



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

November 24, 2021

VIA E-MAIL: jbbrooks@bic-texas.com

James Brooks
Brooks Industrial Coatings, Inc.
1902 Bench Mark Dr
Austin, TX 78728

RE: Potential RCRA Violations and Opportunity for Settlement
Resource Conservation and Recovery Act
Brooks Industrial Coatings, Inc.

Dear Mr. Brooks:

The United States Environmental Protection Agency (EPA), Region 6, identified potential violations of the Resource Conservation and Recovery Act (RCRA) and the regulations enacted thereunder at Brooks Industrial Coatings, Inc., located at 1902 Bench Mark Dr. in Austin, TX. Hazardous waste that is improperly managed poses a serious threat to human health and the environment. Through implementation of the authorities in RCRA, 42 U.S.C. §§ 6901 – 6992k, EPA regulates the control of hazardous waste from the “cradle-to-grave.” This includes the generation, transportation, treatment, storage and disposal of hazardous waste. I write to inform you of: 1) the current areas of concern; 2) an option for resolution; and 3) a timeline for resolution.

Current Areas of Concern

As a generator of hazardous waste, Brooks Industrial Coatings, Inc. is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 Tex. Admin. Code Chapter 335, Subchapters C and F, [40 C.F.R. Parts 262 and/or 270]. Upon further investigation, EPA may determine that Brooks Industrial Coatings, Inc. is also subject to Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925, and the regulations promulgated thereunder.

Based on EPA's current investigation and records review, Brooks Industrial Coatings, Inc. is identified as a Non-Generator of hazardous waste. However, according to the manifests listed in Attachment 1, Brooks Industrial Coatings, Inc. generated hazardous waste in excess of 12,000 kilograms per calendar year or 1,000 kilograms per month in 2018. In 2019 and 2021, the facility generated hazardous waste in excess of 1,200 kilograms per calendar year or 100 kilograms per month. This qualified the facility as a Large Quantity Generator in 2018 and as a Small Quantity Generator in 2019 and 2021, as established under 30 Tex. Admin. Code Chapter 335, Subchapter C, [40 C.F.R. Part 262].

At a minimum, EPA identified the following potential violations of RCRA and the implementing regulations:

- i) Failure to meet RCRA notification requirements, in violation of RCRA § 3010(a), 42 U.S.C. § 6930(a);

- ii) Failure to operate within its stated generator status for at least one (1) year, in violation of 30 Tex. Admin. Code Chapter 335, Subchapters C and F [40 C.F.R. Parts 262 and/or 270].

Option for Resolution

Upon receipt of this letter, if Brooks Industrial Coatings, Inc. is interested in resolving the matter through settlement, the facility has within **14 calendar days** of receipt of this letter to inform EPA by telephone or e-mail by contacting:

Tripti Thapa
E-mail: thapa.tripti@epa.gov
Phone: (214) 665-7563

Thereafter, Tripti Thapa will make arrangements to discuss this letter with Brooks Industrial Coatings, Inc. facility representatives via a conference call. During this conference call, Brooks Industrial Coatings, Inc. may address the potential violations and present evidence that contravenes EPA's evidence. The main goal of this option is to bring the facility into timely compliance with the applicable environmental laws and regulations.

Timetable for Resolution

Given the nature of the potential violations listed above and the current evidence that EPA has in support of these violations, EPA estimates that the parties could agree upon an Administrative Order on Consent by January 23, 2022. This is contingent on whether Brooks Industrial Coatings, Inc. avails itself of the settlement process now offered and works amicably with the EPA. If Brooks Industrial Coatings, Inc. decides not to accept this streamlined option for settlement, Brooks Industrial Coatings, Inc. should similarly notify EPA of its decision in writing to Tripti Thapa within **14 calendar days** of receipt of this letter. Thereafter, EPA will exercise its other options for ensuring Brooks Industrial Coatings, Inc.'s timely compliance with RCRA and the regulations promulgated thereunder.

To the extent that Brooks Industrial Coatings, Inc. qualifies as a "small business" under the Small Business Regulatory Enforcement Fairness Act, enclosed is an Information for Small Businesses sheet that provides information on compliance assistance.

Addressing noncompliance with environmental laws is important in carrying out the EPA's mission to protect human health and the environment. EPA acknowledges that the COVID-19 pandemic may be impacting your business. If that is the case, EPA will consider your specific circumstances in determining an appropriate timeline for responding to this request for information, while still ensuring that the Agency receives the information it needs to timely confirm your company's compliance with the RCRA.

Thank you for your attention to this matter. If you have any questions, please contact Tripti Thapa, of my staff, at thapa.tripti@epa.gov or 214-665-7563.

