

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)
Plaintiff,)
)
the LOUISVILLE METRO AIR)
POLLUTION CONTROL DISTRICT,)
the STATE OF NEW JERSEY)
Plaintiff-Intervenors,)
)
V.)
)
OXY VINYLS, LP)
)
Defendant.)
_____)

Civil Action No.

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF ACTION

1. Plaintiff brings this action under the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*; and the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11001 *et seq.* to obtain civil penalties and injunctive relief for violations of these statutes, as well as their implementing permits and regulations.

JURISDICTION, VENUE AND AUTHORITY

2. Jurisdiction is vested in this Court pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, 42 U.S.C. § 7413(b), 42 U.S.C. § 6928(a) and (g), 33 U.S.C. §§ 1319(b) and 1321(b), 42 U.S.C. §§ 9609(c) and 9613(b), and 42 U.S.C. § 11045(c)(4), because Oxy Vinyls has its headquarters within this district, at 5005 LBJ Freeway, Suite 2200, Dallas, Texas 75244-6119.

4. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516, 519; Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 305 of the CAA, 42 U.S.C. § 7605; and Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4).

NOTICE

5. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notice of the commencement of this action has been given to the Texas Commission on Environmental Quality, the Louisville Metro Air Pollution Control District (“LMAPCD”), and the New Jersey Department of Environmental Protection.

DEFENDANT

6. Defendant Oxy Vinyls, LP (“Oxy Vinyls”) is a joint venture between Occidental Chemical Corporation and Polyone Corporation, doing business in, *inter alia*, the states of Texas, Kentucky, and New Jersey.

7. This action pertains to the following Oxy Vinyls facilities: Deer Park, Texas (“Deer Park Facility”); Pasadena, Texas (“Pasadena Facility”); Louisville, Kentucky (“Louisville

Facility”); and Pedricktown, New Jersey (“Pedricktown Facility”) (together the “PVC Facilities”).

8. The Deer Park Facility is a “facility” within the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. § 355.20, and a “covered facility” within the meaning of 40 C.F.R. § 372.22.

9. At all times relevant to this action, Oxy Vinyls has been and continues to be the owner and/or operator of each of the PVC Facilities within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9) and 40 C.F.R. § 112.26. Each of the PVC Facilities is a “vinyl chloride plant” within the meaning of 40 C.F.R. § 61.61(b) and each of the PVC Facilities produces vinyl chloride within the meaning of 40 C.F.R. § 61.60.

10. At all times relevant to this action, Oxy Vinyls was and continues to be an "owner" and/or "operator" of the Pasadena Facility, within the meaning of 40 C.F.R. § 260.10 and the equivalent Texas hazardous waste regulations. Oxy Vinyls generates hazardous waste within the meaning of RCRA and the relevant Texas hazardous waste regulations.

11. Oxy Vinyls, at all times relevant hereto, has operated, and continues to operate, at each of the PVC Facilities several "stationary sources" of air emissions, that are subject to one or more National Emission Standards for Hazardous Air Pollutants (“NESHAP”) found at 42 C.F.R. Part 61.

12. Oxy Vinyls is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); Section 329(7) of EPCRA; 42 U.S.C. § 11047(7); and Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

STATUTORY BACKGROUND

Hazardous Waste (RCRA)

13. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976 to amend the Solid Waste Disposal Act, and on the Hazardous and Solid Waste Amendments ("HSWA"), enacted by Congress in 1984 to further amend the Solid Waste Disposal Act. RCRA establishes a comprehensive program to be administered by the Administrator of EPA for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. 42 U.S.C. §§ 6901 *et seq.*

14. Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. Part 260 through 272 applicable to generators, transporters, and treatment, storage and disposal facilities. These regulations generally prohibit treatment, storage and disposal of hazardous waste without a permit or equivalent "interim status." They prohibit land disposal of certain hazardous wastes, and provide detailed requirements to govern the activities of those who generate hazardous waste and those who are lawfully permitted to store, treat and dispose of hazardous waste.

15. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, the EPA may authorize a state to administer a state hazardous waste program in lieu of the federal program when it deems the state program to be equivalent to the federal program.

16. EPA has granted final authorization to the State of Texas to administer its hazardous waste program in lieu of the federal program. On December 26, 1984, the State of Texas received final authorization for its base RCRA program, and there have been subsequent authorized revisions to Texas' program. (49 Fed. Reg. 48,300.) With the addition of Section

3006(g) of RCRA, 42 U.S.C. § 6926(g), new requirements imposed pursuant to the authority of HSWA are immediately applicable in the authorized States upon the federal effective date. The Texas Commission on Environmental Quality (“TCEQ”) is the State agency designated to maintain the authorized RCRA program in Texas.

