a formal administrative complaint that would commence an administrative formal proceeding against Solvay for violations at the Facility. Such action would be brought under Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), and the complaint will likely allege the three violations identified above and require submittal of proof of compliance with these regulations.

Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as modified by the Federal Civil Penalties Inflation Adjustment Act as amended through 2023, any person who violates RCRA is liable to the United States for a penalty up to \$121,275 for any violation occurring after November 2, 2015, where penalties are assessed on or after December 27, 2023. See 88 Fed. Reg. 89309 (Dec. 27, 2023).

In the proceeding, a respondent faces a potential per day monetary penalty for each hazardous waste violation. The precise penalty amount that EPA would seek in a RCRA Subtitle C enforcement action would be consistent with applicable Agency guidance, including the RCRA Civil Penalty Policy, that considers, along with other unique factors, the potential for harm associated with and the extent of deviation represented by the violations alleged by EPA. The policy can be found on the Internet at the following address: <https://www.epa.gov/enforcement/resource-conservation-and-recovery-act-rcra-civil-penalty-policy>.

Settlement Discussions

Rather than immediately commencing a civil enforcement action, EPA wishes to see if the Solvay, the Respondent, would like to pursue another avenue to resolve these violations and to explore settlement possibilities through direct discussions before any case is filed. In accordance with rules that apply to EPA's administrative enforcement actions (40 C.F.R. § 22.13(b)), "where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to [40 C.F.R.] § 22.18(b)(2) and (3)." The Agency therefore is offering the Respondent, Solvay, an opportunity to demonstrate why an enforcement proceeding should not be commenced and/or why the penalty EPA might assess regarding these violations, in a formal complaint, should be reduced.

If you are interested in engaging in pre-filing settlement discussions, please contact me so that I can arrange a virtual meeting, or a conference call, at a mutually convenient time between Agency representatives and any representative(s) or employee(s) of the Facility and/or Solvay. EPA will have legal counsel at this virtual meeting/call, and Solvay similarly can decide if such legal representation would also be warranted. Please come prepared to this virtual meeting/call with documentary evidence in support of any position you might raise, such as: efforts the Facility has undertaken to attain and maintain compliance with the applicable hazardous waste requirements; evidence as to why a reduction in the proposed penalty would be warranted (*i.e.*, any evidence that would go to the seriousness of the violation and any good faith efforts you took before the inspection at the Facility to comply with the applicable requirements), and any other factors you want EPA to consider.

Any and all information that Solvay provides to EPA in response to this letter is not governed by the requirements of the Federal Rules of Evidence 408 and may subsequently be utilized by EPA as it sees fit.

Please note that, in determining the appropriate penalty amount in a settlement, EPA may consider the public health and/or environmental benefits of a Supplemental Environmental Project (“SEP”) voluntarily performed by a violator. A SEP is a new project that is not otherwise legally required, and that is designed to: (1) reduce the likelihood that similar violations will occur in the future, (2) reduce any adverse public health and/or environmental impacts created by the violations, and/or (3) reduce the risk that the affected public and/or environment will experience similar adverse impacts. If Solvay is interested in proposing or discussing performance of a SEP as a potential part of the settlement of this matter, please review EPA’s SEP Policy which is available on [EPA’s SEP website](#).

If you are interested in possibly including a SEP in a settlement, please start thinking about a proposed project that complies with the terms of the SEP Policy. While we cannot identify or recommend specific SEPs for Respondents, we can discuss this further with you when we meet.

It is our hope that we can address the alleged violations raised in this letter in a mutually satisfactory manner. Indeed, if it appears likely that the parties will be able to reach a negotiated settlement, EPA may be prepared to postpone further the issuance of a complaint. If, however, the parties are unable to reach an expeditious resolution or if EPA does not hear from you within twenty (20) days of this letter about such settlement discussions, EPA is prepared to initiate an enforcement action.

If you are interested in reaching an agreement, please contact Andrea Brady via email at brady.andrea@epa.gov or by phone at 202-564-4322 within twenty (20) days of this letter to work out the necessary scheduling arrangements. Thank you in advance for your prompt attention to this important matter.

Sincerely,
LYNNE
DAVIES

Digitally signed by LYNNE
DAVIES
Date: 2024.08.08
10:14:04 -04'00'

Lynne Davies
Chief, Waste Enforcement Branch
Waste and Chemical Enforcement Division
Office of Civil Enforcement

cc: William Chernes (Region 2, ECAD-RCB)
Derval Thomas (Region 2, ECAD-RCB)
Gregory Sullivan (OECA, OCE-WCED)
Andrea Brady (OECA, OCE-WCED)