Sincerely,

Margaret Osbourne
Chief
Waste Enforcement Branch

Enclosure: Manifest Summary
Additional Sources of Information

eCC: james.gradney@tceq.texas.gov
john.shelton@tceq.texas.gov

ATTACHMENT 1

Manifest Summary

Year	Manifest Tracking Number	EPA Waste Codes	Weight (kg)
2021	013932358FLE	TX-0160319H, F006	2,273
2019	011644254FLE	TX-0160319H, F006	2,273
2018 <i>(begins 6/30/2018)</i>	016115612FLE	TX-0160319H, F006	9,545

ATTACHMENT 2

Additional Sources of Information

- Information on RCRA and hazardous waste regulations
<https://www.epa.gov/rcra/resource-conservation-and-recovery-act-rcra-regulations>
- RCRA Civil Penalty Policy
<https://www.epa.gov/enforcement/resource-conservation-and-recovery-act-rcra-civil-penalty-policy>
- Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22
https://www.epa.gov/sites/production/files/2013-10/documents/final-crop-fr_1.pdf
- Small Business Fact Sheet (following pages)
www.epa.gov/compliance/small-business-resources-information-sheet

U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

Office of Small and Disadvantaged Business Utilization (OSDBU)

<https://www.epa.gov/aboutepa/about-office-small-and-disadvantaged-business-utilization-osdbu>

EPA's OSDBU advocates and

advances business, regulatory, and environmental compliance concerns

of small and socio-economically disadvantaged businesses.

EPA's Asbestos Small Business Ombudsman (ASBO)

<https://www.epa.gov/resources-small-businesses/asbestos-small-business-ombudsman> or 1-800-368-5888

The EPA ASBO serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

Small Business Environmental Assistance Program

<https://nationalsbeap.org>

This program provides a "one-stop shop" for small businesses and assistance providers seeking information on a wide range of environmental topics and state-specific environmental compliance assistance resources.

EPA's Compliance Assistance Homepage

<https://www.epa.gov/compliance>

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

Compliance Assistance Centers

<https://www.complianceassistance.net>

EPA-sponsored Compliance Assistance Centers provide the information you need, in a way that helps make sense of environmental regulations. Each Center addresses real world issues faced by a specific

industry or government sector. They were developed in partnership with

industry, universities and other federal and state agencies.

Agriculture

<https://www.epa.gov/agriculture>

Automotive Recycling

<http://www.ecarcenter.org>

Automotive Service and Repair

<https://ccar-greenlink.org/> or 1-888-GRN-LINK

Combustion—Boilers, Generators, Incinerators, Wood Heaters

<https://www.combustionportal.org/>

Construction

<http://www.cicacenter.org>

Education

<https://www.nacubo.org/>

Healthcare

<http://www.hercenter.org>

Local Government

<https://www.lgean.net/>

Oil/ Natural Gas Energy Extraction

<https://www.eciee.org/>

Paints and Coatings

<https://www.paintcenter.org/>

Ports

<https://www.portcompliance.org/>

Surface Finishing

<http://www.sterc.org/>

Transportation

<https://www.tercenter.org/>

U.S. der Compliance and Import/Export Issues

<https://www.bordercenter.org/>

Veterinary Care

<https://www.vetca.org/>

EPA Hotlines and Clearinghouses

www.epa.gov/home/epa-hotlines

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Examples include:

Clean Air Technology Center (CATC) Info-line

www.epa.gov/catc or 1-919-541-0800

Superfund, TRI, EPCRA, RMP, and Oil Information Center

1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or 1-734-214-4100

National Pesticide Information Center

www.npic.orst.edu or 1-800-858-7378

National Response Center Hotline to report oil and hazardous substance spills -

<http://nrc.uscg.mil> or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC) -

www.epa.gov/p2/pollution-prevention-resources#ppic or 1-202-566-0799

Safe Drinking Water Hotline -

www.epa.gov/ground-water-and-drinking-water/safe-drinking-water-hotline or 1-800-426-4791

Toxic Substances Control Act (TSCA) Hotline

tsc hotline@epa.gov or 1-202-554-1404

U.S. Small Business Resources

Small Entity Compliance Guides

<https://www.epa.gov/reg-flex/small-entity-compliance-guides>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

Regional Small Business Liaisons

www.epa.gov/resources-small-businesses/epa-regional-office-small-business-liaisons

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

State Resource Locators

www.envcap.org/statetools

The Locators provide state-specific information on regulations and resources covering the major environmental laws.

State Small Business Environmental Assistance Programs (SBEAPs)

<https://nationalsbeap.org/states/list>

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

EPA's Tribal Portal

<https://www.epa.gov/tribal>

The Portal helps users locate tribal-related information within EPA and other federal agencies.

EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has several such policies that may apply to small businesses. More information is available at:

- **EPA's Small Business Compliance Policy**
- <https://www.epa.gov/compliance/small-business-compliance>
- **EPA's Audit Policy**
www.epa.gov/compliance/epas-audit-policy

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a Small Business Administration (SBA) National Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the SBA's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, you can call the SBA National Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247), or submit a comment online at <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>.

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.