17. Pursuant to Sections 3008(a) and (g) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and (g) and 6926(g), the United States may enforce the federally-approved Texas hazardous waste program, as well as the federal regulations that remain effective in Texas by filing a civil action in United States District Court seeking civil penalties not to exceed specified amounts for each day of each violation, and injunctive relief.

Clean Air Act

18. Section 112 of the CAA, 42 U.S.C. § 7412, requires EPA to promulgate emission standards for certain categories of sources of hazardous air pollutants known as NESHAPs.

19. Section 112(b) of the CAA, 42 U.S.C. § 7412(b), designates vinyl chloride as a hazardous air pollutant.

20. Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA promulgated the Vinyl Chloride NESHAP, 40 C.F.R. Part 61, Subpart F §§ 61.60 to 61.71, establishing emissions standards for vinyl chloride.

21. The Vinyl Chloride NESHAP applies to the PVC Facilities, where vinyl chloride is stored, used, processed and released. *See* 40 C.F.R. §§ 61.60 and 61.61(b).

22. 40 C.F.R. § 61.67(g)(2) specifies that test Method 107 or Method 601 is to be used to determine the concentration of vinyl chloride in each inprocess wastewater stream for which an emission limit is established.

23. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including “major sources.” The purpose of Title V is to ensure that all “applicable requirements” for compliance with the CAA are collected in one place. The Air Pollution District of Jefferson County’s (the predecessor agency to the LMAPCD) Title V operating permit program was granted final approval by EPA on April 22, 1996. The LMAPCD’s Title V operating permit program is currently codified as District Regulation 2.16. The State of Kentucky has also given the LMAPCD authority to make and enforce all necessary orders, rules and regulations to implement Chapter 77 of the Kentucky Revised Statutes (Air Pollution Control. *See* KRS 77.180.) Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and the LMAPCD’s Title V operating permit program (District Regulations at 2.16, and all relevant prior versions of this regulation) have at all relevant times made it unlawful for any person to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), implementing regulations of the Act, 40 C.F.R. § 70.2, and the LMAPCD’s Title V operating permit program regulations (District Regulation 2.16 and all relevant prior versions of these regulations) have at all relevant times required that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the CAA.

24. Pursuant to Title V of the CAA, 42 U.S.C. §§ 7661 through 7661f, the Air Pollution Control District of Jefferson County, Kentucky, the predecessor agency to the LMAPCD, has issued an air pollution control permit No. 212-99-TV to the Louisville Facility. That permit, No.

212-99-TV, incorporates as Federally enforceable requirements, *inter alia*, requirements similar and additional to those in the Vinyl Chloride NESHAP.

25. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes EPA to bring a civil action if the Administrator finds that any person is in violation of, *inter alia*, any regulation promulgated under Section 112 of the CAA, 42 U.S.C. § 7412. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the Court to enjoin a violation, to require compliance, and to assess a civil penalty for each violation.

EPCRA Reporting Requirements

26. Under Section 313 of EPCRA, 42 U.S.C. § 11023, and regulations promulgated thereunder, Oxy Vinyls is required annually to calculate and report to EPA various data regarding toxic chemicals at the facility during the preceding year. Such data must include the “annual quantity of the toxic chemical entering each environmental medium.”

27. Oxy Vinyls is required to report pursuant to Section 313 of EPCRA regarding vinyl acetate and vinyl chloride at the PVC Facilities.

28. Section 329(4) of EPCRA, 42 U.S.C. § 11029(4), and 40 C.F.R. § 372.3 define “facility” to mean, in relevant part, all buildings, equipment, structure and other stationary items that are located on a single site and that are owned or operated by the same person.

FACTS

29. The PVC Facilities manufacture polyvinyl chloride (PVC), a plastic material used in many applications from flexible sheeting to rigid water pipes. Suspension polyvinyl chloride is manufactured from vinyl chloride using a batch reactor polymerization process at each of these facilities.

30. Polymerization takes place in those reactors, a process in which the molecules of vinyl are linked together to form long chains. These polymer chains form the plastic PVC resin, which Oxy Vinyls sells as its product.

31. After the reaction is complete, the PVC resin is dried and then bagged for sale. In the drying process, much of the vinyl chloride monomer that has not been combined into a polymer chain will evaporate and escape to the atmosphere. The escape of this un-reacted Residual Vinyl Chloride Monomer ("RVCM") is a large source of vinyl chloride emitted from the PVC Facilities.

32. The PVC manufacturing process also creates several streams of liquid and sludge wastes. Some of the waste streams from the PVC production at the Pasadena Facility are routed to earthen surface impoundments.

