



REGION 4

ATLANTA, GA 30303

March 4, 2024

ELECTRONIC MAIL

CONFIRMATION OF RECEIPT EMAIL REQUESTED

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SUBJ: Response to Request for Information and Opportunity to Show Cause
Clarios LLC
EPA ID: SCR000771451

Dear Jeramy LeMieux:

On July 6, 2023, the U.S. Environmental Protection Agency (EPA) issued a request for information (Request Letter), pursuant to Section 3007 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6927, to Clarios, LLC (Clarios). The Request Letter included questions about three roll-off boxes containing excavated soils, which were observed during the unannounced compliance evaluation inspection (CEI) conducted by the EPA and the South Carolina Department of Health and Environmental Control on February 24, 2022. On September 5, 2023, the EPA received Clarios' response (Response Letter) to the Request Letter.

Based on the information received from Clarios on September 5, 2023, the EPA has determined that the facility may not be in compliance with several requirements of its Hazardous Waste Permit Number SCR000771451, the South Carolina Hazardous Waste Management Act (SCHWMA), S.C. Code Ann. § 44-56-10 *et seq.* [Subtitle C of RCRA, 42 U.S.C. §§ 6921 to 6939(g)], and the regulations promulgated pursuant thereto, found at S.C. Code Ann. Regs. 61-79.260-270, 61-79.273 and 61-79.279 [Title 40 of the Code of Federal Regulations (C.F.R.) Parts 260 through 279], based on potential violations observed during the CEI and described in the Response Letter.

- **Pursuant to Hazardous Waste Permit Number SCR000771451, Permit Condition II.A., the Permittee shall construct, maintain and operate the facility in a manner to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous**

waste constituents to air, soil, or surface water which could threaten human health or the environment, as required by S.C. Code Ann. Regs. 61-79.264.31 [40 C.F.R. § 264.31].

Section F.4 of the approved application for the Hazardous Waste Permit Number SCR000771451, which was submitted on December 24, 2013, states that run-off from paved areas surrounding the main manufacturing building flows into a Low Impact Development (LID) storm water management system. The approved permit application explains that the LID storm water management system consists of numerous bio-retention basins located throughout the site, and that storm water enters the system primarily as sheet flow off the impervious surfaces, through hardwood mulch filter strips designed to absorb lead that may be present in the runoff, into the mulch-filled basins. The LID Storm Water System Maintenance and Monitoring Plan (MMP), which is included as Appendix E of the 2021 LID Stormwater Pollution Prevention Plan (SWPPP), states that “The Storm Water Maintenance Program is designed to manage lead in storm water, manage lead uptake into the control media (hardwood mulch and sand/mulch mixture), and to prevent buildup of lead in the LID system;” that “The hardwood mulch filter strips and biobasin media will be monitored to measure lead concentration;” and that “The hardwood mulch filter strips and biobasin media will be replaced periodically to prevent buildup of lead.” Section 4.2 of the 2021 LID SWPPP also states that, “The biobasin mulch filter strips located throughout the facility will be maintained by annual removal and replacement of mulched materials;” and that “Lead containing materials removed during any mulch filter strip and biobasin maintenance will be characterized and properly disposed.”

In response to EPA’s request for all records used to monitor filter strip and biobasin media performance over the past three years, Clarios stated that, from July 2020 through July 2023, the LID Storm Water System maintenance activities consisted of routine, ongoing replenishment of mulch to the mulch filter strips and of a sitewide LID Storm Water System evaluation in May 2022 followed by LID Storm Water System restoration activities conducted from September 2022 through March 2023. In addition, Clarios provided the September 2023 Comprehensive LID System Restoration Report and the 2022 Groundwater Monitoring Report. However, Clarios did not provide any records associated with periodic monitoring of the hardwood mulch filter strips and biobasin media as described in the LID Storm Water System MMP found in Appendix E of the 2021 LID SWPPP. Clarios also did not provide any records associated with the annual removal and replacement of mulched materials as described in the 2021 LID SWPPP or associated with the periodic replacement of mulch filter strips and biobasin media as described in the LID Storm Water System MMP found in Appendix E of the 2021 LID SWPPP. Therefore, it appears that Clarios may be out of compliance with Hazardous Waste Permit Number SCR000771451, Permit Condition II.A., by failing to maintain and operate the facility in a manner to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment, as required by S.C. Code Ann. Regs. 61-79.264.31 [40 C.F.R. § 264.31].

- **Pursuant to Hazardous Waste Permit Number SCR000771451, Permit Condition I.A., any storage, treatment, and/or disposal of hazardous waste not authorized in the Permit is prohibited, except as allowed by the South Carolina Hazardous Waste Management Regulations, R.61-79.**

According to the March 2022 Biobasin #1 Excavation Report, a contractor for Clarios conducted excavation of affected soil from the Biobasin #1 vicinity and restoration of the excavation area between December 6 and December 29, 2021. Upon removal from the Biobasin #1 excavation areas, the soil was placed directly into roll-off containers for off-site disposal. The Response Letter states that, out of the fifty-four roll-off boxes generated from the excavation activities, the contents of three roll-off boxes were characterized as soil/bio basin media that exceeded the RCRA toxicity characteristic regulatory limit for lead. The contents of these roll-off boxes were disposed of as D008 hazardous waste. According to the September 2023 LID Maintenance and Restoration Report, Clarios disposed of 1,129.1 tons of soil generated from maintenance and soil restoration activities conducted at the remainder of the LID system starting on September 26, 2022.

The elevated concentrations of lead found in the excavated soils, hardwood mulch strips, and/or biobasin media demonstrates that D008 hazardous waste dust was discharged to the LID Storm Water System and surrounding areas, where it was allowed to accumulate. According to the March 2022 Biobasin #1 Excavation Report and the September 2023 LID Maintenance Restoration Report, Clarios also treated the D008 hazardous waste accumulation by mixing Enviroblend into the affected areas. The LID Storm Water System, including Biobasin #1, and the surrounding areas are not identified as permitted hazardous waste management units in the facility's Hazardous Waste Permit Number SCR000771451. Therefore, it appears that Clarios may be out of compliance with Hazardous Waste Permit Number SCR000771451, Permit Condition I.A., by storing, treating, and disposing of hazardous waste in a manner that is not authorized in the Permit.

- **Pursuant to Hazardous Waste Permit Number SCR000771451, Permit Condition I.E.6., the Permittee shall at all times properly maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the Conditions of this Permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures.**

The elevated concentrations of lead found in the excavated soils, hardwood mulch strips, and biobasin media indicates that Clarios disposed of D008 hazardous waste dust by discharging it to the LID Storm Water System and surrounding areas. Furthermore, Clarios did not provide records associated with periodic monitoring of the hardwood mulchfilter strips and biobasin media as described in the LID Storm Water System MMP found in Appendix E of the 2021 LID SWPPP; associated with the annual removal and replacement of mulched materials as described in the 2021 LID SWPPP; and associated with the periodic replacement of mulch filter strips and biobasin media as described in the LID Storm Water System MMP found in Appendix E of the 2021 LID SWPPP. Therefore, it appears that Clarios may be out of compliance with Hazardous Waste Permit Number SCR000771451, Permit Condition I.E.6. by failing to maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the Conditions of this Permit.

- **Pursuant to the S.C. Ann. Regs. 61-79.262.11 [40 C.F.R. § 262.11], which requires a person who generates a solid waste, as defined in the S.C. Ann. Regs. 61-79.261.2 [40 C.F.R. § 261.2], to make an accurate determination as to whether that waste is a hazardous waste in order to ensure**

wastes are properly managed according to applicable RCRA regulations articulate in the S.C. Ann. Regs. 61-79.261.2 [40 C.F.R. § 261.2].

The analytical data provided in the response to EPA's Request Letter indicated that only thirty-seven of the fifty-four roll-off containers of excavated soils were sampled and analyzed. No records of sampling or analysis were provided for the remaining seventeen roll-off containers. Although the report indicates that analytical results of composite samples representing the excavated soils contained in a total of nine roll-off boxes exhibited the hazardous waste characteristic of toxicity for lead, Clarios inaccurately identified the contents of only three roll-off boxes as hazardous waste. The remaining six roll-off boxes were inaccurately characterized by Clarios as nonhazardous waste. Therefore, it appears that Clarios may be out of compliance with the S.C. Ann. Regs. 61-79.262.11 [40 C.F.R. § 262.11], by failing to make an accurate hazardous waste determination on twenty-three roll-off containers of excavated soils, which were inaccurately shipped off-site as nonhazardous waste.