33. EPA conducted a three day inspection of the Louisville Facility in March 2004.

CLAIMS FOR RELIEF

Count I - Clean Air Act

34. Paragraphs 1 through 33 are incorporated herein by reference.

35. Defendant Oxy Vinyls has committed the following violations of the Clean Air Act and the regulations and permits enforced thereunder:

Pasadena and/or Deer Park Facilities

a. On one or more occasions in the five (5) year period immediately preceding the filing of this Complaint, at the Pasadena and/or Deer Park Facilities, Oxy Vinyls submitted NESHAP reports late and/or calculated the three (3) hour rolling average incorrectly in

that reactor opening losses did not match supporting data, in violation of 40 C.F.R. § 61.70(a)(1) and (c)(1).

b. On one or more occasions in the five (5) year period immediately preceding the filing of this Complaint, Oxy Vinyls failed to adhere to Method 107 for testing a sample or samples for vinyl chloride, in violation of 40 C.F.R. § 61.67(g)(3) and 40 C.F.R. Part 61, Appendix B, Method 107, Section 8.1.1, at the Pasadena Facility.

Louisville Facility

c. On or about January 24, 2003, Oxy Vinyls failed to adequately strip wastewater leading to the release of five hundred (500) gallons of 322 parts per million (ppm) Vinyl Chloride wastewater (approximately 1.34 lbs of vinyl chloride), in violation of 40 C.F.R. § 61.65(b)(9).

d. On or about February 18, 2005, Oxy Vinyls released approximately nine (9) lbs of vinyl chloride from relief valve E-LPA on TK-4B, the Fresh Vinyl Chloride Charge Tank, in violation of 40 C.F.R. § 61.65(a).

e. On or about the weeks of August 6, 2003; August 26, 2003; and February 29, 2004, Oxy Vinyls failed to conduct weekly pump inspections in violation of 40 C.F.R. 61.242-2(a)(2).

f. Defendant Oxy Vinyls violated Federally enforceable provisions of its Title V permit, Title V Permit No. 212-99-TV ("Title V Permit"), in the following particulars:

i. On or about November 10, 2004, Oxy Vinyls improperly operated control equipment, resulting in a Method 9 opacity reading of greater than twenty (20)

percent (%) on Boiler #6, E-BLR-#6BLR, in violation of District Regulation 6.07, Section 3.02, and Title V Additional Condition 1.b.i.1.

ii. On or about December 29, 2004, through December 31, 2004, Defendant operated all three (3) boilers, Boilers #4, #5, and #6 (E-BLR-#4-BLR, E-BLR-#5-BLR, and E-BLR-#6-BLR) simultaneously when the temperature was above 32 degrees Fahrenheit, in violation of District Regulation 2.16 and Title V Permit Additional Condition 1.a.i.

iii. On or about the week of November 24, 2003, Oxy Vinyls failed to conduct Method 22 visible emissions survey on the air washer, an emission point on the Ash Handling Silo, E-BLR-ASH, in violation of District Regulation 2.16 and Title V Permit Additional Condition 2.b.iii.

iv. On or about the week of August 22, 2003, Oxy Vinyls failed to perform the required Method 22 visual emissions survey using the correct procedures in that the Boiler #4 (E-BLR-#4-BLR) for the coal conveying baghouse was not operational at the time the emissions survey was performed, in violation of the Title V Permit Additional Condition 2.a.i.5.e.

v. On or about August 22, 2003 to August 26, 2003, Oxy Vinyls failed to verify properly on a daily basis whether Boiler #4 (E-BLR-#4-BLR) for the coal conveying baghouse was in operation during said period, in a violation of the Title V Permit Additional Condition 2.a.i.5.d.

vi. On or about March 16, 2003, Oxy Vinyls exceeded the Prevention of Significant Deterioration ("PSD") pound per day Particulate Matter ("PM") limit

by 34% on storage silos TK-3K, in violation of District Regulation 2.05 and Title V Permit Additional Condition 1.c.i.

vii. On or about March 16, 2003, and March 3, 2003, Oxy Vinyls exceeded the pound per hour PM limit by 1710% on storage silos TK-3K and the PSD PM lb per hour limit by 826% on TK-5K, in violation of District Regulation 7.08 and Title V Permit Additional Condition 1.c.i.

viii. On or about August 15, 2003, as per Malfunction and Emergency Start up and Shutdown (“MESS”) report #6205 submitted by Oxy Vinyls to LMAPCD, Boiler #6 (E-BLR-#6-BLR) exceeded the 20% opacity limit, in violation of District Regulation 6.07, Section 3.02, and Title V Permit Additional Condition 1.b.i.1.