- **Pursuant to the S.C. Ann. Regs. 61-79.262.20(a)(1) [40 C.F.R. § 262.20(a)(1)] a generator that transports or offers for transport a hazardous waste for offsite treatment, storage, or disposal must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22.**

Clarios reported that representative samples of six roll-off boxes, which were shipped offsite without a hazardous waste manifest, exceeded the TCLP threshold for lead. Therefore, it appears that Clarios may be out of compliance with the S.C. Ann. Regs. 61-79.262.20(a)(1) [40 C.F.R. § 262.20(a)(1)] for failing to prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22 for six roll-off boxes of hazardous waste that were shipped offsite for disposal.

- **Pursuant to the S.C. Ann. Regs. 61-79.262.10(a)(3) [40 C.F.R. § 262.10(a)(3)], a generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in section the S.C. Ann. Regs. 61-79.260.10 [40 C.F.R. § 260.10], or not otherwise authorized to receive the hazardous waste.**

Clarios shipped the contents of six roll-off boxes with representative samples exceeding the TCLP threshold for lead for disposal as nonhazardous waste in a solid waste landfill. Therefore, it appears that Clarios may be out of compliance with the S.C. Ann. Regs. 61-79.262.10(a)(3) [40 C.F.R. § 262.10(a)(3)] for shipping six roll-off boxes of its hazardous waste to a facility that is not a designated facility, as defined in the S.C. Ann. Regs. 61-79.260.10 [40 C.F.R. § 260.10], and not otherwise authorized to receive the hazardous waste.

Information currently available to the EPA suggests that Clarios may be in violation of, or have committed violations of, RCRA. By this letter, the EPA is extending to you an opportunity to advise the Agency via a conference call, of any further information the EPA should consider with respect to the potential violations. Clarios may elect to be represented by legal counsel at this meeting and should be prepared to present relevant information and documentation pertaining to the EPA's observed potential violations.

The EPA may determine that a formal enforcement action is appropriate and may assess civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). Therefore, Clarios has the opportunity to

present factors and documentation that could mitigate any penalties that may be assessed against the facility, including information on Clarios' ability to pay a penalty. Prior to the meeting, Clarios may review the following documents:

- **RCRA Civil Penalty Policy** found at: <https://www.epa.gov/sites/default/files/2020-05/documents/june2003rcracivilpenaltypolicyamended050620.pdf>
- **Amendments to EPA's Civil Penalty Policies to Account for Inflation:**
<https://www.epa.gov/system/files/documents/2024-01/amendmentstotheepacivilpenaltypolicyinflation011524.pdf>

Please be advised that any information provided by Clarios at the meeting may be used by the EPA in any civil or criminal proceedings related to this or other matters. Any false, fictitious, or fraudulent material omissions, statements or representations may subject Clarios to criminal penalties under Section 3008(d)(3) of RCRA, 42 U.S.C. § 6928(d)(3).

If Clarios chooses to accept this offer to meet with the EPA, the facility should contact Roberto X. Busó **within fourteen (14) days** following receipt of this letter to schedule a conference call. Roberto X. Busó can be reached at (404) 562-8530 or by email at buso.roberto@epa.gov. If you decide not to accept this offer to meet to discuss the observed potential violations, the EPA may proceed with enforcement action against Clarios as authorized under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), including the assessment of appropriate civil penalties and injunctive relief.

If Clarios is a Small Business or a Small Community, you can find compliance and enforcement resources specifically designed to meet your needs at: <http://www2.epa.gov/enforcement/small-businesses-and-enforcement>. In that webpage you can find information about the Small Business Regulatory Enforcement Fairness Act (SBREFA) that accords some rights to small businesses and is aimed at providing assistance to small businesses and other small entities, making tools available for better understanding of the regulatory and enforcement processes, and seeing that there is no unfair treatment relating to the regulatory enforcement process.

If you have any technical questions regarding the observations and findings, please feel free to contact Laurie Benton DiGaetano, of my staff, by phone at (404) 562-8948 or by email at benton-digaetano.laurie@epa.gov. Please direct any legal questions to Roberto X. Busó at (404) 562-8530 or by email at buso.roberto@epa.gov.

Sincerely,

**FORREST
COVINGTON**

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FORREST COVINGTON
Date: 2024.03.05
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F. Bryce Covington
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