Pedricktown Facility

k. On one or more occasions in the five (5) year period immediately preceding the filing of this Complaint, Oxy Vinyls violated 40 C.F.R. § 61.65(b)(8)(ii) by failing to implement a routine leak detection program at each of its process units at the Pedricktown Facility. Oxy Vinyls has two process units at its Pedricktown Facility within the meaning of 40 C.F.R. § 61.65(b)(8)(ii).

Count II – RCRA

36. Paragraphs 1 through 33 are incorporated herein by reference.

37. Oxy Vinyls is a generator within the meaning of 40 C.F.R. § 260.10 and 30 Texas Administrative Code (“TAC”) § 335.1(58) of hazardous waste within the meaning of 40 C.F.R.

§ 261.3 and 30 TAC § 335.1(62) and subject to the standards at § 262.10(a) and 30 TAC § 335.61(a).

38. A generator within the meaning of 40 C.F.R. § 260.10 and 30 TAC § 335.1(58) of solid waste within the meaning of 40 C.F.R. § 260.10 and 30 TAC § 335.1(131) must determine if that waste is a hazardous waste in accord with 40 C.F.R. § 262.11 and 30 TAC § 335.61(a).

39. A generator within the meaning of 40 C.F.R. § 260.10 and 30 TAC § 335.1(58) of hazardous waste within the meaning of 40 C.F.R. § 261.3 and 30 TAC § 335.1(62) must keep records of any test results, waste analyses or other determinations made in accordance with 40 C.F.R. § 262.11 and 30 TAC § 335.62 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage or disposal. 40 C.F.R. § 262.40(c) and 30 TAC § 335.70(a).

40. On one or more occasions in the five (5) year period immediately preceding the filing of this Complaint, Defendant violated 30 TAC § 335.70(a) and 40 C.F.R. § 262.40(c) by failing to make a hazardous waste determination pursuant to 40 C.F.R. § 262.11 and 30 TAC § 335.62, and/or failure to retain required test results, waste analyses or other determinations made in accordance with 40 C.F.R. § 262.11 and 30 TAC § 335.62 for certain waste streams at the Pasadena Facility, which is Federally enforceable pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

Count III– EPCRA

41. Paragraphs 1 through 33 are incorporated herein by reference.

42. The chemical substance vinyl chloride is a “toxic chemical” as defined by 40 C.F.R. § 372.3 and is listed in 40 C.F.R. § 372.65.

43. The Deer Park Facility is a “facility” within the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. §§ 355.20 and 372.3, and a “covered facility” within the meaning of 40 C.F.R. § 372.22. The threshold quantity for a toxic chemical which is manufactured at a facility is 25,000 pounds for the 2000 and 2001 calendar years as set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25.

44. Oxy Vinyls submitted a toxic chemical release form (Form R) for vinyl chloride covering the 2000 and 2001 calendar years for the Deer Park Facility.

45. Oxy Vinyls’ Form R calculations for vinyl chloride indicated that the Deer Park Facility failed to calculate accurately releases of vinyl chloride fugitive emissions.

46. The Deer Park Facility manufactured and/or processed more than 25,000 pounds of vinyl chloride during the calendar years 2000 and 2001.

47. Oxy Vinyls Form R for the calendar years 2000 and 2001 failed to report accurately the quantity of vinyl chloride which entered the environment from the Deer Park Facility.

48. Oxy Vinyls’ failure to accurately calculate and report the amount of vinyl chloride the Deer Park Facility manufactured, processed, or otherwise used during the 2000 and 2001 years is a violation of EPCRA Section 313, 42 U.S.C. § 11023 and 40 C.F.R. § 372.85(b).

Injunctive Relief

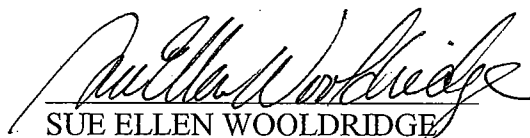
49. Unless restrained by order of this Court, one or more of the violations described above are likely to continue or recur.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court grant the following relief:

1. Permanently enjoin Oxy Vinyls from further violations of the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; and the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001 *et seq.* and their implementing permits and regulations.
2. Order Oxy Vinyls promptly to take all steps necessary or appropriate to comply with the foregoing laws, regulations and permits.
3. A judgment assessing civil penalties against Oxy Vinyls not to exceed \$27,500 per day for each violation that occurred prior to March 15, 2004 and not to exceed \$32,500 per day for each violation which occurred on or after March 15, 2004.
4. Award Plaintiff the costs and disbursements in this action.
5. Award such other relief as this Court may deem just and proper.

Respectfully Submitted,



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